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## **Feasibility Study**

# **Implementation of the UNESCO-Convention for the Safeguarding of Intangible Cultural Heritage (2003) in Germany**

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# Feasibility Study - Implementation of the UNESCO-Convention for the Safeguarding of Intangible Cultural Heritage- in Germany

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## Foreword

The UNESCO convention for the safeguarding of intangible cultural heritage was adopted in 2003 and came into effect in 2006. Intangible cultural heritage became a focal point of German public interest when the first entries were made on the convention's list; however, the convention itself has not yet been ratified by Germany. On the one side there is a number of different people and stakeholders who have publicly announced their support and aspiration to have specific elements or cultural expressions of intangible heritage in Germany inscribed - perhaps better understood as "living" heritage. They, naturally, support the ratification of the convention. On the other side, there are those who strongly criticize the convention and there is a faction who also objects to it, particularly with regards to the recent UNESCO listings of November 2010. There is the fear that living life expressions will succumb to bureaucracy and that these expressions and cultural practises will become musealized. Nevertheless, even with this critique there still are those who value UNESCO's efforts to protect intangible heritage.

The characteristics of intangible heritage are constantly being improvised, developed and changed. Accordingly, the convention should not treat intangible heritage as something fixed. On the contrary it should assist in keeping the cultural expressions and traditions alive. As is clearly stated in the convention UNESCO's aspiration to safeguard intangible heritage is understood so as not to suppress new impulses or developments.

Thus far we are pleased to have been able to follow through with Dr. Birgitta Ringbeck's request to prepare a feasibility study for the implementation of this convention in Germany. Our interest in this study is based also in the fact that since May 2010, BTU Cottbus has been delivering an international graduate programme with studies focused on living intangible heritage. It is well worth noting that the topic of intangible heritage, albeit only one of the five topics in the field of "Heritage" (including Cultural and Natural Heritage, Cultural Landscapes as well as Memory of the World), is of great interest to both German and international students. Apparently there is an enormous need to discuss and to investigate themes related to intangible heritage. In practice this means there is a need to communicate and mediate the 2003 convention, not least because of its eminent and attractive conceptualization of culture which Germany has underestimated for a long time.

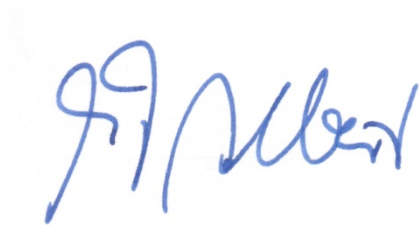
The following feasibility study illustrates the potential outcomes of ratifying the convention and shows several possible ways of implementing the convention within institutions. We believe that the time has arrived to openly debate ratification. On the one hand this is necessary in order to counter misinformation and miscommunication and to challenge resultant public misperceptions with sound information policies and public awareness campaigns. On the other hand it is important to have a voice that can influence the discussion at an international level as it pertains to the current implementation of the convention. With this background we produced a paper that should invite discussion and provide food for thought. These shall be further prompted by questions such as the following:

- How can public respect for the convention be improved? In our opinion creating greater public respect can only be initiated by members and institutions of civil society. The discussion process should not be carried out to the exclusion of the overall goals of the convention, as in deed they themselves have already acquired a positive presence in the minds of the public.
- How should the inventory, which is expressed in the convention and the operational guidelines, be interpreted? As part of the decision-making process we propose a Germany-wide systematic test procedure, or screening, to be carried out on the five categories of intangible heritage, which are mentioned in Article 5. This may be done so as to unlock the existing potential in the Federal Republic of Germany without having to immediately draw up an inventory.

- How might the nomination process be formed? Here we propose to define and implement meaningful flagship projects for each of the five categories during the ratification process. Such flagship projects could stand as examples for contextualizing the overall dimension of the convention in each category (like identity formation, intercultural dialogue, cultural dynamics, cultural diversity or sustainable development) and could demonstrate the practicability and limitation of their implementation.

As already mentioned this study was inspired both in concept and structure by Dr. Birgitta Ringbeck. It was carried out by Stefan Disko, who holds an MA in World Heritage Studies. Indeed our thanks go out to him. We hope that this study invites constructive discussion about the opportunities and risks for the Federal Republic of Germany in ratifying this convention.

Cottbus in February 2011



Prof. Dr. Marie-Theres Albert

# UNESCO-Convention for the Safeguarding of Intangible Cultural Heritage- Feasibility Study for the Implementation of the Convention in Germany

## 1. Introduction

In October 2003 the UNESCO General Assembly adopted the Convention for the Protection of Intangible Cultural Heritage. In the face of rapid social change due to globalization this convention shall contribute to preserving the worldwide diversity of “living” traditions and traditional cultural expressions. In 2002/2003 Germany actively participated together with other EU member states in developing the convention, but remained “reserved and rather sceptical” towards it - like the majority of the EU member states - for various reasons including the incomprehensive definition of this concept.<sup>1</sup> The convention, which came into effect in April 2006, has still not been ratified by Germany (status 20 January 2011).

In June 2009 the Federal Republic determined that “a governmental and—according to international law—normal engagement ... is not absolutely necessary to preserve (German) intangible cultural heritage”. Furthermore, there “were no grounds in regards to foreign policy that would call for a rapid accession to the convention,” as the convention had been ratified by only 113 states—80 UNESCO-member states have not yet ratified the convention. The Federal Government stressed that “before deciding on a possible ratification... there existed a need for deliberation both at Federal and State levels” and that the advantages and disadvantages of ratification would need to be carefully examined.<sup>2</sup>

According to the Federal-State conference protocol at the Foreign Office in Berlin, dated 29 September 2010, the federal states “have not yet come to a decision pertaining to the ratification of the UNESCO convention. They do not consider the ratification to be of urgency and take a critical and circumspective stance. This is among other things based on the incomprehensible definition of the subject of protection and on the unclear process to implement the convention. “The Federal States also require clarification “as to their responsibilities and the incurred costs brought forth by the convention,” as well as an answer to “how this convention would be of benefit to Germany.”<sup>3</sup>

The purpose of this feasibility study is to illustrate possible ways (both procedurally and institutionally) of implementing the convention within Germany, with consideration to the specific circumstances of the nation. The purpose of the study is not to discuss the question of benefits for Germany. However, one point should be mentioned here, namely that the number of States Parties to the convention continues to grow: so far 133 of the 193 UNESCO-member states have ratified the convention. According to the aforementioned Federal-State conference protocol, Germany’s permanent delegation to UNESCO sees a danger that “Germany will lose contact and a significant amount of influence both within the UNESCO establishment and within the context of the convention itself. The convention is one of the most important cultural conventions of UNESCO, and has allowed for merging to take place. The interplay between conventions can only be co-determined by Germany if it also ratifies this cultural convention. “The relevance of time to this issue must be pointed out here: “only by ratifying the convention does Germany still have the chance to actively influence the implementation of the convention and, as with World Heritage, be adequately represented on the international list.” The Federal Government and its Federal States will be held answerable to how they justify their decisions against ratification “and to how they deal with growing media and political interest, should the governments decide against ratification.”<sup>4</sup>

Although there has been an undoubted increase in political and media interest, one cannot help but notice that German media coverage on the convention has in the recent past been extremely critical and at times

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<sup>1</sup> German Commission for UNESCO (2007a), Point 4.

<sup>2</sup> Answer of the federal government to a minor interpellation at the German Bundestag [Parliament of the Federal Republic of Germany], BT-Drs.16/13343 (11 June 2009), pp. 1-2, 6.

<sup>3</sup> Gz. : 603-9.611.31KSIK, 25 October 2010, p.3.

<sup>4</sup> Ibid., pp. 2 and 5. The German Commission for UNESCO already declared in a memorandum from February 2007, which succeeded intensive consultation among experts, that Germany „with an accession to the convention should actively participate and cooperate in Europe and internationally for the protection of intangible cultural heritage (see Appendix 7, „Memorandum“, Paragraph 7).

downright taunting. This is especially the case with the latest entries of elements onto the “representative list of intangible heritage of mankind” called for in the convention and managed by the UNESCO.<sup>5</sup> The reasoning for these snide comments was on the one hand based on the misunderstanding that the representative list is a kind of catalogue, similar to the UNESCO World Heritage list, including unusual and significant—more specifically—valuable intangible “World Heritage.” This misconception led to articles with titles such as “Gyros and Pizza as World Cultural Heritage (Gyros und Pizza als Weltkulturerbe).” On the other hand UNESCO’s programme to protect intangible cultural heritage was criticised for rendering living life expressions to museums and bureaucratic administrations by the “musealization of the past”, as well as the development of a “global bureaucratic identity” and a “curiously sterile ‘UNESCOization’ of the entire world.”<sup>6</sup> It was seen as dealing with the insubstantial preservation of now obsolete cultural practices that had developed “not because they were such delightful folklore, but because they fulfilled a particular function within the structure of society.”<sup>7</sup> Customs that had obviously lost their functions would be kept alive through UNESCO’s endeavour in a “zombie-like state.”<sup>8</sup>

In the situation that Germany would ratify this convention, these misunderstandings and concerns—although partially justified—would have to be actively accounted for and countered by communication strategies and adequate measures (e.g. flagship projects) to develop a positive image of the convention among the public and to maintain UNESCO’s reputation. These strategies and measures would be a central task independent of an institutional approach, but necessary within the context of implementing the convention in Germany. Appropriate communication strategies should be introduced already during the ratification process. The convention should not contain obsolete customs and cultural practices (as will be described shortly in detail) but should be conducive to *living* traditions, expressions and practices.

These should be understood as a part of community and group identities that are transmitted from one generation to the next while continuously recreating themselves and evolving. Contingent incentive measures should not in actual fact lead to the ‘musealization’ of the elements concerned. UNESCO stresses:

“There is a risk that certain elements of intangible cultural heritage could die out or disappear without help, but safeguarding does not mean protection or conservation in the usual sense, as this may cause intangible cultural heritage to become fixed or frozen. ‘Safeguarding’ means ensuring the viability of the intangible cultural heritage, that is ensuring its continuous recreation and transmission. Safeguarding intangible cultural heritage is about the transferring of knowledge, skills and meaning. It focuses on the processes involved in transmitting, or communicating it from generation to generation, rather than on the production of its concrete manifestations, such as dance performances, songs, music instruments or crafts. . . . Intangible cultural heritage should nevertheless not always be safeguarded, nor be revitalized at any cost. As any living body, it follows a life cycle and therefore some elements are to disappear, after having given birth to new forms of expressions. It might be so that certain forms of intangible cultural heritage are no longer considered relevant or meaningful for the community itself. As indicated in the Convention for the Safeguarding of the Intangible Cultural Heritage, only intangible cultural heritage that is recognized by the communities as theirs and that provides them with a sense of identity and continuity, is to be safeguarded. Any safeguarding measure must be developed, and applied, with the consent and involvement of the community itself. In certain cases, public intervention to safeguard a community’s heritage is not even desirable, since it may distort the value such heritage has for the community itself.”<sup>9</sup>

A short description of the main features of the UNESCO convention is next, followed by an investigation into possible approaches for implementing the convention in Germany.

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<sup>5</sup> See e.g. Uhl, A. *Gyros und Pizza als Weltkulturerbe* (Berliner Morgenpost, 11 November 2010); Dolasse, J. *Tartenschutz* (FAZ, 18 November 2010); Mangold, I. *Die Welt als Museum* (Die Zeit, 25 November 2010); Imue Cäsars Koch: *Unesco berät Weltkulturerbe-Liste* (SZ, 16 November 2010).

<sup>6</sup> Mangold, I. *Die Welt als Museum* (Die Zeit, 25 November 2010).

<sup>7</sup> Ibid.

<sup>8</sup> Schwering, M. *Wenn Bräuche sich verbrauchen* (Kölner Stadt-Anzeiger, 17 November 2010).

<sup>9</sup> UNESCO (2009b), S. 3

## 2. Convention for the Safeguarding of the Intangible Cultural Heritage

### 2.1. Definition of Intangible Cultural Heritage

According to Article 2, Paragraph 1 of the UNESCO Convention, the term “intangible cultural heritage” encompasses the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith. These are . . .

- part of the cultural heritage communities, groups and, in some cases, individuals and reflect the self-understanding of their creators, carriers and users;
- transmitted from generation to generation;
- continually advanced in the forms of new expressions and applications by communities and groups who are coming to terms with their environment, their history and their interaction with nature;
- facilitative to the sense of identity and continuity among respective communities and groups.

'Intangible cultural heritage' in Article 2, Paragraph 1 of the Convention is intentionally defined in the broadest sense, for a narrow definition could not account for the global diversity of cultural heritage. Terms such as 'folklore', 'folk culture', 'national identity', 'popular culture', 'nation' and even 'tradition' have been kept out of the definition.<sup>10</sup> UNESCO emphasizes that intangible cultural heritage, in terms of the convention, does not only comprise of inherited traditions from the past, but also of contemporary practices – it is “at once traditional, contemporary and alive”.<sup>11</sup> The special attention given to the living and contemporaneous qualities of intangible cultural heritage is important, because the limitations of inherited, 'traditional' elements could lead to the musealization of the intangible cultural heritage. Indeed, safeguarding, as stipulated in the UNESCO-Convention, should not quell the further development of intangible cultural heritage as it is characterized by process and change. However, a certain degree of continuity is naturally unalterable since this provides for the handing down of traditions from one generation to the next—this is a key element that allows for the discourse around cultural 'Heritage'.

The Convention explicitly adheres to the principle that intangible cultural heritage will only be given consideration if it is in accordance with the existing international legal instruments in the fields of human rights, as well as with the demands for mutual respect between communities, groups and individuals. The inclusion of this stipulation in the Convention was a German request interpreted accordingly by the Federal Government “in terms of a clause, *ordre-public*, which justifies the exclusion of unlawful practices (i.e. genital mutilation, inhuman forms of punishment or the public wearing of NS-symbols) from the list of German intangible cultural heritage”.<sup>12</sup>

Another provision that has been included in the text of the convention states that intangible cultural heritage, in order for it to be taken into consideration, needs to be in accordance with the principles of sustainable development.

The Convention identifies five areas to which intangible cultural heritage ordinarily could be assigned; their boundaries, however, are nuanced:

- oral traditions and expressions, including language as a vehicle of the intangible cultural heritage (i.e. narratives, legends, folk tales, fables, poems, rhymes, riddles, songs, sayings, idioms, prayers);
- performing arts (i.e. music, chanting, typical forms of dance, mask dance, theatre, marionettes-, puppet- and mimic plays, forms of circus, traditional singing like shepherd or polyphonic singing);
- social practices, rituals and festive events (forms of greetings, gift giving, playing, living, eating, dressing; rites of birth, passage, wedding and funeral; seasonal festivities and ceremonies, processions, carnival rituals and traditional life styles);

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<sup>10</sup> Jacobs (2007), p. 12.

<sup>11</sup> UNESCO (2009c), p. 4.

<sup>12</sup> Answer of the federal government to a minor interpolation in the German Bundestag, BT-Drs. 16/13343 (11.06.2009), p. 4.



- knowledge and practices concerning nature and the universe (i.e. cosmologies, knowledge on healing plants and their use, agricultural knowledge, sowing calendars);
- traditional craftsmanship (processing of stone, clay, wood, metal, animal skins, glass, paper, weaving techniques, knitting techniques, lace making, mixing of pigment, painting, traditional preparing of food).

## 2.2 Aims

According to Article 1 the aims of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage are:

- to safeguard the intangible cultural heritage
- to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned
- to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof
- to provide for international cooperation and assistance

The following points are all but a few reflections and realizations that led to the creation of the Convention and that had considerable influence on its drafting (see preamble):

- the awareness of the importance of the intangible cultural heritage as a main-spring of cultural diversity and a guarantee of sustainable development
- the conscientiousness of the deep-seated inter-dependence between the intangible cultural heritage and the tangible cultural and natural heritage
- the realisation that the processes of globalization and social transformation, as well as (emerging) intolerances, seriously endanger the intangible cultural heritage
- the common will and the general concern to safeguard the intangible cultural heritage of humanity
- the recognition that communities, in particular indigenous communities, groups, and (in some cases) individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage
- the necessity to build greater awareness, especially among the younger generations of the importance of the intangible cultural heritage and of its safeguarding
- the invaluable role of the intangible cultural heritage as a factor in bringing human beings closer together and ensuring exchange and understanding among them

According to Article 2, Paragraph 3, 'Safeguarding' means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

The States Parties are to take the necessary measures that ensure the intangible cultural heritage occurring on the national level is safeguarded and in regards to this aim are to cooperate on bilateral, regional and international levels. In addition to purely safeguarding this heritage, another important aim is to strengthen the public's awareness of the significance of intangible cultural heritage. The Convention is an important complement to the earlier international legal instruments for the protection of cultural and natural heritage; these were limited to the protection of movable and immovable cultural and natural goods in times of war and peace. The Convention aims to enrich and complete these legal instruments and it compels States Parties to pursue a holistic policy for cultural heritage.

The Convention recognizes intangible cultural heritage as an applied and dynamic aspect of the identity of communities, groups and individuals. The processes that allow for this are continually practiced and promoted. The Convention therefore addresses the "contextual circumstances under which the intangible cultural heritage is practised, applied and passed on in perpetuity".<sup>13</sup> All of the applicable measures have

<sup>13</sup> Eidgenössisches Departement des Inneren (2006), p. 19.



the aim of “safeguarding” and securing the “viability” of the intangible cultural heritage in its dynamic and changeable character. Musealization should not be a threat to individual elements. The German Commission to UNESCO stresses that “the UNESCO Convention’s requirement of safeguarding is not a lead into the suppression of new impulses or the further development of cultural forms of intangible heritage. Intangible cultural heritage is always characterized by improvisation and change”.<sup>14</sup> Consequently the encompassing involvement of the carriers of intangible cultural heritage (communities, groups and, if applicable, individuals that create, safeguard and pass on the cultural heritage) is of outstanding significance to the implementation of the Convention, to the identification of intangible cultural heritage and to the execution of all safeguarding and promotional measures.

## **2.3 Obligations of States Parties**

The obligations for States Parties arising from the Convention are partly general, and partly specific in nature.

### **2.3.1 General Obligations**

In general the Convention obliges the States Parties to safeguard, develop and support the intangible cultural heritage present in their territory by means of appropriate institutions and measures (Article 11 a, 13) and with the widest possible participation of the carriers of heritage (Article 15).

The contracting states are asked to undertake a variety of measures to fulfil the central task of safeguarding (see Articles 13 and 14). Nevertheless, these regulations are not legally binding and are therefore formulated in quite an open manner (i.e. “undertakes efforts;” “is trying with the use of appropriate measures”). They can be viewed as a catalogue of possible protection and promotion measures which all contracting states should try to implement to the best of their abilities. Furthermore, the contracting states should address the intangible cultural heritage in their cultural policies (Article 13 a); appoint one or more competent bodies for the safeguarding of the intangible cultural heritage (Article 13 b); support scientific research with a view to the effective safeguarding of intangible cultural heritage (Article 13 c); create matching training opportunities, set up centres of documentation and provide guaranteed access to these centres of documentation (Article 13 d). In the area of education, the contracting states should among other things make the effort to raise the level of appreciation and valuation of the intangible cultural heritage in society— i.e. via educational, awareness-raising and information programmes that are aimed at the general public and via educational and training programmes aimed at the communities in question (Article 14 a). Moreover, efforts should be made to keep the public informed of the dangers that threaten intangible cultural heritage (Article 14 b).

The Convention also obliges the States Parties in general to cooperate at bilateral, sub-regional, regional and international levels according to the aims of the Convention, for instance, through common initiatives or the exchange of information and experiences (Article 19). Furthermore, States Parties should “insofar as is possible” lend their support to international fund-raising campaigns organized for the benefit of the Fund under the auspices of UNESCO (Article 28).

### **2.3.2 Specific Obligations**

In addition to the general obligations, the Convention also contains specific obligations that are legally binding in nature. They are contained in Articles 11, 12, 26 and 29. It follows that contracting states are obliged to:

- identify with a view to safeguarding and supporting the various elements of the intangible cultural heritage present in their territory and shall draw up one or more inventories of the intangible cultural heritage and update them regularly (Article 11 b, 12)

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<sup>14</sup> German Commission for UNESCO (2007a), Point 33.

- pay into the UNESCO-Fund for intangible cultural heritage every two years—a contribution that is not to exceed one per cent of the contribution to the regular budget of UNESCO (Article 26); for the time being, the General Assembly of States Parties has fixed the amount of the contribution to one per cent of the regular contribution to UNESCO;<sup>15</sup> for Germany, this would mean approximately 250,000 Euro annually; however, there is a possible ‘opting out clause’ through which a state would be free to make voluntary contributions instead (preferably of the same amount)—this would need to be declared when depositing the instrument of ratification)<sup>16</sup>
- provide periodic reports to the interstate committee on measures that have been taken to implement the Convention (Article 29, Article 12—Paragraph 2), especially in regards to the national inventories and the measures listed in Articles 11, 13, 14 and 19; these reports must also include information on the status of the elements that have been included on the international lists and that are situated in the territory of the contracting state (see Operational Guidelines, Chapter V)

## 2.4 Inventories

Of central importance to the national implementation of the Convention—especially in the first years of ratification—is the creation of an inventory of intangible cultural heritage found in the territory of a contracting state. This will provide the basis for possible safeguarding and promotional measures.

The Convention obliges all contracting states to identify and define the various elements of intangible cultural heritage in their territory and to create one or more relevant inventories that are to be updated regularly. The inventory and identification measures are to be carried out using a participative approach that involves as best as possible the carriers of intangible cultural heritage (communities, groups and where appropriate individuals), as well as all relevant non-governmental organisations, experts and research institutes (Article 11 b, 12, 15; Operational Guidelines, Chapter III). However, the Convention does not create any legal rights or entitlements for individual carriers of intangible cultural heritage once the elements have been included in the inventory. Moreover, the inclusion of an element in the inventory does not place any further obligations on the carrier of the cultural heritage in question. The existing rights and obligations of carriers of the intangible cultural heritage, especially in the area of intellectual property, are not affected by the Convention.<sup>17</sup>

Some states had criticized the systematic creation of inventories for the intangible cultural heritage at the national level during the drafting of the Convention. It was seen as an inappropriate procedure for intangible cultural heritage. Exception was taken to the disproportionately high costs in governmental administration, which in the end would negatively impact the promotion of cultural practices, and to the creation of inventories that could lead to the musealization of otherwise dynamic cultural forms of expression. In the end, the creation of inventories was included as a central rudiment in the Convention, since without any preceding identification of intangible cultural heritage, the targeted safeguarding and promotion of individual elements would not be possible. In addition, inventories at a national level provide a meaningful basis from which to select elements for the international “representative list of the intangible cultural heritage of mankind”, as required by the Convention. The aim here is to foster better visibility of the intangible cultural heritage and to strengthen the general awareness of its significance.<sup>18</sup>

Whereas the preparation of inventories is a legally binding obligation of the States Parties, the Convention provides some freedom to States Parties in how to implement this obligation. Each contracting state is

<sup>15</sup> Resolution 2.GA 7 (2008)

<sup>16</sup> According to the UNESCO Convention consultations’ protocol between the federal government and the federal states in the Foreign Office, Berlin on 29.09.2009 (Gz.: 603-9.611.31KSIK, 25.10.2010), the finance ministry approached the foreign office and expressed favour towards the opting-out option in case of ratification. There was agreement that in case of ratification the option that allows for voluntary instead of mandatory contributions should be chosen.

<sup>17</sup> See Swiss Federal Office for Culture (2010), p. 6.

<sup>18</sup> Eidgenössisches Departement des Inneren (2006), p. 12; Blake (2006), p. 63.

required to prepare “in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory” (Article 12). The flexibility given to the states is on the one hand attributed to the vast differences in social, political and administrative structures; on the other hand it is attributed to the vast diversity of forms of intangible cultural heritage and the strongly differentiated international needs of their carriers.

Countries are not required to list all aspects of intangible cultural heritage in a single system, nor are they obliged to create a “national” inventory (that accounts for the entire nation). As such, federative states, in which the legislative and administrative aspects of culture are not under the jurisdiction of a central government, can create several regional inventories, instead of only a national one at the federal level.<sup>19</sup> In any case, the inventories should be all encompassing and as exhaustive as possible, as implied in the text of the Convention: the entirety of the intangible cultural heritage in the territory of a state is to be included in the inventory.<sup>20</sup> This, however, does not mean that priorities cannot be set in terms of practical implementation. Even the secretariat of the Convention has taken note that the task of completing an inventory would be next to impossible for most states. This is due to the great diversity, course or ‘processuality’ of the intangible cultural heritage that makes priority setting a necessity in many instances. More conceivable would be for example to initially focus on those elements that are particularly representative of the intangible cultural heritage of certain communities or regions. Some States Parties are specifically focused on the threatened elements of intangible cultural heritage.<sup>21</sup>

The convention does not contain exact instructions as to the content and degree of detail required in the inventories. Even the operational guidelines do not as of yet contain any recommendations on this matter. However, what one can infer from the Convention is that inventories are not an end in themselves but rather a means of “safeguarding the identification of heritage with the purpose to protect it”. Hence, it follows that elements that are included in the inventories should be described and documented to such an extent that they contribute to a safeguarded status and provisional base that can be used for further initiatives to promote the intangible cultural heritage. At the same time overly ambitious inventory projects should be avoided so as to ensure a measured use of available resources for both inventorying and promoting heritage.

In any case, the carriers of the intangible cultural heritage must be involved in the preparation and documentation of inventories. This means above all that respective communities, groups—and where appropriate—individuals need to be in agreement with the inscription onto the inventory list and with the content of the inscription (‘Principle of Free, Prior and Informed Consent:’ see Operational Guidelines—Paragraph 101).<sup>22</sup>

In order to provide a basis upon which State Parties can orientate the organisational content of the inventory inscriptions, the Secretariat of the Convention designed a “possible outline for inventorying elements of the intangible cultural heritage”<sup>23</sup>. In addition, various forms can be used as a basis to work from: for instance the nomination form used by the Interstate Committee for the “representative list of intangible cultural heritage of mankind”(Form ICH-02)<sup>24</sup>; the application form of the Austrian Commission to UNESCO (see Annex 3) for the inscription of intangible cultural heritage onto the national list; or the corresponding application forms used by Swiss Cantons (e.g. the application form for the “intangible cultural heritage inventory / living traditions of Canton Bern,” see Annex 5).

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<sup>19</sup> See UNESCO (2009a), S. 5: „States are able to choose whether to create a single, over-arching inventory or a set of smaller, more restricted ones. That is why neither the Convention nor the Operational Directives ever speak of ‘a national inventory’: instead, they refer to ‘one or more inventories’. In this way, States are not forced to include all domains or all communities within a single system. They may also incorporate existing registries and catalogues. A system that includes multiple inventories may be particularly appealing to federal states where responsibility for culture falls outside the remit of the central government, allowing sub-national regions or provinces to create their own inventories.”

<sup>20</sup> Ibid, p. 7-8.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid, p. 7.

<sup>23</sup> See *ibid*, p. 15.

<sup>24</sup> Updated version available under <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00184>

## 2.5 State of Implementation

The Convention for the Safeguarding of the Intangible Cultural Heritage was adopted by the General Assembly of UNESCO in Paris on October 17, 2003. It came into force on April 20<sup>th</sup>, 2006, three months after being ratified by 30 states. As of September 28, 2010, 132 states have ratified the Convention, including 19 EU member states: Belgium, Bulgaria, Denmark, Estonia, France, Greece, Italy, Latvia, Lithuania, Luxembourg, Austria, Portugal, Romania, Slovakia, Slovenia, Spain, Czech Republic, Hungary and Cyprus. Switzerland too has ratified the Convention and the Netherlands has announced that it still intended to ratify it in 2010.

The most important body of the Convention is the General Assembly of the States Parties. It meets every two years and is, among other things, responsible for the election of the Intergovernmental Committee for the Safeguarding of Intangible Cultural Heritage. Up until now, the General Assembly has met for three ordinary sessions (June 2006, June 2008, June 2010), as well as for one extra-ordinary session in November 2006.

The Intergovernmental Committee is composed of representatives from 24 contracting states. They are elected by the General Assembly for a four-year term in office. The General Assembly must heed the principles of equitable geographical representation and of rotating contracting states on the Committee during elections. Up until now, the Intergovernmental Committee has held five ordinary and three extra-ordinary sessions. The last ordinary session was held in Nairobi, Kenya from November 15 – 19, 2010. At present the European region (UNESCO voting groups I and II) is represented by the following countries on the Committee: Cyprus, Italy and Spain (voting group I), as well as Albania, Azerbaijan, Croatia and the Czech Republic (voting group II).

The Committee has been given the task to support and monitor the implementation of the Convention and to foster the aims of the Convention. The following tasks are all but a few concrete examples of what the Committee does:

- prepare and submit operational directives for the implementation of the Convention; these need to be approved by the General Assembly
- examine the reports of contracting states on the measures they have taken for the implementation of the Convention
- define objective selection criteria for the inscription of elements onto the “Representative List of the Intangible Cultural Heritage of Humanity” and the “List of Intangible Cultural Heritage in Need of Urgent Safeguarding” and the “Register of Good Safeguarding Practices”
- decide on the applications of contracting states for the inscription of elements onto one of the three above mentioned lists
- draft plans for the usage of funds from the “Intangible Cultural Heritage Fund;” these must be accepted by the General Assembly
- decide on the submitted applications of contracting states that require international support for the safeguarding of intangible cultural heritage
- provide consultation that draws on model projects and deliver recommendations on the measures required for the safeguarding of the intangible cultural heritage

As intended by the Convention, the Intergovernmental Committee has drafted “Operational Directives” for the implementation of the Convention. These have been revised and accepted by the General Assembly of contracting states in June 2008. At the third ordinary session of the General Assembly in June 2010, a newly amended and adapted version of the “Operational Directives” was passed. The Directives are to be thought of as a “work in progress” that will be regularly revised by the Committee and General Assembly. The completion of the Directives will be based on the experiences that will have been made during the implementation of the Convention in the years to come.

The Operational Directives contain, among other things, selection criteria for the inscription of elements onto the three international lists (see point 4.6.3 below), regulations on the nomination procedure, regulations on the periodical reports that are to be submitted by the contracting states, as well as a set of

rules for the granting of funds and the financing of the Intangible Cultural Heritage Fund. Moreover, they contain principles that guide States Parties in their education, awareness and information programmes, in addition to regulations for the participation of communities, groups and other non-governmental agents in the implementation of the Convention and regulations for the accreditation of non-governmental organisations as consultants of the Committee.

During its third ordinary session in November 2008, the Intergovernmental Committee inaugurated the “Representative List of Intangible Cultural Heritage”. As made possible by the Convention, the “Masterpieces of Oral and Intangible Heritage of Humanity”--proclaimed by UNESCO in the years 2001 to 2005--were included on the representative list. With this inscription the list already included 90 elements from regions around the world. The Committee decided on the first new inscriptions for the representative list in Abu Dhabi during the autumn 2009 session. The Committee had more than 100 proposals from 35 countries at hand, of which 76 were approved. In November 2010, another 47 elements were included onto the representative list. Since then the list contains 213 elements of intangible cultural heritage from a total of 41 countries. Some examples include the Argentinean and Uruguayan Tango, Spanish Flamenco, the Tibetan Opera in China, the "Carnival de Negros y Blancos" in Columbia, the Houtem Jaarmarkt in Belgium, Chinese Acupuncture, the traditional art of carpet knotting from Azerbaijan, the Mediterranean diet/mode of nutrition, the traditional handicraft of the “Zafimaniry” in Madagascar, and the Mandan Charter of Mali, which is considered the oldest constitution of the world.

The “List of Intangible Cultural Heritage that is in Urgent Need for Safeguarding” currently contains 19 cultural forms of expression from nine countries. The list includes elements such as the New Year’s Eve festivities in Qiang (China); the collective fishing tradition of Sanké mon (Mali); the cultural region of the Catholic minority, the Suiti (Latvia); the Junk construction techniques (China); and the traditional Tsuru-Music (Mongolia).

Currently, the register for examples of good practices contains three programmes. These also relate to projects that have been inscribed onto the list because of, according to the opinion of the Intergovernmental Committee, the exemplary manner in which they reflect the principles and aims of the Convention: e.g. the project for the safeguarding of the cultural heritage of the Aymara (Bolivia, Chile, Peru), the project for the support of Indonesian batik in educational institutions (Indonesia), and the school and museum project which integrates the knowledge around local cultural and natural heritage in its curricula in Elche (Spain).

As agreed by the General Assembly in June 2008, nominations for the representative list are to be examined by a lower body of the Intergovernmental Committee, set up specifically for this purpose and for providing recommendations to the Committee concerning the inscriptions, or non-inscriptions in question (see Operational Directives Paragraphs 29-31). This lower body was set up by the Committee in November 2008 and consists of six member states to the Committee (currently these are: Italy, Croatia, Venezuela, Republic of Korea, Kenya and Jordan). Applications for the inscription of elements onto the list of “Intangible Cultural Heritage in Urgent Need for Safeguarding” and the list for examples of good practices are to be examined - on a trial basis - by a specific consultation panel in the future. This panel consists of six independent experts and six accredited non-governmental organisations. More importantly it is to examine applications that request international assistance in excess of \$ 25,000 US (see Operational Directives Paragraphs 26-28).



### 3. Territorial Implementation of the Convention in Austria and in Switzerland

Since the majority of the articles pertaining to the UNESCO Convention have been kept very general and nonbinding, the States Parties have a large amount of leeway in the practical implementation of the Convention. Even the legally binding obligation to inventory intangible heritage within sovereign territory has been formulated in such a manner that the implementation is rendered very flexibly. As a consequence the states, which have ratified the Convention, approach the implementation very differently, and this is especially the case for the inventory.<sup>25</sup> The following sections briefly address the implementation process in Austria and Switzerland, and provide vital motives for the implementation process in Germany, especially as it applies to institutional approaches.

#### 3.1. Austria

In Austria the legislation and the execution of culture matters is a federal responsibility.<sup>26</sup> By way of a simple administrative act within the Austrian Commission for UNESCO, a National Agency was established, which was given the task to implement the UNESCO Convention. The National Agency is the interface between national and international cooperation and a platform for interdisciplinary dialog. Its main task is to raise awareness for the preservation, mediation and promotion of intangible heritage in Austria, and to establish a “National List of Intangible Heritage in Austria.” The national list encompasses an open inventory of the intangible heritage in Austria. All elements put forward by the bearers of the respective cultural heritage are included granted they meet the definitions of the UNESCO Convention criteria and the corresponding criteria of the Austrian Commission for UNESCO (see Appendix 4). The Austrian federal states do not keep separate lists.

The National Agency has an “expert advisory board of intangible cultural heritage” (with its own statutes) that bases its decisions on a catalogue of criteria as to whether suggested intangible cultural heritage should be included on the national list, and whether elements on the national list should be nominated for the international lists. The expert advisory board has 24 voting members representing the five federal ministries,<sup>27</sup> including one representative from each of the nine federal states, and experts from each of the five fields of intangible cultural heritage. To inscribe an element on the national list or to nominate an element for an international list, unanimity is required in the resolution. Expert advisory board meetings are held when necessary, but at least once a year. The National Agency is responsible for the coordination, administration and the keeping of minutes.

Only bearers of the respective intangible cultural heritage are allowed to suggest the inscription of an element on the national list. Communities, groups, as well as, in exceptional cases, individuals who pass down intangible cultural heritage in question, are invited to solicit the inscription of practices, performances, expressions/manifestations, knowledge, and skills for the national list, and - if the application is evaluated positively - to solicit the nomination for one of the international lists. All applications must be submitted with an additional declaration of consent from the communities, associations and persons involved, as well as two reference documents that reflect expert opinion. When intangible cultural heritage becomes inscribed on the Austrian list, the information acquired through the application process is made publicly accessible on the online database, [www.unesco.at/nationalagentur](http://www.unesco.at/nationalagentur). As of the end of 2010, 30 elements were registered on Austria’s National List (see bottom of p. 33).

The measures employed by the Austrian National Agency to raise awareness of the importance of intangible cultural heritage also benefit the implementation of the Convention in Germany, especially when considering the frequent past derisory coverage of the UNESCO Convention in the German media. In order to raise awareness among the public about the importance of intangible cultural heritage, the Austrian National Agency has focused its work in a variety of areas where current social issues and

<sup>25</sup> See Swiss Commission for UNESCO (2010) and UNESCO (2009a).

<sup>26</sup> Federal Constitutional Law, Version of 31 December 2010, Article 10, Paragraph 13.

<sup>27</sup> Federal Ministry of Education, Arts and Culture, Federal Ministry of Health, Federal Ministry of Agriculture and Forestry, Environment and Water Management; Federal Ministry of Science and Research, Federal Ministry of European and International Affairs.

traditional cultural knowledge overlap. The Agency cooperates with the Ministry of Health and the Institute of the History of Medicine at the University of Vienna to preserve and revalorize traditional healing methods and preventive health care, a topic that has been met with great interest. The Agency also cooperates closely with the Federal Ministry of Agriculture and Forestry, Environment and Water Management, for example in safeguarding the transmission of local knowledge that embodies precautionary and response measures to natural disasters - such as flooding, avalanches etc., or in the area of forestry where the traditional exchange of the knowledge of natural processes is threatened and could be lost irrevocably. Through these activities one can make a significant difference in safeguarding biological diversity and thereby support sustainable interactions with the natural environment. In this context cultural heritage acquires a completely new perspective and timeliness.<sup>28</sup>

### 3.2 Switzerland

Also Switzerland has created a national list of intangible cultural heritage (“List of Living Traditions in Switzerland”) for the implementation of the Convention. The list has to be put together under the direction of the Federal Office of Cultural Affairs in close collaboration with the cantons and the Swiss Commission for UNESCO. The national list has not envisioned as an all-inclusive, unlimited inventory of the Swiss intangible cultural heritage, but rather as an inventory containing representative elements of intangible cultural heritage from all parts of the country and should thereby be representative of Switzerland as a whole. In the scope of a pilot project 125 national entries were set as a maximum number. In conformity to the Convention the list is to be periodically revised, which means that from time to time new elements will be included and other elements, which do not meet the criteria anymore, will be de-listed. The list is conducive to raising public awareness of the significance of the practise and the mediation of living traditions, as well to promoting recognition of the bearers of these living traditions.

Cantons in Switzerland, similar to (the federal states in) Germany, have authority over cultural matters, whereas in Austria this is not the case. The cantons are responsible for assembling the elements for the national list and for identifying and inventorying intangible cultural heritage on their territory. The federal government is only responsible for its coordination. The cantons gather recommendations made for the national list and pass on a reduced number of these to the Federal Office of Cultural Affairs. Concurrently, they are held responsible for the creation of inventories of intangible cultural heritage in the cantonal territory. It is up to each canton to decide how to specifically deal with the process; however, the bearer of the cultural heritage in question will have to be included in the identification and inventory of the elements, and the public must be given the freedom to point out appropriate living traditions. In practise, each canton proceeds with the matter quite differently from the other.<sup>29</sup> Some cantons develop their own inventories (e.g. Canton Bern or Canton Fribourg); others collaborate and create joint inventories (e.g. the Cantons of Central Switzerland).

The Federal Office of Cultural Affairs has established a catalogue of criteria for inscribing elements on the national list. Furthermore, it assists the cantons in administrative and professional issues and integrates the work of the cantons. A Steering Group has been established by the Federal Office of Cultural Affairs (supported by a project team from the University of Lucerne), which assesses the recommendations put forward by the cantons. The Steering Group makes a representative preliminary selection of elements to be inscribed on the Swiss “List of Living Traditions.” The preliminary selection list is then presented at the “Conference of Cantonal Cultural Delegates” (KBK) for approval. Only in well-supported cases can the cantons deviate from the recommendations put forward by the Steering Group. The Steering Group consists of 11 members and is broken down as follows:

- 1 representative of the Federal Office of Cultural Affairs (Director of Steering Group)
- 1 representative of the Central Switzerland Regional Conference of the KBK
- 1 representative of the Western Switzerland Regional Conference of the KBK
- 1 representative of the Eastern Switzerland Regional Conference of the KBK
- 1 representative of the Northern Switzerland Regional Conference of the KBK

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<sup>28</sup> See German Commission for UNESCO (2007b), pp. 69-70 and <http://nationalagentur.unesco.at>.

<sup>29</sup> See <http://www.lebendige-traditionen.ch> and bottom of Section 4.6.1.



- 1 representative of the Italian speaking part of Switzerland
- 1 representative of the Swiss Commission for UNESCO
- 1 representative of the Swiss Culture Foundation Pro Helvetica
- 1 representative from the area of traditional knowledge/craftsmanship
- 1 representative from cultural studies and European ethnology

The first list of entries will be published by the Federation in the spring of 2012. The list will be stored digitally as part of an internet database. This has its advantages in that the database is easier to access, and updates can be made immediately. Moreover, all of this is possible at a minimal operating cost. In a second step the Steering Group will develop recommendations for the Swiss elements to be nominated for the UNESCO lists based on the “List of Living Traditions”.

#### **4. Implementation of the Convention in Germany**

##### **4.1. Legal Consequences and Implementation**

According to Article 59, Paragraph 2, Clause 1 of the German constitution, internationally legally binding contracts that refer to matters of federal legislation, require the consent or collaboration of the representative bodies responsible for federal legislation (i.e. the “Bundestag” or Federal Diet and the “Bundesrat” or Federal Council) to be formulated into federal or contractual law. The federal government in response to a minor interpellation in the Bundestag declared that the Convention for the Safeguarding of Intangible Cultural Heritage could only be adopted upon examining “whether the Convention affects matters of federal legislation as stated in Article 59, Paragraph 2, Clause 1 of the German constitution, and whether it thereby requires a contract law... Furthermore, it would be complementary to examine whether only a contract law or also an implementation law is required ...”<sup>30</sup> According to R. Bernhardt the contract law fulfils a double function: it empowers the federal president to ratify an internationally legally binding convention, and it declares a national legal requirement to observe the contents of the contract.<sup>31</sup> The legislated contract law once approved by the Bundestag as being constitutional is then without question legally binding to domestic state affairs and is to be observed by all addressees of the provision.

According to the minutes of a Federal and State Ministers Conference concerning the UNESCO Convention at the foreign office in Berlin on 29 September 2009, both the Federal Ministry of Internal Affairs and the Federal Ministry of Justice did not see the contract law as necessarily mandatory, as “the convention text - which contains the obligations which each of the State Parties has to fulfil for safeguarding intangible cultural heritage - does not mention any real responsibilities for the implementation. Instead they are framed as responsibilities to strive towards. Thus, in the case that Germany would ratify the Convention, it would in no way be obliged to employ specific mechanisms or measures for the safeguarding and preservation of intangible cultural heritage.”<sup>32</sup>

It is important to point out here that even though for the most part the obligations of the State Parties of the UNESCO Convention have been expressed as very general and nonbinding (i.e. “endeavour obligations”), the obligation to develop and periodically update the inventory of intangible cultural heritage on sovereign territory is legally binding in nature (albeit there is considerable leeway for the implementation). The federal government assumes that in Germany this task would - because of the cultural sovereignty of the federal states (Länder)—fall to these federal states: “Because the federal states are mainly responsible for the intangible cultural property, every federal state would have to create (no less than ) one list, should Germany enter into the Convention.”<sup>33</sup>

Consequently, it would seem that it is imperative - based solely on the binding obligation of carrying out an inventory—to decree a contract law with the cooperation of the Federal Council in order to establish legal

<sup>30</sup> Answer of the Federal Government to a Minor Interpellation , BT-Drs. 16/13343 (11 June 2009), p.3.

<sup>31</sup> Bernhardt (1992), Paragraph 174, Rn, 174.

<sup>32</sup> Gz.: 603-9.611.31KSIK, 25 October 2010, p.4.

<sup>33</sup> Answer of the Federal Government to a Minor Interpellation in the Bundestag, BT-Drs.16/13343 (11 June 2009), p. 3.

certainty.<sup>34</sup> Only a contract law could underwrite the obligations that need to be met by the federation through the federal states.

In contrast a specific law for the implementation of the Convention as suggested in the solutions below does not appear to be vital, because the required institutions and mechanisms, like those in Austria and Switzerland, can be created through administrative acts.

The inventories of intangible cultural heritage, as prescribed by the Convention, are purely declaratory in nature and do not have any legal bearing. The Convention does not establish any enforceable rights for the individual bearers of intangible cultural heritage, and, therefore, there are no legal ramifications for the promotion or the inscription of elements on an inventory. Existing rights and duties, especially in the area of intellectual property, are not touched upon by the Convention.<sup>35</sup>

The Convention is indeed compatible with the international obligations of the Federal Republic of Germany. As already mentioned, it considers only the kind of intangible cultural heritage that is in accord with existing international legal instruments in the area of human rights<sup>36</sup>, as well as with the demand for mutual respect between communities, groups, and individuals. Elements of intangible cultural heritage that do not meet these requirements will not be given any consideration and will be omitted respectively from the German inventory. Moreover, no conflicts have presented themselves with the World Heritage Convention or international legal instruments that regulate the rights of intellectual property or the utilization of biological and ecological resources. This is because the resultant rights and obligations of the States Parties to these legal instruments are not explicitly touched upon by this Convention (Article 3).

## 4.2 Organisation

In regards to organising the implementation at a domestic state level UNESCO provides the State Parties with a large amount of leeway. Should the Convention be ratified by the Federal Republic of Germany specific conditions would have to be followed to organise the implementation. These are already asserted by the constitutional jurisdictional divisions between the Federation and the Länder. Given the cultural sovereignty of the Länder, the Swiss model seems to be most suitable, as here the Länder are responsible for the identification and the inventory of intangible cultural heritage, as well as for state level protective and promotional measures. The Federation would be responsible for the coordination of the domestic state level implementation and the public relations and promotional programmes at the federal level, including communications with UNESCO and the other States Parties. Presumably the Austrian model could also be employed should the inventory be solely drawn up at the federal level. This is possible if the federal states were to relinquish their jurisdiction in carrying out the inventory to an organ at the federal level, for example to the German Commission for UNESCO.

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<sup>34</sup> All international conventions dealing with the preservation of historic monuments, cultural property and World Heritage, starting with the 1970 UNESCO Convention on Cultural Property to the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression, were ratified with the support of parliament. Despite the original intention, the World Heritage Convention in Germany is at a disadvantage in that it was approved of by Cabinet as a “administrative agreement, according to Article 59, Paragraph 2 Clause 2 Federal Constitution” without the support of parliament (Hönes, 2008, pp.59-70).

As a consequence, the Ministry of Justice in Niedersachsen, for example, concluded in an assessment dated 22 November 2007, that the constitutional implementation of the World Heritage Convention according to territorial state law Article 59, Paragraph 2 of the Federal Constitution had not been fulfilled, and that the territorial practitioners of law (organs and authorities of the federation, the Länder and the communes) and those subject to legal rights are therefore not obliged to adhere to the regulations of the World Heritage Convention (see Hönes, 2008, pp.59-70).

Also the Free State of Saxony (represented by the Regional Administrative Authority of Dresden) argued in regards to the construction of the “Waldschlösschen bridge,” that the World Heritage Convention had been implemented contrary to the territorial contract law Article 59 Paragraph 2 of the Federal Constitution, and that, therefore, any obligation resulting from the implementation does not apply to the Länder, as this was a contractual matter falling within the legislative jurisdiction of the Länder (see OVG Bautzen, decision from the 9 March 2007, Az.:4 BS 216/06).

<sup>35</sup> See public release of the Swiss Federal Council dated 21 September 2007 (07.076), BBl 2007 7251-7278.

<sup>36</sup> The preamble of the convention specifically refers to the Universal Declaration on Human Rights of 1948, the International Covenant of Economical, Social and Cultural Rights of 1966, and the International Covenant of Civil and Political Rights of 1966.

It seems inevitable that an authorized office or institution be established at the federal level and that it would coordinate and support the implementation of the Convention in Germany. By doing so it would act as an interface between UNESCO, other States Parties and the German federal states. At the same time it would function as a national point of contact for the bearers of intangible cultural heritage, specialised institutions and civil society—in essence act as a platform for interdisciplinary dialogue. Above all an institution as such could play a central role in choosing the German nominations for international lists - a task that could also be carried out directly by the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany similar to the World Heritage Convention. Should a national list of intangible cultural heritage be established - something States Parties are not obliged to do—the model institution would play an additional vital role in compiling or administering a national list.

In establishing an office or institution of authority at the federal level, Article 13 b of the Convention would be met, whereby each State Party makes the effort to safeguard, develop and promote intangible cultural heritage located within its sovereign territory, and whereby each State Party will “identify and establish one or more professional offices responsible for the safeguarding of intangible cultural heritage within its territory.” This would also be in accordance with Paragraph 80 of the Operational Directives, which calls upon States Parties to establish advisory organs or coordinating mechanisms with the aim of supporting participation of the bearers of intangible cultural heritage, as well as that of experts, professional centres and research institutions. The aim of support is especially directed towards the identification and designation of intangible cultural heritage, the compilation of inventories, the preparation of nominations for the international lists, and the execution of programmes, projects and activities.<sup>37</sup>

If an office of authority were established at the federal level, the opportunity presents itself to use the Swiss and Austrian examples concerning institutional structuring and task assignment (i.e. the Austrian National Agency for Intangible Cultural Heritage and its expert advisory board; the Swiss “Steering Group” etc.). One example in Germany that could function as a model is the German National Committee for Monument Preservation and the German Nomination Committee for the UNESCO programme, “Memory of the World.” The following two propositions build on these principles as they apply to the institutional implementation of the UNESCO Convention in Germany:

- Option1: Establishing a German national committee for intangible cultural heritage

This option is strongly based on the model of the German National Committee for Monument Preservation. A national committee as such, or its administrative office, could be located either at the German Committee for UNESCO (where the national contact for the UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions is, and where extensive expertise and relevant structures in regards to intangible cultural heritage already exist), or at the Federal Government Commission for Culture and Media (where the DNK for the preservation of monuments is also located). Another possibility would be to link a national committee for intangible cultural heritage directly to the Conference of Education Ministers. Option 2 is different in that there would be an institutional connection to a larger number of relevant decision-makers and actors. An interdisciplinary and bridging dialogue would be thereby encouraged and this would help in the realisation of the general aims and obligations to the Convention.

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<sup>37</sup> 80. States Parties are encouraged to create a consultative body or a coordination mechanism to facilitate the participation of communities, groups and, where applicable, individuals, as well as experts, centres of expertise and research institutes, in particular in:

- (a) the identification and definition of the different elements of intangible cultural heritage present on their territories;
- (b) the drawing up of inventories;
- (c) the elaboration and implementation of programmes, projects and activities;
- (d) the preparation of nomination files for inscription on the Lists, in conformity with the relevant paragraphs of Chapter 1 of the present Operational Directives;
- (e) the removal of an element of intangible cultural heritage from one List or its transfer to the other, as referred to in paragraphs 38 to 40 of the present Operational Directives.

- Option 2: Establishing a national nomination committee

This proposition is modelled very closely on the German nomination committee for the UNESCO programme, “Memory of the World” and on the Austrian National Agency for Intangible Cultural Heritage. As compared to Option 1, Option 2 presents a simpler solution from an institutional point of view. To be sure, other possibilities would have to be created to enhance the dialogue, the networking and the cooperation between governments, administrations, professionals, as well as the bearers of intangible cultural heritage. Furthermore one would have to establish the conditions important to realising the overall aims and obligations of the Convention. A national committee as such should be located at the German Commission for UNESCO, where a large amount of experience and expertise in the area of intangible cultural heritage already inherently exists<sup>38</sup>, and where extensive structures and networks important to achieving the general aims of the Convention are already present.<sup>39</sup>

The following section investigates more closely the possible structures and the potential tasks that both a German national committee for intangible cultural heritage and a national nomination committee could have. These structures and tasks would establish a basis for discussions, and facilitate decision-making with reference to German ratification of the UNESCO Convention.

### **4.3 Option 1: The Appeal for a German National Committee for intangible cultural heritage**

#### **4.3.1 Tasks**

The general tasks of the German National Committee for intangible cultural heritage would be to coordinate and to support the implementation of the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage in Germany, and to promote the aims of the Convention. The Committee should attend to the “spirit” of the Convention and its implementation in Germany in order to secure a positive public image. Another general task would be to provide an interface for national and international cooperation, and to act as a platform for dialogue between government, administration, professionals and bearers of intangible cultural heritage. Should a national list for intangible cultural heritage be created, the main task of the National Committee would lie in creating and managing this list.

Moreover, some of the practical tasks of the national committee could be:

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<sup>38</sup> Since 2004 the UNESCO Experts Committee for Culture and the Nomination Committee for the Memory of the World Programme have exchanged views on German cooperation in the UNESCO intangible cultural heritage programme. Already in 2005 and in 2006, the German Commission for UNESCO had carried out technical consultations pertaining to civil-society and the UNESCO Convention, in which approximately one hundred experts of different disciplines and areas of praxis had participated from across Germany. Their collaboration resulted in the memorandum, “Intangible Cultural Heritage within the Work of UNESCO: New Tasks, New Challenges”. In February 2006 a symposium for intangible cultural heritage was held in Bonn. In 2007, an edition of *UNESCO heute*, a magazine of the German Commission for UNESCO, was dedicated to the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.

<sup>39</sup> To mention just a few structures: the German Commission for UNESCO has a technical committee of culture, a multi-level interdisciplinary committee, whose interest it is to implement the UNESCO cultural programme in Germany. In 2004 the German Commission for UNESCO founded a nationwide Coalition for Cultural Diversity represented by experts from the cultural sector, associations, (political) parties, the economy, communities, public authorities, research (areas) and journalism. Together they assist in matters concerning the implementation of the *UNESCO Convention for the Protection and Promotion of Diversity of Cultural Expression*. In 2007 the German government declared the German Commission for UNESCO a national contact point for the Convention of Diversity of Cultural Expressions. To assist in the professional work of the contact point a special advisory board for the technical committee of culture was created in 2008. The German Commission for UNESCO has also founded a national committee for the implementation of the world decade, “Education for Sustainable Development.” At an international level it cooperates with the national and international networks of UNESCO (for example with other UNESCO national committees, UNESCO chairs etc.). It also coordinates German civil-society participation with UNESCO programme implementation, and more specifically with the UNESCO General Conference, interstate conferences, steering committees and (other) committees.

- to manage the list of intangible cultural heritage in Germany, and to decide on what elements are to be inscribed by producing and applying a catalogue of criteria (the final decision would lie with the Standing Conference)
- to decide on the German nominations for the three international lists (also here the final selection could be carried out by the STANDING CONFERENCE)
- to advise the federal states on safeguarding their intangible cultural heritage, as well as on the creation of state level inventory lists
- to support involvement of the bearers of intangible cultural heritage, as well as that of the experts, professional centres and research facilities, especially in identifying and determining intangible cultural heritage, drawing up inventories, preparing nominations for the international lists and carrying out programmes, projects and activities
- to raise awareness of the significance of maintaining, mediating and promoting intangible cultural heritage in Germany through the media and public relations
- to develop and carry out communication strategies and appropriate measures (such as flagship projects) so as to establish a positive public image of the Convention
- to inform the public about the dangers which threaten intangible cultural heritage, as well as the activities which are being carried out in applying the UNESCO Convention
- to establish measures to revalorize the function of intangible cultural heritage within society
- to recommend measures for the safeguarding of intangible cultural heritage and to consult best-practise methods
- to encourage studies and research projects in the field of intangible cultural heritage
- to raise awareness with regards to the importance of education and training facilities for the transmission of intangible cultural heritage
- to encourage the identification and recording of intangible cultural heritage
- to create a network of specialised institutions and experts
- to act as a national contact point for the bearers of intangible cultural heritage, professional institutions and civic society
- to function as a mediator for the General Assembly of States Parties and as a secretariat of the Convention for the UNESCO Secretariat
- to coordinate the production of periodic reports on Germany for the Interstate Committee

The aforementioned tasks correspond closely to those tasks which, for example, the Austrian National Agency for Intangible Cultural Heritage has been asked to fulfil.<sup>40</sup> If the National Committee were to fulfil these tasks, a considerable number of responsibilities as defined by the Convention would be realized as part of the on-going implementation.

#### 4.3.2 Members

A National Committee for intangible cultural heritage conceived as a multi-level, multi-disciplinary association of stakeholders would be one-of-a-kind—especially if representatives of the Federation and the Länder, respective interest groups from society, and experts belonged to it. The composition of the Committee and the number of experts would have to be balanced between functional and financial considerations. For example, the Austrian National Agency's Advisory Council of Intangible Cultural Heritage (24 members) or the Swiss Steering Group (11 members) could act as models. Indeed the German National Committee for Monument Preservation could be used as a model as well, but it is rather large with its current 48 members.<sup>41</sup>

The following list of suggested members has been assembled as a basis for discussion and draws on the solutions (expertise) found in Austria and Switzerland, and on the composition of the German National Committee for Monument Preservation:

- Federal Deputy for Culture and Media

<sup>40</sup> See Austrian Commission for UNESCO (2009).

<sup>41</sup> The German National Committee for Monuments Protection consists of 3 members of the Federal Diet (Bundestag); 6 representatives of the federal government; one representative from each of the 16 federal states; the president of the German District Council; 22 representatives from relevant groups of society (religious communities, associations, organisations).



- Federal Deputy for Ethnic Germans, Repatriates , and National Minorities
- Representatives of relevant federal ministries (e.g. the Foreign Office, Federal Ministry of Education and Research; Federal Ministry of Health, Federal Ministry of Food, Agriculture and Consumer Protection; Federal Ministry of Environment, Nature Conservation and Nuclear Safety, Federal Ministry of Economics and Technology; the German Development Ministry)
- Representative of the Bundestag (Federal Diet)
- One representative of each of the 16 Federal States (a limited number of representatives of the STANDING CONFERENCE would also be foreseeable)
- One representative of the four national minorities (Danes, Friesen, Sorbs; the German Sinti and Roma), e.g. representatives of the Southern Schleswig Association, the Domowina, the Frisian Council, and the Central Council of German Sinti and Roma<sup>42</sup>
- President of the Central Council of Jews in Germany<sup>43</sup>
- President of the German Commission for UNESCO
- Chairperson of the Board of Trustees of the Federal Cultural Foundation
- Chairperson of the Board of Trustees of the Cultural Foundation of State Governments
- President of the German Arts Council (representatives of each section of the German Arts Council is also foreseeable: German Music Council, Council for Performing Arts and Dance, German Literature Conference, German Cultural Council, Council for Building Culture, Design Section, Film and Audiovisual Media Section, Council for Cultural Sociology and Cultural Education)
- President of the “Bund Heimat und Umwelt”
- One expert from each of the five areas of intangible cultural heritage, e.g. folklore /European ethnology, cultural studies, the liberal arts and musicology, theatre, intangible cultural heritage in general, and World Heritage Studies, etc. ( this corresponds to the configuration used in Austria; the Swiss Steering Group also includes one “representative from the area of traditional knowledge /crafts” and one “representative from cultural studies and European ethnology”)
- Representatives belonging to UNESCO professorial chairs in Germany
- Representatives from the Media
- Representatives of other socially relevant groups is foreseeable in certain circumstances

Members that have been appointed by virtue of their office should nominate permanent representatives.

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<sup>42</sup> Involving representatives of the national minorities into the work of the national committee is in accordance with of the UNESCO Convention and its overall intention; it specifically encourages intercultural dialogue, and respect towards cultural diversity (Preamble and Article 16) using the “invaluable role of intangible cultural heritage as a factor in bringing human beings closer together and ensuring exchange and understanding among them” (Preamble). It is also in accordance with the *Framework Convention for the Protection of National Minorities* which was ratified by Germany in 1997. Here the States Parties are committed to promoting the conditions necessary for persons belonging to national minorities to maintain and to develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage” (Article 5.1). The frame convention indeed obliges the States Parties to promote the spirit of intercultural dialogue (Article 6.1) and to take appropriate measures, to encourage tolerance and create the basis for cultural pluralism (Article 9.4). Furthermore, measures are to be taken to foster an understanding of the culture, history, language and religion of their national minorities (Article 12.1), and to create the conditions for involving members of national minorities effectively into cultural, social and economic aspects of life, and into public issues, especially those that concern them (Article 15).

<sup>43</sup>Involving the Central Council of Jews in Germany would be in accordance with the agreement between the Federal Republic of Germany and the Central Council of Jews in Germany signed in 2003, in which “a continuous and cooperative collaboration in the fields of common interest and which lie within the responsibility of the Federal Republic” was stipulated. The Federal Republic declared to contribute to the safeguarding and care of German-Jewish cultural heritage [and] to contribute to the foundation of a Jewish community (Article 1), “with the awareness of the particular historic responsibility of the German population for Jewish life in Germany, in face of the immeasurable sufferance, that the Jewish community had to endure between 1933 and 1945 [and] driven by the wish to encourage the rehabilitation of Jewish life in Germany” (Preamble).

### 4.3.3 Organs

#### a) General Assembly

The General Assembly would be the decisive power in matters of intangible cultural heritage for this kind of national committee. As a rule it would convene once annually, and would set the guidelines for the work of the National Committee, including a work schedule and a budget, changes to business priorities, and the admission of new members. The General Assembly would have the possibility to consult and to invite experts to their meetings, as well as request written statements from them.

If a national list of intangible cultural heritage were to be drawn up, the General Assembly would be responsible for the important task of selecting the elements for inscription (the final decision of which would be left to the Standing Conference). Another essential task would be the selection of German nominations for the international lists.

However, from a logistical point of view it would only make sense to place an advisory board in charge of examining suggested entries and making preliminary selections both for elements for the national list as well as for nominations for the international lists. The board would have to make its preliminary selection using a catalogue of criteria, which would have been adopted by the General Assembly. As in Switzerland the General Assembly (and possibly the Standing Conference) could only deviate from the advisory board recommendations if and when it was justified.

#### b) Presiding Committee

The presiding committee of the National Committee for Intangible Cultural Heritage could be organised following the model of the National Committee for Monument Preservation. As such one of the members of the Standing Conference, a state minister, would act as the president, whose chairmanship would change every three years. The president would be assisted by two vice-presidents, one of whom representing the federal government in the area of culture and media, the other being a representative state minister and member of the Standing Conference. The number of other members and their institutional allegiances would have to be determined according to the size, composition and the affiliation of the institution to the National Committee.<sup>44</sup>

The presiding committee's responsibilities would include summoning general assemblies, and managing the duties of the committee. The president would represent the committee in external matters. Current business matters should be transferable from the presiding committee to an administrative office. The National Committee for intangible cultural heritage, like the National Committee for Monument Preservation should use, if need be and if within its financial resources, working groups for which an executive committee could be summoned to prepare and assist with its work.

#### c) Advisory Board

The advisory board would have the following tasks - similar to the Austrian National Agency's Advisory Board of Intangible Cultural Heritage:

- to examine recommendations for the inscription of elements on the national list of intangible cultural heritage (given such a list were to be drawn up) and to consult the General Assembly in regards to the inscription/selection of elements, based on a catalogue of criteria adopted by the National Committee

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<sup>44</sup> An additional five members are presently part of the presidency of the German National Committee for the Preservation of Monuments: two members of the German Federal Diet (Bundestag), the presidents of the (two) leading community associations, and one state minister responsible for the preservation of monuments, but who is not a State Minister belonging to the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany.



- to consult the General Assembly on matters concerning German nominations for the “Representative List of Intangible Cultural Heritage of Mankind” and the “List of Intangible Cultural Heritage in Need of Urgent Safeguarding”
- to consult the General Assembly in regards to the nomination of programs, projects and activities for the “List of Best-Practice Examples”

Even though the advisory board only has a consultative function, the General Assembly should heed its recommendations and only deviate from them in justified cases.

The advisory board could for example be made up of:

- an expert from each of the five areas of intangible cultural heritage e.g. folklore/European ethnology, cultural studies, the arts and musicology, theatre, intangible cultural heritage in general, and World Heritage Studies etc.
- a representative of the Conference of the Ministers of Education and Cultural Affairs
- the president of the German Commission for UNESCO (or a representative thereof)

The members of the advisory board should concurrently be members of the National Committee or should as a minimum participate in the meetings of the General Assembly. The administrative office of the National Committee would be responsible for the coordination, and management of board meetings, as well the recording of minutes.

#### **4.3.4 Administrative Office**

The administrative office could be established at:

- the German Commission for UNESCO (this would also be the national contact point for the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and where extensive expertise and specific structures relating to intangible cultural heritage already exist)
- the Federal Commission for Culture and Media (this is also where one can find the German National Committee for Monument Preservation)
- the Conference of the Ministers of Education and Cultural Affairs directly

The administrative office would be in charge of managing current business matters, coordinating the work of the committee, and attending to meetings and other events. The administrative Office would also be responsible for publications, an internet presence and other forms of public relations work.

Depending on how the workload is distributed and the extent of the National Committee's activities the administrative office would require 2-3 staff members.<sup>45</sup> The Administrative Office could, however, delegate its workload to affiliated institutions making use of an already existing framework of structures (for example, its affiliation to the German Commission for UNESCO, which has at its disposal a supply of internet-based materials on themes relating to intangible cultural heritage).

### **4.4 Option 2: Establishing a National Nomination Committee**

#### **4.4.1 Tasks**

A national nomination committee would deal exclusively with nominations for the three international lists and possibly for the national list. Its tasks would be less extensive than those of the German National Committee for Intangible Cultural Heritage. To a large degree they would conform to the tasks mentioned under point 4.3.3 c) that outlines the tasks of the advisory board and (more specifically) the Austrian National Agency's “Advisory Board for Intangible Cultural Heritage.” In detail the tasks would be:

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<sup>45</sup> In Comparison, the Austrian National Agency for Intangible Cultural Heritage (at the Austrian Commission for UNESCO) has presently 2 employees. The administrative office of the German National Committee for the Preservation of Monuments (located at the Federal Commission for Culture and Media) has presently 4 employees.

- to examine recommendations made for the inscription of elements on the national list of intangible cultural heritage, and to make a decision or a pre-selection based on a catalogue of criteria (in the case that such a list were to be drawn up)
- to decide upon the nomination of elements on the national list for the international “Representative List of the Intangible Cultural Heritage of Humanity” and the “List of Intangible Cultural Heritage, in Need of Urgent Safeguarding”
- to decide upon the nomination of programs, projects and activities for the international “List of Best-Practise Examples”

All decisions would most likely have to be approved of by the Standing Conference, whereby the Standing Conference could only deviate from the recommendations made by the National Nomination Committee in justified cases. The catalogue of criteria for the inscription of elements on the national list would have to be developed by the German Commission for UNESCO and be adopted by the Standing Conference.

#### 4.4.2 Members

The Nomination Committee could for example consist of:

- the president of the German Commission for UNESCO (or a representative thereof)
- a representative of the Conference of the Ministers of Education and Cultural Affairs
- a representative from the federal government, for example the Commission for Culture and Media (or a representative thereof)
- an expert from each of the five areas of intangible cultural heritage (for example: the areas of folklore/European ethnology, cultural studies, the arts and musicology, theatre, intangible cultural heritage in general, and World Heritage Studies etc.)
- representatives from the relevant German UNESCO professorial chairs

The president of the German Commission for UNESCO would be responsible for summoning the meetings of the National Nomination Committee, and for their coordination, management and records of minutes.

#### 4.4.3 Institutional Affiliation

In contrast to the German National Committee for Intangible Cultural Heritage (which could be located with the German Commission for UNESCO, the Federal Government Representative for Culture and Media or the Standing Conference), a national nomination committee would have to be most certainly founded within the German Commission for UNESCO following a similar pattern. Within the Commission a considerable amount of experience and expertise in the area of intangible heritage already exists, including the relevant structures and networks.<sup>46</sup> One could fall back on these existing structures, networks and expertise - without having to establish a specific national committee in order to realise the general aims and obligations of the Convention, and to incorporate a greater number of decision-makers and actors into the measures taken to implement the Convention. The aforementioned tasks of the German National Committee for Intangible Cultural Heritage (see point 4.3.1) would have to be carried out by the German Commission for UNESCO (i.e. public relations, development of communication strategies and flagship projects, coordination, consultancy, national contact point, reporting, etc.). In addition the German Commission for UNESCO would have to function as an administrative office of the National Nomination Committee. This organisation would conform to the model used in Austria, where the “National Agency for Intangible Cultural Heritage” was founded within the Austrian commission for UNESCO (it included an advisory board responsible for the inventory /nominations).

Standards in procedural rules for the envisioned National Nomination Committee could be drawn from those of the German national committee for the world decade, “Education for Sustainable Development,” and from those of the German nomination committee for the world heritage documentation program, “Memory of the World.” Both bodies are considered official consulting committees of the German Commission for UNESCO.

<sup>46</sup> See footnotes 38 and 39.

## 4.5 Financing

If Germany were to ratify the UNESCO Convention, there would be on the one hand the need to make financial contributions to the UNESCO Fund for Intangible Cultural Heritage. On the other hand there would also be the need to cover the costs of implementing the Convention domestically, especially for the development and maintenance of administrative structures.

Germany's contribution payments to the UNESCO Fund for Intangible Cultural Heritage would amount to approx. 250,000 Euro per annum according to the Federal Government.<sup>47</sup> However, there is the possibility to be released from this obligation by declaring the same in the deposition of the instrument of ratification. Germany would then make voluntary contributions instead (most likely for the same amount). At the Permanent Conference of Federal and State Ministers at the Foreign Office in Berlin on 29 September 2010, it was unanimously agreed to choose this option if Germany were to ratify the Convention. The funds required to make contributions would, according to the minutes of the Permanent Conference of Federal and State Ministers, "have to be generated within the existing budget lines (or financial plans) in the EPL 05 by making appropriate spending cuts in other areas—additional funds would not be available."<sup>48</sup>

The costs of the national or domestic implementation of the Convention would depend on the choice of administrative solutions. Costs would be incurred from the meetings of the national committee, the nomination committee, advisory board, and others (especially the travel costs of experts), as well as from public relations and media campaigns. In addition, there would be specific personnel costs from the administrative office depending on its institutional affiliations to the organ responsible for the Convention. The costs of operating a nation-wide coordinating office could be equally divided between the federal government and the Länder, in which case the dues of each federal state would be determined by the "Königsstein key". The exact costs could only be determined if political decisions were made concerning the structure and the affiliation of the organisation for the implementation of the Convention. One might add, however, that the synergy created by affiliating to already existing structures, established committees, and annual meetings or assemblies would to best estimates amount to 30,000 Euro. This estimate would increase considerably, if an independent organisational structure were to be set up.

In certain cases particular costs may arise on the state level for the inventory of intangible cultural heritage. These depend largely though on the chosen starting points (see point 4.6.1) and can be kept in check by appropriate planning. The extent to which the federal states make use of possible preservation and promotion measures falls within their jurisdiction. Incurred costs could be covered presumably within the structure of existing cultural budgets.

## 4.6 Inventory and Lists of Intangible Heritage

### 4.6.1 Establishing an Inventory

As described above (see sections 2.3.2 and 2.4) all State Parties to the UNESCO Convention are obliged to identify and to ascertain intangible cultural heritage on their sovereign territory and thereupon to draw up and regularly update inventories. Rather than having a central inventory, the States Parties could establish several regional inventories, for example at the federal state level.<sup>49</sup> The measures used to identify and to inventory intangible cultural heritage should most definitely be carried out by the widest open participation of the bearers of this heritage (i.e. communities, groups, and, if necessary, individuals who create, care for and pass on the intangible cultural heritage), as well as by the participation of relevant non-governmental organisations, experts and research institutes.

One can assume that due to the cultural sovereignty of the Länder in Germany, these federal states, similar to Switzerland's, would be responsible for the identification and inventory of intangible cultural

<sup>47</sup> Answer of the federal government to a minor interpellation in the Federal Diet (Bundestag), BT-Drs. 16/13343 (11 June 2009), p. 3.

<sup>48</sup> Gz.: 603-9.611.31KSIK, 25 October 2010.

<sup>49</sup> See preceding footnote 19.

heritage found on their territory,<sup>50</sup> in as much as they would be responsible for the inventory of tangible cultural heritage on their territory.<sup>51</sup> The specific procedure used for drawing up an inventory would be left to the federal states themselves. However, they would be guided by the stipulations provided in the Convention and by the Operational Directives published by the interstate committee. Of special importance is the fact that bearers of intangible cultural heritage must also be involved in the inventory and documentation. Furthermore, they will have to be in agreement with the inscription of the inventory and its content.

It could also be possible for the inventory to be carried out at a federal level rather than a state level given there is an organ responsible for the implementation of the Convention (similar to Austria), for example through a subsidiary body of the German Commission for UNESCO. For this to happen, the federal states would need to relinquish their authority over the inventory of intangible cultural heritage on their territory to an appropriate organ at the federal level. Rather than maintaining separate inventories among the Länder, a single national inventory of intangible cultural heritage would be kept in Germany. From all across the federation the bearers of intangible cultural heritage would have the opportunity to solicit the inscription of elements for the national inventory directly.

Individual bearers of intangible cultural heritage would have no enforceable rights or legal claim to an element once it is inscribed on a federal state inventory or the national inventory. Furthermore there would be no entitlement to support once an element is inscribed on an inventory. These points should be clearly presented in the application forms and their accompanying information materials. Existing rights and obligations, especially in the area of intellectual property, remain unaffected and need to be upheld (for example, bearers of intangible cultural heritage could prohibit recordings and their distribution because they are the executors of the heritage).

In practice Austria, Switzerland and other States Parties provide a variety of useful examples and impulses for inventory procedures.<sup>52</sup>

- In Austria, recommendations to the inscription of elements on the list of intangible cultural heritage are made exclusively by the bearers of the cultural heritage themselves. Communities, groups and individuals, who pass on the intangible cultural heritage, are invited to apply for the inclusion of practices, performances, expressions/manifestations, knowledge, and skills on the list (the application form and the criteria for the inscription of elements are to be found in Appendices 3 and 4). All applications should be submitted with a declaration of consent from the involved communities, associations and persons, and should include two scientific expert reports
- The Federal Office of Cultural Affairs in Switzerland recommends “a participatory approach wherever possible, as expressed by the aims of the Convention... this fosters commitment from the bearers. Moreover, the feedback on the recommendations makes it possible to evaluate the interest in caring for living traditions. Cantons (or groups of cantons) or their respective project managers could, for example, present to the bearers of the living traditions the inventory project and elicit indicators for living traditions from them. At the very best this would be prompted by a cantonal or regional conference with the additional participation of experts. So too could communities be informed and invited to present their recommendations... The public ... should

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<sup>50</sup> The federal government is of the same opinion. See the preceding section 4.2.

<sup>51</sup> In Germany, for example, each federal state keeps its own list of protected monuments; in doing so the representative monument and historic buildings laws of the federal states differ in part considerably. There is no monument and historic buildings law at the federal level.

Indeed the lists for “cultural property of national value” and for “archives of national value,” that were established because of the *Law for the Protection of German Cultural Property Translocation* (BGBl I, 1754, last modified through article 2 G v. 18 May 2007, BGBl I, 757) are kept separately by the federal states because of their cultural sovereignty. The “complete list of cultural property of national value” or the “archives of national value”, which is kept by the Federal Commission for Culture and Media, acts merely as an administrative compendium of the intrinsic, active Länder catalogues, so as to maintain the responsibility of the Länder (Hipp, 2000, 80).

<sup>52</sup> See <http://nationalagentur.unesco.at> (Austria), <http://lebendige-traditionen.ch> (Switzerland), [http://www.unesco.ch/fileadmin/documents/work/2010/Consultation\\_2\\_ICH\\_results\\_June\\_2010.pdf](http://www.unesco.ch/fileadmin/documents/work/2010/Consultation_2_ICH_results_June_2010.pdf) (results of an survey of the Swiss commission for UNESCO to the inventory practise in different states, 2010) and [http://www.unesco.org/culture/ich/index.php?meeting\\_id=00076](http://www.unesco.org/culture/ich/index.php?meeting_id=00076) (contributions to an international seminar for inventories, Tallinn, Estonia , 2007).

have the opportunity, to point out particular living traditions in response to the type of initiative. For this purpose a virtual notice board has been made available on a project webpage<sup>53</sup>

- Eight eastern Swiss cantons have approached the inventory jointly. In collaboration with local experts the project management collects and documents the living traditions. This solution should provide the opportunity to compare similar traditions and to position them jointly
- The canton of Bern has mandated the Ballenberg Course Centre to draw up an inventory of living traditions in its territory. Groups, associations, or organisations that maintain intangible cultural heritage are called up to submit applications for inscription on the cantonal inventory (the application form and the criteria for the application can be found in Appendix 5). The inventory will be made available over the internet. The digital format will allow for regular updates of the entries in the inventory which in turn will prevent traditions from becoming fixed in their present form and, more importantly, document their living qualities
- The cantons of Basle-Landschaft (rural) and Basle-Stadt (urban) have commissioned a joint project team that—together with a broad network of experts and in collaboration with the region's actors—works on entries representative of the combined Basle region and intended for the comprehensive Swiss list
- The six cantons from central Switzerland have commissioned a professionally trained folklorist and cultural scientist to manage the project of the central Swiss list. In close collaboration with the cultural commissioner of each canton as well as other local experts from the area of folk culture, he is to draw up a list of approximately 80 inscriptions from all six cantons
- In the canton of Fribourg the Gruyères Museum was commissioned to work out a scheme for the inventory of living traditions of the territory. The museum can dispose of extensive scientific experience in the domain of Fribourg's traditional cultural values. The project is led by the Museum's director who is assisted by a group of experts
- In France the Ethnology Department ("Mission ethnologie") of the French Ministry of Culture compiles two inventories: firstly there is the inventory of already existing inventories and archives, which presently includes 38 sub-inventories (among them an inventory of traditional music and dances from Brittany, and an inventory of French culinary heritage etc...); and secondly there is an inventory of intangible cultural heritage that has been compiled especially for the implementation of the Convention in collaboration with research institutions and experts, whose work is based on the scientific research of specific themes or regions. As a consequence there is close collaboration with individual bearers of intangible cultural heritage. Both inventories are accessible to the general public on the internet<sup>54</sup>
- In Cyprus the inventory builds upon an already existing "Archive of Oral Traditions" that was compiled by experts from the Cyprus Research Centre; this centre has also been entrusted with the development of the inventory

Independent of the procedure for compiling an inventory, the content of inventory lists is set by certain limits expressed within the UNESCO Convention. It follows that only those elements that meet the definition of "intangible cultural heritage" in Article 2 Clause 1 of the Convention will be considered. More importantly only those elements that are in accordance with human rights and that are in agreement with demands of the mutual respect of communities, groups and individuals, as well as with sustainable development, are to be inscribed.

Should inventories be compiled individually at the state level, an example application form or a template for inscriptions including guidelines would in either case be helpful to the organ responsible for the implementation of the Convention. This would facilitate the task of the federal states, warrant professional consistency with regard to the content, and also secure that the stipulations of the UNESCO Convention are observed at the state level. Right from the start unsuitable elements to the inventory could be censored. For example the "Guidelines for the Compilation of the List of Living Traditions in Switzerland" is used by each canton to create its inventory and could serve as a model. Furthermore, the application forms for the national list of Austria and the inventory of the canton of Bern (see Appendices 3, 4, and 5) could serve as the same. In addition, accompanying, expert, scientific evaluations could become requisite to submissions, as is the case in Austria.

<sup>53</sup> Swiss Federal Office of Culture (2010), p.7.

<sup>54</sup> See [http://www.culture.gouv.fr/culture/dp/ethno\\_spci/invent\\_invent.htm](http://www.culture.gouv.fr/culture/dp/ethno_spci/invent_invent.htm).



#### 4.6.2 German List (optional)

As mentioned earlier, the State Parties of the UNESCO Convention are not obliged to compile “national” (inter-state) lists; indeed, instead of having a central inventory several regional inventories, i.e. federal state level, could be drawn up. The establishment of a list of intangible cultural heritage at the federal level is not absolutely necessary, if Germany ratified the Convention as long as a nationwide and, at best, a comprehensive inventory of intangible cultural heritage in Germany is ensured. It is yet to be weighed whether establishing a national inventory has any advantage—in addition to the federal state inventories.<sup>55</sup>

In principle there would be three options outside of not establishing a national list. They are as follows:

- 1) to maintain a national “comprehensive listing” at the federal level, which merely represents an administrative compendium of the listings from the Länder and which can easily be expanded; This would conform to the procedures outlined in the *Law for the protection of German cultural heritage against translocation*. Before elements are inscribed on the national comprehensive list, it may be necessary to have them examined as to whether they meet all of the criteria of the UNESCO Convention, albeit this may have to already take place at the state level
- 2) to establish a comprehensive national inventory of intangible cultural heritage at the federal level in Germany rather than to maintain inventories at the state level; In this case the bearers of intangible cultural heritage across Germany would be able to apply directly for the admission of elements on the national inventory. This would conform to the procedures adopted in Austria. However, the question arises how the given procedures in Germany would be compatible with the cultural sovereignty of the Länder. The federal states would need to transfer their authority over the compilation of territorial inventories of intangible cultural heritage to the appropriate organ at the federal level, which in turn would have to deal with a comparatively large number of applications/inscriptions.
- 3) to establish a representative, national list of intangible cultural heritage, similar to the “List of Living Traditions in Switzerland;” Its extent would be limited to a certain degree, since each federal state could only make a certain number of recommendations, i.e. per year. A list as such would have to be balanced in regards to the five areas of intangible cultural heritage and would have to be representative of Germany’s entire intangible cultural heritage. A federal level commission would have to examine the recommendations made by the federal states and agree on which elements to admit on the national list. Yet to be decided is how the number of inscriptions could be limited. It could be possible:
  - to limit the number of inscriptions or recommendations per federal state annually (e.g. 2-3 recommendations per federal state) whereby the list could be easily expanded—a federal level commission (e.g. national committee or advisory board) would then decide upon new inscriptions annually
  - to increase the limit on inscriptions per federal state (e.g. 20 inscriptions per federal state + 5 per national minority) for which the federal states would be given a deadline to submit their recommendations—evaluations would then be carried out at the federal level by a non-permanent, ad-hoc commission; this process could be carried out at a later date and/or would be repeated regularly

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<sup>55</sup> Some reasons that speak in favour of establishing a national list include among other things: public receptivity in which a general awareness of the significance of intangible cultural heritage could be augmented; in addition a national list would act as a mechanism to encourage dialogue and networking between regions, administrations, levels of specialists and bearers of intangible cultural heritage. This would thereby establish the conditions to engage jointly in the protection of intangible cultural heritage. The increased awareness and acknowledgement due to inscriptions on the national list would affect the bearers of cultural heritage positively in a variety of ways. From a practical point of view, the national list would provide a basis from which to select elements for the international lists. Reasons that speak against establishing a national list could include among other things increased bureaucracy and the associated administration costs. In the worst case, inscription and the resulting increased awareness could have a negative effect on the actual cultural heritage (e.g. the danger of commercialisation or creating spectacles / ‘eventisation,’ the danger of ‘musealization,’ and loss of momentum). A national list could also lead to a “hierarchical structuring” of intangible cultural heritage or to the misunderstanding that it is an award, especially in the case of a representative national list being established.

If an independent national list of intangible cultural heritage were to be established in Germany, all applications for the inscription of elements would have to be examined by an appropriate organ at the federal level (e.g. the advisory board as described in section 3.3.3). The final decision if necessary would lie with the Standing Conference. The list would have to be examined and brought up to date regularly (e.g. every five years) to ensure that the listed elements still meet the admission criteria.

In order to facilitate an objective and efficient registry and/or selection of elements, the appropriate federal level organ would have to dispose of an application form and a catalogue of criteria for the admission of elements. These would indeed thwart the nomination of unsuitable elements right from the start. The application forms and the catalogue of criteria for the national list of Austria, and the inventory of the canton of Bern (see Appendices 3, 4, and 5) could be employed as models, as well as the criteria for the inscription of elements on the “List of Living Traditions in Switzerland.”<sup>56</sup>

In Austria it has become routine for an application form to be accompanied by two expert scientific reports (the National Agency keeps a list of experts who have agreed to set up these letters of recommendation). In addition an application form has to be accompanied by a declaration of consent of the bearers of the nominated cultural heritage (i.e. involved communities, associations and persons). A similar procedure could also be meaningful to Germany and would ensure right from the start that certain basic requirements were being met.

Certainly a national list would only be declaratory in nature and would not have the full force of law. Existing rights and obligations, especially in the area of intellectual property, would remain unaffected and would have to be respected. There could be no legal entitlement derived from the inscription of an element on the national list or on the inventories of the federal states (e.g. financial funding for safeguarding measures). These points should be clearly presented in the application forms and their accompanying information materials.

#### **4.6.3 Nominations for the international list**

As applied to all three international lists established through the UNESCO Convention (“Representative List”; “Urgent Safeguarding List” and “Register of Good Safeguarding Practises”), only nominations that are submitted by the State Parties are valid. The German federal government, by way of the Permanent German Delegation to UNESCO, would be responsible for submitting the nominations. Submitting nominations is voluntary, which means there is no mandatory obligation to the States Parties.

As provided for by the Convention, the interstate committee has established selection criteria for all three lists, which can be found in the Operational Directives (see Appendix 2) , as well as in application forms and corresponding instructions. All nominations must have the consent of the bearers of the cultural heritage in question verified (principle of “Free, Prior and Informed Consent”). Moreover, the State Parties must verify in cases where there are nominations for the “Representative List” and the “Urgent Safeguarding List”, that the respective elements have been inscribed on an inventory of the sovereign territory on which the intangible cultural heritage exists. In Germany the respective elements would either be on an inventory of a federal state, or, if it were to be established, on the national list. The national list, however, is not a mandatory requirement for the nomination of elements for the international lists.

The procedure for the selection of German nominations for the international lists would on the one side depend on institutional solutions, and on the other, whether or not a German list existed.

If a national list existed, one could proceed as follows:

- an appropriate organ at the federal level (e.g. a national nomination committee, or a German national committee for intangible cultural heritage with the participation of an advisory board)

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<sup>56</sup> See Swiss Federal Office of Culture (2010), pp. 9-11. In regards to representativeness the following criteria apply: “Living tradition is characterised in comparison to other living traditions in Switzerland or abroad by distinguishing features (singularity) and is suited to represent a group of similar living traditions due to its charisma (representativeness). Their inscription contributes to promote awareness of the creative diversity of living traditions in Switzerland.”



would select from the elements inscribed on the national list those that should be nominated for the “Representative List” or the “Urgent Safeguarding List;” furthermore it would make recommendations for the nomination of programs, projects and activities for the “Register of Good Safeguarding Practises”

- the second step calls for recommendations to be submitted to a commission of experts, possibly the Conference of the Ministers of Education and Cultural Affairs, which would make a final decision and pass it on to the federal government; as such the Standing Conference could only deviate from the recommendations in justified cases;
- the federal government would finalise the nominations in collaboration with the bearers of the intangible cultural heritage in question and the administrative office of the authority responsible for the implementation of the Convention, and would then submit them to UNESCO

If no national list were created, one could proceed as follows:

- Option 1: The national nomination committee or the advisory board of the German national committee examines the inventories of the federal states and selects those inscribed elements that are most suitable for the “Representative List” and the “Urgent Safeguarding List”
- Option 2: The federal states submit recommendations, with reference to the nomination of elements for the international lists, to the appropriate organ at the federal level. This authority then selects the elements that are suitable based on the recommendations made by the federal states
- Option 3: A combination of the first two options—an organ at the federal level selects appropriate elements from the inventories of the federal states, but would also accept recommendations made by the federal states

#### **4.7 Pilot phase**

A “pilot stage” during and after the process of ratification would help inform the public about the purpose of the Convention and its implementation in Germany. It would indeed give the Convention a positive image as well as counteract existing misunderstandings, critiques and doubts. In addition to this, appropriate communication strategies and other measures would have to be developed, such as flagship projects that are socially appropriate and projects that embrace the overall dimensions of the Convention, like *sustainable development, cultural diversity, the formation of identity, intercultural dialogue or cultural dynamic*. These would best be developed before ratification. Also of related interest are the measures taken by the Austrian National Agency for raising awareness of the significance of intangible cultural heritage, for example in the areas of traditional healing methods and preventive medicine, disaster prevention and forestry (see Section 2.1. above).

A pilot stage could also be used to define the concept of intangible cultural heritage in Germany more precisely, for example through “screening studies” conducted by independent experts or scientific institutions in each of the five areas of intangible cultural heritage. Using this as a basis, a more precise picture could be drawn as to which current practises, expressions/manifestations, knowledge, and skills can be fitted to the Convention. This would help in communicating the meaning of the Convention to the public and to counteract the danger, that the implementation of the Convention would be dominated by financial interests and lobbyists. Professional and independently conducted “screening studies” in the five fields of intangible cultural heritage could also be useful in drawing up a catalogue of criteria for the inscription of elements on the inventories of the federal states (or the national inventory respectively).

The propositions referred to would be carried out by scientific institutions that deal with the questions of concern. The propositions would be coordinated by the institutions (potentially newly established) that are responsible for the implementation of the Convention. Prior and during the ratification process the German Commission for UNESCO, or an ad-hoc organ, would most likely coordinate the respective campaign.

## 5. Considerations for Intangible Cultural Heritage in Germany

As mentioned at the beginning, the term, “intangible cultural heritage,” in the UNESCO Convention encompasses practises, expressions/manifestations, knowledge, and skills. Communities, groups and possibly individuals understand these as part of their cultural heritage and their collective identity and transmit them from one generation to another. Moreover “intangible cultural heritage” includes orally transmitted traditions and forms of expression, the performing arts, social practises, rituals, festivities, knowledge and practises concerning the natural world, as well as crafts. A crucial characteristic of intangible cultural heritage is that the traditions be transmitted from one generation to the next.

According to the spirit of the Convention, intangible cultural heritage must be maintained for several generations by its respective communities or groups;<sup>57</sup> this does not mean, however, that the present form or practise cannot contain contemporary elements.

Intangible cultural heritage in the UNESCO Convention was intentionally broadly defined because of the global and local diversity of this cultural heritage. Terms, such as “folklore,” “folk culture,” “national identity,” “popular culture,” and even “tradition” were, therefore, not included in the definition. At the same time there were no qualitative restrictions such as in the World Heritage Convention where the “outstanding universal value” of natural and cultural heritage was strictly applied. This was done to avoid any inappropriate hierarchy of structures that would limit intangible cultural heritage. Terms such as “outstanding,” “universal value,” “masterpiece,” or “world” were, therefore, intentionally excluded from the text of the Convention. Accordingly, the international “Representative List of Intangible Cultural Heritage of Mankind” should not be a hierarchical registry for the outstanding or exceptional value of world cultural heritage, but be rather simply a mirror of the worldwide diversity of intangible cultural heritage.

The openness of the definition of intangible cultural heritage is well grounded, but as a consequence, the point of the Convention remains difficult to grasp. Because of this in Germany there is some doubt, as to which practises, expressions/manifestations, knowledge, and skills belong to intangible cultural heritage, and, more specifically, which of these could or should be admitted on national inventories and international lists.

Public discussion has so far been limited mainly to potential German nominations for the international “representative list.” A large number of recommendations have been made—some seemingly absurd—often with goal of financial gain in mind (especially by way of increased tourism). To this end various interest groups have come forward with recommendations to nominate particular “events” which are rich in tradition and attract a large number of visitors for the international representative list (such as folk festivals). Consequently, it seemed that in some cases the special financial interests of individual groups, and communities or counties had become more important rather than the safeguarding of intangible cultural heritage and the fulfilment of the aims of the UNESCO Convention. In regard to the German inventories, the federal government had voiced fears that “specific social or professional groups would like to achieve a financial advantage through inscriptions on lists, more specifically the lists of German intangible cultural heritage.”<sup>58</sup>

It could well be true that intangible cultural heritage would be “safeguarded” in the spirit of the Convention through the higher income generated by increased tourism; however, a nomination or inscription of an element for primarily economic reasons would then not only contradict the spirit of the Convention, but also prove a potential danger to the cultural heritage in question. The UNESCO Secretariat stipulates:

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<sup>57</sup> In the case of the “Swiss List of Living Traditions” elements of intangible cultural heritage have to be “present in Switzerland for at least two generations”, in order to be inscribed on the list (Swiss federal Office of Culture, 2010, 10). In this context it is stressed, that living traditions “due to the bearers mobility as well as the exchange of information electronically are not necessarily geographically bound,” and that a “living tradition of a group with a migratory background . . . ., as long as its presence is proven to have existed in Switzerland for several generations, can be accepted on the [List of Living Traditions].”

<sup>58</sup> Answer of the federal government to a minor interpellation in the Federal Diet (Bundestag), BT-Drs. 16/13343 (11 June 2009), p. 5.

“Care must be given to ensure that the increased attention—arising from the inscription of an element on an international list—does not affect the intangible cultural heritage negatively. For instance, increased tourism could result in distortions in heritage if communities were to change aspects of the cultural heritage to suit tourists’ demands... This could eventually replace the ‘cultural value’ of intangible cultural heritage with a ‘market value’ leaving it open to inappropriate commercial exploitation.”<sup>59</sup>

Prevailing public discussion on the UNESCO Convention in Germany has indicated that the ill-advised nomination of elements for the international UNESCO lists could easily deride the Convention- and thereby UNESCO. This of course is not within the spirit of the Convention, which obliges the States Parties to work towards securing the respect and valorisation of intangible cultural heritage within society. Various recommendations for German nomination that had been hastily presented (as well as a few actually realised inscriptions of other states) were followed by the German press articles and panel discussions on the internet. These examples serve as a warning.<sup>60</sup> The international representative list was in most cases misunderstood by both those who had made the recommendations and by those commenting on it: they mistakenly understood it as a list of intangible “world heritage,” similar to the UNESCO World Heritage list. This false notion would need to be firmly counteracted with the implementation of the Convention in Germany and with the selection of German nominations. In the spirit of the Convention, intangible cultural heritage *is not world heritage*, even when it is inscribed on one of the international lists. This point must be made very clear in public discussions in order to prevent UNESCO and the World Heritage Convention from falling into disrepute with inappropriate comparisons (i.e. fried sausage=Stonehenge).

When selecting German nominations for the international lists and inscribing elements on the national inventories, these dangers will have to be taken into account. Everything should be done to prevent the Convention from being ridiculed and to prevent elements from being nominated or inscribed primarily out of economic interest. This seems to be a serious threat especially for the nominations for international lists and for the possible national list. Because of this, there should be a guarantee that the applications and, more specifically, the statements of intent of communities, groups and possibly individuals are critically and impartially examined by non-partisan experts. Under no circumstances should professional groups, professional associations and other associations influence the decision-making process. For this reason Swiss associations and institutions that bring together a large number of the bearers of living traditions are fundamentally not entitled to file applications for the inscription of elements on the national list of living traditions. At most they can represent the bearers of the cultural heritage.<sup>61</sup> The German Commission for UNESCO stresses:

“The UNESCO Convention aims primarily at safeguarding those phenomena, practises, rituals, handicrafts etc. that are usually not promoted by large organisations or organised by professional associations... Federal states, parishes, communities and professional associations are to be involved in the selection process in such a way that their proportional representation does not dominate the matter of procedure... If a decision were to fall to the federal states, communities and professional organisations, this might be disadvantageous to the activities of those bearers of traditions that are not firmly established in large organisations or associations.”<sup>62</sup>

The aforementioned structures and strategies to implement the Convention in Germany take into account deliberation in various ways. Bearers of intangible cultural heritage can only file an application for an inscription on an inventory of the federal states (or the national inventory) that is in accord with the

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<sup>59</sup> UNESCO (2009b), p. 6

<sup>60</sup> See, for example, Imue, „Cäsars Koch: UNESCO berät Weltkulturerbe-Liste“ (Süddeutsche Zeitung, 16 November 2010, Feuilleton); B. Tyron, „Kloßartig!“ (DAS MAGAZIN 12/2007); schmunzelmax, „Weltkulturerbe????“ (online discussion at [www.zdf.de/ZDFforum/ZDFde/inhalt/5/0,1872,7182885,00/F5265/msg1717900.php](http://www.zdf.de/ZDFforum/ZDFde/inhalt/5/0,1872,7182885,00/F5265/msg1717900.php)); A. Uhl, „Gyros und Pizza als Weltkulturerbe“ (Berliner Morgenpost, 11 November 2010); „Umfrage: Die WiesnalsWeltkulturerbe?“ (tz-online, 13 January 2009, online discussion at [www.tz-online.de/aktuelles/muenchen/umfrage-die-wiesn-als-weltkulturerbe-97305.html](http://www.tz-online.de/aktuelles/muenchen/umfrage-die-wiesn-als-weltkulturerbe-97305.html)); D. Köchel, „Das ist Blödsinn“: NN-Internet-Umfrage zu Annafest alsWeltkulturerbe“ (NordbayrischeNachrichten, 18 August 2010, [www.nordbayern.de/region/forchheim/das-ist-blodsinn-1.104748](http://www.nordbayern.de/region/forchheim/das-ist-blodsinn-1.104748)).

<sup>61</sup> Swiss Federal Office for Culture (2010), p.9.

<sup>62</sup> German Commission for UNESCO (2007a), Point 58.

Convention. The application has to be as complete as possible and, as such, be expandable and not representative of an “exclusive” list. On the basis of these inventories—and on possible recommendations made by the federal states—an independent commission of experts (“advisory board” or “national nomination committee”) will decide on the nomination of elements for the international lists without prejudice and in the spirit of the UNESCO Convention. The commission would also decide on the inclusion of elements on the representative, national list, should such a list be established. In the process one would have to guarantee that the selected elements are in summation representative of the intangible cultural heritage in Germany and that the bearers of the cultural heritage in question consent to the nomination or inscription. A procedure as such would exclude to a large degree the domination of financial interests from deciding on German nominations for international lists and on inscriptions for a possible German representative list. Since the (final) decision lies with the commission of experts, the governments of the federal states could thereby hopefully avoid the pressures exerted by lobbyists. In compiling the inventories additional measures could be resorted to in order to prevent elements from being nominated purely out of financial reasons. For example, in Switzerland people who have “juridical or natural (professional)” interests in maintaining intangible cultural heritage for mainly commercial purposes... are not eligible to file applications. However, intangible cultural heritage that has been used commercially can be accepted for inscription, if the bearers formally organise themselves as a not-for-profit group.”<sup>63</sup>

Specific examples of intangible cultural heritage in Germany will not be mentioned at this point. This is because the identification and designation of the variety of elements of intangible cultural heritage found in Germany should not be inappropriately anticipated. This is in accord with article 11(b) of the Convention that states these actions should be carried out with the participation of the bearers of intangible cultural heritage and not in an inappropriate manner without forethought. It would be unfitting to speculate which elements represent the best intangible cultural heritage in Germany—and thereby suited for an international representative list and possibly a national representative list—especially before the inventories of the federal states or a national inventory is drawn up.

A reference point for the potential content of an inventory in Germany is provided by the (expandable, non-representative) “List of Intangible Cultural Heritage of Austria” on which the following inscriptions have been inscribed so far:<sup>64</sup>

Inscriptions March 2010: Pharmaceutical Specialities, Mountain Fires at the Ehrwald, Mining Culture in Bleiberg, Bodensee-headress in Lamé lace, Indigo Hand Prints of Burgenland, Falconry, Imst Carnival - "Schemenlaufen," Gun-smithing Ferlach, Healing Knowledge of Pinzgauer men and women, “Hundstoaranggeln,” Classical Horsemanship and the High Art of the Spanish Riding School, Bread making in the Lesach Valley, Story-telling, Slovenian Field and House Names in Carinthia, Carol Singing in the Tyrolian Villgraten Valley (Inner and Outer Villgraten), Bird Catching in Salzkammergut, Association for Mutual Assistance in Fire Emergencies (“ancillary service”), Tamsweg Union.

Inscriptions September 2010: The Ötztal dialect,<sup>65</sup> Carol Singing in Heiligenblut, Viennese Yodeling, Bonfire Sunday, Wine Guardian Procession in Perchtoldsdorf, Shooting clubs in Salzburg, “Samsonstragen” in Lungau and Murau, “Schleicherlaufen” in Telfs, “Glöcklerlauf” in Ebensee, The Viennese Ball, Stove and Fireplace Masonry in Burgenland, Forging in Ybbsitz.

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<sup>63</sup> Application form for the inventory of intangible cultural heritage / living traditions, Canton Bern. Likewise, the Swiss Federal Office of Culture (2010), p.9.

<sup>64</sup> See <http://nationalagentur.unesco.at/cgi-bin/unesco/element.pl?intro=1&lang=de>

<sup>65</sup> How dialects and minority languages should be dealt with will have to be decided upon, i.e. whether or not they should be included as such in the inventories. The convention does not deal with languages per se as intangible cultural heritage, but merely as “vehicles of intangible cultural heritage”. Accordingly, languages, as such, have not been inscribed on the international lists of UNESCO (UNESCO, 2009b, p.7; Blake 2006, p.37). However, the States Parties are asked to promote dialects and local languages in the Operational Directives through measures such as educational and media programs (Paragraph 107, 113). Austria and Switzerland have acted on their inventories differently: in Austria the Ötztal dialect was included on the national list, in Switzerland, though, “a language or dialect ... cannot be included in the inventory as independent intangible cultural heritage, but it can be an important part of intangible cultural heritage” (Cantonal Education Department Canton Bern, 2010; Swiss Federal Office of Culture, p.10).

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## 7. Annexes

**Annexes 3 – 7 were not translated into English.**



Annex 1:

**CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE**

Paris, 17 October 2003  
MISC/2003/CLT/CH/14

**CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE**

The General Conference of the United Nations Educational, Scientific and Cultural Organization hereinafter referred to as UNESCO, meeting in Paris, from 29 September to 17 October 2003, at its 32nd session,

*Referring to* existing international human rights instruments, in particular to the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966,

*Considering* the importance of the intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development, as underscored in the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, in the UNESCO Universal Declaration on Cultural Diversity of 2001, and in the Istanbul Declaration of 2002 adopted by the Third Round Table of Ministers of Culture,

*Considering* the deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage,

*Recognizing* that the processes of globalization and social transformation, alongside the conditions they create for renewed dialogue among communities, also give rise, as does the phenomenon of intolerance, to grave threats of deterioration, disappearance and destruction of the intangible cultural heritage, in particular owing to a lack of resources for safeguarding such heritage,

*Being aware* of the universal will and the common concern to safeguard the intangible cultural heritage of humanity,

*Recognizing* that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and recreation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity,

*Noting* the far-reaching impact of the activities of UNESCO in establishing normative instruments for the protection of the cultural heritage, in particular the Convention for the Protection of the World Cultural and Natural Heritage of 1972,

*Noting further* that no binding multilateral instrument as yet exists for the safeguarding of the intangible cultural heritage,

*Considering* that existing international agreements, recommendations and resolutions concerning the cultural and natural heritage need to be effectively enriched and supplemented by means of new provisions relating to the intangible cultural heritage,

*Considering* the need to build greater awareness, especially among the younger generations, of the importance of the intangible cultural heritage and of its safeguarding,

*Considering* that the international community should contribute, together with the States Parties to this Convention, to the safeguarding of such heritage in a spirit of cooperation and mutual assistance,

*Recalling* UNESCO's programmes relating to the intangible cultural heritage, in particular the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity,



*Considering* the invaluable role of the intangible cultural heritage as a factor in bringing human beings closer together and ensuring exchange and understanding among them,

*Adopts* this Convention on this seventeenth day of October 2003.

## **I. General provisions**

### **Article 1 – Purposes of the Convention**

The purposes of this Convention are:

- (a) to safeguard the intangible cultural heritage;
- (b) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned;
- (c) to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;
- (d) to provide for international cooperation and assistance.

### **Article 2 – Definitions**

For the purposes of this Convention,

1. The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

2. The “intangible cultural heritage”, as defined in paragraph 1 above, is manifested inter alia in the following domains:

- (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
- (b) performing arts;
- (c) social practices, rituals and festive events;
- (d) knowledge and practices concerning nature and the universe;
- (e) traditional craftsmanship.

3. “Safeguarding” means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

4. “States Parties” means States which are bound by this Convention and among which this Convention is in force.

5. This Convention applies mutatis mutandis to the territories referred to in Article 33 which become Parties to this Convention in accordance with the conditions set out in that Article. To that extent the expression “States Parties” also refers to such territories.

### **Article 3 – Relationship to other international instruments**

Nothing in this Convention may be interpreted as:

(a) altering the status or diminishing the level of protection under the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage of World Heritage properties with which an item of the intangible cultural heritage is directly associated; or

(b) affecting the rights and obligations of States Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties.

## **II. Organs of the Convention**

### **Article 4 – General Assembly of the States Parties**

1. A General Assembly of the States Parties is hereby established, hereinafter referred to as “the General Assembly”. The General Assembly is the sovereign body of this Convention.

2. The General Assembly shall meet in ordinary session every two years. It may meet in extraordinary session if it so decides or at the request either of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage or of at least one-third of the States Parties.

3. The General Assembly shall adopt its own Rules of Procedure.

### **Article 5 – Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage**

1. An Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, hereinafter referred to as “the Committee”, is hereby established within UNESCO. It shall be composed of representatives of 18 States Parties, elected by the States Parties meeting in General Assembly, once this Convention enters into force in accordance with Article 34.

2. The number of States Members of the Committee shall be increased to 24 once the number of the States Parties to the Convention reaches 50.

### **Article 6 – Election and terms of office of States Members of the Committee**

1. The election of States Members of the Committee shall obey the principles of equitable geographical representation and rotation.

2. States Members of the Committee shall be elected for a term of four years by States Parties to the Convention meeting in General Assembly.

3. However, the term of office of half of the States Members of the Committee elected at the first election is limited to two years. These States shall be chosen by lot at the first election.

4. Every two years, the General Assembly shall renew half of the States Members of the Committee.

5. It shall also elect as many States Members of the Committee as required to fill vacancies.

6. A State Member of the Committee may not be elected for two consecutive terms.

7. States Members of the Committee shall choose as their representatives persons who are qualified in the various fields of the intangible cultural heritage.

#### **Article 7 – Functions of the Committee**

Without prejudice to other prerogatives granted to it by this Convention, the functions of the Committee shall be to:

- (a) promote the objectives of the Convention, and to encourage and monitor the implementation thereof;
- (b) provide guidance on best practices and make recommendations on measures for the safeguarding of the intangible cultural heritage;
- (c) prepare and submit to the General Assembly for approval a draft plan for the use of the resources of the Fund, in accordance with Article 25;
- (d) seek means of increasing its resources, and to take the necessary measures to this end, in accordance with Article 25;
- (e) prepare and submit to the General Assembly for approval operational directives for the implementation of this Convention;
- (f) examine, in accordance with Article 29, the reports submitted by States Parties, and to summarize them for the General Assembly;
- (g) examine requests submitted by States Parties, and to decide thereon, in accordance with objective selection criteria to be established by the Committee and approved by the General Assembly for:
- (i) inscription on the lists and proposals mentioned under Articles 16, 17 and 18;
- (ii) the granting of international assistance in accordance with Article 22.

#### **Article 8 – Working methods of the Committee**

1. The Committee shall be answerable to the General Assembly. It shall report to it on all its activities and decisions.
2. The Committee shall adopt its own Rules of Procedure by a two-thirds majority of its Members.
3. The Committee may establish, on a temporary basis, whatever ad hoc consultative bodies it deems necessary to carry out its task.
4. The Committee may invite to its meetings any public or private bodies, as well as private persons, with recognized competence in the various fields of the intangible cultural heritage, in order to consult them on specific matters.

#### **Article 9 – Accreditation of advisory organizations**

1. The Committee shall propose to the General Assembly the accreditation of nongovernmental organizations with recognized competence in the field of the intangible cultural heritage to act in an advisory capacity to the Committee.
2. The Committee shall also propose to the General Assembly the criteria for and modalities of such accreditation.

#### **Article 10 – The Secretariat**

1. The Committee shall be assisted by the UNESCO Secretariat.
2. The Secretariat shall prepare the documentation of the General Assembly and of the Committee, as well as the draft agenda of their meetings, and shall ensure the implementation of their decisions.

### **III. Safeguarding of the intangible cultural heritage at the national level**

#### **Article 11 – Role of States Parties**

Each State Party shall:

- (a) take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory;
- (b) among the safeguarding measures referred to in Article 2, paragraph 3, identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities, groups and relevant nongovernmental organizations.

#### **Article 12 – Inventories**

1. To ensure identification with a view to safeguarding, each State Party shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory. These inventories shall be regularly updated.
2. When each State Party periodically submits its report to the Committee, in accordance with Article 29, it shall provide relevant information on such inventories.

#### **Article 13 – Other measures for safeguarding**

To ensure the safeguarding, development and promotion of the intangible cultural heritage present in its territory, each State Party shall endeavour to:

- (a) adopt a general policy aimed at promoting the function of the intangible cultural heritage in society, and at integrating the safeguarding of such heritage into planning programmes;
- (b) designate or establish one or more competent bodies for the safeguarding of the intangible cultural heritage present in its territory;
- (c) foster scientific, technical and artistic studies, as well as research methodologies, with a view to effective safeguarding of the intangible cultural heritage, in particular the intangible cultural heritage in danger;
- (d) adopt appropriate legal, technical, administrative and financial measures aimed at:
  - (i) fostering the creation or strengthening of institutions for training in the management of the intangible cultural heritage and the transmission of such heritage through forums and spaces intended for the performance or expression thereof;
  - (ii) ensuring access to the intangible cultural heritage while respecting customary practices governing access to specific aspects of such heritage;
  - (iii) establishing documentation institutions for the intangible cultural heritage and facilitating access to them.

#### **Article 14 – Education, awareness-raising and capacity-building**

Each State Party shall endeavour, by all appropriate means, to:

(a) ensure recognition of, respect for, and enhancement of the intangible cultural heritage in society, in particular through:

(i) educational, awareness-raising and information programmes, aimed at the general public, in particular young people;

(ii) specific educational and training programmes within the communities and groups concerned;

(iii) capacity-building activities for the safeguarding of the intangible cultural heritage, in particular management and scientific research; and

(iv) non-formal means of transmitting knowledge;

(b) keep the public informed of the dangers threatening such heritage, and of the activities carried out in pursuance of this Convention;

(c) promote education for the protection of natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage.

#### **Article 15 – Participation of communities, groups and individuals**

Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management.

### **V. Safeguarding of the intangible cultural heritage at the international level**

#### **Article 16 – Representative List of the Intangible Cultural Heritage of Humanity**

1. In order to ensure better visibility of the intangible cultural heritage and awareness of its significance, and to encourage dialogue which respects cultural diversity, the Committee, upon the proposal of the States Parties concerned, shall establish, keep up to date and publish a Representative List of the Intangible Cultural Heritage of Humanity.

2. The Committee shall draw up and submit to the General Assembly for approval the criteria for the establishment, updating and publication of this Representative List.

#### **Article 17 – List of Intangible Cultural Heritage in Need of Urgent Safeguarding**

1. With a view to taking appropriate safeguarding measures, the Committee shall establish, keep up to date and publish a List of Intangible Cultural Heritage in Need of Urgent Safeguarding, and shall inscribe such heritage on the List at the request of the State Party concerned.

2. The Committee shall draw up and submit to the General Assembly for approval the criteria for the establishment, updating and publication of this List.

3. In cases of extreme urgency – the objective criteria of which shall be approved by the General Assembly upon the proposal of the Committee – the Committee may inscribe an item of the heritage concerned on the List mentioned in paragraph 1, in consultation with the State Party concerned.

#### **Article 18 – Programmes, projects and activities for the safeguarding of the intangible cultural heritage**

1. On the basis of proposals submitted by States Parties, and in accordance with criteria to be defined by the Committee and approved by the General Assembly, the Committee shall periodically select and

promote national, sub-regional and regional programmes, projects and activities for the safeguarding of the heritage which it considers best reflect the principles and objectives of this Convention, taking into account the special needs of developing countries.

2. To this end, it shall receive, examine and approve requests for international assistance from States Parties for the preparation of such proposals.

3. The Committee shall accompany the implementation of such projects, programmes and activities by disseminating best practices using means to be determined by it.

## **V. International cooperation and assistance**

### **Article 19 – Cooperation**

1. For the purposes of this Convention, international cooperation includes, inter alia, the exchange of information and experience, joint initiatives, and the establishment of a mechanism of assistance to States Parties in their efforts to safeguard the intangible cultural heritage.

2. Without prejudice to the provisions of their national legislation and customary law and practices, the States Parties recognize that the safeguarding of intangible cultural heritage is of general interest to humanity, and to that end undertake to cooperate at the bilateral, sub-regional, regional and international levels.

### **Article 20 – Purposes of international assistance**

International assistance may be granted for the following purposes:

(a) the safeguarding of the heritage inscribed on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding;

(b) the preparation of inventories in the sense of Articles 11 and 12;

(c) support for programmes, projects and activities carried out at the national, sub-regional and regional levels aimed at the safeguarding of the intangible cultural heritage;

(d) any other purpose the Committee may deem necessary.

### **Article 21 – Forms of international assistance**

The assistance granted by the Committee to a State Party shall be governed by the operational directives foreseen in Article 7 and by the agreement referred to in Article 24, and may take the following forms:

(a) studies concerning various aspects of safeguarding;

(b) the provision of experts and practitioners;

(c) the training of all necessary staff;

(d) the elaboration of standard-setting and other measures;

(e) the creation and operation of infrastructures;

(f) the supply of equipment and know-how;

(g) other forms of financial and technical assistance, including, where appropriate, the granting of low-interest loans and donations.



## **Article 22 – Conditions governing international assistance**

1. The Committee shall establish the procedure for examining requests for international assistance, and shall specify what information shall be included in the requests, such as the measures envisaged and the interventions required, together with an assessment of their cost.
2. In emergencies, requests for assistance shall be examined by the Committee as a matter of priority.
3. In order to reach a decision, the Committee shall undertake such studies and consultations as it deems necessary.

## **Article 23 – Requests for international assistance**

1. Each State Party may submit to the Committee a request for international assistance for the safeguarding of the intangible cultural heritage present in its territory.
2. Such a request may also be jointly submitted by two or more States Parties.
3. The request shall include the information stipulated in Article 22, paragraph 1, together with the necessary documentation.

## **Article 24 – Role of beneficiary States Parties**

1. In conformity with the provisions of this Convention, the international assistance granted shall be regulated by means of an agreement between the beneficiary State Party and the Committee.
2. As a general rule, the beneficiary State Party shall, within the limits of its resources, share the cost of the safeguarding measures for which international assistance is provided.
3. The beneficiary State Party shall submit to the Committee a report on the use made of the assistance provided for the safeguarding of the intangible cultural heritage.

## **VI. Intangible Cultural Heritage Fund**

### **Article 25 – Nature and resources of the Fund**

1. A “Fund for the Safeguarding of the Intangible Cultural Heritage”, hereinafter referred to as “the Fund”, is hereby established.
2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.
3. The resources of the Fund shall consist of:
  - (a) contributions made by States Parties;
  - (b) funds appropriated for this purpose by the General Conference of UNESCO;
  - (c) contributions, gifts or bequests which may be made by:
    - (i) other States;
    - (ii) organizations and programmes of the United Nations system, particularly the United Nations Development Programme, as well as other international organizations;
    - (iii) public or private bodies or individuals;

(d) any interest due on the resources of the Fund;

(e) funds raised through collections, and receipts from events organized for the benefit of the Fund;

(f) any other resources authorized by the Fund's regulations, to be drawn up by the Committee.

4. The use of resources by the Committee shall be decided on the basis of guidelines laid down by the General Assembly.

5. The Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by the Committee.

6. No political, economic or other conditions which are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.

#### **Article 26 – Contributions of States Parties to the Fund**

1. Without prejudice to any supplementary voluntary contribution, the States Parties to this Convention undertake to pay into the Fund, at least every two years, a contribution, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly. This decision of the General Assembly shall be taken by a majority of the States Parties present and voting which have not made the declaration referred to in paragraph 2 of this Article. In no case shall the contribution of the State Party exceed 1% of its contribution to the regular budget of UNESCO.

2. However, each State referred to in Article 32 or in Article 33 of this Convention may declare, at the time of the deposit of its instruments of ratification, acceptance, approval or accession, that it shall not be bound by the provisions of paragraph 1 of this Article.

3. A State Party to this Convention which has made the declaration referred to in paragraph 2 of this Article shall endeavour to withdraw the said declaration by notifying the Director-General of UNESCO. However, the withdrawal of the declaration shall not take effect in regard to the contribution due by the State until the date on which the subsequent session of the General Assembly opens.

4. In order to enable the Committee to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article shall be paid on a regular basis, at least every two years, and should be as close as possible to the contributions they would have owed if they had been bound by the provisions of paragraph 1 of this Article.

5. Any State Party to this Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year immediately preceding it shall not be eligible as a Member of the Committee; this provision shall not apply to the first election. The term of office of any such State which is already a Member of the Committee shall come to an end at the time of the elections provided for in Article 6 of this Convention.

#### **Article 27 – Voluntary supplementary contributions to the Fund**

States Parties wishing to provide voluntary contributions in addition to those foreseen under Article 26 shall inform the Committee, as soon as possible, so as to enable it to plan its operations accordingly.

#### **Article 28 – International fund-raising campaigns**

The States Parties shall, insofar as is possible, lend their support to international fund-raising campaigns organized for the benefit of the Fund under the auspices of UNESCO.

### **VII. Reports**

#### **Article 29 – Reports by the States Parties**

The States Parties shall submit to the Committee, observing the forms and periodicity to be defined by the Committee, reports on the legislative, regulatory and other measures taken for the implementation of this Convention.

#### **Article 30 – Reports by the Committee**

1. On the basis of its activities and the reports by States Parties referred to in Article 29, the Committee shall submit a report to the General Assembly at each of its sessions.
2. The report shall be brought to the attention of the General Conference of UNESCO.

#### **VIII. Transitional clause**

##### **Article 31 – Relationship to the Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity**

1. The Committee shall incorporate in the Representative List of the Intangible Cultural Heritage of Humanity the items proclaimed “Masterpieces of the Oral and Intangible Heritage of Humanity” before the entry into force of this Convention.
2. The incorporation of these items in the Representative List of the Intangible Cultural Heritage of Humanity shall in no way prejudice the criteria for future inscriptions decided upon in accordance with Article 16, paragraph 2.
3. No further Proclamation will be made after the entry into force of this Convention.

#### **IX. Final clauses**

##### **Article 32 – Ratification, acceptance or approval**

1. This Convention shall be subject to ratification, acceptance or approval by States Members of UNESCO in accordance with their respective constitutional procedures.
2. The instruments of ratification, acceptance or approval shall be deposited with the Director-General of UNESCO.

##### **Article 33 – Accession**

1. This Convention shall be open to accession by all States not Members of UNESCO that are invited by the General Conference of UNESCO to accede to it.
2. This Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.
3. The instrument of accession shall be deposited with the Director-General of UNESCO.

##### **Article 34 – Entry into force**

This Convention shall enter into force three months after the date of the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, but only with respect to those States that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other State Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.

### **Article 35 – Federal or non-unitary constitutional systems**

The following provisions shall apply to States Parties which have a federal or non-unitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;

(b) with regard to the provisions of this Convention, the implementation of which comes under the jurisdiction of individual constituent States, countries, provinces or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

### **Article 36 – Denunciation**

1. Each State Party may denounce this Convention.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of UNESCO.
3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the denouncing State Party until the date on which the withdrawal takes effect.

### **Article 37 – Depositary functions**

The Director-General of UNESCO, as the Depositary of this Convention, shall inform the States Members of the Organization, the States not Members of the Organization referred to in Article 33, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 32 and 33, and of the denunciations provided for in Article 36.

### **Article 38 – Amendments**

1. A State Party may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the General Assembly for discussion and possible adoption.
2. Amendments shall be adopted by a two-thirds majority of States Parties present and voting.
3. Once adopted, amendments to this Convention shall be submitted for ratification, acceptance, approval or accession to the States Parties.
4. Amendments shall enter into force, but solely with respect to the States Parties that have ratified, accepted, approved or acceded to them, three months after the deposit of the instruments referred to in paragraph 3 of this Article by two-thirds of the States Parties. Thereafter, for each State Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that State Party of its instrument of ratification, acceptance, approval or accession.
5. The procedure set out in paragraphs 3 and 4 shall not apply to amendments to Article 5 concerning the number of States Members of the Committee. These amendments shall enter into force at the time they are adopted.

6. A State which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered:

(a) as a Party to this Convention as so amended; and

(b) as a Party to the unamended Convention in relation to any State Party not bound by the amendments.

**Article 39 – Authoritative texts**

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, the six texts being equally authoritative.

**Article 40 – Registration**

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of UNESCO.

Annex 2:

**Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage [Excerpts]**

Adopted by the General Assembly of the States Parties to the Convention  
at its second ordinary session (Paris, France, 16 to 19 June 2008),  
amended at its third session (Paris, France, 22 to 24 June 2010)

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## **Chapter I Safeguarding of the intangible cultural heritage at the international level, cooperation and international assistance**

### **I.1 Criteria for inscription on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding**

1. In nomination files, the submitting State(s) Party(ies), is (are) requested to demonstrate that an element proposed for inscription on the Urgent Safeguarding List satisfies all of the following criteria:
  - U.1** The element constitutes intangible cultural heritage as defined in Article 2 of the Convention.
  - U.2** a. The element is in urgent need of safeguarding because its viability is at risk despite the efforts of the community, group or, if applicable, individuals and State(s) Party(ies) concerned;  
or b. The element is in extremely urgent need of safeguarding because it is facing grave threats as a result of which it cannot be expected to survive without immediate safeguarding.
  - U.3** Safeguarding measures are elaborated that may enable the community, group or, if applicable, individuals concerned to continue the practice and transmission of the element.
  - U.4** The element has been nominated following the widest possible participation of the community, group or, if applicable, individuals concerned and with their free, prior and informed consent.
  - U.5** The element is included in an inventory of the intangible cultural heritage present in the territory(ies) of the submitting State(s)Party(ies), as defined in Articles 11 and 12 of the Convention.
  - U.6** In cases of extreme urgency, the State(s) Party(ies) concerned has(have) been duly consulted regarding inscription of the element in conformity with Article 17.3 of the Convention.

### **I.2 Criteria for inscription on the Representative List of the Intangible Cultural Heritage of Humanity**

2. In nomination files, the submitting State(s) Party(ies) is (are) requested to demonstrate that an element proposed for inscription on the Representative List of the Intangible Cultural Heritage of Humanity satisfies all of the following criteria:
  - R.1** The element constitutes intangible cultural heritage as defined in Article 2 of the Convention.
  - R.2** Inscription of the element will contribute to ensuring visibility and awareness of the significance of the intangible cultural heritage and to encouraging dialogue, thus reflecting cultural diversity worldwide and testifying to human creativity.
  - R.3** Safeguarding measures are elaborated that may protect and promote the element.
  - R.4** The element has been nominated following the widest possible participation of the community, group or, if applicable, individuals concerned and with their free, prior and informed consent.
  - R.5** The element is included in an inventory of the intangible cultural heritage present in the territory(ies) of the submitting State(s)Party(ies), as defined in Articles 11 and 12 of the Convention.

### **I.3 Criteria for selection of programmes, projects and activities that best reflect the principles and objectives of the Convention**

3. States Parties are encouraged to propose national, sub-regional or regional programmes, projects and activities for safeguarding intangible cultural heritage to the Committee for selection and promotion as best reflecting the principles and objectives of the Convention.

4. At each session the Committee may explicitly call for proposals characterized by international cooperation, as mentioned in Article 19 of the Convention, and/or focusing on specific priority aspects of safeguarding.
5. Such programmes, projects and activities may be completed or in progress at the time they are proposed to the Committee for selection and promotion.
6. In its selection and promotion of safeguarding programmes, projects and activities, the Committee shall pay special attention to the needs of developing countries and to the principle of equitable geographic distribution, while strengthening South-South and North-South-South cooperation.
7. From among the programmes, projects or activities proposed to it, the Committee shall select those that best satisfy all of the following criteria:
  - P.1 The programme, project or activity involves safeguarding, as defined in Article 2.3 of the Convention.
  - P.2 The programme, project or activity promotes the coordination of efforts for safeguarding intangible cultural heritage on regional, subregional and/or international levels.
  - P.3 The programme, project or activity reflects the principles and objectives of the Convention.
  - P.4 The programme, project or activity has demonstrated effectiveness in contributing to the viability of the intangible cultural heritage concerned.
  - P.5 The programme, project or activity is or has been implemented with the participation of the community, group or, if applicable, individuals concerned and with their free, prior and informed consent.
  - P.6 The programme, project or activity may serve as a subregional, regional or international model, as the case may be, for safeguarding activities.
  - P.7 The submitting State(s) Party(ies), implementing body(ies), and community, group or, if applicable, individuals concerned are willing to cooperate in the dissemination of best practices, if their programme, project or activity is selected.
  - P.8 The programme, project or activity features experiences that are susceptible to an assessment of their results.
  - P.9 The programme, project or activity is primarily applicable to the particular needs of developing countries.

#### **I.5 Multi-national files**

13. States Parties are encouraged to jointly submit multi-national nominations to the List of Intangible Cultural Heritage in Need of Urgent Safeguarding and the Representative List of the Intangible Cultural Heritage of Humanity when an element is found on the territory of more than one State Party.
14. One or more States Parties may, with the agreement of each State Party concerned, propose inscription on an extended basis of an element already inscribed. The States Parties concerned submit together a nomination showing that the element, as extended, satisfies all of the criteria set out in paragraph 1 for the List of Intangible Cultural Heritage in Need of Urgent Safeguarding and paragraph 2 for the Representative List of the Intangible Cultural Heritage of Humanity. Such a request shall be submitted according to the established procedures and deadlines for nominations. In the event that the Committee decides to inscribe the element on the basis of the new nomination file, the new inscription shall replace the original inscription. In the event that the Committee, on the basis of the new nomination file, decides not to inscribe the element, the original inscription shall remain intact.
15. The Committee encourages the submission of sub-regional or regional programmes, projects and activities as well as those undertaken jointly by States Parties in geographically discontinuous areas. States Parties may submit these proposals individually or jointly.
16. States Parties may submit to the Committee requests for international assistance jointly submitted by two or more States Parties.

### **I.11 Removal of an element from a List**

39. An element shall be removed from the List of Intangible Cultural Heritage in Need of Urgent Safeguarding by the Committee when it determines, after assessment of the implementation of the safeguarding plan, that the element no longer satisfies one or more criteria for inscription on that list.
40. An element shall be removed from the Representative List of the Intangible Cultural Heritage of Humanity by the Committee when it determines that it no longer satisfies one or more criteria for inscription on that list.

### **I.15 Timetable – Overview of procedures**

54. Phase 1: Preparation and submission
  - 31 March Year 0 Deadline for preparatory assistance requests for the elaboration of nominations for the List of Intangible Cultural Heritage in Need of Urgent Safeguarding and proposals for programmes, projects and activities that best reflect the objectives of the Convention (Article 18).
  - 31 March Year 1 Deadline by which nominations for the List of Intangible Cultural Heritage in Need of Urgent Safeguarding and the Representative List of the Intangible Cultural Heritage of Humanity, proposals for programmes, projects and activities and international assistance requests greater than US\$25,000 must be received by the Secretariat. Files received after this date will be examined in the next cycle.
  - 30 June Year 1 Deadline by which the Secretariat will have processed the files, including registration and acknowledgement of receipt. If a file is found incomplete, the State Party is invited to complete the file.
  - 30 September Year 1 Deadline by which missing information required to complete the files, if any, shall be submitted by the State Party to the Secretariat. Files that remain incomplete are returned to the States Parties that may complete them for a subsequent cycle.
55. Phase 2: Examination
  - December Year 1 – May Year 2 Examination of the files by the Consultative Body or Subsidiary Body.
  - April – June Year 2 Meetings for final examination by the Consultative Body or Subsidiary Body.
  - Four weeks prior to the session of the Committee The Secretariat transmits the examination reports to the members of the Committee. The files and examination reports will also be available on-line for consultation by States Parties.
56. Phase 3: Evaluation
  - November Year 2 The Committee evaluates the nominations, proposals and requests and makes its decisions.

## **Chapter III Participation in the implementation of the Convention**

### **III.1 Participation of communities, groups and, where applicable, individuals, as well as experts, centres of expertise and research institutes**

79. Recalling Article 11 (b) of the Convention and in the spirit of Article 15 of the Convention, the Committee encourages States Parties to establish functional and complementary cooperation among communities,

groups and, where applicable, individuals who create, maintain and transmit intangible cultural heritage, as well as experts, centres of expertise and research institutes.

80. States Parties are encouraged to create a consultative body or a coordination mechanism to facilitate the participation of communities, groups and, where applicable, individuals, as well as experts, centres of expertise and research institutes, in particular in:
  - (a) the identification and definition of the different elements of intangible cultural heritage present on their territories;
  - (a) the drawing up of inventories;
  - (b) the elaboration and implementation of programmes, projects and activities;
  - (c) the preparation of nomination files for inscription on the Lists, in conformity with the relevant paragraphs of Chapter 1 of the present Operational Directives;
  - (d) the removal of an element of intangible cultural heritage from one List or its transfer to the other, as referred to in paragraphs 38 to 40 of the present Operational Directives.
81. States Parties shall take necessary measures to sensitize communities, groups and, where applicable, individuals to the importance and value of their intangible cultural heritage, as well as of the Convention, so that the bearers of this heritage may fully benefit from this standard-setting instrument.
82. In conformity with the provisions of Articles 11 to 15 of the Convention, States Parties shall undertake appropriate measures to ensure capacity building of communities, groups and, where applicable, individuals.
83. States Parties are encouraged to establish and regularly update, in a manner geared to their own situation, a directory of experts, centres of expertise, research institutes and regional centres active in the domains covered by the Convention that could undertake the studies mentioned in Article 13 (c) of the Convention.
84. Among the private and public bodies mentioned in paragraph 89 of the present Operational Directives, the Committee may involve experts, centres of expertise and research institutes, as well as regional centres active in the domains covered by the Convention, in order to consult them on specific matters.
85. States Parties shall endeavour to facilitate access by communities, groups and, where applicable, individuals to results of research carried out among them, as well as foster respect for practices governing access to specific aspects of intangible cultural heritage in conformity with Article 13 (d) of the Convention.
86. States Parties are encouraged to develop together, at the sub-regional and regional levels, networks of communities, experts, centres of expertise and research institutes to develop joint approaches, particularly concerning the elements of intangible cultural heritage they have in common, as well as interdisciplinary approaches.

### **III.2 Non-governmental organizations and the Convention**

#### **III.2.1 Participation of non-governmental organizations at the national level**

90. In conformity with Article 11 (b) of the Convention, States Parties shall involve the relevant non-governmental organizations in the implementation of the Convention, inter alia in identifying and defining intangible cultural heritage and in other appropriate safeguarding measures, in cooperation and coordination with other actors involved in the implementation of the Convention.

## **Chapter V Reporting to the Committee**

### **V.1 Reports by States Parties on the implementation of the Convention**

151. Each State Party to the Convention periodically submits to the Committee reports on the legislative, regulatory and other measures taken for the implementation of the Convention.

152. The State Party submits its periodic report to the Committee, on the basis of common guidelines and in a simplified format prepared by the Secretariat and adopted by the Committee, by 15 December of the sixth year following the year in which it deposited its instrument of ratification, acceptance or approval, and every sixth year thereafter.
153. The State Party reports on the measures taken for implementation of the Convention at the national level, including:
- (a) drawing up of inventories of the intangible cultural heritage present in its territory, as described in Articles 11 and 12 of the Convention;
  - (b) other measures for safeguarding as referred to in Articles 11 and 13 of the Convention, including:
    - i. promoting the function of intangible cultural heritage in society and integrating its safeguarding into planning programmes;
    - ii. fostering scientific, technical and artistic studies with a view to effective safeguarding;
    - iii. facilitating, to the extent possible, access to information relating to intangible cultural heritage while respecting customary practices governing access to specific aspects of it.
154. The State Party reports on the measures taken at the national level to strengthen institutional capacities for safeguarding intangible cultural heritage, as described in Article 13 of the Convention, including:
- (a) designating or establishing one or more competent bodies for safeguarding its intangible cultural heritage;
  - (b) fostering institutions for training in intangible cultural heritage management and transmission of this heritage;
  - (c) establishing documentation institutions for intangible cultural heritage and, to the extent possible, facilitating access to them.
155. The State Party reports on the measures taken at the national level to ensure greater recognition of, respect for and enhancement of intangible cultural heritage, in particular those referred to in Article 14 of the Convention :
- (a) educational, awareness-raising and information programmes;
  - (b) educational and training programmes within the communities and groups concerned;
  - (c) capacity-building activities for the safeguarding of the intangible cultural heritage;
  - (d) non-formal means of transmitting knowledge;
  - (e) education for the protection of natural spaces and places of memory.
156. The State Party reports on the measures taken by it at the bilateral, sub-regional, regional and international levels for the implementation of the Convention, including measures of international cooperation such as the exchange of information and experience, and other joint initiatives, as referred to in Article 19 of the Convention.
157. The State Party reports on the current status of all elements of intangible cultural heritage present in its territory that have been inscribed on the Representative List of the Intangible Cultural Heritage of Humanity. The State Party shall endeavour to ensure the widest possible participation of the communities, groups and, where applicable, individuals concerned during the process of preparation of such reports, which shall address, for each element concerned:
- (a) the element's social and cultural functions;
  - (b) an assessment of its viability and the current risks it faces, if any;
  - (c) its contribution to the goals of the List;
  - (d) the efforts to promote or reinforce the element, particularly the implementation of any measures that might have been necessary as a consequence of its inscription;
  - (e) the participation of communities, groups and individuals in safe guarding the element and their commitment to its further safeguarding.



158. The State Party reports on the institutional context for the element inscribed on the Representative List of the Intangible Cultural Heritage of Humanity, including:
- (a) the competent body(ies) involved in its management and/or safeguarding;
  - (b) the organization(s) of the community or group concerned with the element and its safeguarding.
159. States Parties shall respond, in a timely manner, to specific requests addressed to them by the Committee for additional information, if needed between the deadlines set out in paragraph 152 above.

## **V.2 Reports by States Parties on elements inscribed on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding**

160. Each State Party reports to the Committee reports on the status of elements of intangible cultural heritage present in its territory that have been inscribed on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding at its request or, in cases of extreme urgency, after consultation with it. The State Party shall endeavour to involve as broadly as possible the communities, groups and, where applicable, individuals concerned during the process of preparation of such reports.
161. Such reports shall normally be submitted to the Committee, on the basis of common guidelines and in a simplified format prepared by the Secretariat and adopted by the Committee, by 15 December of the fourth year following the year in which the element was inscribed, and every fourth year thereafter. At the time of inscription the Committee may on a case-by-case basis establish a specific timetable for reporting that will take precedence over the normal four-year cycle.
162. The State Party reports on the current status of the element, including:
- (a) its social and cultural functions;
  - (b) an assessment of its viability and the current risks it faces;
  - (c) the impacts of the efforts to safeguard the element, particularly the implementation of the safeguarding plan that was submitted at the time of nomination;
  - (d) the participation of communities, groups and individuals in safeguarding the element and their continued commitment to further safeguarding.
163. The State Party shall report on the institutional context for safeguarding the element inscribed on the List, including:
- (a) the competent body(ies) involved in its safeguarding;
  - (b) the organization(s) of the community or group concerned with the element and its safeguarding.
164. States Parties shall respond, in a timely manner, to specific requests addressed to them by the Committee for additional information, if needed between the deadlines set out in paragraph 161 above.

## **V.3 Receipt and processing of reports**

165. Upon receipt of reports from States Parties, the Secretariat shall register them and acknowledge receipt. If a report is incomplete, the State Party will be advised how to complete it.
166. The Secretariat transmits to the Committee, before each of its regular sessions, an overview of all reports received. The overview and the reports are also made available to States Parties for information.
167. Following the session at which they are examined by the Committee, reports are made available to the public for information, unless decided otherwise by the Committee in exceptional cases.

<b>BEWERBUNGSFORMULAR</b> <b>für die Eintragung in die nationale Liste des immateriellen Kulturerbes [Österreich]</b> <i>(Die Kriterien, die für eine Aufnahme erfüllt sein müssen, finden Sie unter Punkt III. Mit der Aufnahme in eine der Listen sind keinerlei Ansprüche auf Unterstützung – insbesondere finanzielle – und sonstige Rechtsansprüche verbunden.)</i>	
1.	<b>Kurzbeschreibung des Elements</b> <i>(betreffend die Punkte 3 – 9) Nicht mehr als 600 Wörter.</i>
2.	<b>AntragsstellerInnen</b> <i>(Nur die Gemeinschaft, die das immaterielle Kulturerbe tradiert oder ein/e von ihr ernannte/r VertreterIn kann sich um die Eintragung eines Elements immaterieller Kultur in die nationale Liste bewerben. Geben Sie Ihre vollständigen Kontaktdaten mit Namen, Adresse, E-Mail-Adresse und Telefonnummer bekannt.)</i>
3.	<b>Name des Elements</b> <i>(Geben Sie den von den KulturerbeträgerInnen verwendeten Namen und allfällige Bezeichnungsvarianten für das Kulturerbe an.) Nicht mehr als 200 Zeichen.</i>
4.	<b>Beschreibung des Elements (unter besonderer Beachtung des regionalspezifischen Kontexts)</b> <b>(a) Heutige Praxis</b> <i>(Beschreiben Sie die heutige Praxis und Anwendung des Kulturerbes – die Aus-/Aufführung, die verwendeten Objekte, Techniken und Regeln etc. – und ihre Bedeutung für die betreffende Gemeinschaft.) Nicht mehr als 300 Wörter.</i> <b>(b) Entstehung und Wandel</b> <i>(Geben Sie an, wie das Kulturerbe entstanden ist, wie es sich im Laufe seiner Geschichte verändert hat und wie es seit etwa drei Generationen weitergegeben wird.) Nicht mehr als 300 Wörter.</i>
5.	<b>Dokumentation des Elements</b> <i>(Verweise auf Quellen, Literatur, Dokumentationen)</i>
6.	<b>Geographische Lokalisierung</b> <i>(Nennen Sie die Ortschaft/en und/oder Region/en, wo das Kulturerbe verbreitet, praktiziert und angewendet wird.)</i>

7.	<p><b>Eingebundene Gemeinschaften, Vereine, Personen und Art ihrer Beteiligung</b>  <i>(Geben Sie die vollständigen Kontaktdaten der KulturerbeträgerInnen und ihre Aktivitäten bzw. Bedeutung für den Erhalt des immateriellen Kulturerbes an.)</i></p>		
8.	<p><b>Risikofaktoren für die Bewahrung des Elements</b>  <i>(Nennen Sie allfällige Risikofaktoren, welche die Tradierung, Praxis und Anwendung des Kulturerbes gefährden könnten.) Nicht mehr als 300 Wörter.</i></p>		
9.	<p><b>Bestehende und geplante Maßnahmen zur Erhaltung und kreativen Weitergabe des Elements, z. B. im Bereich der Öffentlichkeitsarbeit, Bewusstseinsbildung etc.</b>  <i>(Erwähnen Sie, welche Maßnahmen zur Sicherung der Tradierung getroffen wurden/ werden/ werden sollen.) Nicht mehr als 300 Wörter.</i></p>		
10.	<p><b>Kontaktinformationen der VerfasserInnen der Empfehlungsschreiben</b> <i>(Name, Adresse, E-Mail-Adresse, Telefonnummer und fachlicher Hintergrund)</i></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="padding: 5px; height: 40px;">Empfehlungsschreiben 1</td> </tr> <tr> <td style="padding: 5px; height: 40px;">Empfehlungsschreiben 2</td> </tr> </table>	Empfehlungsschreiben 1	Empfehlungsschreiben 2
Empfehlungsschreiben 1			
Empfehlungsschreiben 2			
<p><i>Der/die AntragstellerIn gewährleistet, InhaberIn aller Rechte am Bildwerk zu sein und garantiert hiermit, alle erforderlichen Nutzungsrechte eingeholt zu haben und zum Abschluss dieser Vereinbarung berechtigt zu sein. Der/die AntragstellerIn leistet zudem Gewähr dafür, dass durch das Bildwerk Persönlichkeitsrechte Dritter (Recht am eigenen Bild, Ehrenbeleidigung, Kreditschädigung) nicht verletzt werden.</i></p> <p><i>Der/die AntragstellerIn räumt der Nationalagentur für das Immaterielle Kulturerbe der Österreichischen UNESCO-Kommission eine zeitlich und räumlich unbeschränkte, nicht exklusive Nutzungsbewilligung am Bildwerk ein; dies umfasst insbesondere die Vervielfältigung, Verbreitung und Veröffentlichung des Bildwerks in gedruckter oder elektronischer Form, die Bearbeitung des Bildwerks, die Aufführung, Sendung und öffentliche Zurverfügungstellung des Bildwerks, einschließlich dem Recht, diese Werknutzungsbewilligung an Dritte zu übertragen.</i></p> <p><i>Die Nationalagentur für das Immaterielle Kulturerbe der Österreichischen UNESCO-Kommission sichert zu, dass bei dieser Nutzung die Urheberpersönlichkeitsrechte der Urheber/Urheberinnen gewahrt bleiben.</i></p>			
<p>_____</p> <p>Datum und Unterschrift des/r AntragsstellerInnen</p>			

## **Kriterien zur Aufnahme von Elementen in das nationale Verzeichnis des immateriellen Kulturerbes [Österreich]**

1. Das Element zählt zu den Praktiken, Darstellungen, Ausdrucksformen, Wissen und Fertigkeiten, die Gemeinschaften, Gruppen und gegebenenfalls Einzelpersonen als Bestandteil ihres Kulturerbes verstehen.
2. Es wird in einem oder mehreren der folgenden Bereiche zum Ausdruck gebracht:
  - a. mündlich überlieferte Traditionen und Ausdrucksformen, einschließlich der Sprache als Trägerin des immateriellen Kulturerbes;
  - b. darstellende Künste;
  - c. gesellschaftliche Praktiken, Rituale und Feste;
  - d. Wissen und Praktiken in Bezug auf die Natur und das Universum;
  - e. traditionelle Handwerkstechniken.
3. Das Element wird von einer Generation an die nächste weitergegeben.
4. Es wird von Gemeinschaften und Gruppen in Auseinandersetzung mit ihrer Umwelt, in ihrer Interaktion mit der Natur und mit ihrer Geschichte fortwährend neu gestaltet.
5. Das Element vermittelt ein Gefühl von Identität und Kontinuität, wodurch die Achtung vor der kulturellen Vielfalt und der menschlichen Kreativität gefördert wird.
6. Es steht mit den bestehenden internationalen Menschenrechtsübereinkünften sowie mit dem Anspruch gegenseitiger Achtung von Gemeinschaften, Gruppen und Einzelpersonen sowie der nachhaltigen Entwicklung im Einklang.
7. Eine möglichst weitreichende Beteiligung von Gemeinschaften, Gruppen und gegebenenfalls Einzelpersonen, die dieses Erbe schaffen, pflegen und weitergeben, muss gewährleistet werden und nachweisbar sein.

## Inventar immaterielles Kulturerbe / lebendige Traditionen Kanton Bern

### Antragsformular

Die unterzeichnenden Personen beantragen beim Amt für Kultur des Kantons Bern nachfolgend beschriebenes und dokumentiertes immaterielles Kulturerbe, man spricht in diesem Zusammenhang auch von lebendigen Traditionen, in das geplante kantonale Inventar aufzunehmen:

*Vor dem Ausfüllen lesen Sie bitte die Kriterien für die Antragsstellung und die rechtlichen Hinweise am Schluss des Antragsformulars durch. Für Rückfragen steht Ihnen die externe Projektleitung, das Kurszentrum Ballenberg unter Telefon 033 952 80 45 oder E-Mail [info@ballenbergkurse.ch](mailto:info@ballenbergkurse.ch) zur Verfügung.*

#### 1. Name(n) des immateriellen Kulturerbes

Geben Sie den Namen und allfällige Bezeichnungsvarianten an

#### 2. Art des immateriellen Kulturerbes

Bitte einem oder mehreren Bereichen zuweisen (Zutreffendes bitte ankreuzen)

- mündlich überlieferte Traditionen und Ausdrucksweisen
- traditionelle musikalische, theatrale oder tänzerische Ausdrucksweisen
- gesellschaftliche Praktiken, jahreszeitliche Feste und Rituale
- Wissen und Praktiken im Umgang mit der Natur und dem Universum
- Fachwissen über traditionelle Handwerkstechniken

#### 3. Geographische Lokalisierung

Nennen Sie die Ortschaft(en) und Region(en), wo das immaterielle Kulturerbe praktiziert wird.

#### 4. Trägerinnen und Träger

Beschreiben sie die Trägergruppe (Individuen, Verband oder Gruppe), die das immaterielle Kulturerbe praktizieren. Geben Sie gegebenenfalls deren Organisationsform an und nennen Sie die (ungefähre) Zahl der praktizierenden Trägerinnen und Träger.

#### 5. Beschreibung des immateriellen Kulturerbes

- 5.1. Beschreiben Sie die heutige Praxis des immateriellen Kulturerbes (einschliesslich regelmässige Anlässe), ihre Bedeutung für die Bevölkerung in der Region und wie sie an die nachfolgende Generation weitergegeben wird (maximal 10'000 Zeichen).
- 5.2. Geben Sie an, wie das immaterielle Kulturerbe entstanden ist, einschliesslich Entstehungslegenden, und wie sie sich im Laufe ihrer Geschichte verändert hat (maximal 8'000 Zeichen).
- 5.3. Erwähnen Sie, falls vorhanden, ähnliches oder vergleichbares Kulturerbe anderswo in der Schweiz oder im Ausland; nennen Sie zudem Projekte des Kunstschaffens und der Populärkultur, die auf das immaterielle Kulturerbe Bezug nehmen (maximal 2'000 Zeichen).

- 5.4. Erwähnen Sie, wenn spezielle Massnahmen zur Bewahrung getroffen wurden oder geplant sind. Nennen Sie allfällige Gefährdungen für die Tradierung des immateriellen Kulturerbes (maximal 2'000 Zeichen; das Feld kann leer bleiben).

## 6. Vorhandene Dokumentation

- 6.1. Stellen Sie eine Liste der wichtigsten (maximal zehn) Publikationen und Archivmaterialien zusammen, in denen das immaterielle Kulturerbe dargestellt ist (inklusive Inventare und Publikationen im Internet). Geben Sie jeweils das Publikationsmedium an (Bücher, Zeitschriftenartikel, Tonträger, Filme, Photobände etc.).
- 6.2. Sind Bild-, Ton- oder Filmdokumente in digitaler Form vorhanden, die für eine Internetpublikation geeignet sind und uns mit den Nutzungsrechten unentgeltlich überlassen werden können? Geben Sie die ungefähre Anzahl der Dokumente an.
- Bilder (PNF-, JPG- oder TIFF-Format, mindestens 150 dpi Auflösung)
  - Tonbeispiele (MP3 oder WAV-Format, maximal 5 Minuten Dauer)
  - Filmaufnahmen

## 7. Antragstellende

- 7.1. Geben Sie Ihre(n) Name(n), Ihre Beziehung zum immateriellen Kulturerbe und Ihre vollständige Adresse an. Falls Sie es nicht selbst praktizieren, geben Sie zusätzlich eine Ansprechperson aus dem Kreis der Trägergruppe mit Namen und vollständiger Adresse, wenn möglich einschliesslich E-Mail-Kontakt an.
- 7.2. Geben Sie eine Kontaktadresse und / oder Internetseite an, die auf dem kantonalen bzw. dem nationalen Inventar publiziert werden kann.
- 7.3. Falls Sie von einer Expertin oder einem Experten bei der Antragstellung beraten wurden, geben Sie ihren bzw. seinen Namen und die vollständige Adresse, einschliesslich E-Mail-Kontakt an.

## 8. Ergänzungen und Bemerkungen

Geben Sie allfällige Ergänzungen und Bemerkungen hier an.

### Rechtliche Hinweise

Gegen den Entscheid der kantonalen Behörden, einen Antrag nicht ins kantonale Inventar aufzunehmen, können keine Rechtsmittel ergriffen werden; aus einer Aufnahme in das kantonale oder nationale Inventar können keine rechtlichen Ansprüche abgeleitet werden (beispielsweise auf finanzielle Förderung von Bewahrungsmassnahmen).

Die Antragstellenden bestätigen mit der Einreichung des Antrags davon Kenntnis genommen zu haben, ferner dass

- das immaterielle Kulturerbe in der Liste der lebendigen Traditionen in der Schweiz verzeichnet werden kann;
- die im Antragsbogen enthaltenen Informationen (einschliesslich persönlicher Daten) im Rahmen des Projekts und seiner Publikation genutzt werden können;
- der Antrag bei der Gruppe der Trägerinnen und Trägern breit abgestützt ist;
- sie für Rückfragen zur Verfügung stehen.

\_\_\_\_\_  
Datum, Ort

\_\_\_\_\_  
Unterschriften Antragsstellende

**Vollständig ausgefüllte Antragsbogen sind bis am 31.10.2010 per Post (Datum Poststempel) einzureichen an die externe Projektleitung:**



## Kriterien für die Antragsstellung

### Einleitung: Was versteht man unter immateriellem Kulturerbe?

Unter immateriellem Kulturerbe oder lebendigen Traditionen werden verstanden: «die Praktiken, Darbietungen, Ausdrucksweisen, Kenntnisse und Fähigkeiten – sowie die damit verbundenen Instrumente, Objekte, Artefakte und Kulturräume – zu verstehen, die Gemeinschaften, Gruppen und gegebenenfalls Individuen als Bestandteil ihres Kulturerbes ansehen. Dieses immaterielle Kulturerbe, das von einer Generation an die nächste weitergegeben wird, wird von Gemeinschaften und Gruppen in Auseinandersetzung mit ihrer Umwelt, ihrer Interaktion mit der Natur und ihrer Geschichte fortwährend neu geschaffen und vermittelt ihnen ein Gefühl von Identität und Kontinuität. Auf diese Weise trägt es zur Förderung des Respekts vor der kulturellen Vielfalt und der menschlichen Kreativität bei. Im Sinne dieses Übereinkommens findet nur dasjenige immaterielle Kulturerbe Berücksichtigung, das mit den bestehenden internationalen Rechtsinstrumenten im Bereich der Menschenrechte sowie mit der Forderung nach gegenseitiger Achtung zwischen den Gemeinschaften, Gruppen und Individuen und nach einer nachhaltigen Entwicklung im Einklang steht».

Immaterielles Kulturerbe manifestiert sich «unter anderem in folgenden Bereichen:

- mündlich überlieferte Traditionen und Ausdrucksweisen, einschliesslich der Sprache als Träger immateriellen Kulturerbes;
- darstellende Künste;
- gesellschaftliche Praktiken, Rituale und Feste;
- Wissen und Praktiken im Umgang mit der Natur und dem Universum;
- Fachwissen über traditionelle Handwerkstechniken».

### Kriterien zur Antragsstellung für das Inventar immaterielles Kulturerbe des Kantons Bern

#### 1. Berechtigung

Einen Antrag auf Einschreibung können Vertreterinnen und Vertreter einer Gruppe von Personen stellen, die immaterielles Kulturerbe aktiv pflegen.

Nicht antragsberechtigt ist eine einzelne natürliche Person, die alleinige Trägerin, alleiniger Träger immateriellen Kulturerbes ist.

Natürliche oder juristische Personen, die immaterielles Kulturerbe primär mit kommerziellem Ziel pflegen, sind nicht antragsberechtigt. Es kann aber immaterielles Kulturerbe, das derart genutzt wird, als Eintrag aufgenommen werden, wenn sich deren Trägerinnen und Träger formal als Gruppe ohne Profitziele organisieren.

#### 2. Zugehörigkeit zu einem oder mehreren Bereichen des immateriellen Kulturerbes

Das immaterielle Kulturerbe gehört einem oder mehreren der folgenden Bereiche an:

- mündlich überlieferte Traditionen und Ausdrucksweisen (beispielsweise traditionelle Gesänge, Sagen oder Märchenerzählungen)
- traditionelle musikalische, theatrale oder tänzerische Ausdrucksweisen (beispielsweise Huusmusik in einer Region, Maskentänze oder Marionettentheater)
- gesellschaftliche Praktiken, jahreszeitliche Feste und Rituale (beispielsweise Umzüge und Prozessionen, Fasnachtsbräuche oder Spiele)
- Wissen und Praktiken im Umgang mit der Natur und dem Universum (beispielsweise traditionelles medizinisches oder landwirtschaftliches Wissen)
- Fachwissen über traditionelle Handwerkstechniken (traditionelle Verarbeitung, Gestaltung oder Bemalung von Holz, Erde, Metall, Leder, Glas, Papier, Stein oder Textilien)

Sofern eine bestimmte Ausdrucksweise, Praxis oder Anwendung in ein umfassenderes immaterielles Kulturerbe eingebunden ist, ist letztere für die Einschreibung vorzuziehen (beispielsweise Guggenmusigen als Teil einer bestimmten fasnächtlichen Tradition oder ein einzelnes Volkslied als Teil einer Gesangspraxis).

Unter den volksreligiösen Traditionen werden für das Inventar nur diejenigen berücksichtigt, die in der gesellschaftlichen Wahrnehmung auch als Brauchtum anerkannt sind. Es muss zudem der Zugang zur Teilnahme durch auswärtige Personen gewährleistet sein.

Sportarten werden nicht für die Auswahl berücksichtigt. Ausnahmen sind die in der Schweiz im engen Zusammenhang mit Brauchtum gepflegten sportlichen Wettbewerbe (beispielsweise das Hornussen oder das Schwingen).

Eine Sprache oder ein Dialekt kann nicht als selbständiges immaterielles Kulturerbe in das Inventar aufgenommen werden, kann aber wichtiger Teil eines immateriellen Kulturerbes sein.

Um Überschneidungen mit der bestehenden nationalen Liste des kulinarischen Erbes zu vermeiden, werden traditionelle Zubereitungsarten von Nahrungsmitteln nicht als selbständiges immaterielles Kulturerbe anerkannt. Speisen können aber Teil eines immateriellen Kulturerbes sein.

### **3. Kontinuität**

Die Praxis oder Anwendung des immateriellen Kulturerbes muss in der Vergangenheit, Gegenwart und naher Zukunft gegeben sein:

- Das immaterielle Kulturerbe ist im Kanton Bern nachweisbar seit mehreren Generationen präsent.
- Es wird gegenwärtig im Kanton Bern praktiziert oder zur Anwendung gebracht.
- Es wird durch Praxis an die nachfolgenden Generationen vermittelt.

### **4. Gesellschaftliche Verankerung**

Das immaterielle Kulturerbe wird von einer gesellschaftlichen Gruppe im Kanton Bern als Teil ihres gemeinsamen Kulturerbes anerkannt; sie verbindet durch geteilte Erfahrungen und Erinnerungen die Angehörigen der Gruppe.

### **5. Beteiligung der Trägerinnen und Träger bei der Antragsstellung**

Mit der Einschreibung in das kantonale und nationale Inventar sind ihre Trägerinnen und Träger einverstanden (Prinzip der freien Einwilligung nach erfolgter Aufklärung [Free, Prior and Informed Consent FPIC]). Der Antrag dazu wird von einer möglichst grossen Zahl der Trägerinnen und Träger unterstützt.

### **6. Repräsentativität**

Das immaterielle Kulturerbe weist gegenüber anderen im Kanton, in der Schweiz oder im Ausland praktizierten Formen unterscheidende Merkmale auf (Singularität) oder eignet sich durch seine Ausstrahlung, eine Gruppe ähnliches Kulturerbes zu repräsentieren (regionale Bedeutung). Seine Einschreibung trägt dazu bei, das Bewusstsein für die kreative Vielfalt des immateriellen Kulturerbes im Kanton Bern und in der Schweiz zu fördern.

**Antwort**  
**der Bundesregierung**

**auf die Kleine Anfrage der Abgeordneten Hans-Joachim Otto (Frankfurt), Christoph Waitz, Jens Ackermann, weiterer Abgeordneter und der Fraktion der FDP**  
**– Drucksache 16/13243 –**

**UNESCO-Übereinkommen zur Bewahrung des immateriellen Kulturerbes vom 17. Oktober 2003**

Vorbemerkung der Fragesteller

*Im Jahr 2003 hat die UNESCO-Generalkonferenz das Übereinkommen zur Bewahrung des immateriellen Kulturerbes verabschiedet. Nachdem 30 Staaten ratifiziert hatten, trat es zum 20. April 2006 in Kraft. Bisher haben 107 Staaten die Konvention ratifiziert, davon 31 Staaten aus Europa – davon wiederum 18 EU-Staaten –, 16 aus Asien, 23 aus Afrika, 23 aus Lateinamerika und 14 arabische Staaten.*

*Nach der Durchführung des internationalen Fachgespräches zur Umsetzung des UNESCO-Übereinkommens zur Bewahrung des immateriellen Kulturerbes am 25. März 2009 im Ausschuss für Kultur und Medien blieb offen, wie die Bundesregierung zur Ratifizierung des Übereinkommens zur Bewahrung des immateriellen Kulturerbes steht. Die Enquete-Kommission „Kultur in Deutschland“ hat die Ratifikation mehrheitlich befürwortet. Zur Schaffung einer besseren Entscheidungsgrundlage für eine Ratifizierung oder Nichtratifizierung, sollten die Vor- und Nachteile eines Beitritts Deutschlands zum UNESCO-Übereinkommen zur Bewahrung des immateriellen Kulturerbes untersucht werden.*

1. *Ist nach Auffassung der Bundesregierung ein staatliches und völkerrechtliches normiertes Engagement in Deutschland zur Bewahrung des immateriellen Kulturerbes erforderlich, und welche kultur- und außenpolitischen Gründe sprechen nach Ansicht der Bundesregierung für einen Beitritt Deutschlands zur UNESCO-Konvention?*

Die Fragen 1 und 17 werden gemeinsam beantwortet:

Zur Bewahrung des (deutschen) immateriellen Kulturerbes erscheint ein staatliches und völkerrechtlich normiertes Engagement nicht zwingend erforderlich. Sofern in Einzelfällen staatliches Handeln zum Schutz immaterieller Kulturgüter für geboten oder wünschenswert gehalten werden sollte, sind die zuständigen Instanzen (in der Regel auf Länderebene) zur Ergreifung geeigneter Maßnahmen befugt und im Stande. Ob gleichwohl kulturpolitische Gründe für einen Beitritt zur UNESCO-Konvention sprechen, bedarf noch näherer Prüfung.

Das Übereinkommen ist derzeit von 113 UNESCO-Mitgliedsstaaten ratifiziert worden, d. h. es haben 80 UNESCO-Mitgliedstaaten, darunter auch die USA, Großbritannien, Finnland, Irland und die Niederlande, die Konvention nicht ratifiziert. Es sprechen daher keine außenpolitischen Gründe für einen raschen Beitritt zur Konvention.

2. *Welche Erkenntnisse hat die Bundesregierung aus dem internationalen Fachgespräch vom 25. März 2009 im Ausschuss für Kultur und Medien gewonnen?*

Bei dem Fachgespräch vom 25. März 2009 im Ausschuss für Kultur und Medien wurden unterschiedliche Auffassungen im Hinblick auf einen Beitritt Deutschlands zum Übereinkommen zur Bewahrung des immateriellen Kulturerbes deutlich. Die Bundesregierung ist der Auffassung, dass vor einer Entscheidung über eine mögliche Ratifizierung dieses Übereinkommens weiterer Abstimmungsbedarf auf Bundes- und Länderebene besteht.

3. *Welcher konkrete bürokratische Aufbau ist in Deutschland zu leisten, falls ratifiziert würde (Institutionalisierung einer Einrichtung, die die Anträge prüft, die Aufnahme abwickelt; nationale Fachstellen, die für die Bewahrung des Erbes zuständig sind; Dokumentationszentren für das immaterielle Kulturerbe, Berichte an das zwischenstaatliche Komitee)?*

Die Konvention lässt den Vertragsstaaten weitgehende Freiheit in Bezug auf die administrative Umsetzung der eingegangenen Verpflichtungen.

Gleichwohl würde ein Beitritt zur Konvention voraussichtlich den Aufbau gesonderter Verwaltungsstrukturen zumindest auf Länderebene zur Inventarisierung immateriellen Kulturerbes sowie ggf. zur Durchführung von Maßnahmen zur Erhaltung desselben erforderlich machen.

Da die Konvention eine umfassende Beteiligung zivilgesellschaftlicher Akteure beim Prozess der Identifikation und Inventarisierung immaterieller Kulturgüter vorsieht, ist ein nicht unerheblicher Zeit- und Personalaufwand nicht auszuschließen. Dies gilt auch länderübergreifend bzw. auf Bundesebene (Kultusministerkonferenz und ggf. Beauftragter für Kultur und Medien) für die Koordination sowie zur Erfüllung der Berichtspflichten gegenüber dem Zwischenstaatlichen Komitee.

4. *Teilt die Bundesregierung die Kritik, dass die vorgeschlagenen Institutionen und Maßnahmen (zwischenstaatliches Komitee, Liste des immateriellen Kulturerbes der Menschheit, Fonds für das immaterielle Kulturerbe) eine unnötige Bürokratisierung darstellen?*

Zwischenstaatliches Komitee und Fonds sind eine Minimalstruktur, um auf Basis des Völkerrechts Kooperation zwischen den Mitgliedsstaaten der Vereinten Nationen dauerhaft zu organisieren. Dies ist eine für Programmkonventionen gebräuchliche Methodik, mit der die Vertragsstaaten ihrer Mitarbeit und den Zielsetzungen des Übereinkommens Sichtbarkeit verleihen.

5. *Teilt die Bundesregierung die teilweise geäußerte Auffassung, dass die Zielsetzung der Konvention als Ausdruck einer Konservierung des kulturellen Lebens aufgefasst werden könnte und damit die lebendige Weiterentwicklung des kulturellen Lebens gefährdet sein könnte?*

Die Bundesregierung teilt diese Auffassung nicht. Den Vertragsparteien werden bei der Wahl der zur Verwirklichung des Konventionsziels einzusetzenden Mittel weitgehende Freiheiten eingeräumt. Einer etwaigen Gefahr, dass die Weiterentwicklung des kulturellen Lebens beeinträchtigt werden könnte, kann damit durch verfassungskonforme Auslegung und geeignete Auswahl der im Rahmen der Umsetzung zu treffenden Maßnahmen wirksam vorgebeugt werden.

6. *Wie hoch sind die Einzahlungen an den Fonds gemäß Artikel 25 ff. des Übereinkommens zur Bewahrung des immateriellen Kulturerbes, die Deutschland zu zahlen hätte?*

Nach Artikel 26 Absatz 1 entrichtet jeder Vertragsstaat einen Betrag in Höhe von einem Prozent des Beitrags zum regulären Budget der UNESCO, für Deutschland somit etwa 250 000 Euro pro Jahr.

7. *Welche weiteren Kosten entstünden für Deutschland bei einer Ratifizierung (z. B. Personalkosten)?*

Im Falle eines Beitritts zur Konvention wären auf nationaler Ebene einerseits Kosten für Aufbau und Unterhalt von Verwaltungsstrukturen, andererseits Aufwendungen zum Schutz bedrohter immaterieller Kulturgüter zu erwarten.

Der voraussichtliche Umfang der Aufwendungen ist derzeit auch nicht näherungsweise abzuschätzen, da weder die tatsächliche Nachfrage seitens der Zivilgesellschaft vorherzusehen ist, noch auf Vergleichswerte aus anderen Staaten zurückgegriffen werden kann. Im Übrigen wird auf die Antwort zu Frage 3 verwiesen.

8. *Hält die Bundesregierung für den Fall einer Ratifizierung Deutschlands auch ein Umsetzungsgesetz für geboten?*

Vor einem Beitritt zum Übereinkommen zur Bewahrung des immateriellen Kulturerbes wäre zu prüfen, ob das Übereinkommen Gegenstände der Bundesgesetzgebung im Sinne des Artikels 59 Absatz 2 Satz 1 des Grundgesetzes berührt und daher eines Vertragsgesetzes bedarf. Diese Prüfung hat noch nicht statt gefunden. Ergänzend wäre dann zu prüfen, ob ggf. neben dem Vertragsgesetz auch ein Umsetzungsgesetz (Ausführungsgesetz) erforderlich ist. Diese Frage bedarf noch der Erörterung zwischen Bund und Ländern.

9. *Hat die Bundesregierung schon Pläne, wie die Inventarlisten (Artikel 12 des Übereinkommens zur Bewahrung des immateriellen Kulturerbes) innerstaatlich erstellt werden könnten?*

Konkrete Pläne der Bundesregierung zur Erstellung von Inventarlisten bestehen nicht. Da immaterielle Kulturgüter im Schwerpunkt in die Zuständigkeit der Länder fallen, wäre im Falle eines Beitritts davon auszugehen, dass jedes Bundesland (mindestens) eine solche Liste erstellen würde.

10. *Ist die Bundesregierung vor dem Hintergrund, dass in der bisherigen Diskussion in Deutschland auch erwogen wird, traditionsreiche Volksfeste – wie z. B. das Münchner Oktoberfest – in die Liste des immateriellen Kulturerbes aufzunehmen der Auffassung, dass auch solche kommerziellen Veranstaltungen des Schutzes des UNESCO-Übereinkommens zur Bewahrung des immateriellen Kulturerbes bedürfen, und wenn ja, aus welchen Gründen?*

Die Bedeutung eines Volksfestes als Wirtschaftsfaktor dürfte seine Aufnahme in eine künftige Liste immaterieller Kulturgüter in Deutschland weder positiv noch negativ präjudizieren. Schutzbedürftigkeit ist nach der Konvention keine Voraussetzung für die Aufnahme in die nationale Liste des immateriellen Kulturerbes.

11. *Teilt die Bundesregierung die Bedenken, dass die Konvention auf Grund des recht unbestimmten Wortlautes der Begriffsbestimmung in Artikel 2 Absatz 1 des Übereinkommens zur Bewahrung des immateriellen Kulturerbes eventuell Grundlage für Forderungen zur Unterstützung und Bewahrung von Bräuchen etc. ist, die im Widerspruch zur deutschen Werteordnung stehen?*

Die Rechtsordnung der Bundesrepublik Deutschland beruht auf einer Anerkennung und Förderung der kulturellen Pluralität. Dies schließt nicht aus, dass einzelne kulturelle Bräuche und Traditionen an die Grenzen der deutschen Rechtsordnung stoßen. Die weit gefasste Definition des „immateriellen Kulturerbes“ in Artikel 2 Absatz 1 der Konvention steht unter dem Vorbehalt, dass „nur das immaterielle Kulturerbe Berücksichtigung [findet], das mit den bestehenden internationalen Menschenrechtsübereinkünften sowie mit dem Anspruch gegenseitiger Achtung von Gemeinschaften, Gruppen und Einzelpersonen [...] in Einklang steht“. Die Aufnahme dieser Bestimmung in den Konventionstext war deutsches Anliegen. Sie lässt sich im Sinne einer Ordre-Public-Klausel auslegen, die einen Ausschluss rechtswidriger Praktiken (z. B. Genitalverstümmelung, menschenverachtende Formen der Bestrafung oder das öffentlich Führen von NS-Symbolen) von der Liste des deutschen immateriellen Kulturerbes rechtfertigen würde. Probleme können sich indes in der Grauzone nicht ausdrücklich verbotener, aber gleichwohl im Widerspruch mit der Werteordnung der Bundesrepublik Deutschland stehender Bräuche, ergeben. Im Übrigen wird auf die Antwort zu Frage 12 verwiesen.

12. *Inwieweit birgt nach Auffassung der Bundesregierung ein umfassendes nationales Inventar, welches nach Artikel 2 Nummer 2 Satz 1 des Übereinkommens zur Bewahrung des immateriellen Kulturerbes zu erstellen ist, Konflikt- und Missbrauchspotential?*

Eine Prüfung der Repräsentativität, der Erhaltungswürdigkeit oder des gesamtgesellschaftlichen Nutzwerts durch staatliche Instanzen sieht die Konvention auf nationaler Ebene nicht vor. Derartige Kriterien kommen nur auf internationaler Ebene bei der Erstellung der „Repräsentativen Liste des immateriellen Kulturerbes der Menschheit“ nach Artikel 16 und der „Liste des dringend erhaltungsbedürftigen immateriellen Kulturerbes“ nach Artikel 17 zur Anwendung.

Die Konvention sieht auf nationaler Ebene als Filterfunktion lediglich den Vorbehalt in Artikel 2 Absatz 1 der Konvention (siehe Antwort zu Frage 11) vor. Da eine Verweigerung der Aufnahme in die nationale Liste bzw. die nationalen Listen der gerichtlichen Prüfung unterläge, erscheint zweifelhaft, ob die Eintragung unerwünschter, jedoch nicht eindeutig rechtswidriger Bräuche (z. B. Rituale mit nationalsozialistischer Konnotation) zu verhindern wäre. Daraus könnte in Medien und Öffentlichkeit des In- und Auslandes der unzutreffende Eindruck einer Sanktionierung derartiger Praktiken durch die Bundesrepublik Deutschland entstehen.

Nicht auszuschließen ist auch, dass bestimmte gesellschaftliche oder berufsständische Gruppen eine Eintragung in die Liste bzw. Listen des deutschen immateriellen Kulturerbes mit dem Ziel der Erlangung wirtschaftlicher Vorteile (z. B. steuerliche Begünstigung, Freistellung von rechtlichen Vorschriften, Abwehr von Marktöffnungsbestrebungen) betreiben könnten. Die allgemeinen kulturpolitischen Auswirkungen einer solchen Entwicklung bedürfen noch einer genaueren Analyse.

13. *Welche Bedeutung hat die Einordnung als immaterielles Kulturerbe für die Pflege und Praktizierung dieses Kulturerbes auf dem Hoheitsgebiet eines anderen Staates?*

Jeder Vertragsstaat hat nach Artikel 11 die Aufgabe, die verschiedenen Elemente des immateriellen Kulturerbes, die sich in seinem Hoheitsgebiet befinden, unter Beteiligung der relevanten Gemeinschaften, Gruppen und Nichtregierungsorganisationen zu identifizieren und zu bestimmen. Diese Einordnung gilt ausschließlich in dem Hoheitsgebiet dieses Vertragsstaats. Sollte weitere Vertragsstaaten – z. B. Nachbarstaaten – identische Elemente des immateriellen Kulturerbes auf ihrem Hoheitsgebiet identifizieren, empfehlen die Umsetzungsrichtlinien, dass diese Staaten oder die Staatengruppe eine gemeinsame länderübergreifende Nominierung für die internationale Repräsentative Liste des Immateriellen Kulturerbes in Erwägung ziehen.

Mit Blick auf Unterstützungs- und Fördermaßnahmen können Vertragsstaaten der Konvention gemäß Artikel 23 bei deren Exekutivgremium (sog. Zwischenstaatlicher Ausschuss, vgl. Artikel 5 ff.) „... einen Antrag auf internationale Unterstützung für die Erhaltung des in (ihrem) Hoheitsgebiet befindlichen immateriellen Kulturerbes stellen“. Ziele und Formen dieser Unterstützung sind insbesondere in den Artikeln 20 und 21 näher geregelt.

*14. Teilt die Bundesregierung die Auffassung, dass die Konvention an einigen Stellen unklar formuliert ist und mehrere unbestimmte Rechtsbegriffe enthält?*

Die Konvention verwendet eine Reihe unbestimmter Rechtsbegriffe, was allerdings für internationale Rechtsinstrumente nicht untypisch und oftmals politisch sinnvoll ist, um einen großen Ermessens- und Gestaltungsspielraum der Vertragsstaaten sicherzustellen. Dies gilt zunächst für den Begriff des „immateriellen Kulturerbes“ selbst (siehe Antwort zu Frage 12), aber auch für den der „Erhaltung“ (Artikel 2 Absatz 1).

Welche über die Führung nationaler Inventarlisten und die regelmäßige Berichterstattung an den Zwischenstaatlichen Ausschuss hinausgehenden konkreten Verpflichtungen den Vertragsparteien obliegen bzw. welche konkreten Ansprüche den zivilgesellschaftlichen Trägern des immateriellen Kulturerbes eingeräumt werden, soll durch die Arbeiten des Zwischenstaatlichen Ausschusses konkretisiert werden. Gerade aus diesem Grunde hat sich die Bundesregierung entschlossen, die weitere Konkretisierung des Übereinkommens vor der Entscheidung über einen Beitritt abzuwarten.

*15. Wie ist die Ansicht der Bundesregierung zum Ergebnis der Anhörung, dass die Länder vornehmlich die Abgrenzung zu anderen Konventionen (z. B. Konvention Kulturelle Vielfalt) als problematisch erachten?*

Das UNESCO-Übereinkommen zur Bewahrung des immateriellen Kulturerbes (2003) entstand auf Initiative zahlreicher asiatischer Staaten, u. a. wegen des starken und anhaltenden europäischen Übergewichts auf der UNESCO-Welterbeliste. Die Konvention zur Bewahrung des immateriellen Kulturerbes ist u. a. auch deswegen weitgehend komplementär zur UNESCO-Welterbekonvention von 1972 angelegt.

Die Konvention zum Schutz und zur Förderung der Vielfalt kultureller Ausdrucksformen (2005) ist auf die kreative Basis der Gesellschaft gerichtet und stellt zeitgenössische kulturelle Aktivitäten, Güter und Dienstleistungen sowie deren internationalen Austausch ins Zentrum. Die Konvention anerkennt ausdrücklich die Doppelnatur von Kulturgütern- und Dienstleistungen und die Komplementarität der wirtschaftlichen und kulturellen Aspekte der Entwicklung.

Mit Blick auf Ziele und Förderkonzept bleibt bei beiden Konventionen die faktische Umsetzung abzuwarten, die für beide Konventionen erst im Laufe des Jahres einsetzt, da zunächst für beide Konventionen wesentliche Durchführungsvorschriften („operational guidelines“) auf Basis der Konventionstexte zu verhandeln waren.

*16. Besteht nach Ansicht der Bundesregierung eine besondere Eilbedürftigkeit, die Konvention zu ratifizieren und umzusetzen, und wenn ja, aus welchen Gründen?*

Nach Ansicht der Bundesregierung besteht keine besondere Eilbedürftigkeit einer Ratifizierung der Konvention, sondern die Notwendigkeit, Vor- und Nachteile einer Ratifizierung sorgfältig und in Absprache mit den Bundesländern zu prüfen.

*17. Ist die Bundesregierung der Auffassung, dass eine „kulturpolitische Isolation“ Deutschlands im Falle einer Nichtratifizierung zu befürchten wäre?*

Auf die Antwort zu Frage 1 wird verwiesen.



## Annex 7:

### **Immaterielles Kulturerbe in der Arbeit der UNESCO: neue Aufgaben, neue Herausforderungen**

#### **Ergebnisse einer Fachkonsultation zum UNESCO-Übereinkommen zur Bewahrung des immateriellen Kulturerbes**

1. Im Oktober 2003 hat die UNESCO das Übereinkommen zur Bewahrung des immateriellen Kulturerbes verabschiedet, das in seiner Struktur und Arbeitsweise eng an die erfolgreiche UNESCO-Welterbekonvention von 1972 angelehnt ist. Bereits zweieinhalb Jahre nach der Verabschiedung sind 74 Staaten (Stand: 1. Februar 2007) aus allen Erdteilen dem neuen Übereinkommen beigetreten, das am 20. April 2006 in Kraft getreten ist. Die konkreten Aktivitäten zur Umsetzung des Übereinkommens haben begonnen. Ähnlich wie bei der Welterbekonvention wird ein *Zwischenstaatliches Komitee für die Bewahrung des immateriellen Kulturerbes* ab dem Jahr 2008 herausragende Beispiele in eine *Repräsentative Liste des immateriellen Kulturerbes der Menschheit* aufnehmen und Modellprojekte zur Pflege des immateriellen Kulturerbes entwickeln. Zielsetzung ist auch bei diesem Übereinkommen die Wahrung kultureller Vielfalt und die Verstärkung internationaler Zusammenarbeit. Bereits jetzt ist ein starkes Interesse an der Thematik seitens der Medien, der kulturpolitisch Interessierten und in der breiteren Öffentlichkeit zu verzeichnen.

#### **Immaterielles Kulturerbe – eine europäische Debatte**

2. Die UNESCO-Programminitiativen im Bereich des immateriellen Erbes und insbesondere die Initiative zur Erarbeitung eines völkerrechtlichen Übereinkommens zu dessen Bewahrung wurden von den europäischen Partnern zu Anfang sehr unterschiedlich bewertet: Die Reaktionen reichten von großem Interesse bis hin zu Skepsis und abwartendem Beobachten. Im Vergleich zu einigen asiatischen Ländern, vor allem Japan, Korea und Indonesien, haben viele europäische Länder bislang noch keine kulturpolitische Praxis des Umgangs mit Formen des immateriellen Kulturerbes entwickelt.

3. Im zeitlichen Zusammenhang mit den Verhandlungen zu diesem Übereinkommen gewann das UNESCO- Programm "Meisterwerke des mündlichen und immateriellen Kulturerbes" (2001-2005) eine starke Dynamik und Sichtbarkeit. Eine internationale Jury unter Vorsitz des spanischen Schriftstellers Juan Goytisolo (2001 und 2003) bzw. der jordanischen Prinzessin Bint Talal (2005) wählte insgesamt 90 herausragende Beispiele immateriellen Kulturerbes aus 68 Ländern aus, darunter 21 aus Europa, wie zum Beispiel das sizilianische

Marionettentheater "Opera dei Pupi" und der Tenorgesang der sardischen Schäferkultur (Italien), die Mysterienspiele von Elche und das Patum-Fest von Berga (Spanien), die Kreuzschnitzerei Litauens, der Karneval von Binche (Belgien), der Kulturraum Kihnu (Estland) sowie die Fujara Flöte und ihre Musiktradition (Slowakei).

4. Die EU-Mitgliedstaaten, darunter Deutschland, beteiligten sich 2002/2003 aktiv an den zwischenstaatlichen Verhandlungen, die im Oktober 2003 zur erfolgreichen Annahme des Übereinkommens führten. Wesentliche Aspekte wie zum Beispiel die Menschenrechtsbindung des immateriellen Kulturerbes wurden erfolgreich in den Vertragstext eingebracht. Deutschland stand, wie die Mehrheit der EU-Mitgliedstaaten, dem Übereinkommen unter anderem wegen des definitorisch schwer fassbaren Gegenstands eher skeptisch-abwartend gegenüber.

5. Die Dynamik der europäischen Diskussion über Fragen des Schutzes des immateriellen Kulturerbes seit 2005 legt auch eine Neubewertung der deutschen Mitwirkung an dieser internationalen Initiative nahe. Das Übereinkommen wurde in Rekordzeit durch inzwischen 74 Staaten ratifiziert (Stand: 1. Februar 2007), darunter mit Belgien, Bulgarien, Estland, Frankreich, Griechenland, Lettland, Litauen, Luxemburg, Rumänien, der Slowakei, Spanien, Ungarn und Zypern 13 EU-Mitgliedstaaten. Österreich und die Schweiz haben die Ratifizierungsprozesse initiiert. Die sehr erfolgreiche Kooperation der EU-Partner bei den Verhandlungen zum Übereinkommen über den Schutz und die Förderung der Vielfalt kultureller Ausdrucksformen (2005) hat auch das Interesse an Fragen des immateriellen Kulturerbes neu geweckt. Diese Formen des Kulturerbes tragen ebenfalls zu kultureller Vielfalt bei, die eine wichtige Ressource und einen hohen Wert für unsere Gesellschaft darstellt.

6. Für die Umsetzung des Übereinkommens ist es notwendig, die europäische Zusammenarbeit und Abstimmung in Fragen der Bewahrung des immateriellen Kulturerbes zu intensivieren. Im Jahr 2007 werden die Vertragsstaaten und speziell die 24 Mitglieder des Zwischenstaatlichen Komitees für das immaterielle Kulturerbe, darunter die EU-Mitgliedstaaten Belgien, Bulgarien, Estland, Frankreich, Rumänien und Ungarn, die Weichen für die weitere Umsetzung stellen. Derzeit werden die Praxisrichtlinien zur Bewahrung des immateriellen Kulturerbes und die Kriterien für künftige Nominierungen für die Repräsentative Liste des immateriellen Kulturerbes der UNESCO entwickelt. An diesem Arbeitsprozess können ausschließlich Vertragsstaaten des Übereinkommens mitwirken.

7. Deutschland sollte sich mit einem Beitritt zu dem Übereinkommen aktiv an der europäischen

und internationalen Kooperation zur Bewahrung des immateriellen Kulturerbes beteiligen.

Dieses Memorandum leistet einen Beitrag zu der notwendigen fachlichen Diskussion in Deutschland. Es fasst die zivilgesellschaftlichen Fachberatungen der Deutschen UNESCO-Kommission 2005/2006 zusammen. Es beinhaltet

- einen Überblick über den Stand der Umsetzung des UNESCO-Übereinkommens zur Bewahrung des immateriellen Kulturerbes, unter anderem zu Definitionen, Zielen und Nominierungskriterien (Ziffern 8 bis 23),
- die Leitfragen der Fachberatung zur Umsetzung des Übereinkommens (24-28),
- sechs Thesen zum Umgang mit dem immateriellen Kulturerbe in Deutschland (29-34),
- Arbeitsfragen zur europäischen und internationalen Kooperation (35-38) und
- exemplarische Anregungen zu erhaltenswertem immateriellem Kulturerbe in und aus Deutschland (59-62).

### **Immaterielles Kulturerbe – eine neue Akzentsetzung im Programm der UNESCO**

8. Fragen des immateriellen Kulturerbes spielen in der UNESCO-Arbeit seit über dreißig Jahren eine Rolle. Ursprünglich wurden sie vor allem unter dem Gesichtspunkt von Folklore, traditioneller Musik, Kunsthandwerk und Brauchtum, später dann als Verhältnis von Kultur und Entwicklung thematisiert, zum Beispiel im Rahmen der Weltdekade für Kultur und Entwicklung (1988-1997) und bei der Stockholmer Weltkonferenz 1998. Besonderes Gewicht kam Fragen der Sprachenvielfalt, auch im Cyberspace, zu sowie dem Phänomen des Sprachensterbens. Hierzu veröffentlichte die UNESCO 1996 einen Weltatlas der gefährdeten Sprachen (zweite Auflage 2001), der in Auszügen (Afrika) seit 2005 als interaktive Online-Version angeboten wird.

9. 2001 startete die UNESCO das Programm "Meisterwerke des mündlichen und immateriellen Kulturerbes der Menschheit". Die auf der Liste der "Meisterwerke" verzeichneten neunzig Beispiele und Formen des immateriellen Kulturerbes vermitteln einen plastischen Eindruck von der Vielfalt dieser Facetten menschlicher Kulturen. Mit dem Programm der Meisterwerke hat die UNESCO zudem verständlich gemacht, welche praktischen Rahmenbedingungen nötig sind, um diese kulturellen Ausdrucksformen zukunftsfähig zu erhalten. Nach über dreißig Jahren erfolgreicher internationaler Kooperation

zum Schutz von Kultur- und Naturstätten und Kulturlandschaften (Welterbeliste), nach der Entwicklung des erfolgreichen Programms zum Schutz des Weltdokumentenerbes "Memory of the Word", wird mit der Verpflichtung auf den Schutz des gelebten Kulturerbes eine Lücke geschlossen.

10. Die intensivere Auseinandersetzung mit den Aspekten dieses immateriellen Erbes in den letzten Jahren hat mehrere Gründe: Die weltweite Erfahrung von Globalisierungsprozessen hat ein neues Bewusstsein für das komplexe Verhältnis von Modernisierung und Tradition geschaffen. Einige der identifizierten "Meisterwerke" waren akut im Bestand gefährdet. In der breiten Debatte zur Vielfalt kultureller Ausdrucksformen hat sich zudem bei Regierungen weltweit die Erkenntnis durchgesetzt, dass es hier in vielen Fällen auch um wichtige Ressourcen nachhaltiger Entwicklung geht. Die Formen des immateriellen Kulturerbes sind stark an die Fähigkeit von Menschen gebunden, ihr Können, ihre Traditionen, Sprachen, Feste, Rituale usw. zu pflegen und als Teil der eigenen Identität weiter zu entwickeln. Das über Generationen überlieferte Wissen und die damit verbundenen vielfältigen Fertigkeiten, zum Beispiel Kunst- und Handwerkstechniken oder eine bestimmte Aufführungspraxis, sind wichtige kulturelle Ressourcen. Als gewachsene und tradierte Formen der Kreativität bilden sie die Basis für Entwicklung. Auch in anderen Bereichen ist die Aufwertung so genannter immaterieller Faktoren zu beobachten, etwa bei dem Versuch, die Rolle immaterieller Unternehmenswerte wie Wissenskapital und soziale Netzwerke für Erfindergeist, Produktivität und Wertschöpfung zu erfassen.

### **Aktueller Stand der Umsetzung des UNESCO-Übereinkommens**

11. Die UNESCO-Generalkonferenz hat das Übereinkommen zur Bewahrung des immateriellen Kulturerbes im Oktober 2003 in Paris verabschiedet. Es trat, nachdem es von 30 Staaten ratifiziert wurde, am 20. April 2006 in Kraft. Eine deutschsprachige Arbeitsübersetzung ist auf der Website der Deutschen UNESCO-Kommission verfügbar: [www.unesco.de/ike-konvention.html](http://www.unesco.de/ike-konvention.html)

12. Bisher (Stand: 1. Februar 2007) haben **74 Staaten** die **Konvention ratifiziert**: 11 asiatische, 7 arabische, 19 afrikanische, 14 lateinamerikanische und 23 europäische Staaten. Weitere Staaten, darunter Österreich und die Schweiz, haben die Ratifizierung der Konvention für 2007 angekündigt. Auch wenn das Übereinkommen ursprünglich ein Gegengewicht zur geografischen Dominanz Europas beim populären Welterbeprogramm schaffen sollte, muss die Annahme, dass dieses Übereinkommen ausschließlich für außereuropäische Länder relevant sei, heute als hinfällig betrachtet werden.

Das Übereinkommen zur Bewahrung des immateriellen Kulturerbes ist die Ergänzung zu dem heute von über 180 Vertragsstaaten ratifizierten "UNESCO-Übereinkommen zum Schutz des Kultur- und Naturerbes der Welt".

13. Am 27. und 28. Juni 2006 tagte in Paris die **konstituierende Vollversammlung** der Vertragsstaaten. Sie wählte ein 18-köpfiges Zwischenstaatliches Komitee für die Bewahrung des immateriellen Kulturerbes, das im Jahr 2007 detaillierte Richtlinien für die praktische Umsetzung des Übereinkommens ausarbeiten wird. Da zwischenzeitlich weitere 30 Staaten ratifiziert hatten, wurden am 9. November 2006 im Rahmen einer außerordentlichen Tagung der Vertragsstaatenkonferenz – wie im Übereinkommen vorgesehen – weitere sechs Mitglieder in das Komitee gewählt. Für die Region Europa (UNESCO-Wahlgruppe I und II) sind im Komitee vertreten: Belgien, Frankreich und die Türkei (Wahlgruppe I) sowie Belarus, Bulgarien, Estland, Rumänien und Ungarn (Wahlgruppe II).

14. Das vollzählige **24-köpfige Zwischenstaatliche Komitee** trat am 18. und 19. November 2006 zu seiner **konstituierenden Sitzung** in Algier zusammen. Das Komitee behandelte drei wesentliche Themen: die Ausarbeitung eines Entwurfs für die Richtlinien zur Umsetzung des Übereinkommens, die Entwicklung von Kriterien zur Aufnahme ausgewählter Kulturformen in die Repräsentative Liste des immateriellen Kulturerbes der Menschheit sowie die Frage der Einrichtung eines Beratungsorgans von Nichtregierungsorganisationen. Das Komitee wird 2007 mit Hochdruck an diesen Themen weiter arbeiten. Es tritt vom 23. bis 27. Mai 2007 in China (Peking) zu einer außerordentlichen und im September 2007 in Japan zu seiner regulären Sitzung zusammen.

15. Im **Juni 2008** tagt die **zweite Vollversammlung der Vertragsstaatenkonferenz**, die die Richtlinien zur Umsetzung des Übereinkommens dann beschließen soll. Auf dieser Basis wird sich künftig die internationale Zusammenarbeit in diesem wichtigen Bereich des Kulturerbes im Rahmen der UNESCO entwickeln.

#### **Definition des immateriellen Kulturerbes**

16. Das Übereinkommen definiert als immaterielles Kulturerbe (vgl. Art. 2) Praktiken, Darbietungen, Ausdrucksformen, Kenntnisse und Fähigkeiten sowie die damit verbundenen Instrumente, Objekte, Artefakte und Kulturräume, die Gemeinschaften, Gruppen und gegebenenfalls Individuen als Bestandteil ihres Kulturerbes ansehen. Man hat sich also für Arbeitsdefinitionen entschieden, die neben der Beschreibung der Kulturformen den Aspekt der Lebensfähigkeit des immateriellen Kulturerbes

und seine Bedeutung für die jeweiligen Gesellschaften ins Zentrum rücken.

17. Immaterielles Kulturerbe findet vorwiegend in folgenden **fünf Bereichen** (vgl. Art 2, a-e) seinen Ausdruck:

- **Mündlich überlieferte Traditionen und Ausdrucksformen, einschließlich der Sprache als Träger des immateriellen Kulturerbes;** zum Beispiel *Sagen, Märchen, Erzählungen, Epen, Gesangsepen, Regionalsprachen.*
- **Darstellende Künste;** zum Beispiel *Musik, Gesang, typische Tanzformen, Maskentanz, Volkstheater, Marionetten-, Puppen- und Mimenspiel, Zirkusformen, traditionelle Gesänge wie Hirtengesang, polyphone Gesänge.*
- **Gesellschaftliche Praktiken, Rituale und Feste;** zum Beispiel *Bräuche, Traditionen und Spiele im Zusammenhang mit Jahreszeiten oder Naturphänomenen, Umzüge, Paraden, Prozessionen, Fastnachtsbräuche, traditionelle Lebensweisen und Fertigkeiten.*
- **Wissen und Praktiken im Umgang mit der Natur und dem Universum;** zum Beispiel *Kosmologien, Wissen über Heilpflanzen und ihre Anwendung, Aussaatkalender.*
- **Fachwissen über traditionelle Handwerkstechniken;** zum Beispiel *die Verarbeitung von Stein, Lehm, Holz, Metall, Tierhäuten, Glas, Papier, Webtechniken, Sticktechniken, Spitzenklöppeln, Pigmentmischungen, Malerei.*

18. Das durch die Konvention geschützte immaterielle Kulturerbe (vgl. Art 2, a-e)

- wird von einer Generation an die nächste weitergegeben;
- wird von Gemeinschaften und Gruppen in Auseinandersetzung mit ihrer Umwelt, ihrer Interaktion mit der Natur und ihrer Geschichte ständig neu geschaffen;
- vermittelt den Gemeinschaften und Gruppen ein Gefühl von Zugehörigkeit und Kontinuität;
- trägt zur Förderung des Respekts vor der kulturellen Vielfalt und der menschlichen Kreativität bei;
- steht im Einklang mit den bestehenden internationalen Menschenrechtsinstrumenten;

- basiert auf der Zielsetzung der wechselseitigen Achtung zwischen Gemeinschaften, Gruppen und Individuen;
- ist Element einer Strategie nachhaltiger Entwicklung.

#### 19. Ziele des Übereinkommens sind

- die Bewahrung des immateriellen Kulturerbes;
- die Sicherung des Respekts vor dem immateriellen Kulturerbe der betreffenden Gemeinschaften, Gruppen und Individuen;
- die Förderung des Bewusstseins für die Bedeutung des immateriellen Kulturerbes und seiner gegenseitigen Wertschätzung auf lokaler, nationaler und internationaler Ebene;
- die Förderung der internationalen Zusammenarbeit und Unterstützung.

**20. Nominierungskriterien für Modellprojekte und die Repräsentative Liste des immateriellen Kulturerbes:** Diese Richtlinien werden als Grundlage für die Entwicklung von Erhaltungsmaßnahmen und Aktionsplänen für die Bewahrung des immateriellen Kulturerbes dienen. Die Vertragsstaatenkonferenz wird die Richtlinien voraussichtlich im Juni 2008 beschließen (siehe auch Ziffer 60).

21. Der Text des Übereinkommens gibt für die Entwicklung von Nominierungskriterien folgenden **Rahmen** vor:

- generationenübergreifende Weitergabe des immateriellen Kulturerbes "in der Erwägung der Notwendigkeit, ein stärkeres Bewusstsein für die Bedeutung des immateriellen Kulturerbes und seinen Schutz zu entwickeln, insbesondere bei den jungen Generationen";
- weit reichende "Wechselwirkung zwischen dem immateriellen Kulturerbe und dem materiellen Kultur- und Naturerbe";
- identitäts- und kontinuierstiftende Funktion;
- immaterielles Kulturerbe "als Triebfeder kultureller Vielfalt", welche menschliche Kreativität fördert;
- "Sicherung des Respekts vor dem immateriellen Kulturerbe der betreffenden Gemeinschaften, Gruppen und Individuen";

- Förderung des Bewusstseins für die Bedeutung des immateriellen Kulturerbes und seiner gegenseitigen Wertschätzung auf lokaler, nationaler und internationaler Ebene";
- "Bezugnahme auf die bestehenden internationalen Rechtsinstrumente zu den Menschenrechten, insbesondere auf die Allgemeine Erklärung der Menschenrechte von 1948, auf den Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte von 1966 und auf den Internationalen Pakt über bürgerliche und politische Rechte von 1966" und auf die Forderung nach gegenseitiger Achtung zwischen den Gemeinschaften, Gruppen und Individuen;
- immaterielles Kulturerbe als "Garant der nachhaltigen Entwicklung, wie hervorgehoben in der Empfehlung der UNESCO zur Bewahrung traditioneller Kultur und Folklore von 1989, der Allgemeinen Erklärung der UNESCO zur kulturellen Vielfalt von 2001 und der Erklärung von Istanbul, die 2002 vom dritten Runden Tisch der Kulturminister verabschiedet wurde".

22. Wichtiges Kriterium ist hierbei die **Einbeziehung lokaler Gemeinschaften** bei der Umsetzung des Übereinkommens, bei der Identifizierung von immateriellem Kulturerbe und bei der Entwicklung von Kriterien für nationale Inventarlisten (Bestandsaufnahmen). Diese sollen als Basis für eine künftig vom Zwischenstaatlichen Komitee zu erstellende Repräsentative Liste des immateriellen Kulturerbes der Menschheit dienen. Dabei wird man die Erfahrungen mit der Welterbekonvention und dem starken Anwachsen der Welterbeliste berücksichtigen. In Diskussion ist, ob herausragende Feste, Praktiken und andere Ausdrucksformen des immateriellen Erbes nur für eine befristete Zeit, zum Beispiel ein Jahrzehnt, auf die Repräsentative Liste des immateriellen Kulturerbes aufgenommen werden sollen.

23. In den Jahren 2001, 2003 und 2005 wurden durch eine von der UNESCO eingesetzte internationale Jury 90 **"Meisterwerke des mündlichen und immateriellen Erbes der Menschheit"** aus 68 Ländern proklamiert. Mit dem Inkrafttreten der Konvention endete dieses Projekt. Die bisher identifizierten Meisterwerke können voraussichtlich in die neu zu erstellende Repräsentative Liste des immateriellen Kulturerbes bzw. auch in die Liste des immateriellen Kulturerbes, das eines dringenden Schutzes bedarf, übernommen werden. Einzelheiten legt das Komitee bei seinen nächsten beiden Sitzungen im Laufe des Jahres 2007 fest.



## Leitfragen für die Fachberatung zur Umsetzung des UNESCO-Übereinkommens

24. Was bedeutet der Umgang mit immateriellem Kulturerbe in und aus Deutschland für die künftige Entwicklung der Kulturen in Deutschland und Europa? Spielen dauerhaft tragende Strukturen kollektiver regionaler Gedächtnisse dabei eine Rolle? Wer entscheidet heute, an was wir uns morgen erinnern können oder sollen? Wie ist die kontinuierliche Mischung und Balance von kreativer Neuschöpfung und Pflege zu fassen? Inwieweit ist hierfür das UNESCO-Konzept zur Bewahrung des immateriellen Kulturerbes nützlich?

25. Was bedeuten die in Art. 2 des Übereinkommens genannten "mündlich überlieferten Traditionen, Fähigkeiten, Handwerkskünste, kollektive Aufführungspraxis, Rituale, Bräuche und Feste sowie Kulturräume" in einer postmodernen Industriegesellschaft auf dem Weg zur international vernetzten Wissensgesellschaft? Wie sind hier Phänomene der Re-Inszenierung, Ästhetisierung und "Eventisierung" von immateriellem Kulturerbe zu bewerten?

26. "Die andere Blickrichtung": Welche Rolle spielen die Übernahme vormals fremder Kulturelemente und transnationale kulturelle Wechselwirkungen für die Perspektiven des immateriellen Kulturerbes in und aus Deutschland? Inwiefern gibt es bereits inter- oder sogar transkulturelle Formen von immateriellem Kulturerbe? Oder handelt es sich hier um importierte "Zitate" und Re-Inszenierungen von kollektiver Aufführungspraxis, Ritualen und Festen aus anderen geografischen Regionen und Zeiten?

27. Welche kulturellen Ausdrucksformen aus Deutschland sollten Teil einer bundesweiten Bestandsaufnahme (Inventarliste) werden? Welche Themenbereiche, Fragestellungen und Kultur Aspekte des immateriellen Erbes sind wichtig, welche werden voraussichtlich künftig an Gewicht gewinnen? Welche würden sich ggf. besonders für eine Nominierung für die Repräsentative Liste des immateriellen Kulturerbes der Menschheit eignen?

28. Wo zeichnet sich in Deutschland und Europa derzeit die Entstehung künftigen immateriellen Kulturerbes ab? Gibt es relevante kulturelle Neuschöpfungen, die an überlieferte Traditionen anknüpfen, wie zum Beispiel Phänomene aus der Populär- und Jugendkultur (Rap, Poetry Slam, Multimedia), die berücksichtigt werden sollten?

## Ergebnisse – sechs Thesen zum Umgang mit dem immateriellen Kulturerbe in Deutschland

29. **Kulturelle Vielfalt** ist Ausdruck des Reichtums einer Gesellschaft im Sinne ihrer kreativen Ressourcen. Vielfalt ist in jeder

Gesellschaft angelegt und als Potenzial vorhanden. Sie braucht jedoch Aufmerksamkeit, Wertschätzung und Anerkennung. Dies gilt in besonderem Maße für gelebtes immaterielles Kulturerbe, das meist an besondere lokale und regionale Prägungen und Entwicklungen gebunden ist.

30. Immaterielles Kulturerbe ist wichtig für die **Ausbildung kultureller Identität**. Der **Mensch und sein Körper als Träger** von Formen des Kulturerbes spielt beim Wissenserwerb und bei der Weitergabe dieses Wissens von Generation zu Generation eine große Rolle. Die Aneignung kultureller Praktiken geschieht wesentlich durch mimetische Nachahmung. Diese Form der Kulturübermittlung hat Veränderungspotenzial und sorgt somit für kulturelle Vitalität.

31. Immaterielles Kulturerbe spielt eine große Rolle in **Bildungsprozessen**. Formales, non-formales und informelles Lernen sind hierbei gleichermaßen wichtig. Die Erfahrung von Alterität regt zur Bildung einer reifen und offenen Persönlichkeit an. Immaterielles Kulturerbe braucht deshalb einen festen Platz auch im schulischen Unterricht und im interkulturellen Lernen. Heute eine **kritische Auswahl** aus dem Fundus und den Ausdrucksformen des immateriellen Kulturerbes treffen zu können, ist nicht zuletzt eine Frage von Bildungsmöglichkeiten. Dementsprechend ist auch der Zugang zum immateriellen kulturellen Erbe eine wichtige Aufgabe der Allgemeinbildung und des lebenslangen Lernens.

32. Die **gesellschaftliche Akzeptanz** des immateriellen Kulturerbes ist ein wichtiges Kriterium. Der Bezug zu den Menschen, die Riten, Tänze, Spiele, Feste etc. praktizieren, muss sichtbar bleiben. Sie sind Teil des kulturellen Gedächtnisses und erneuern es immer wieder durch ihr Tun. Zivilgesellschaftliche Initiativen, Vereine und Organisationen fördern das Wissen um Kulturtechniken und ihre Voraussetzungen. Hierbei kommt es auch auf die Entwicklung und Erhaltung der Fähigkeit an, Qualitätsmerkmale zu erkennen.

33. Die **Musealisierungsfahr** ist real: Die im UNESCO-Übereinkommen geforderte Bewahrung darf nicht zu einem Unterdrücken neuer Impulse oder von Weiterentwicklungen dieser Kulturformen führen. Immaterielles Kulturerbe ist immer auch durch Improvisation und Veränderung gekennzeichnet.

34. Im Zeitalter der Globalisierung und an Betrachtung des schnellen gesellschaftlichen Wandels ist die **positive Wertschätzung** des "Alten" und der "Älteren" eine eigene Herausforderung. Der mögliche Verlust an kulturellen Ressourcen ist ein Motiv für das gesteigerte Interesse an Ausdrucksformen des immateriellen Kulturerbes. Das Kriterium der Gefährdung darf jedoch keine Überhand über alle anderen Aspekte gewinnen.

Die Frage des **Gefährdungsstatus** und der damit verbundene Zeitfaktor sind besonders kritisch. Aus der Volkskunde-Forschung sind solche Warnungen hinlänglich bekannt. Bei "gefährdeten Kulturformen" sollte immer genauestens geprüft werden, worin und warum die Gefährdung besteht. Viele Formen des immateriellen Kulturerbes, wie das Erfahrungswissen handwerklicher und heilender Berufe, sind auch hierzulande teilweise unwiederbringlich verloren, andere müssen als "akut gefährdet" eingestuft werden.

### **Arbeitsfragen zur europäischen und internationalen Kooperation**

Der Großteil dieser Arbeitsfragen stellt sich in den meisten europäischen Ländern. Die Entwicklung tragfähiger und pragmatischer Lösungen für die Umsetzungspraxis des Übereinkommens in Deutschland kann daher vom europäischen Austausch sehr profitieren.

35. Zu den **Begriffsbestimmungen** des UNESCO-Übereinkommens zur Bewahrung des immateriellen Kulturerbes: Grundsätzlich sind völkerrechtliche Übereinkommen immer Ergebnis von Verhandlungsprozessen der Staatenvertreter. Bei der Erarbeitung dieser Texte fließen zwar Expertenmeinungen und Stellungnahmen der Zivilgesellschaft ein, entscheidend sind jedoch letztlich der politische Konsensus und die beabsichtigte Kooperationspraxis, die mit Hilfe eines Übereinkommens entwickelt werden soll.

36. Der Begriff "**Immaterielles Kulturerbe**" ist in der europäischen kulturpolitischen Debatte noch wenig verankert. Das UNESCO-Übereinkommen gibt in Art. 2, Abs. 1, einen Orientierungsrahmen vor. Hier sollte man in den kommenden Jahren schrittweise ein gemeinsames europäisches Verständnis der praktischen Bedeutung dieser Kulturerbepflichten erarbeiten.

37. Unter "**Bewahrung**" sind Maßnahmen zu verstehen, die auf die Sicherung der Lebensfähigkeit des immateriellen Kulturerbes gerichtet sind" (Art. 2, Abs.3). Der Begriff "Bewahrung" (im englischen Originaltext: "safeguarding" bzw. "preservation") hat in diesem Übereinkommen eine sehr umfassende Bedeutung, das heißt die Umsetzung ist weniger punktuell, sondern auf lange Zeit angelegt. Gemeint ist nicht eine "Unterschutzstellung" oder "Konservierung". Bewahrung bedeutet hier Aufmerksamkeit auf alltäglicher, wissenschaftlicher, politischer Ebene sowie in der medialen Vermittlung. "Bewahrung" schließt laut Art. 2, Abs. 3, des Übereinkommens Maßnahmen der Identifizierung, der Dokumentation, der Erforschung, der Erhaltung, des Schutzes, der Förderung, der Aufwertung, der Weitergabe sowie der Neubelebung der verschiedenen Aspekte dieses Erbes ein.

Die deutsche Übersetzung der Begriffsbestimmungen des UNESCO-Übereinkommens ist ein generelles Problem, wie auch bei anderen internationalen Kulturübereinkommen. Entsprechend lösen diese terminologischen Fragen in Expertengruppen kontroverse Debatten aus. In Zweifelsfällen ist es hilfreich, auf die Originalfassung des Übereinkommens zurückzugreifen.

39. Zur Frage von "**Volkskultur und Folklore**": "Volkskultur" in Deutschland kannte und kennt nicht nur ein "folkloristisches" Selbstverständnis, sondern wurde auch immer wieder aus fortschrittlichen Ansätzen heraus neu interpretiert. Aufgrund der Instrumentalisierung in der Zeit des Nationalsozialismus gibt es hierzu jedoch weiterhin verständliche Berührungspunkte. Die neu auflebende internationale und europäische Diskussion zur künftigen Bedeutung immateriellen Kulturerbes ist daher auch für Deutschland eine **Chance zur Auseinandersetzung und Neubestimmung**. Die heutigen Lebensverhältnisse sind durch Reisen, interkulturellen Austausch und Migration viel europäischer und internationaler geworden. So stellen sich diese Fragen in mehrfacher Hinsicht neu. Immaterielles Kulturerbe von Minderheiten sowie von Migrantinnen und Migranten ist in Deutschland und Europa dauerhaft präsent. Zu klären ist, in welchen Bezügen diese unterschiedlichen und gleichzeitigen Entwicklungen zueinander stehen.

40. Die **Frage nach der Originalität** von Kulturelementen blieb in der Fachberatung kontrovers. Sind solche Konzepte vor dem Hintergrund der Globalisierung und touristisch motivierter Kommerzialisierung überhaupt noch möglich oder angemessen? Schließlich ist vermeintliche Authentizität immer eine Zuschreibung von außen. Die Konvention geht lediglich von einer "**Verankerung in der Tradition**" aus. Dazu gehören unter anderem das Wissen um das soziale Umfeld, die Zeitläufe und die Anlässe, aus denen heraus "Volkskulturelemente" entstanden sind oder sich weiterentwickelt haben. Die meisten nord-, mittel- und westeuropäischen Traditionen basieren auf älteren Kulturphänomenen, sind inhaltlich jedoch stark dem 19. Jahrhundert verhaftet (zum Beispiel Musik, Trachten, Tanz). Ein großer Teil des immateriellen europäischen Kulturerbes ist religiösen Ursprungs und findet heute in weitgehend säkularisiertem Kontext statt. Da gerade bei Jüngeren die Unkenntnis im Bezug auf Symbole und Inhalte der historisch christlich-jüdisch geprägten europäischen Kultur spürbar zunimmt, kann dies zu erheblichen Missverständnissen führen.

41. Nach Auffassung mancher Experten sind moderne Elemente in diesem Kontext zurückhaltend zu betrachten, da ansonsten die Gefahr von Beliebigkeit und Verflachung bestehe.

Ein gewisses Maß an **Kontinuität** ist im Rahmen der Konvention unabdingbar. Umstritten blieb hierbei die Rolle der Jugendkultur für das immaterielle Kulturerbe. Jugendkulturen sind stark zeitgebunden und können abrupt enden. Gibt es in ihnen über einen längeren Zeitraum hinweg konstante, stabile Elemente, die neue Kulturformen beeinflussen?

42. Das **Verhältnis zwischen Hoch- und Volkskultur** wurde im Laufe der Fachberatungen immer wieder angesprochen. Diese Frage gilt grundsätzlich sowohl in der Volkskunde als auch in Kulturwissenschaft und Ethnologie als geklärt: Neuere wissenschaftliche Ansätze haben die Dichotomie zwischen Hoch- und Volkskultur für obsolet erklärt. Das wechselseitige Verhältnis der unterschiedlichen kulturellen und künstlerischen Ausdrucksformen war lange Zeit sehr durchlässig. Die Institutionalisierung der "Hochkulturen" im 19. und 20. Jahrhundert war einem regen Austausch jedoch nicht förderlich. Heute interessieren wieder mehr die vielfachen Wechselwirkungen, Neuschöpfungen und kreativen Prozesse. Eine strikte Abgrenzung im Rahmen der Klärung von Formen des immateriellen Kulturerbes sollte hier auf jeden Fall vermieden werden.

43. Sobald es jedoch um die *konkrete* Sondierung geht, welche kulturellen Ausdrucksformen aus Deutschland im Sinne der UNESCO-Konvention zum immateriellen Kulturerbe für eine Bestandsaufnahme besonders wichtig wären, spielt dieses Spannungsverhältnis wieder eine Rolle. So bestreiten Akteure und Experten des immateriellen Kulturerbes, die schwerpunktmäßig die Laienpraxis der Brauchtumpflege im Blick haben, dass die deutsche (Stadt-)Theater- und Konzertvielfalt Teil des zu sichernden immateriellen Kulturerbes sei, da diese Ausdrucksformen bereits als kulturell wertvoll anerkannt, institutionell organisiert und öffentlich gefördert seien.

44. Das UNESCO-Übereinkommen spricht ausdrücklich vom immateriellen Kulturerbe, welches "Gemeinschaften, Gruppen und gegebenenfalls Individuen als Bestandteil ihres Kulturerbes ansehen". Für die mögliche Umsetzung dieser Konvention in Deutschland braucht es also ein praktikables und demokratisches Verfahren zum Umgang mit kontroversen Sichtweisen unterschiedlicher Gruppen, Kulturpraktiker und Interessensvertreter.

45. Zum **Verhältnis Welterbestätten – immaterielles Kulturerbe**: Im künftigen Umgang mit dem Übereinkommen zur Bewahrung des immateriellen Kulturerbes ist das Verhältnis zu den Welterbestätten im Sinne der UNESCO-Welterbekonvention von 1972 eine interessante Frage. Faktisch besteht eine enge Verwobenheit und Interdependenz dieser unterschiedlichen

Aspekte von Kulturerbe und Tradierung. So symbolisiert beispielsweise ein auf die Welterbeliste aufgenommenes Kloster weit mehr als das eigentliche Monument. Es weist über sich hinaus auf einen ganzen Kulturraum, auf Kulturlandschaft und Regionalentwicklung mit immateriellen und handfesten Aspekten wie Ritualen, Festen, Gebräuchen, Handwerks- und Heilwissen, Handschriften, Landwirtschaftskultur, Musik, kulinarische Traditionen etc.

46. Die Verknüpfung des Welterbes mit immateriellen Formen kann für den internationalen Kulturdialog ausgesprochen fruchtbar sein. Allerdings ist das immaterielle Kulturerbe im Sinne der UNESCO-Konvention nicht lediglich als bloßes Beiwerk von Baudenkmälern und Naturstätten zu sehen. Diese basieren im Gegenteil entscheidend zum Beispiel auf hoch entwickelten Handwerksprinzipien und Kunstfertigkeiten. Zentral ist also die Wechselwirkung.

47. **Mögliche Folgen einer Nominierung** für die Repräsentative Liste des immateriellen Kulturerbes: Immaterielles Kulturerbe ist an die Kulturpraxis von Menschen gebunden, die eine materielle Lebensgrundlage haben und brauchen. Viele Manifestationen traditioneller Kulturen in Europa sind auch heute schon eine Attraktion für ein nicht-einheimisches Publikum und stellen einen wichtigen Wirtschaftsfaktor für die Regionen dar. Touristisches Interesse und Vermarktung spielen hierbei eine Rolle und liegen im Interesse der Traditionsträger. Die damit verbundenen **Zielkonflikte** sind teilweise vergleichbar mit Konfliktagen, für die im Zusammenhang mit Strategien nachhaltiger Entwicklung Lösungsvorschläge entwickelt wurden (zum Beispiel Waldbewirtschaftung, Handwerks- und Manufakturproduktion).

48. Viele arme Länder und Produzenten bieten inzwischen containerweise Kunsthandwerk zu Billigtarifen auf den internationalen Märkten an. Diese Konstellationen sind durchaus vergleichbar mit den Problemlagen, auf die Fair-Trade-Kampagnen Antworten suchen, die für Kaffee, Tee, Kunsthandwerk, Blumen und Kleidung gerechte(re) Preise zahlen wollen. Ein intelligenter Umgang mit **Kommerzialisierungstendenzen** und touristischem Ausverkauf von erfolgreich nominiertem immateriellem Kulturerbe der UNESCO bleibt also auf lange Sicht eine Aufgabe.

49. Innerhalb der Gemeinschaften, deren immaterielles Kulturerbe zwischen 2001 und 2005 von der UNESCO in die Liste der Meisterwerke des immateriellen Kulturerbes der Menschheit aufgenommen wurde, sind laut den Ergebnissen eines UNESCO-Workshops im April 2006 **gegenläufige Tendenzen** zu beobachten: Einerseits besteht die Gefahr der schnellen Kommerzialisierung und Reduzierung von



Qualität und Kreativität. Andererseits integrieren die Gemeinden traditionelle Elemente bereitwillig in bereits modernisierte Varianten des immateriellen Kulturerbes und erreichen so eine nachträgliche Bereicherung, Rekonstruktion und Neubesinnung.

50. An Fragen der **Zugangsmöglichkeiten zum immateriellen Kulturerbe** wird international intensiv gearbeitet. Unter Umständen kann bei bestimmten Formen des immateriellen Kulturerbes auch die Nicht-Zugänglichkeit durch bloße Registrierung sinnvoller sein. Für den Bereich des durch Tonaufnahmen erfassten oder dokumentierbaren immateriellen Kulturerbes werden derzeit elektronische Plattformen mit einheitlichem Metadatenformat für audiovisuelle Materialien entwickelt, die bislang unterrepräsentiert und schwer zugänglich sind (Musikethnologie, Erzählungen, Lyrik u.a.). Archive sind wesentliche wissenschaftliche und kulturelle Wissensspeicher und damit zentrale Orte eines europäischen kulturellen Gedächtnisses. Das Open Access Prinzip ist auch in diesem Zusammenhang von großer Bedeutung.

51. Der von der Konvention geforderte **Schutz des immateriellen Kulturerbes ohne Verlust der Eigendynamik** ist nicht nur durch Bildung und wissenschaftliche Dokumentation zu leisten. Die Situation in Deutschland wird von der Experten-Community als sehr kritisch beurteilt: Viele wissenschaftliche Gedächtnisinstitutionen werden öffentlich ignoriert, öffentlich-rechtliche Rundfunkanstalten stellen entsprechende Programme ein, Universitätsinstitute für Europäische Ethnologie, Abteilungen für Ethnomusikologie oder Institute wie das Internationale Institut für Traditionelle Musik in Berlin werden geschlossen. Die Infrastruktur wird somit brüchig.

52. Fragen nach den **Verwertungsrechten für immaterielles Kulturerbe** tauchen immer wieder auf: Besitzen solche Rechte ausschließlich die Nachkommen der ursprünglichen "Besitzer" und Anwender (zum Beispiel Rückgabeforderungen von Native Americans gegenüber Museen, einschließlich der Forderung nach Zerstörung von Ritualgegenständen und Tonaufnahmen)? Inwieweit gefährden diese Formen der Copyright-Ansprüche auf bestimmte immaterielle Kulturphänomene unter Umständen selbst den Schutz des immateriellen Kulturerbes? Wer ist zum Beispiel berechtigt, Elemente des immateriellen Kulturerbes weiterzuentwickeln, wenn diese ursprünglich von initiierten Mitgliedern von (Geheim-) Gesellschaften getragen wurden? Stehen diese Rhythmen, Melodien, Instrumente, Rituale, Tänze usw. unter heutigen Bedingungen allen interessierten Nutzern offen, oder muss der Zugang autorisiert werden (vgl. die Kontroverse um die Gnawa-Musiker der marokkanischen Sufi-

Gemeinschaften und die Popularisierung dieser Musik als Weltmusik)?

53. Fragen der **internationalen Governance** und der **Rechtspraxis/Rechtssicherheit indigener Gruppen und lokaler Gemeinschaften**: Zwischenstaatliche Übereinkommen, darunter auch das hier behandelte UNESCO-Übereinkommen, gehören zu den zahlreichen internationalen Rechtsnormen, die zunehmend auch lokale Wirkung entfalten. Fragen des Rechtspluralismus gewinnen in diesem Zusammenhang neue Bedeutung: Wie wirken diese transnationalen Rechtsnormen? Wie verhalten sich lokales Gewohnheitsrecht, religiöses Recht, nationalstaatliche Rechtssysteme und Völkerrecht zueinander (vgl. die Arbeiten des Max-Planck-Instituts für ethnologische Forschung, Forschungsgruppe Rechtspluralismus)?

54. Zur **Methodik von Nominierungen**: Die Praxis der Nominierungen immateriellen Erbes für die Repräsentative Liste der UNESCO muss den jeweiligen Gegebenheiten in den einzelnen Ländern entsprechen. Die Konvention bietet Rahmenkriterien an, die durch die Vertragsstaatenkonferenz schrittweise weiterentwickelt werden. Einige Länder der Südhemisphäre lösen diese Frage, indem sie sich stark auf lokale Gemeinschaften beziehen. Nachdem der Staat die Gemeinschaften identifiziert hat, entscheiden und diskutieren diese unabhängig über ihr Kulturerbe und nehmen Einschätzungen der Gefährdungsfrage und Differenzierung vor.

55. Dieses Vorgehen wurde als nicht auf Deutschland übertragbar bewertet, unter anderem wegen der Unmöglichkeit, präzise zu fassen, was dann unter "Gemeinschaften" zu verstehen wäre. Die Erstellung einer offenen Datenbank zur Selbsteintragung stellt wegen der Gefahr von Beliebigkeit keine alternative Lösung dar.

56. **Ausschreibungen** sind ein möglicher Weg zur Identifizierung wichtiger Aktivitäten zum immateriellen Kulturerbe. Schützenswertes traditionelles Kulturgut ist zumeist regional oder lokal angesiedelt. Die UNESCO-Konvention will vorrangig diejenigen Phänomene, Praktiken, Rituale, Handwerkskünste etc. schützen, die gewöhnlich nicht von Großorganisationen veranstaltet werden oder in Fachverbänden organisiert sind. Willensbekundungen von unmittelbar Interessierten müssen jedoch von unparteiischen Experten unvoreingenommen und kritisch geprüft werden.

57. Vorgeschlagen wurde, eine Liste des immateriellen Kulturerbes in Deutschland als offene Liste zu führen und beispielsweise alle fünf Jahre zu überprüfen. Dies erlaubt zum Beispiel zu unterscheiden, ab wann immaterielles Kulturerbe von den Verantwortlichen nicht mehr

als ihr "Eigenes" angesehen wird, sondern möglicherweise als reiner "Event" inszeniert wird. Bundesländer, Gemeinden, Gemeinschaften und Fachverbände sind so in den Auswahlprozess einzubeziehen, dass Proporzgesichtspunkte nicht die Substanz des Verfahrens dominieren.

58. Die Fragen der Hierarchie von Entscheidungsträgern und der **Vermischung von politischen und kulturellen Entscheidungskriterien** wurden kontrovers diskutiert. In diesem Zusammenhang wurden einige Beispiele aus der UNESCO-Liste der Meisterwerke des immateriellen Kulturerbes als problematisch eingestuft. Bei demokratisch-pluralistischen Entscheidungsprozessen ist es normal, dass unterschiedliche politische und kulturelle Kriterien diskutiert und durchgesetzt werden. Problematisch kann es werden, wenn politisch Entscheidungsbefugte wenig Sachkenntnis oder keinerlei Verständnis für eine beantragte Nominierung haben. Falls die Entscheidung bei Bundesländern, Gemeinden und Fachorganisationen angesiedelt würde, könnte dies möglicherweise zu Lasten der Aktivitäten von denjenigen Traditionsträgern gehen, die nicht in Großorganisationen oder – verbänden verankert sind.

#### **Exemplarische Anregungen zu erhaltenswertem immateriellem Kulturerbe in und aus Deutschland**

59. Das UNESCO-Übereinkommen fordert die Vertragsstaaten dazu auf, eine **nationale Bestandsaufnahme** ihres immateriellen Kulturerbes zu machen. Jeder Staat kann selbst entscheiden, welches Vorgehen hierbei für das betreffende Land sinnvoll ist. Dieser Schritt ist in jedem Fall die unabdingbare Voraussetzung, um Nominierungen zur Aufnahme in die Repräsentative Liste des immateriellen Kulturerbes der Menschheit zu erarbeiten. Dieses zweistufige Verfahren ist für eine vertiefte Debatte über mögliche interessante Nominierungen aus Deutschland zu berücksichtigen. Europäische Nachbarländer wie Belgien, Frankreich, Österreich, die Schweiz, die Slowakei und Tschechien haben hier bereits interessante Wege beschritten.

60. Die Detailkriterien für die Aufnahme von immateriellem Kulturerbe in die Repräsentative Liste sowie für die Einschreibung in die Liste des immateriellen Kulturerbes, das eines besonderen Schutzes bedarf, werden 2007 ausgearbeitet und 2008 von der Vertragsstaatenkonferenz verabschiedet (*siehe oben*). Nach derzeitigem Diskussionsstand sollen **zehn Kriterien** über die Aufnahme einer Ausdrucksform des immateriellen Kulturerbes in die Repräsentative Liste entscheiden: Das immaterielle Kulturerbe soll

(i) in einen der in Artikel 2.2. des Übereinkommens aufgeführten fünf Bereiche fallen (siehe oben);

(ii) mit den internationalen Menschenrechtsinstrumenten und der Forderung nach gegenseitigem Respekt und nach einer nachhaltigen Entwicklung vereinbar sein;

(iii) von den Gemeinschaften, Gruppen oder Individuen als Teil ihres kulturellen Erbes angesehen werden;

(iv) auf gemeinsamer Erfahrung oder kollektivem Gedächtnis basieren und somit für Gemeinschaften oder Gruppen kontinuierlich- und identitätsstiftend sein;

(v) in der Tradition der Gemeinschaften oder Gruppen verwurzelt sein und ständig weitergegeben werden;

(vi) die kulturelle Vielfalt des immateriellen Erbes weltweit widerspiegeln;

(vii) in Absprache und mit Einwilligung der betroffenen Gemeinschaften, Gruppen oder Individuen nominiert werden;

(viii) hierzu sind bereits im Vorfeld die Gemeinschaften, Gruppen oder Individuen als Träger dieses Erbes einzubeziehen;

(ix) das immaterielle Kulturerbe soll in der nationalen Bestandsaufnahme (Inventar) erfasst sein und

(x) seine Erhaltung und Bewahrung sollen mit Hilfe eines Erhaltungsplans gesichert sein.

61. Als Ergebnis der ersten Konsultationen der Deutschen UNESCO-Kommission sind exemplarische Anregungen zu erhaltenswertem immateriellem Kulturerbe in und aus Deutschland benannt worden. Sie orientieren sich an den fünf Bereichen, wie sie in Artikel 2, Abs. 2, des Übereinkommens aufgeführt sind:

- **Mündlich überlieferte Traditionen und Ausdrucksformen, einschließlich der Sprache als Träger des immateriellen Kulturerbes;** *zum Beispiel* Erzählungen; Dialekte als Kulturform einer regionalen Gemeinschaft; altertümliche Begriffe und Sprachformeln (vgl. das Wörterbuch des antiquarischen Schreibens, zum Beispiel "des Glückes Unterpand"), Regionalsprachen (Sorbisch und Friesisch).
- **Darstellende Künste (musikalische und motorische Ausdrucksformen);** *zum Beispiel* Puppentheater; musikalische Klangkörper; Liedgut; Gruppentanzformen; Vielfalt der städtischen Theatertraditionen; Kirchenmusikpraxis.

- **Gesellschaftliche Praktiken, Rituale und Feste;** *zum Beispiel* regionale Bräuche wie das Bremer und Hamburger Schaffermahl, norddeutsche Grünkohl- und Pinkel-Fahrten, fränkische Osterbrunnen; überregionale Karneval- und Fastnachtsformen; Schützenwesen; moderne Phänomene wie zum Beispiel die Christopher-Street-Day-Parade.
- **Wissen und Praktiken im Umgang mit der Natur und dem Universum;** *zum Beispiel* traditionelles Wissen mit Bezug zur Natur: Landwirtschaft, Bauernwissen, Heilkunde, Hausrezepte; komplexe Lebensformen/Kulturräume: Almbewirtschaftung, Weinbau (Steillagen); Rituale religiöser Lebenspraxis, zum Beispiel Kloster, Diakonie, religiöse Praktiken auf Friedhöfen.
- **Fachwissen über traditionelle Handwerkstechniken;** *zum Beispiel* verschwindende Berufskulturen, Arbeitswissen, Handwerk als Prinzip; Kulturtechniken der industrialisierten Arbeitsgesellschaft: historische Bedienungsanleitungen von Technik; Wissen um materielle Alltagsressourcen und ihre Produktion wie zum Beispiel Stopfen, Schustern; Bildende Kunst: Restaurierungs- und Erhaltungstechniken; künstlerische Auseinandersetzung mit handwerklichen Produktionstechniken, die als Breitentechnik bereits verschwunden sind (wie zum Beispiel Schmiedekunst, Papierschöpfen).

62. Generell ist für eine Umsetzung des Übereinkommens in Deutschland ein **fachlich fundierter, partizipativer Entscheidungsweg** nötig, um bei kontroversen Sichtweisen und divergierenden Bewertungen erhaltenswerten immateriellen Kulturerbes aus der Sicht von unterschiedlichen Wissenschaftsdisziplinen, Kulturpraktikern und Interessensvertretern von Gemeinschaften nachvollziehbare Kriterien zugrunde legen zu können.

Bonn, Februar 2007

Redaktion: Christine M. Merkel, Kulturreferentin der Deutschen UNESCO-Kommission, unter Mitarbeit von Regina Höfer, M.A., Bonn, und Agnes Charlotte Frey, Studentin der Theater-, Film- und Fernsehwissenschaft in Köln, unter Berücksichtigung von rund hundert Wort- und Schriftbeiträgen

### **Zur Genese dieses Memorandums**

*Dieses Memorandum ist Ergebnis zivilgesellschaftlicher Fachberatungen der Deutschen UNESCO-Kommission 2005 und 2006, insbesondere der Fachtagung der Deutschen UNESCO-Kommission zum immateriellen Kulturerbe im Februar 2006 in Bonn. Bundesweit haben sich rund hundert Expertinnen und Experten aus unterschiedlichen geisteswissenschaftlichen Disziplinen und Praxisfeldern mit Wort- und Schriftbeiträgen beteiligt. Darunter waren Kulturmittler, Museums- und Archivdirektorinnen und -direktoren, Forscherinnen und Forscher verschiedener Disziplinen, Künstler und Künstlerinnen, Denkmalschützer, Filmemacher, Brauchtumsfreunde, Laienkünstler und engagierte Handwerker.*

*Der Entwurf vom Oktober 2006 wurde einem Peer-Review unterzogen und vom Fachausschuss Kultur der Deutschen UNESCO-Kommission auf seiner Sitzung am 23. November 2006 intensiv beraten. Diese Fassung ist das überarbeitete Ergebnis.*

*Seit 2004 haben der Fachausschuss Kultur und das Nominierungskomitee Memory of the World Optionen der deutschen Mitarbeit am UNESCO-Programm Immaterielles Kulturerbe beraten. Am 2./3. Februar 2006 hat die Deutsche UNESCO-Kommission zu einer Fachtagung ins Bonner Gustav-Stresemann-Institut eingeladen, mit Impulsbeiträgen, Präsentationen von UNESCO-Meisterwerken des immateriellen Kulturerbes aus dem europäischen (Belgien) und außereuropäischen Ausland (Brasilien) sowie drei Diskussionsrunden, verbunden mit einem öffentlichen Abendprogramm in der Bonner Brotfabrik.*

*Unter Rückgriff auf Begriffe und Methodik der empirischen Kulturwissenschaften, Anthropologie, Geschichtswissenschaft, Musikethnologie, Museumskunde wurden Kriterien und Orientierungen für eine mittelfristig ausgerichtete deutsche Mitarbeit für den Fall einer Ratifizierung des UNESCO-Übereinkommens zur Bewahrung des immateriellen Kulturerbes entwickelt. Die Tagungsergebnisse gingen in den Text dieses Memorandums ein.*

*Zu den Ergebnissen der Tagung siehe auch den Beitrag in unesco heute online Februar/März 2006 <http://www.unesco-heute.de/0106/ikeft.htm>.*