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Articles 20–24. International Assistance

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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, subregional 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.*

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Article 23—Requests for international assistance

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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.*

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2. *Such a request may also be jointly submitted by two or more States Parties.*

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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

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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.*

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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.*

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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.*

Introduction

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International assistance is ‘the very core’ of the Convention on the Safeguarding of Intangible Cultural Heritage (the ‘Convention’).¹ Of all the mechanisms for safeguarding and co-operation in the Convention, international assistance ‘most fully’ addresses the treaty’s purposes.² Building States Parties’ capacity to implement its obligations under the Convention is recognized as an ‘urgent priority’, as is international assistance’s central role in this regard.³ Yet, the overwhelming majority of States Parties remain fixated on inscription on the Representative List, while international assistance is plagued by near chronic under-utilization. This has led to the conclusion that this mechanism has yet to fulfil the intent of the Convention’s drafters.⁴ In response, the Convention’s governing bodies has instituted a number of initiatives to reverse this trend, with limited success to date.⁵ Despite these efforts, in 2018, the Intergovernmental Committee (‘Committee’) observed that ‘the full potential of this mechanism as a means of safeguarding living heritage has not been explored’.⁶

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This chapter covers Articles 20–24 concerning the purposes, types, and the process of requesting international assistance. Located in Chapter V covering international co-operation and assistance, it outlines the role of international co-operation in building States Parties’ capacity to meet their obligations under the Convention. The role of the Committee in determining requests for international assistance within the ambit of its various functions under the Convention is defined by Article 7.⁷ However, although initially modelled on the Articles 13 and 19–29 of the Convention concerning the Protection

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¹ Workshop on Providing Technical Assistance to States Parties Requesting International Assistance, 20 October 2015, UNESCO Doc. ITH/15/WOR/3, p. 1.

² Ibid.

³ UNESCO, Evaluation by the Internal Oversight Service of UNESCO’s Standard-Setting Work of the Culture Sector. Part I: 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO Doc. ITH/13/8.COM/INF.5.c.

⁴ Ibid.

⁵ UNESCO Doc. ITH/13/8.COM/7.c.

⁶ UNESCO Doc. ITH/18/7.GA/8, para. 10.

⁷ See the chapter on Arts 4–8 by Guido Carducci in this volume.

of the World Cultural and Natural Heritage ('World Heritage Convention'),⁸ these provisions were significantly redrafted and streamlined during the negotiations of the Convention.⁹ Nonetheless, Articles 20–24 in conjunction with the current Operational Directives ('OD') mirror the key elements of provisions covering international assistance under the World Heritage Convention. These Articles also provide the contours of the Committee's powers in respect of international assistance which are lacking in Article 7(g) (ii). The operation of the Intangible Cultural Heritage Fund, whose major function is the financing of successful international assistance requests, is regulated by Articles 25–30, Chapter VI of the Convention.¹⁰

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This commentary on Articles 20–24 focuses on the rationale and the mechanics of international assistance under the Convention. First, there is a brief examination of the place of international assistance as one of the driving aims of the Convention, together with a look at the purposes of international assistance itself as defined by that instrument. Next, and related to these defined purposes, there is consideration of the forms of international assistance sanctioned by the Convention and its related instruments. Then the commentary moves onto the mechanics of international assistance, including an overview of the formalities prescribed for requests, the evaluation criteria and process, and finally, the monitoring and reporting requirements for successful requests for international assistance. The chapter concludes with a critical examination of the implementation of international assistance in the first decade plus of the Convention's operation to provide some context to the recent assessments detailed in its opening lines of this chapter.

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International Assistance in the Context of the Convention

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Purpose of the Convention

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The first preliminary draft of the convention in 2002 explicitly provided in its preamble that the international community and relevant States Parties should contribute to safeguarding intangible cultural heritage by 'granting technical and financial assistance'.¹¹ The provision of international assistance remained one of four explicit purposes of the final text of Convention (Article 1(d)).¹² This is reinforced by Article 19 on international co-operation which is defined to include 'the establishment of a mechanism of assistance to States Parties in their efforts to safeguards the intangible cultural heritage'. In 2013, the Committee called on the General Assembly, States Parties, the Secretariat, category 2 centres, NGOs and other stakeholders to promote international assistance as a 'tool for the safeguarding of intangible cultural heritage and the implementation of the

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⁸ 16 November 1972, in force 17 December 1975, 1037 UNTS 151.

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⁹ See Intersessional Working Group of Government Experts on the Preliminary Draft Convention for the Safeguarding of the Intangible Cultural Heritage, Report of C Economides, May 2003, UNESCO Doc. CLT-2003/CONF.206/3, para. 27.

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¹⁰ See the chapters on Arts 25–28 by Andrzej Jakubowski and on Arts 29–30 by Janet Blake and James Nafziger in this volume.

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¹¹ First preliminary draft of an international convention for the safeguarding of the intangible cultural heritage, 26 July 2002, UNESCO Doc. CLT-2002/CONF.203/3, p. 2.

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¹² See Text agreed upon in 2nd session of the Intergovernmental Meeting of Experts on the Preliminary Draft Convention for the Safeguarding of the Intangible Cultural Heritage, Secretariat Report, April 2003, UNESCO Doc. CLT-2003/CONF.205/6, para. 11 (Art. 1(d), on international co-operation and assistance, was agreed on in the form proposed by the Drafting Committee), by Group 1 (comprising France, Greece and Norway). The 3rd session of the Intergovernmental Meeting of Experts on the Preliminary Draft in June 2003 confirmed this consensus: see UNESCO Doc. CLT-2003/CONF.206/3, para. 3.

Convention'.¹³ This purpose is reinforced by the Operational Directives that state that the Intangible Cultural Heritage Fund, established under Chapter V of the Convention, shall be used *primarily* for international assistance.¹⁴ The Committee earmarks more than half of the Fund's resources for international assistance, see discussion below.

C23.S9 *Purposes of International Assistance*

C23.P35 Article 20 stipulates that international assistance may be provided:

- C23.P36 • to safeguard inscriptions on the List of Intangible Heritage in Need of Urgent Safeguarding,
- C23.P37 • to enable States Parties to prepare inventories of intangible cultural heritage on their territory (pursuant to Articles 11 and 12),
- C23.P38 • to support regional, sub-regional and international safeguarding efforts, and
- C23.P39 • 'any other purpose the Committee may deem necessary'.¹⁵

C23.P40 This list has been reiterated by the Committee in its Operational Directives. However, it has closed it off by replacing the opened-ended nature of the last clause with the words: 'preparatory assistance'.¹⁶ The Committee has the power to grant international assistance for preparatory work undertaken for proposals concerning safeguarding programmes, projects and activities (Article 18(2)). The Directives go further than the Convention and provide for international assistance for the 'elaboration' of nomination files for the List of Intangible Heritage in Need of Urgent Safeguarding also,¹⁷ as a form of preparatory assistance. The Committee has also actively encouraged the submission of nominations for inscription on the Urgent Safeguarding List in combination with a request of international assistance from the Fund.¹⁸

C23.S10 **Forms of International Assistance**

C23.P41 Article 21 provides guidance as to the types of international assistance that can be requested by States Parties and approved by the Committee. These may include but are not limited to studies on aspects of safeguarding, provision of experts and practitioners, training of necessary staff, the elaboration of standard-setting and other measures, the creation and operation of infrastructure, the supply of equipment and know-how, and other forms of financial and technical assistance including, where appropriate, low-interest loans or donations.¹⁹ While the provision appears to be vague in its construction with its reference to 'may take the following form' in its chapeau, the usual rules concerning treaty interpretation would indicate that the request must fall within the spirit of this list.²⁰ This is reinforced by the fact that it is not an open-ended list, with a generalized catch-all at the end; as is the case with the list contained in Article 20, which provides significant leeway to the Committee. Many grants of international assistance approved by the Committee or its Bureau until recently covered inventorying (for the purposes of possible nomination for listing); this has slowly shifted with an increasing number

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¹³ Decision 8.COM 5.c.1 (2013), para. 5.

¹⁴ OD, para. 66. See draft Art. 15(4): UNESCO Doc. CLT-2003/CONF.206/3.

¹⁵ Draft Art. 20 in the first preliminary draft convention is near identical to the final form of Art.20 of the Convention: UNESCO Doc. CLT-2003/CONF.206/3, p. 15.

¹⁶ OD, para. 9. ¹⁷ OD, para. 21. ¹⁸ Decision 11.COM 10(2016), paras 6 and 7.

¹⁹ See draft Arts 22 and 23: UNESCO Doc. CLT-2002/CONF.203/3; and revised draft Art. 22: UNESCO Doc. CLT-2003/CONF.206/3 (2003), para. 3.

²⁰ See Art. 31 of the Vienna Convention on the Law of Treaties, 23 May 1969, in force 27 January 1980, 1155 UNTS 331.

covering capacity-building, education and awareness-raising, and promotion and transmission of intangible cultural heritage.²¹

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The *aide-mémoire* on international assistance requests prepared by the Secretariat provides further information concerning the activities to be supported by international assistance. It defines safeguarding as activities focussed on ensuring the viability of the intangible cultural heritage through ‘strengthening practice and transmission and other activities, including those aimed at research or documentation’.²² It notes that the Committee have emphasized the need for a ‘balanced and well-rounded approach, with a complement of activities all oriented around the overall safeguarding objective’.²³ It also observed that ‘no single set of measures . . . is suited to every situation, and the evaluators and Committee have taken a broad and inclusive view of what measures can be included’.²⁴ To this end, the safeguarding initiatives should be concrete measures designed to effectively address the specific (rather than generic) threats faced by the intangible cultural heritage the subject of the international assistance request.²⁵ So for example, the Committee has repeatedly stated generalized threats like those appearing in the Preamble (e.g. globalization and social transformation) and others like an ageing population or the lack of interest from younger generations are too generic.²⁶ States Parties are advised that their main focus must be transmission rather than the ‘freez[ing] the element’; and that research is not a safeguarding measure in itself but should be aligned with transmission and ensuring its viability.²⁷ Conversely, while income-generating activities are recognized as playing an important role in contributing to the viability of some intangible cultural heritage, commercialization (especially tourism) must ‘remain within the control of the community, group or individuals concerned’ with ‘ritual aspects . . . fully respected’.²⁸ Consistent with the Convention, Operational Directives and Ethical Principles (EP),²⁹ the Committee has indicated that ‘all safeguarding measures should be voluntary and reflect the will and aspirations of the community concerned and that compulsion should have no place among them’.³⁰ To ensure that the proposed safeguarding measures are sustainable, the Committee has emphasized the importance of the scale of international assistance requested and that it be ‘closely focussed, clearly bounded to identified resources’.³¹ The *aide-mémoire* notes States Parties

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²¹ See Projects for the safeguarding of Intangible Cultural Heritage, available online at <<https://ich.unesco.org/en/project>> accessed 25 January 2019.

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²² UNESCO, *Aide-Mémoire for Completing the Request for International Assistance for 2016 and Later Requests*, Form ICH-04—Aide-Mémoire—EN—27 September 2015, available online at <<https://ich.unesco.org/en/forms>> accessed 12 December 2018), para. 62. The *aide-mémoire* is described as an ‘up-to-date compendium of the accumulated jurisprudence of the Convention was its strength, even if that meant it might lack advice on specific topics that had not yet come to the attention of the Committee or evaluation bodies. On the other hand, by depending on the written record of the Committee, the document also acquired a certain tone, meaning that it was a dry and detailed reference text’: UNESCO Doc. ITH/15/WOR/3, p. 6. It is viewed as useful to States Parties, their intended primary audience, and evaluators and Committee members: UNESCO Doc. ITH/15/WOR/3, p. 9.

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²³ Ibid. ²⁴ Ibid.

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²⁵ UNESCO (n. 22) at para. 70. See UNESCO Docs 9.COM 9.a (2014), para. 7; and 8.COM 7.a (2013), para. 8.

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²⁶ UNESCO Doc. ITH/14/9.COM/9.a Add.2 (2014), para. 13.

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²⁷ UNESCO (n. 22) at para. 66.

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²⁸ UNESCO (n. 22) at paras 68 and 69; and OD, para. 102(e).

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²⁹ Ethical Principles for Safeguarding Intangible Cultural Heritage (EP), Decision 10.COM 15.a (2015), available online at <<https://ich.unesco.org/en/ethics-and-ich-00866>> accessed 14 January 2019.

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³⁰ UNESCO (n. 22) at para. 73; and Decision 8.COM 7.a.6 (2013), para. 9.

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³¹ UNESCO (n. 22) at para. 72; and UNESCO Doc. IHT/12/7.COM/7, para. 21.

have often requested a donation to procure goods and services provided by UNESCO rather than a financial donation; and the form prepared by the Organization reinforces this bias.³²

Requests for International Assistance

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The Convention and the Operational Directives confirm that ‘all States Parties’ are eligible to submit an application for international assistance (Article 23(1)).³³ The Directives (and the related forms, instructions, and the *aide-mémoire*) indicate from the outset that international assistance is ‘supplementary’ to national safeguarding efforts. The Convention includes the proviso of ‘present on its territory’, while encouraging joint requests by two or more States Parties (Article 23(2)).³⁴ The *travaux préparatoires* make clear that the majority of experts maintained that ‘only the Member State involved with the particular intangible cultural heritage’ should be able to make an international assistance request and that ‘territorial link with the heritage in question was the primary factor’.³⁵ Applications by multiple States Parties are explicitly permitted given that intangible cultural heritage ‘sometimes transcends national borders’.³⁶ The *aide-mémoire* further notes that it is available for safeguarding intangible cultural heritage on a State Party’s territory, whether or not it is inscribed on the Lists.³⁷ Importantly, inscription (including on the Urgent Safeguarding List) does not automatically attract international assistance.³⁸ The Committee has repeatedly emphasized that the two mechanisms are ‘complementary but distinct nature and purposes’ with States Parties encouraged to use the mechanism most appropriate to their specific needs.³⁹ International assistance must be specifically requested by the State Party.

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The Convention provides that the Committee shall specify the information to be included in the request for international assistance (Articles 22(1) and 23(3)) and indicates what information can be required including measures ‘envisaged’, intervention ‘required’, and a cost assessment.⁴⁰ The Directives makes clear that all requests for international assistance must be made using the relevant forms approved by the Committee and available online via the official website or upon request from the Secretariat (OD, paras 21 and 22). Requests for international assistance including emergency assistance must be made using Form ICH-04.⁴¹ Requests for preparatory assistance to elaborate nomination files

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³² UNESCO (n. 22) at p. 7 and fn. 7. It goes on to state that Form ICH-04 be ‘revised to make that possibility more readily accessible’.

³³ OD, para.8. See UNESCO Doc. CLT-2002/CONF.203/3 (2002), draft Art. 19; and UNESCO Doc. CLT-2003/CONF.206/3 (2003), para. 29 and draft Art. 19 which is largely reflected in Art. 23 of the Convention: p. 15.

³⁴ OD, paras 13 and 15. ³⁵ UNESCO Doc. CLT-2003/CONF.206/3 (2003), para. 29.

³⁶ Ibid. ³⁷ UNESCO (n. 22) at para. 10.

³⁸ Decision 7.COM 7 (2012), para. 11. The *travaux* indicates that the requests for international assistance ‘ought not be restricted to instances of exceptional value alone’: UNESCO Doc. CLT-2003/CONF.206/3, para. 29. The *aide-mémoire* makes the observation that in the future when the international assistance requested begins to exceed the available resources of the Fund, the Committee may need to make a decision about prioritizing requests of international assistance for elements inscribed on the Urgent Safeguarding List: UNESCO (n. 22), para. 11; and UNESCO Doc. CLT-2003/CONF.206/3 (2003), para. 29.

³⁹ Decision 7.COM 8 (2012), para. 3; and Form ICH-01-bis, available online at <<https://ich.unesco.org/en/forms>> accessed 25 January 2019.

⁴⁰ Draft Art. 21, preliminary draft convention which was adopted in a simplified form in Art. 22: UNESCO Doc. CLT-2003/CONF.206/3, p. 15.

⁴¹ Request for International Assistance from the Intangible Cultural Heritage Fund ICH-04—Form (revised on 14 March 2018) and Instructions for completing Form ICH-04 (revised on 21 March 2018), available online at <<https://ich.unesco.org/en/forms>> accessed 10 December 2018.

for including in the Urgent Safeguarding List must use Form ICH-05.⁴² Requests for preparatory assistance for the elaboration of a proposal of a programme, project or activity for selection and promotion by the Committee (Article 18(2) of the Convention) must utilize Form ICH-06.⁴³ Forms ICH-05 and ICH-06 are only for the nomination or proposal processes respectively. Requests for international assistance for safeguarding of intangible heritage already inscribed on the Urgent Safeguarding List or the preparation of inventories generally must be made using Form ICH-04. The forms must be completed in English or French, the working languages of the Committee. They must be signed by an official empowered to do so by the State Party; and, where it is a multinational request, by an official from each of the participating States Parties. Applications can be withdrawn by the requesting State Party, or Parties, any time prior to its examination by the Committee, ‘without prejudice to its right to benefit from international assistance under the Convention’ (OD, para. 25). An expert meeting in 2015 reviewing the operation of international assistance requests found the forms were an ‘efficient tool in structuring information that is necessarily complex’.⁴⁴

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The content, length, formatting and supporting documentation of the forms for international assistance and preparatory assistance are high circumscribed. All the forms require information concerning the State Party or Parties making the request and their relevant contact details; US dollar amount of assistance requested together with contributions by the requesting State Party or Parties, other contributions and total project budget; geographical scope;⁴⁵ domains represented including but not limited to oral traditions and expressions (including language as a vehicle for ICH), performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe, and traditional craftsmanship; details of implementing agency (if the request is successful); details of preparatory measures and related timelines; details of any previous financial assistance for similar or related activities; and bank information details for money transfers (if the request is successful). Form ICH-04, covering international assistance generally, also requires information about the possible multiplier effect of the grant in stimulating financial and technical assistance from other sources; monitoring, reporting and evaluation, and sustainability of the results; and, project, ongoing benefits after the financial assistance ends.⁴⁶ The Consultative Body has encouraged States Parties preparing requests for international assistance to properly detail available ‘knowledge, skills and experience’ and ensure the project was properly integrated into ‘existing national frameworks’ to ensure its long-term impact and sustainability.⁴⁷

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⁴² Preparatory Assistance Nomination for Urgent Safeguarding List ICH-05—Form (revised on 21 March 2018) and Instructions for completing Form ICH-05 (revised on 21 March 2018), available online at <<https://ich.unesco.org/en/forms>> accessed 10 December 2018.

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⁴³ Preparatory Assistance Proposal for the Register of Good Safeguarding Practices ICH-06—Form (revised on 21 March 2018) and Instructions for completing Form ICH-06 (revised on 21 March 2018), available online at <<https://ich.unesco.org/en/forms>> accessed 10 December 2018.

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⁴⁴ UNESCO Doc. ITH/15/WOR/3, p. 7.

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⁴⁵ This request for information differs depending on the type of international assistance required. ICH-06—Form covering proposal for register of good safeguarding practices requests information on the national, subregional, regional or international (not necessarily geographically continuous areas) covered by the proposed programme, project or activity. ICH-05—Form, Question 6 provides the cautionary note: ‘While acknowledging the existence of the same or similar elements outside their territories, submitting States should not refer to the viability of such intangible cultural heritage outside their territory or characterize the safeguarding efforts of other States.’

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⁴⁶ ICH-04—Form, Questions 19–21.

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⁴⁷ UNESCO Doc. ITH/12/7.COM/7 (2012), para. 22.

C23.P46 The Committee has indicated requests that do not comply strictly with the forms by providing a response in ‘each and every section’ or exceed the maximum word count indicated will be returned by the Secretariat to the requesting State Party or Parties who will need to resubmit them in their proper form for evaluation in a subsequent round.⁴⁸ It has encouraged States Parties to learn from prior, successful applications for international assistance as good practice, while ensuring that they submit a unique, coherent and consistent application and do not simply reproduce earlier applications as though on an ‘assembly-line’.⁴⁹ This advice aligns with recent initiatives to increase the volume and quality of requests of international assistance instituted by the Committee, discussed below.

C23.P47 Consistent with Article 15 of the Convention,⁵⁰ the Forms require the requesting State Party or Parties to ‘identify clearly one or more communities, groups, or, if applicable, individuals concerned by the element to be nominated, including the role of gender’.⁵¹ They must detail how their involvement in the preparation of the request and its future implementation and monitoring should the request be successful.⁵² The Consultative Body has stated that: ‘There can be no safeguarding of an element without the interest, enthusiasm and active participation of the concerned community.’⁵³ The *aide-mémoire* indicates that ‘no topic receive[s] greater attention’ from the Committee and its bodies than that of the widest possible participation of communities, groups and relevant individuals.⁵⁴ The Committee will decline requests that have not demonstrated that sufficient participation ‘all stages . . . through ample and convincing evidence’.⁵⁵ Form ICH-05 requires information that the communities, groups or individuals concerned have given their consent prior to the submission of the nomination for inscription on the Urgent Safeguarding List.⁵⁶ While Form ICH-04 covering international assistance requests generally requires information concerning the impact on the capacity building of the relevant communities.⁵⁷ The *aide-mémoire* notes that community participation and consent is ‘essential’ for safeguarding including inventorying which is the most frequently seen category for international assistance requests.⁵⁸

C23.P48 Likewise, the Consultative Body has emphasized that in order to achieve this level of participation the community must be well-defined.⁵⁹ The Committee has emphasized the need to recognize the heterogeneity of communities and called on the widest possible community participation in the nomination process and ‘should reflect the diversity of their expectations and demands’.⁶⁰ Likewise, the Consultative Body has observed

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⁴⁸ Decision 7.COM 11 (2012), paras 17 and 18.

⁴⁹ UNESCO (n. 22) at paras 24–30; and Decision 7.COM 11 (2012), para. 16.

⁵⁰ OD, para.24; and EP.

⁵¹ Preparatory Assistance Nomination for Urgent Safeguarding List ICH-05—Form (revised on 21 March 2018), available online at <<https://ich.unesco.org/en/forms>> accessed 10 December 2018, Question 5.

⁵² Ibid. ICH-04—Form, Question 15 also requests information about their involvement in the evaluation and follow-up, adding: ‘[D]escribe not only the participation of the communities as beneficiaries of the project, but also their active participation in the project design; their perspectives and aspirations should be fully reflected in the proposed project.’

⁵³ UNESCO Doc. IHT/13/8.COM/7.a Add 2 (2013), para. 33.

⁵⁴ UNESCO (n. 22) at para. 32.

⁵⁵ UNESCO (n. 22) at paras 33 and 35; and Decision 9.COM 10 (2014), para. 14.

⁵⁶ ICH-05—Form, Question 9, and ICH-06—Form, Question 10. See also EP, Principle 4.

⁵⁷ ICH-04—Form, Question 16; and EP, Principle 9. ⁵⁸ UNESCO (n. 22) at para. 35.

⁵⁹ UNESCO Doc. ITH/14/9.COM 9 (2014), para. 28.

⁶⁰ UNESCO (n. 22) at para.37, citing Decision 8.COM 7.a.8 (2013).

that: ‘communities are not monolithic and homogenous, but are stratified by age, gender and other factors’ and has encouraged States Parties to ‘describe the diversity of actors and their roles in relation to specific intangible cultural heritage’.⁶¹ It has also repeatedly emphasized the need to ensure the participation of women, children and young people in safeguarding initiatives and international co-operation mechanisms especially in respect of transmission and raising awareness of the significance of intangible cultural heritage.⁶² It noted that the ‘invisibility of women as participants . . . continued to be a matter of no small concern’.⁶³ More recently, it expressed disquiet about whether women and girls’ participation in certain practices defined as intangible cultural heritage were voluntary or are reinforcing gender inequalities.⁶⁴ Further it denounced applications which laid blame with the lack of interest of young people, noting that their active participation through multiple pathways (e.g. apprentices, trainees, audience members, and gradually as practitioners) is vital to the element’s ‘long-term viability’.⁶⁵

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The Subsidiary Body has noted that an element is important not only to those directly involved in its ‘enactment and transmission’, but also ‘the larger population involved in appreciating, observing and participating in that heritage—all of those for whom it constitutes a source of identity and continuity’.⁶⁶ The Instructions for Completing the Forms remind State Parties that ‘mutual respect among communities, groups and individuals is a fundamental principle’ of the Convention. They are also requested to ‘take particular care in their requests to avoid characterizing the practices and actions within other States or including expressions that might inadvertently diminish such respect or impede dialogue that respects cultural diversity’.⁶⁷ This is reflective of the early recognition during the drafting of the Convention that intangible cultural heritage often ‘transcends national boundaries’.⁶⁸ Article 23(2) and the Operational Directives state international assistance requests *may* be submitted by two or more States Parties.⁶⁹ The Committee encourages the submission of multinational nominations on ‘elements shared by different communities, groups and individuals in order to facilitate dialogue between cultures and communities’.⁷⁰ Indeed, it has sanctioned an online resource by which States Parties announce their intention to nominate elements and other States Parties have the opportunity of co-operating in elaborating a multinational nomination.⁷¹

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However, the Subsidiary Body has noted it was ‘confronted with nominations whose objective does not seem to be a cultural one’ and ‘express[ed] its opinion that the 2003

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⁶¹ UNESCO Doc. ITH/11/6.COM/CONF.206/7 (2011), para. 29; and ITH/13/8.COM/7 (2013), para. 37. See also ITH/13/8.COM/8, para. 55: ‘The Body renews its invitation to submitting States to clearly describe gender roles in enacting and safeguarding proposed elements in future nominations.’

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⁶² UNESCO (n. 22) at para.39.

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⁶³ UNESCO Doc. ITH/12/7.COM/7 (2012), para. 30; ITH/11/6.COM/CONF.206/7 (2011), para. 29.

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⁶⁴ UNESCO Doc. ITH/17/12.COM/11 (2017) para. 33: ‘For example, when the purpose of young girls’ participation is to find a suitor for marriage, there is an issue around whether the girls agree to partake of their own free will or whether an element of coercion was involved.’

C23.N65

⁶⁵ UNESCO Doc. ITH/11/6.COM/CONF.206/7 (2011), para. 30.

C23.N66

⁶⁶ UNESCO Doc. ITH/13/8.COM/8, para. 50; and Art. 2(1) of the Convention. The Subsidiary Body involved in the evaluation of nomination for inscription on the Representative List until 2015 was like the Consultative Body which considered IA requests, was also a precursor to the Evaluation Body which subsequently assumed all these roles: OD, para.27.

C23.N67

⁶⁷ See Instructions for Completing Form ICH-05 (revised on 21 March 2018), available online at <<https://ich.unesco.org/en/forms>> accessed 10 December 2018, para. 14; and Instructions for completing Form ICH-04, para. 13.

C23.N68

⁶⁸ *Ibid.* ⁶⁹ OD, para. 15. ⁷⁰ Decision 9.COM 10 (2014), para. 5.

C23.N71

⁷¹ UNESCO Doc. ITH/12/7.COM/14 (2012); and Decision 7.COM 14 (2012), para. 5.

Convention is not an appropriate arena for settling political issues'.⁷² The Evaluation Body likewise observed that some nominations had 'nationalistic aspirations . . . as well as tendencies towards exclusivity over element' which can 'imply appropriation' when an element is shared by different communities and States Parties.⁷³ It recommended States Parties avoid adjectives related to nationality 'that may reflect claims of ownerships'.⁷⁴

AQ: Lenzerini, pp.# above – please supply cross-ref

C23.S12 Conditions Governing International Assistance

C23.S13 *Evaluation of Requests*

C23.S14 Evaluation Process

C23.P51 Unlike Article 13 of the World Heritage Convention, Article 7 of the Intangible Cultural Heritage Convention concerning the functions of the Intergovernmental Committee does not prescribe the evaluation process for international assistance requests it must follow.⁷⁵ Instead, much of the information concerning the evaluation process including the timelines are contained in Chapter V and elaborated in the Operational Guidelines.

C23.P52 Requests for international assistance up to US\$100,000 (except requests for preparatory assistance) and emergency requests regardless of the amount can be submitted at any time.⁷⁶ These requests are not subject to the usual annual deadlines and are examined and approved by the Bureau of the Committee, rather than being evaluated by the Evaluation Body and then by the Committee.⁷⁷ The form requesting emergency assistance must have this clearly indicated on Form ICH-05 with relevant supporting information, otherwise the 'request will be treated according to the normal procedures and timetables'.⁷⁸ The Secretariat assesses the completeness of the request; it may ask for further information and advise the requesting State(s) of possible examination dates.

C23.P53 The Evaluation Body is charged with evaluating international assistance requests of greater than US\$100,000.⁷⁹ It will submit to the Intergovernmental Committee an evaluation report that includes a recommendation 'to approve or not to approve the International Assistance request, or to refer the request to the submitting State(s) for additional information'.⁸⁰ The Evaluation Body has observed that where: '[T]he needs assessment, definition of threats or gaps analysis was inadequate' the proposed responses were 'inevitably incomplete or likely to be ineffective'.⁸¹ It added that 'generic factors' like globalization which may be a threat to the element 'usually do not lend themselves to solutions that are within the capacity of the submitting State to achieve'; however where the threat is identified more specifically it becomes 'easier to imagine that an International Assistance project could begin to rebalance things through concrete interventions'.⁸² The Evaluation Body's predecessor, the Consultative Body indicated its frustration in being

C23.N99

⁷² UNESCO Doc. ITH/13/8.COM/8 (2013), para. 49.

⁷³ UNESCO Doc. ITH/17/12.COM/11 (2017), para. 24.

⁷⁴ Ibid. See also UNESCO, Background Paper for UNESCO Meeting 'Intangible Heritage Beyond Borders: Safeguarding Through International Cooperation', Bangkok, 20–21 July 2010; and Lenzerini, [pp.#] above.

⁷⁵ OD, paras 54–6. See draft Arts 13, 20, 21, and 24, First preliminary draft, UNESCO Doc. CLT-2002/CONF.203/3 (2002).

⁷⁶ In 2016, the maximum had increased from US\$25,000 to US\$100,000 per request which could be considered by the Bureau. This change effectively increased the number of other types of nominations/requests a State Party could make during a single cycle.

⁷⁷ OD, paras 47–9. ⁷⁸ UNESCO (n. 22) at para. 50. ⁷⁹ OD, para. 27.

⁸⁰ OD, para. 30. ⁸¹ UNESCO Doc. IHT/12/7.COM/7 (2012), para. 35.

⁸² UNESCO (n. 22) at para. 55; and UNESCO Doc. IHT/12/7.COM/7 (2012), para. 35.

confined to evaluating only the paper dossier without a site visit, noting that this did not enable it to ‘fully appreciate the complex situations’ related to each file.⁸³ More recently, following the rejection of a number of the Evaluation Body’s recommendations by the Committee, procedures were suggested to facilitate dialogue between the Body and submitting State Parties and render the application process more flexible.⁸⁴

C23.P54

The Evaluation Body is a consultative body of the Committee (Article 8(3)). It consists of twelve members appointed by the Committee: six experts nominated by States Parties who are not members of the Committee and six accredited non-governmental organizations,⁸⁵ with due consideration made to equitable geographical representation and the domains of intangible cultural heritage. The period of office of each member cannot exceed four years, with a renewal of a quarter of the membership each year.⁸⁶ The Operational Directives noted that: ‘[o]nce appointed by the Committee, the members of the Evaluation Body shall act impartially in the interests of all the States Parties and the Convention’.⁸⁷ A member recuses themselves from deliberations involving a request from their State Party.

C23.P55

The Secretariat is required to provide the Committee with an overview of international assistance requests including summaries and evaluation reports, which are made available to States Parties to consult.⁸⁸

C23.P56

The Committee decides two years beforehand how many requests for international assistance greater than US\$100,000 it can consider in the following two cycles based on available resources and capacity.⁸⁹ To the extent it is able, the Committee will try to examine at least one file (covering either a nomination to the Lists, programme proposes or requests of international assistance) from a submitting State. When a State Party has submitted more than one file in the same cycle, they will be assessed based on the order of priority indicated by the requesting State Party. States are invited to prioritize nominations for the Urgent Safeguarding List.⁹⁰ Following an examination of the request file, the Committee decides ‘whether or not an international assistance request greater than US\$100,000 shall be approved, or whether the proposal shall be requested to the submitting State(s) for additional information’.⁹¹ Where the Committee has not approved the request or asked for additional information from the submitting State, an updated and supplemented application can be re-submitted in a subsequent cycle.⁹² As before, the request must address all the necessary criteria and there is no guarantee that it will be successful upon re-examination.⁹³

C23.P57

The Secretariat communicates the decisions concerning international assistance to the requesting State Party or Parties within two weeks of the decision. The Secretariat will then prepare the agreement with the requesting State Party or Parties on the details of the assistance.⁹⁴

C23.N83

⁸³ UNESCO Doc. ITH/14/9.COM/9 (2014), para. 36.

C23.N84

⁸⁴ UNESCO Doc. ITH/17/12.COM/12 (2017).

C23.N85

⁸⁵ The role, participation and accreditation of non-governmental organizations is covered in OD, paras 91–9; see also the chapter by Chiara Bortolotto and Jorjin Neyrick on Art. 9.

C23.N86

⁸⁶ OD, para. 28. Three months prior to the Committee’s opening session, the Secretariat will advise States Parties within each Electoral Group of a vacancy. Up to three possible candidates are forwarded to the Secretariat by the Electoral Group at least six weeks prior to the opening session. See also Art. 9(1) of the Convention that accredited NGOs shall have an advisory function to the Committee including preparing evaluation reports for it when it is examining international assistance requests (OD, para. 96(c)).

C23.N89

⁸⁷ OD, para. 28.

⁸⁸ OD, para. 31.

⁸⁹ OD, para. 37.

⁹⁰ OD, para. 34.

C23.N93

⁹¹ OD, para. 35.

⁹² OD, para. 36.

⁹³ OD, para. 37.

⁹⁴ OD, para. 52.

C23.P58 As explained below, successful requests for international assistance are subject to appropriate monitoring, reporting, and evaluation.

C23.S15 **Evaluation Criteria**

C23.P59 The Operational Directives state that for the purposes of international assistance the Committee will base its decision on criteria including: the community, group or individuals concerned were involved in the preparation of the request and will be involved in the implementation of the proposed activity; amount requested is appropriate; the proposed activities are well conceived and feasible; the project will have lasting effects; the beneficiary State Party shares costs to the limits of its resources; it is aimed at building or reinforcing capacity in the field; and the beneficiary State Party has previously implemented funded activities in compliance with the relevant regulations and conditions.⁹⁵ The Committee will also take into account the principle of geographical distribution and special needs of developing States (OD, para. 10). Related to this, the Committee should consider whether it involves bilateral, regional, or international co-operation (where appropriate); and that the assistance could have a multiplier effect by eliciting financial and technical help from other sources. Several of these criteria reiterate conditions outlined in the Convention. Therefore, although the Committee may accord each a different weight, it is obliged to take each of them into account.⁹⁶

C23.P60 The *aide-mémoire* notes that the evaluation and examination of requests for international assistance is distinguishable from the process of evaluation of nominations for the Lists.⁹⁷ The Consultative Body indicated that a ‘recommendation to approve or not to approve is therefore based on the degree to which the request responds to the criteria as a whole’.⁹⁸

C23.P61 The Committee has recognized that requests for international assistance should address the role of intangible cultural heritage in sustainable development including ‘economically viable practices’.⁹⁹ This is part of the broader process within the implementation framework of the Convention (and Chapter VI of the Operational Directives) and UNESCO to align with the United Nations’ sustainable development goals.¹⁰⁰ In addition, the requests for international assistance must be consistent with a State Party’s obligations in respect of other UNESCO Culture Conventions, namely, the World Heritage Convention, and Convention on Diversity of Cultural Expressions,¹⁰¹ and other related treaties including the Convention on Biological Diversity (Articles 3(a), (b), and 14(c) Convention).¹⁰² While encouraging States Parties to appreciate the synergies between the 2003 and 2005 Conventions, the Committee observed a lack of understanding concerning these instruments and their distinctive characters, with States often interchanging or confusing terms across the treaty regimes.¹⁰³ The Committee has reiterated the differing purposes of the Funds under the respective Conventions. It emphasizes that the 2005 Convention aims at

⁹⁵ OD, para. 12. ⁹⁶ UNESCO (n. 22) at para. 17. ⁹⁷ UNESCO (n. 22) at para. 15.

⁹⁸ UNESCO Doc. ITH/13/8.COM/7.c (2013), para. 8.

⁹⁹ Decision 9.COM 10 (2014), para. 6; Art. 2(1) of the Convention; and UNESCO Doc. ITH/14/9.COM/13.b (2014).

¹⁰⁰ Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, UN Doc. A/RES/70/1.

¹⁰¹ Article 3(b) of the Intangible Heritage Convention; and Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Convention on Diversity of Cultural Expressions), 20 October 2005, in force 18 March 2007, 2440 UNTS 311.

¹⁰² Convention on Biological Diversity (CBD), 5 June 1992, in force 29 December 1993, 1760 UNTS 79.

¹⁰³ UNESCO Doc. ITH/13/8.COM/7 (2013), para. 33.

‘fostering the emergence of a dynamic cultural sector’; while the 2003 Convention and its international assistance has the objective of fostering ‘an enabling environment for communities to practice and transmit their intangible cultural heritage, and not to develop or strengthen cultural industries’.¹⁰⁴

C23.S16

Order of Priorities

C23.P62

The Convention only provides limited guidance as to the prioritization of international assistance requests. The only explicit reference is contained in Article 22(2), which states that the Committee shall examine requests for assistance in emergencies, as a matter of priority.¹⁰⁵ However, the Operational Directives elaborate upon the implicit referencing of prioritization contained in Part V of the Convention. The Directives provide that when examining files, the Committee shall endeavour to examine at least one file from a State Party with priority given to files from States Parties with no element inscribed, best safeguarding practice selected or request for international assistance more than \$100,000; multinational files; and States Parties with the fewest number of elements inscribed, best practices selected or international assistance requests.¹⁰⁶

C23.P63

If a State Party submits more than one file, they shall indicate order of priority between those files, for the Committee (OD, para. 34). The Committee has expressed concern with increasing number of multiple requests being made by States Parties sometimes in the same round, raising issues around their capacity to successfully implement the proposed projects.¹⁰⁷ The Bureau is addressing the ‘issues related to an increasing number of International Assistance requests being submitted to the Bureau by a single country, either at the same time or in quick succession’ and noted that nearly 25% of all requests filed were by three States alone.¹⁰⁸ It notes that submission by a single country at the same time or in rapid succession of small requests (below US\$100,000) to the Bureau, thereby bypassing the scrutiny of the Committee poses a potential governance problem for the Convention.¹⁰⁹ In response in 2018, after rejecting the Bureau’s recommendation to consider possible revision of the Operational Directives to limit the amount requested by a single country through the Bureau (excluding emergency requests) to US\$200,000 per biennium, the Committee requested that the Secretariat monitor this situation and report back to it.¹¹⁰

C23.S17

Emergency Assistance

C23.P64

A request of international assistance is considered an emergency request and eligible for priority consideration when ‘a State Party finds itself unable to overcome on its own any circumstance due to calamity, natural disaster, armed conflict, serious epidemic or any other natural or human event that has severe consequences’ for the intangible heritage or community, group or individuals who are ‘bearers’ of the heritage.¹¹¹ The Istanbul

C23.N104

¹⁰⁴ UNESCO Doc. ITH/12/7.COM/10 (2012), para. 11.

C23.N106

¹⁰⁵ See draft Art. 21(2); UNESCO Doc. CLT-2003/CONF.206/3. ¹⁰⁶ OD, para. 34.

C23.N107

¹⁰⁷ UNESCO Doc. ITH/18/13.COM/12 (2018), para. 9.

C23.N108

¹⁰⁸ UNESCO Doc. ITH/18/13.COM/12 (2018), paras 2 and 7. For the period 2008–2018, of the total 173 requests for international assistance below US\$100,000, Kenya (11), Uganda (9), Zambia (12), and Zimbabwe (12). However, it is important to note that Africa is a priority region for UNESCO.

C23.N109

¹⁰⁹ See UNESCO Doc. ITH/18/13.COM/12 (2018), Annex.

C23.N110

¹¹⁰ Decision 13.COM 12 (2018), para. 6; and draft decision 13.COM 12, para. 6 in UNESCO Doc. ITH/18/13.COM/12 (2018), para. 13.

C23.N111

¹¹¹ OD, para. 50.

Declaration of 2002 adopted during the drafting and negotiation of the text of the Convention responded to the destruction of cultural heritage in Afghanistan and ‘territories suffering from poverty, conflicts or crisis’ by calling on UNESCO to ‘examine the possibility of establishing a special fund’ to facilitate international assistance in such circumstances.¹¹² This sentiment is reflected also in the Convention’s preamble which recognizes:

C23.P65 [T]he 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*, . . . (emphasis added).

C23.P66 To this end, the Committee repeatedly invited ‘States Parties to request emergency International Assistance, as they deem appropriate, and to make use of the technical assistance mechanisms with the support of the Secretariat, with a view to finalizing their requests in line with the principles of the Convention’ in such circumstances.¹¹³ More recently, it has noted the ‘promising initial results’ arising from the first grant of emergency assistance under the Fund designed to contribute to ‘reconstruction and social cohesion’ in Mali following civil unrest and armed conflict in 2012.¹¹⁴

C23.S18 **Accountability and Role of Beneficiary States Parties**

C23.S19 *Agreement Between Beneficiary State Party and Committee*

C23.P67 The Convention requires that the grant of international assistance be regulated through an agreement between the beneficiary State Party and the Intergovernmental Committee (Article 24(1)).¹¹⁵ The *aide-mémoire* indicates the request approved by the Committee or Bureau ‘serves as the primary content of the contract between UNESCO and the implementing organization’.¹¹⁶ Further, the Secretariat ‘cannot enter into a contract with the implementing agency if the budget is not carefully prepared and readily understandable’.¹¹⁷ The Consultative Body has observed that there is a general problem with requests proposing to allocate the largest part of the budget to the implementing organization, with the community, group or individual attached to the intangible heritage to be safeguarded ‘often neglected’ or not enumerated at all. It found that this ‘necessarily jeopardizes the feasibility and sustainability’ of the project.¹¹⁸ It observed that it was ‘inexplicable why, for instance, in some budgets researchers should have their time compensated while community members did not’, especially when working side-by-side in the inventorying process.¹¹⁹

C23.N111

¹¹² 3rd Roundtable of the Ministers of Culture, ‘Intangible Cultural Heritage—A Mirror of Cultural Diversity’, 17 September 2002, Final Communiqué (Istanbul Declaration).

¹¹³ Decision 13.COM 11, para. 10 (2018). See also UNESCO Doc. ITH/18/13.COM/11 (2018).

¹¹⁴ Decision 10.COM 6.c (2015), para. 6.

¹¹⁵ See draft Art. 26, First preliminary draft Convention, UNESCO Doc. CLT-2002/CONF.203/3 (2002).

¹¹⁶ UNESCO (n. 22) at para. 102.

¹¹⁷ UNESCO (n. 22) at p. 33; and UNESCO Doc. ITH/13/8.COM/7.c (2013), para. 3 (‘that contract shall strictly reflect the scope of the work proposed in the approved request and correspond exactly to its timetable and budget, except for minor technical corrections’).

¹¹⁸ UNESCO (n. 22) at para. 81.

¹¹⁹ UNESCO (n. 22) at para. 82; UNESCO Doc. 7.COM 10 (2012), para. 23; and EP, Principle 7.

C23.S20

Cost-Sharing

C23.P68

The Convention lays down that ‘as a general rule’, the State Party shall ‘within the limits of its resources’ share the cost of the safeguarding initiative the subject of the international assistance request (Article 24(2)).¹²⁰ The Consultative Body has observed that this contribution by the requesting State Party is ‘proof of their commitment and awareness of the national resources’ to be invested during the life of the project and after the grant of international assistance has finished.¹²¹ This requirement is reaffirmed in the Operational Directives (OD, para. 8), and relevant forms prepared by the Secretariat. Form ICH-04 Timetable and Budget has a column dedicated to outlining the requesting State Party’s contribution. They are encouraged to show not only financial contributions but also staff time, office space, transportation, or other in-kind services to be quantified like any other financial contribution so that the Evaluation Body and Committee can take them into account when considering the State Party’s contribution to the proposed project.¹²² This information also informs the assessment of the sustainability of the project and the multiplier effect of international assistance.¹²³

C23.S21

Monitoring, Reporting, and Evaluation

C23.P69

Finally, the beneficiary State Party is required to submit a report to the Committee concerning the use of the international assistance (Article 24(3)).¹²⁴ The Operational Directives likewise broadly state that ‘assistance will be subject to appropriate monitoring, reporting and evaluation’.¹²⁵ This aspect is also important given that one of the evaluation criteria of international assistance requests covers how a requesting State Party has implemented prior grants.¹²⁶ The *aide-mémoire* states that during the design phase, the project should including a mechanism for ongoing monitoring of the project’s implementation, and final reporting requirements including evaluation of results.¹²⁷ Building these elements into the application is an ‘important demonstration that the project is “well-conceived and feasible”’.¹²⁸ Ongoing monitoring is viewed as ensuring adherence to the agreed requirements of the grant and Operational Directives.¹²⁹ The role of communities, groups or individuals concerned should be factored into these reporting mechanisms to enable their ‘concerns and aspirations [to] be raised’ and the project can be improved.¹³⁰ The requirement for progress reporting in multi-year projects and final reporting is incorporated into the contract with UNESCO. The forms for progress and final reporting are prescribed by the Secretariat and are publicly available on the official

C23.N120

¹²⁰ See draft Arts 25 and 26(2), First preliminary draft Convention, Doc. CLT-2002/CONF.203/3 (2002); and UNESCO Doc. CLT-2003/CONF.206/3, para. 32.

C23.N122

¹²¹ UNESCO Doc. 7.COM 10 (2012), para. 27. ¹²² UNESCO (n. 22) at para. 80.

C23.N123

¹²³ UNESCO (n. 22) at paras 105–8.

C23.N124

¹²⁴ This reporting is in addition to the periodic (six-yearly) reporting to the Committee by States Parties under Arts 29 and 30 of the Convention.

C23.N125

¹²⁵ OD, para. 53.

C23.N126

¹²⁶ OD, para. 12. See also UNESCO Doc. ITH/18/13.COM/12 (2018), para. 9: ‘[T]he Secretariat is regularly faced with challenges in closing projects due to delays in their implementation at the national level; one case of a project that could not be closed for several years concerned a State that continued to submit several other requests to be implemented by different implementing agencies. In such cases, the conformity to criterion A.7 for new submissions could be questions (paragraph 12 of the Operational Directives). Taking into account the financial risk for the implementation of the Intangible Cultural Heritage Fund, the importance of compliance with criterion A.7 as a risk mitigation measure is of utmost importance.’

C23.N128

¹²⁷ UNESCO (n. 22) at para. 100. ¹²⁸ Ibid.

C23.N129

¹²⁹ UNESCO Doc. ITH/17/12.COM/11 (2017), para. 62. ¹³⁰ Ibid.

website. The *aide-mémoire* indicates that the reporting should be based on ‘reliable data’ and with multi-year projects ‘external evaluation is advised and should be built into’ the description, timetable and budget.¹³¹ Evaluations should include assessments of the project’s outcomes by communities, groups or individuals concerned and the impact of activities upon them including capacity-building.¹³² There is limited guidance on this back-ended aspect of international assistance, compared to the detailed guidance, forms and institutional oversight of the application process. The Committee and Evaluation Body emphasized the importance of effectively tracking the future development and sustainability of projects after the international assistance has expired.¹³³

Concluding Observations

C23.S22

C23.P70

The fate of the international assistance mechanism during the first fifteen years of the Convention’s operation reveals disjunctures between the text of the treaty, and its related documents, and its day-to-day implementation. These disjunctures, exposed during the Convention’s drafting and negotiation, have become more pronounced since the treaty came into force. These have been especially overt in three areas, namely, international assistance as the explicit objective of the Convention and its ongoing under-utilization; bureaucratization and the return of the expert; and the roles of States Parties and communities, groups, or individuals concerned.

C23.P71

As noted above, international assistance has been viewed as a central objective of the Convention from the first preliminary draft, to the final text, and subsequent instruments and decisions adopted by its governing bodies. Yet, much like the dynamics of the World Heritage Convention, while the Representative List under this Convention has flourished, the attraction of international assistance has remained intractably modest. The 2013 IOS Evaluation Report found that while the Representative List ‘contributed to the visibility of the Convention and to raising awareness about ICH, its relative importance was overrated’; while the other mechanisms like International Assistance are ‘under-utilized’.¹³⁴ The Committee has repeatedly noted the relatively low number of requests for international assistance in the light of its central importance to achieving the purposes of the Convention and the challenges faced by several States Parties.¹³⁵ From its first analysis of the Intangible Cultural Heritage Fund resources and its uses in 2010 to its most recent in 2018, it has noted that its income has exceeded expenditure largely because of the ‘low use States Parties have made of the International Assistance mechanism’.¹³⁶ Nonetheless, the Committee has ‘expresse[d] satisfaction’ that developing countries, particularly in

C23.N196

¹³¹ UNESCO (n. 22) at para. 101.

¹³² UNESCO (n. 22) at paras 103 and 104.

¹³³ Decision 12.COM 11 (2017), para. 16; and UNESCO Doc. ITH/17/12.COM/11 (2017), para. 62. During the same session, the Committee approved at the draft Overall Results Framework for monitoring the implementation of the Convention which only explicitly cover the implementation of Art. 21 under assessment criteria 26.1: UNESCO Doc. ITH/17/12.COM/Decisions (2017), p. 11.

¹³⁴ UNESCO, Evaluation of UNESCO’s Standard-setting Work of the Culture Sector: Part I—2003 Convention for the Safeguarding of the Intangible Cultural Heritage. Final Report (October 2013), UNESCO Doc. IOS/EVS/PI/129 REV, paras 230 and 298. The report notes that: ‘Building States Parties’ capacities for the implementation of the 2003 Convention is an urgent priority and the IA mechanism can play an important role in this’ (UNESCO Doc. IOS/EVS/PI/129 REV, para. 233).

¹³⁵ Decision 8.COM 7.c (2013), para. 4.

¹³⁶ General Assembly of the States Parties to the Convention, Use of Resources of the Intangible Cultural Heritage Fund, 4 May 2018, UNESCO Doc. ITH/18/7.GA/8, para. 7. See also ICG, Draft Plan for the Use of the Resources of the Intangible Cultural Heritage Fund in 2018–2019, 3 November 2017, UNESCO Doc. ITH/17/12.COM/7; and Decision 11.COM 6(2016).

AQ: should this be a Level 1 heading?

Africa, continued to be the main recipients of international assistance from the Fund.¹³⁷ Indeed, there has been significant funding by individual States Parties, as earmarked funds or funds-in-trust, to support other States Parties in their implementation of the Convention; and safeguarding in conflict and post-conflict situations funded by regional organizations, namely the European Union.¹³⁸

C23.P72

In response to the ongoing under-utilization of the mechanism of international assistance, the IOS Evaluation Report recommended that priority be given to international assistance within the ceiling of nominations and requests processed by Bureau and Committee; and its promotion as a capacity-building mechanism for States Parties.¹³⁹ Likewise, the Committee observed that States Parties encountered difficulties preparing requests that met the selection criteria and UNESCO's administrative and financial regulations. It recommended that the Secretariat devise a means of offering technical assistance through experts to States Parties seeking to elaborate a request and to be paid from the Fund.¹⁴⁰ In response, in 2014, the Secretariat devised a short-term strategy to provide technical assistance to requesting States Parties.¹⁴¹ Within twelve months, eight States Parties were provided with expert assistance; two of which were approved by the Bureau.¹⁴² The technical assistance was not simply to prepare a 'convincing request' but also 'develop well-conceived projects that they can successfully and sustainably implement' if funds are granted by the Committee.¹⁴³ A 2015 workshop on international assistance maintained that: '[T]echnical assistance should be seen as an investment in the long-term capacities of a beneficiary State to implement the Convention effectively' and 'not expenditure rates'.¹⁴⁴ In this context, it is important to heed the caution expressed by the IOS Evaluation Report concerning possible future cost blowouts of advisory services.¹⁴⁵

C23.P73

In 2018, the Committee again acknowledged that 'underutilization' of international assistance is 'a major challenge' under the Convention.¹⁴⁶ It found that expenditure remained proportionally low despite efforts to reverse this trend through various initiatives including increasing request for international assistance to the Bureau from a maximum of US\$25,000 to US\$100,000 and provision of expert assistance in the preparation of request applications.¹⁴⁷ In response, the General Assembly of States Parties approved use of monies from the Fund to increase Secretariat staffing for the Convention, requesting that it 'intensify its efforts in favour of greater International Assistance'.¹⁴⁸ The General Assembly noted that increased staffing was necessitated by the 30% rise in States Parties to the Convention and the proliferation of the Secretariat's obligations related to the work

C23.N137

¹³⁷ Decision 10.COM 6.c, para. 3. See UNESCO Doc. ITH/15/10.COM/6.c, para. 9.

C23.N138

¹³⁸ As at January 2019, of the 172 grants of international assistance, ninety-six were from earmarked funds or funds-in-trust, rather than the Intangible Cultural Heritage Fund: at Projects for the safeguarding of intangible cultural heritage, available online at <<https://ich.unesco.org/en/project>> accessed 10 January 2019.

C23.N139

¹³⁹ Recommendations 13 and 14, UNESCO Doc. IOS/EVS/PI/129 REV, para. 233. ¹⁴⁰ Ibid.

C23.N142

¹⁴¹ Decision 8.COM 7.c (2013), para. 5. ¹⁴² UNESCO Doc. ITH/15/WOR/3, p. 2.

C23.N144

¹⁴³ UNESCO Doc. ITH/15/WOR/3, p. 3. ¹⁴⁴ UNESCO Doc. ITH/15/WOR/3, p. 9.

C23.N145

¹⁴⁵ UNESCO Doc. ITH/13.8/COM/5.c, Annex II, p. 17: referred to the operation of World Heritage Convention where the costs of the advisory services obtained by its three statutory bodies constituted a large part of the budget.

C23.N146

¹⁴⁶ UNESCO Doc. ITH/18/7.GA/8, para. 10. ¹⁴⁷ Ibid.

C23.N148

¹⁴⁸ Resolution 7.GA 8, para. 6. The draft plan for use of the resources of the fund provided that 56.55% of the total amount proposed for 2018–2019 (or US\$4,858,267) is earmarked for International Assistance (including related Preparatory assistance) and 8.20% for increased Secretariat staffing (or US\$704,456): UNESCO Doc. ITH/18/7.GA/8, Annex, p. 10.

programmes of its governing bodies—where ‘the scope of operation for each of them has become increasingly complex and voluminous’.¹⁴⁹ The bureaucratic workload of all actors under the auspices of the Conventions is only likely to increase with the recent push to ensure rigour and oversight over effective implementation and timely completion of funded projects. The Overall Results Framework designed to evaluate implementation of the Convention and adopted by the General Assembly of States Parties in 2018 evidences this trend. Yet, of its twenty-six core indicators, only one—the last—indicator is dedicated to ‘ICH Fund effectively supports safeguarding and international engagement’; and only one assessment criterion conceivably covers international assistance.¹⁵⁰ This is arguably reflective of the diminished visibility of international assistance in the overall context of the text of the Convention as compared to the more expansive approach of the World Heritage Convention (cf. Article 7(g)(ii) of the Convention and Article 13 of the WHC).

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This growth in the bureaucratic infrastructure to support the implementation of the Convention and safeguarding of intangible cultural heritage is an important development for the purpose of oversight, transparency, efficiency and effectiveness. The creation of the tailored forms, *aide-mémoire*, expert assistance and evaluation framework (including the establishment of the Evaluation Body) are welcome developments in endeavouring to ensure international assistance funding is distributed equitably and to where it is needed. However, it may also come at a cost. The fact that there is a need for a lengthy *aide-mémoire* and additional expert advice *to complete the prescribed form*, which can only be done in English or French, also reflects the limitations of the current process. It has become increasingly formalized, rigid, and inflexible. Characteristics that the Committee has recognized to varying degrees and is seeking to remedy.¹⁵¹

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This return of the expert has become manifest in other ways within the operation of the international assistance mechanism. The privileging of the interests of researchers in the safeguarding of intangible cultural heritage was criticized in the lead-up to the draft of the Convention. The favouring of researchers and government officials was raised as a concern by the Convention’s precursor, the Recommendation on the Safeguarding of Traditional Culture and Folklore (1989 Recommendation).¹⁵² West Germany stressed that the draft text recommendation ‘should concentrate more upon the persons who actually produce the folklore. They should be helped to help themselves and they should not be degraded by researchers, folklorists, etc. to mere statist[sic]’.¹⁵³ This issue was revisited three decades later. In 2017, the Evaluation Body noted that increasing number of requests for international assistance for safeguarding activities to be implemented by universities.¹⁵⁴ In response it once again stressed that ‘the primary focus on such projects should be on the safeguarding activities carried out in close collaboration with the bearer communities themselves, rather than exclusively on research and teaching activities’.¹⁵⁵

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¹⁴⁹ UNESCO Doc. ITH/18/7.GA/8, para. 15.

¹⁵⁰ Resolution 7.GA 9 (2018), Annex, p. 9.

¹⁵¹ UNESCO Docs ITH/17/12.COM/12 (2017); ITH/17/12.COM/13 (2017); Decision 12.COM 13(2017); ITH/18/13.COM/16 (2018); and Decision 13.COM 16(2018).

¹⁵² Paragraph A of Recommendation on the Safeguarding of Traditional Culture and Folklore, adopted by the UNESCO General Conference, 15 November 1989, available online at <http://portal.unesco.org/en/ev.php-URL_ID=13141&URL_DO=DO_TOPIC&URL_SECTION=201.html> accessed 16 January 2019; and J. Blake, *Developing a New Standard-setting Instrument for the Safeguarding of Intangible Cultural Heritage: Elements for Consideration* (Revised edn, UNESCO, 2002); UNESCO Doc. CLT-2001/WS/8. Rev. p. 137.

¹⁵³ See UNESCO Doc. 25C/33, Annex II, para. 23; and para. 35 (France).

¹⁵⁴ UNESCO Doc. ITH/17/12.COM/11 (2017), para. 60. ¹⁵⁵ *Ibid.*

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Most of the assessments concerning the under-utilization of the mechanism of international assistance refer to its importance in facilitating States Parties implementation of their obligations under the Convention. Unsurprisingly, the initiatives (including financial and technical assistance) designed to address this trend have invariably targeted them. This treaty and its attendant framework is a product of our present-day international order and international legal framework in which States are the predominant actors. However, the earliest efforts to draft and adopt a multilateral instrument for the safeguarding of intangible cultural heritage needed to address the conundrum that treaties remained instruments between States and that effective safeguarding of intangible heritage needed to recognize the role of communities, groups and individuals concerned. The fractious efforts to define a greater or lesser role for non-state actors in the context of the drafting and negotiation of the final text of the Convention is well-documented.¹⁵⁶ It is a tussle which continues to define and hamstring the operation of its mechanisms including (and perhaps especially) international assistance. For it is only a State Party that is able to make a request for international assistance; it is the Committee (or its Bureau) made up of members from States Parties who determine the fate of such requests; and the contract for the implementation of successful grants is made with the implementing organization nominated by the State. The small crack of light provided for communities, groups or individuals in the text of the Convention has been expanded and emphasized by the Operational Guidelines, Ethical Principles and, more recently, the Overall Results Framework. This, in turn, is replicated in the Committee and Evaluation Body's feedback in respect of the formulation of international assistance requests and the monitoring, reporting and evaluation of successful grants. Yet despite these efforts, the reality remains that States Parties continue to prioritize the listing of select elements of intangible culture heritage on the Representative List, over facilitating capacity-building through the mechanism of international assistance of safeguarding efforts by communities, groups, or individuals on their territories.

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¹⁵⁶ For more generally on the participation of communities, groups and individuals in the operation of the 2003 Convention, see the chapters by Gabriele d'Amico and Marc Jacobs in this volume.

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