

National Response to International Conventions: The Case of the 2003 UNESCO Intangible Cultural Heritage Convention and the New Korean Legislation

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The 2003 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage has enabled the setting of a universal standard to safeguard living heritage, by specifying the concepts, principles, and various domestic and international mechanisms. Nevertheless, the last decade has witnessed a certain degree of disparity in compliance to the Convention among States Parties. The Republic of Korea, as a country which has a long history of protecting heritage and which has also contributed to the development of the Convention, has drawn the attention of the international community by establishing a new legislation in 2015. With the understanding of the Convention on one hand, the study analyzes the compatibility of Korean approach with international norms and investigates the implicit challenges at hand for the implementation of the Convention.

Keywords: *UNESCO, Intangible Heritage, Republic of Korea, International Conventions, Institutionalization, Legal Alignment*

1. INTRODUCTION

The standard-setting role by the UNESCO in relation to intangible cultural heritage (hereinafter ICH) has been crystalized with the introduction of the Convention on the Safeguarding of the Intangible Cultural Heritage in 2003 (hereinafter 2003 Convention) which came into force in 2006.¹ The Convention has provided States Parties with a normative instrument for safeguarding ICH in a coherent and cooperative manner up until now, and has been highly regarded for its contribution to the increased awareness of cultural diversity as well as its significance in the area of sustainable development. It also enabled communities to reinforce their own identities, and accordingly, to understand one another with respect while promoting a culture of peace at the same time.

Together with the normative establishment, the provisions of the Convention also specify the operational directives as to how to cooperate at the international level and what mandates should be imposed at the state level. By ratification, acceptance, or approval in accordance with each country's constitutional procedure, States Parties accede to the terms whereby they are required to conform to those operational codes. This is an inherent characteristic of international conventions, which is actualized by different domestic legal systems under various local context of the subject area. In particular, for non-self-executing conventions,

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¹ Adopted on 17 October 2003 by the General Conference of the UNESCO at its 32nd session and entered into force on 20 April 2006. Full text of the Convention can be found at the following link: <http://www.unesco.org/culture/ich/en/convention> (accessed November 22). As of 6 October 2016, 171 States has joined the Convention. List of the States Parties can be found at the following link: <http://www.unesco.org/culture/ich/en/states-parties-00024> (accessed November 22).

like the 2003 Convention, the legal response of the States Parties varies in terms of scope and means, and the non-prescriptive stipulation in the Convention postulates the discretion of state operation to a great extent. Indeed, for the last decade, the implementation of the Convention at large has revealed wide inconsistencies among States Parties and it has resulted in unfulfilled compliance of the Convention, both nationally and internationally.²

This study is, therefore, aimed at exploring the current response of the States Parties to the Convention in general with a particular focus on their laws and policies, and closely

Table 1. Stakeholders of the Convention at Two Different Levels and Their Roles Based on the Convention

Levels	Stakeholders	Roles	Values for Promotion	Goal
International	General Assembly (Article 4)	<div style="border: 1px solid black; padding: 5px;"> Lists of ICH (Article 16-18) International Cooperation (Article 19) International Assistance (Article 20-23) </div>	<div style="border: 1px solid black; padding: 5px;"> Cultural Diversity Sustainable Development Intra- and Inter-cultural Understanding and Cooperation </div>	Peace
	Intergovernmental Committee (Article 5-8)			
	Advisory Organizations (Article 9)			
	Secretariat (Article 10)			
	States Parties (Article 19, 24)			
National	States Parties (Article 11)	<div style="border: 1px solid black; padding: 5px;"> Ratification Inventories (Article 12) </div>	<div style="border: 1px solid black; padding: 5px;"> Cultural Diversity Sustainable Development Intra- and Inter-cultural Understanding and Cooperation </div>	Peace
		<div style="border: 1px solid black; padding: 5px;"> General policy Establishment of competent bodies Scientific studies Legal, technical, administrative and financial measures (Article 13) </div>		
		<div style="border: 1px solid black; padding: 5px;"> Education, awareness-raising and capacity-building (Article 14) </div>		
		<div style="border: 1px solid black; padding: 5px;"> Participation of communities, groups, and individuals (Article 15) </div>		

Source: Authors.

² Torggler, Barbara and Janet Blake (2013). p. 25.

examining the case of Republic of Korea. The research was initiated with a high expectation for its distinctive approach, given that the country has a relatively long history of safeguarding ICH. The recent change through a new ICH legislation is anticipated to entail significant implications for other States Parties, where national response has yet to fulfill the objective of the Convention. On the other hand, it is also assumed that while the pioneering commitment of Korea in the field of ICH contributed to the early development of the Convention, it might face a critical challenge due to the very reason in adjusting its national system to the new international legal framework. As the scope of this study does not allow any policy analysis concerning their national implementation, it aims to tackle mainly the alignment of provisions between the Convention and the new legislation in Korea. For that objective, the main chapters of this paper will go over the Convention in detail and then move to the comparison of the Convention with the Korean law.

The rationale behind the stratification for the analysis in this study corresponds to the structure of the Convention. With the view of consistency and clarification, the standard-setting works are divided into two levels so as to demonstrate the mandates of each stakeholder both at the international and domestic levels as illustrated in Table 1. In Chapter two, the authors will clarify the rights and duties required of States Parties as stated in Article 4 to 24 of the Convention.

In the following chapter, with a particular concern for the study toward the Korean implementation at the national level, the authors will refer to Article 11 to 15 and use them as analytical yardsticks to evaluate the Korean approach. Article 11 (Role of States Parties) of the Convention dictates that each State Party should take the necessary measures³ as stated in Article 2.3. Those specific approaches function as an index to inquire into the national obligations (see Table 2).

Table 2. Indicators for National Obligations According to the Convention

	Scope
Inventories (Identification and inventorying ICH)	Participation of community Cultural diversity Sustainability in the inventory management
Institutionalization (institutions and policies)	Establishment or improvement of institutions Institutional arrangements and capacity Policies and programs to support the safeguarding of ICH Coordination of activities among several stakeholders
Awareness-raising and Capacity- building	Visibility and accessibility of ICH to the general public Educational and training programs with relevant information
Participation of communities ⁴	Structure of decision-making process

Source: The 2003 Convention (Article 12 to 15)

³ Article 12 to 15.

⁴ Community denotes communities, groups and, where applicable, individuals as stipulated in Article 15.

2. 2003 CONVENTION AND ITS IMPLEMENTATION IN GENERAL

In the field of culture, most efforts of the UNESCO were devoted to tangible heritage issues for several decades since the establishment of the organization. Consideration for ICH started only in the 1970s. Led by non-Western countries, who adhered to different standards and norms of culture at the international fora, the normative instrument for the protection of ICH was made possible in 2003 after many lengthy discussions at UNESCO. Indeed, the 2003 Convention signaled a historic turning point in terms of the concept and definition of heritage, and of actions for its safeguarding (Bouchenaki, 2007: 106).

In this chapter, history and contents of the 2003 Convention will be briefly introduced for a general understanding of the Convention. While analyzing the Convention at the international and national levels, the overall implementation of the Convention by the States Parties will be demonstrated. This will put the Korean case in the broader context, which will be visited in detail in the following chapter.

2.1. History of the 2003 Convention

The issue of protecting folklore in relation with its copyright during the 1970s and 1980s is usually mentioned as the starting point of the international debate for the ICH (Aikawa, 2004: 138). UNESCO prepared a draft document on international instrument in 1971, but it turned out that it is unrealistic to apply copyright to the protection of folklore (Sherkin, 2001: 42-44). UNESCO's joint effort with the WIPO to establish a model provision in 1982 again was considered premature, due to a lack of understanding for the protection of folklore and its workable mechanism (Ficsor, 1997: 223). However, UNESCO was not discouraged in developing a framework for safeguarding folklore, and kept discussion going while leaving the copyright issue to WIPO. Establishment of expert committee and independent section at the Secretariat led to the adoption of the Recommendation on the Protection of Traditional Cultural and Folklore in 1989 (hereinafter the 1989 Recommendation). The Recommendation was the first international normative instrument recognizing folklore, or ICH, as an object of protection, and became the source of various programs before the adoption of the 2003 Convention. In particular, the proposal of the Republic of Korea to establish a system of Living Human Treasure,⁵ modeled after the World Heritage List of the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (hereinafter 1972 Convention) inspired many countries to adopt similar systems. Also, the idea of establishing the world list was realized in 1998, when a new program entitled Proclamation of Masterpieces of Oral and Intangible Heritage of Humanity (hereinafter 'Masterpiece program') launched, with the inspiration from a case study of Jemaa el Fna in Morocco (Schmitt, 2008: 99-101).

Listing ICH elements received much attention from the Member States of UNESCO, and gave rise to many lively debates on its concepts and notions. Also, the global assessment of the 1989 Recommendation at the Washington International Conference in 1999 concluded with the request of stronger legal instrument to address the question of ICH more adequately (Mounir, 2007: 107). The recommendation was well delivered to UNESCO and a feasibility

⁵ 142 EX/18, 1993. Accessed November 22. <http://unesdoc.unesco.org/images/0009/000958/095831eo.pdf>.

study on developing a new standard-setting instrument was undertaken.⁶ With the concerns about the duplication of work with WIPO, a few states expressed their reservations on the type of the new instrument, but it was decided that it would take the form of an international convention.⁷

While the Guidelines for the Establishment of National Living Human Treasure Systems were disseminated by UNESCO in 2002, several intergovernmental meetings of experts were organized to further develop the draft convention. The events contributed to filling the gap of ideas of different countries on various issues especially listing system, and enabled the final draft convention to be adopted without amendment at the 32nd session of the General Conference in October 2003. This led rapid and high ratification rate of the Convention by the Member States compared to other conventions of UNESCO, even inviting several countries who were hesitant or passive in the introduction of this new instrument.

2.2. Contents of the 2003 Convention

The 2003 Convention consists of 40 Articles, divided into nine Chapters. The object of the Convention, ICH, is well defined in Article 2.1 and 2.2. It should be noted that the definition assumes a group of people who recognize a particular cultural element as a symbol of their identity (Kurin, 2007: 12). This means the ICH cannot be detached with its community who share the value of heritage, and the community shares the duty to safeguard the elements of ICH concerned with them.

The roles of a State Party, as an entity for the Convention, are stipulated under Chapter III. First of all, to ensure identification with a view to safeguarding, each State Party shall draw up one or more inventories of the ICH.⁸ National inventory works as a basic tool for efficient safeguarding the heritage. Therefore, governments of States Parties first of all need to take actions to ‘identify and define the various elements of the ICH present in its territory, with the participation of communities, groups and relevant non-governmental organizations.’⁹ Appropriate legal and technical, administrative and financial measures for safeguarding the ICH such as adopting relevant policies, designating or establishing competent bodies for the safeguarding actions, fostering researches and trainings, can ensure the establishment of inventories and appropriate protection for listed elements.¹⁰ Education is a key method of transmission of the ICH to the future generation, and various educational means needs to be promoted by States Parties.¹¹ Last but not least, it should be noted that the Convention strongly calls for the participation of individual bearers or practitioners, groups, and communities in all these safeguarding efforts of governments.¹² Considering the characteristics of intangible cultural heritage whose value is defined by the communities, the role of all relevant stakeholders cannot be overestimated.

At the international level, the Convention addresses the collective duties of States Parties through its Intergovernmental Committee and General Assembly. In particular, Article 16-18

⁶ 30 C/25 B.2. Accessed November 22. <http://unesdoc.unesco.org/images/0011/001171/117173e.pdf>

⁷ 31 C/INF.24. Accessed November 22. <http://unesdoc.unesco.org/images/0012/001244/124435e.pdf>

⁸ Article 12.1.

⁹ Article 11.2.

¹⁰ Article 13.

¹¹ Article 14.

¹² Article 15.

introduce three different lists under the Convention. Although inspired by the World Heritage Lists of the 1972 Convention which consists of normal and in danger lists, the 2003 Convention made substantial effort to avoid the notion of ‘superiority’ deliberately, which was implied in the previous Masterpiece program. This was a reflection of intention to refrain from paying too much attention on the international lists and nominating countries (Kurin, 2007: 17), based on the new definition of the ICH. Firstly, concerning the Representative List of the Intangible Cultural Heritage of Humanity, the Operational Directives of the Convention suggests five criteria for inscription,¹³ which do not show any concept like ‘outstanding universal value’ of the World Heritage Sites. Rather, as stated in criterion R.2, it emphasizes the contribution of elements to enhancing visibility of ICH, cultural diversity and human creativity through their inscriptions on the List. This approach derived from the belief that each individual cultural tradition cannot be evaluated or does not need to be of outstanding universal value as they are all part of diversity of culture. There are two other lists of the Convention: List of Intangible Cultural Heritage in Need of Urgent Safeguarding, and Register of Programs, Projects and Activities that Best Reflect the Principles and Objectives of the Convention. The Urgent Safeguarding List aims to draw up the international society’s attention for endangered ICH elements,¹⁴ and this mechanism works for one of several grounds for international assistance. Register for Best Practices, which is a unique list that cannot be found in the systems of the 1972 Convention, also contributes to facilitating international cooperation between States Parties. By listing exemplary national programs or projects that seek to safeguard ICH, countries can share and exchange experiences to more effectively implement the Convention at the national level.¹⁵ In addition to the list systems at the international level, the Convention emphasizes the principles of international cooperation. By joining the Convention, States Parties recognize the safeguarding of ICH as a general interest to humanity, and shall participate in the collective actions.¹⁶ International Assistance for individual States Parties becomes available, whether it is to safeguard the State’s elements on the Urgent Safeguarding List or support its capacities to duly implement the Convention.¹⁷

2.3. Analysis of the Current Status of the Implementation of the Convention

In 2013, Evaluation Section of the UNESCO Internal Oversight Service conducted

¹³ I.2.2 of the Operational Directive:

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; and

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.

¹⁴ Article 17.

¹⁵ Article 18.

¹⁶ Article 19.

¹⁷ Article 20.

overall evaluation of four culture conventions¹⁸ regarding the relevance and effectiveness of the UNESCO's role in standard-setting, with a focus on its impact on ratification, legislation, policies, and strategies of the States Parties and their implementation at the national level. For the 2003 Convention, such evaluation has been attempted for the first time since its adoption. Basic data was collected by various methods, including a desk study, interviews, and surveys. In particular, the Periodic Reports submitted by the States Parties every six years according to the Article 29 of the Convention worked as an important source to have a general overview on the implementation of the Convention both at the international and national levels.¹⁹

International Implementation

In the international framework of the Convention, two indicators can be used in particular for the analysis: the Lists of the Convention and International Assistance. First of all, three list mechanisms for international safeguarding of the ICH, the Representative List, the Urgent Safeguarding List, and the Register of Best Practices, show imbalance in their usages by States Parties. Many countries prefer to nominate their ICH element for the Representative List, as they assume the inscription as an evidence of supremacy of their ICH, based on their previous experience with Masterpiece program. The fact that 90 elements previously declared as Masterpieces were included to the Representative List also added that confusion. Some countries consider the inscription as a proclamation of their ownership on the specific ICH elements, and this misconception generated conflict and competition among countries in several cases.²⁰

However, for the Urgent Safeguarding Lists, there exist tendency of States Parties to consider the List as an admission of their failure in protecting the nominating ICH element. Like the List of World Heritage in Danger of the 1972 Convention, many countries view the Urgent Safeguarding List as a shameful event, not as a useful tool to raise immediate

¹⁸ The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

¹⁹ Periodic Reports are available in the following link: <http://www.unesco.org/culture/ich/en/committee-documents-and-in-depth-studies-00862>. For up to date review, this study analyzed 88 Periodic Reports including those 47 Reports submitted after the evaluation done by Barbara Torggler and Janet Blake in 2013.

²⁰ For example, when Festivity of Virgen de la Candelaria of Puno was inscribed on the Representative List in 2014 by Peru, the Decision of the Committee took note that cultural expressions associated with the element are shared by Andean communities from the region and recalled that inscription on the Representative List does not imply exclusivity (9.COM 10.34). Further information can be found at the following link: <http://www.unesco.org/culture/ich/en/9com-november-2014-00574> (accessed November 22).

In some cases, name of the country is included to the element's title to line the physical boundary of that element, which acknowledges the existence of similar ICH element in different countries in other words. To tackle this rivalry misconception of the States Parties, the Intergovernmental Committee and the Secretariat encourage multinational nominations to facilitate international cooperation among countries sharing similar ICH.

visibility of the elements by expressing the State Parties' commitment for safeguarding. The misconception extends to the Register of Best Practice as well, which is created to share good safeguarding programs or activities for possible application in a developing country context. This Register also has been ignored by the States Parties, due to the competition among the List mechanisms derived from the ceiling of the submission of nominations by each State Party.²¹ This resulted in serious imbalance among the Lists of the Convention, which has a detrimental effect on the overall achievement of the objectives of the Convention.²²

International Assistance, the other indicator for the international implementation of the Convention, also shows many rooms for improvement. So far, total US \$ 21,051,903 from the Fund for the Safeguarding of ICH has been granted to 133 projects of 106 benefitting countries. The most frequent purpose of granting International Assistance is to support the preparation of inventories of ICH. However, the request for preparatory assistance has declined over the years and no request was received in the past two years.²³ This is related to the fact that States Parties need to select between submitting a nomination for possible inscription on one of three Lists or a request of International Assistance due to the ceiling of the Committee mentioned above. Many countries actually chose the Lists rather than Assistance mainly due to visibility reasons although this mechanism works as a fundamental ground for capacity-building. This tendency won't be changed easily unless the request for the International Assistance becomes excluded from the ceiling of the number of files treated by the Committee.

National Implementation

First of all, as demonstrated by an exceptionally high number of ratifications for about ten years, the Convention responded to a need for normative instrument in the field ICH. This is 88% among the 195 Member States of UNESCO. This implies that the Convention adequately addressed the needs of countries for a normative instrument to safeguard ICH, as the only international convention in this field. Many States Parties consider the Convention to be highly relevant with their national and local priorities, although more efforts need to be made to establish legislative and policy environment in many countries (Torggler, Barbara and Janet Blake, 2013: 23-30). The degree of incorporation of the provisions of the Convention into national legislation and policies and their implementation varies among countries. Although clear explanation was missing in several Periodic Reports and there exist possibility of some outdated information, the synthesis of national response of the 88 States

²¹ I.10. 33 of the Operational Directive: *The Committee determines two years beforehand, in accordance with the available resources and its capacity, the number of files that can be treated in the course of the two following cycles. This ceiling shall apply to the set of files comprising nominations to the List of Intangible Cultural Heritage in Need of Urgent Safeguarding and to the Representative List of the Intangible Cultural Heritage of Humanity, proposals of programmes, projects and activities that best reflect the principles and objectives of the Convention and international assistance requests greater than US\$100,000.*

²² Torggler, Barbara and Janet Blake, *op. cit.*, p. 46-55. As of 18 November 2016, there are 336 elements inscribed on the Representative Lists, 43 elements on the Urgent Safeguarding List, and 12 elements on the Register of Best Safeguarding Practices. All the lists can be found in the following link: <http://www.unesco.org/culture/ich/en/lists>

²³ ITH/16/11.COM/9.c, 6. Accessed November 22. <http://www.unesco.org/culture/ich/en/11com>

Parties, slightly more than half of the Parties to the Convention, demonstrated that 99% of them can be considered to take measures at legal and policy levels.

The measures addressed mainly to establish national and/or local inventories and designate competent bodies for the implementation of the Convention. Those institutions promote education, awareness-raising and capacity building programs nationally. However, many countries tend to focus on ICH elements with “outstanding value” or their “preservation” in “authentic” forms (Torggler, Barbara and Janet Blake, 2013: 32-40). This lack of understanding on the Convention, which is possibly derived from confusion with the 1972 Convention or previous Masterpiece program, needs to be addressed more through stronger integration of the key principles of the Convention into national legislation or policy.

Participation of communities at the national level seems to be limited in general although they play one of the most important roles in implementing the Convention (Torggler, Barbara and Janet Blake, 2013: 40-43). Reasons that communities are not sufficiently involved with all the aspects of domestic implementation of the Convention may vary under the different contexts of each State Party. It can be derived from lack of mechanism based on laws or policies, lack of experience of government in bottom-up approaches in safeguarding ICH elements. However, the governments need to be alerted with the fact that the safeguarding of specific ICH elements cannot be achieved without the participation of their bearers who make the value of the elements and transmit them to future generation, and endeavor to create formal and non-formal mechanisms to ensure their involvement.

Incorporation of the Convention in National Legislation

Upon ratification, States Parties adopt various measures to incorporate the principles of the Convention and conduct duties mentioned above. Generally, the States Parties’ practice of the incorporation of the Convention into their national legislation and policies could be categorized into four types: (1) Developing a new legislation, (2) Revising existing legislation, (3) Introducing policies and programs, and (4) Taking no specific actions. As both Type (1) and Type (2) go through legal process of incorporation domestically, these types show more active integration of the Convention at the national level. Type (3) countries can be divided into two again: (3.1) Countries with precedent relevant laws and therefore do not have to take new legislation; and (3.2) Introducing policies and programs only without legal actions.

Table 3 shows 41% of the States Parties has introduced or been developing a new legislation on ICH while 19% of the States Parties have decided to amend existing law(s). Considering 19 countries belonging to Type (3.1) already introduced legal measures domestically before their ratification of the Convention, it can be said 82% of the States Parties are (being) equipped with legal measures to safeguard ICH at the national level. Remaining 15 States Parties have introduced various policies and programs to reflect the ideas of the Convention domestically, while one country has not adopted any yet.²⁴ According to the Electoral Groups of UNESCO, Group III (Latin America) and Group IV (Asia and the Pacific) show relatively high rate of using pre-existing laws compared to Group I (Europe and North America) and Group II (East Europe). This shows their relatively long history of safeguarding ICH, as they did leading roles in introducing the 2003 Convention. On the contrary, Group V (Arab and Africa) countries tend to choose non-legal means, and this implies those countries take relatively less active actions at the national level.

²⁴ Only Iceland is yet to adopt a general policy on ICH.

Table 3. Number of States Parties for Each Type of National Integration of the Convention

Type	Number of SP	Group I	Group II	Group III	Group IV	Group V (a)	Group V (b)	Total (%)
1	36	6	9	8	4	6	3	41%
2	17	1	5	3	3	4	1	19%
3.1	19	3	3	6	4	2	1	22%
3.2	15	2	1	1	3	6	2	17%
4	1	1	0	0	0	0	0	1%
Total (Number)	88	13	15	18	14	18	7	100%

Source: Data from the Periodic Reports by 88 States Parties²⁵

Various factors may affect which type a State Party belongs to, concerning its national incorporation of the Convention. Alignment of key notions in the pre-existing laws or policies, history of previous legislation, support from UNESCO field offices and foreign funds, capacities of UNESCO related institutions such as National Commission and Category II Centers within territory, interests of the government, and the country's previous participation in the Masterpiece program can be some of those factors. For example, China belongs to Type (1), with the introduction of a new law on the ICH in 2011 after its ratification of the Convention in 2008. Although there have been several interim measures and guidelines on safeguarding and management of national intangible heritage, the new law strengthened the legislative and policy environment of the country. Considering China's high interest in the Masterpiece program,²⁶ and competent bodies in the field of ICH such as UNESCO Category 2 Center in Beijing, the legal path that China chose seems to be understandable.

According to its Periodic Report in 2012, the Republic of Korea could be categorized to Type (3.1). However, in 2015, Korea introduced a new law dedicated in safeguarding ICH, and now can be included to Type (1) group. As a country with long tradition of protecting ICH and whose law and practice influenced previous ICH programs and the 2003 Convention, this legal path that Korea chose to follow, attracted many other countries' attention, in particular, from those that have been considering the adoption of new laws and policies in accordance with the Convention. The Secretariat also pointed out the importance of cases of legislative actions for comparative examination.²⁷ In this vein, the new Korea ICH legislation will be analyzed in detail in the following chapter, according to the several indicators of the Convention.

²⁵ The authors sorted out 88 States Parties by the four categories of legal adjustment using the data from each Periodic Report. The number of subjects reflects the fact that some States Parties have not stated clearly their legal efforts to align with the Convention in the Periodic Report.

²⁶ China registered the most elements (four) on the Masterpiece program before the adoption of the 2003 Convention.

²⁷ ITH/13/8.COM/6.a, p. 24. Accessed November 22. <http://www.unesco.org/culture/ich/en/8com>

3. THE DEVELOPMENT OF NATIONAL LAW ON ICH IN THE REPUBLIC OF KOREA

Republic of Korea in 1960s, at the onset of which a military coup by the former general Park took over the regime and embarked upon a dictatorial government, introduced a new initiative to put both tangible and intangible cultural assets²⁸ under national protection, with a view to enhancing the legitimacy of regime as well as national identity. On the other hand, the aggressive industrialization process was expected to result in critical vulnerability to the loss or degradation of traditional folklore. Accordingly, the government enacted relevant legislations relatively early compared to other nations, and the relevant Japanese laws became a good reference for its prompt enactment (Jung, 2004: 486-491). In 1962, the Cultural Heritage Protection Act (hereinafter the CHPA) was stipulated where drama, music, dance and craftsmanship were categorized as the ICH. Since then, the CHPA has developed along with three complete overhauls and the 39 instances of partial amendments.

In this chapter, the history of legal changes in the field of cultural heritage in Korea will be briefly introduced, before a detailed overview on the new ICH law ensues. Significant changes made from the previous general cultural heritage law to new special ICH law will be demonstrated, and further analysis of the new legislation according to the indicators from the 2003 Convention will be followed. This paper attempts to assess the degree of institutional incorporation in line with the Convention by comparing each Article from the new legislation and the Convention.

3.1. History of Legal Changes

Dividing the entire period by drastic legal changes in the field of cultural heritage, this study finds out that there are three phases recognized in its development²⁹; the first phase from 1962 to 1982, the second phase from 1982 to 2000, and the third phase from 2000 to present. Each division reflects corresponding attitudes and recognition by relevant stakeholders and people in the territory as to how they view ICH. The most striking feature in the first phase is a) the separation of works between the Office of Cultural Properties under the Ministry of Culture and Education and the Office of the Public Affairs under the Blue House (the former for the administration of preservation of, whereas the latter was for utilization of intangible cultural assets), b) the reflection of policy objectives of the regime on the preferred list of protected items (Jung, 2004: 486-491), and c) cultural asset holder-centered policies.

In 1982, the CHPA's definition, protection mechanisms, designation and transmission support in the qualitative and quantitative manners were revised. The basic foundational form of the current CHPA was shaped at that time. Throughout the 1990s, several culture-related institutions³⁰ released a voluminous amount of research, statements of opinions and

²⁸ English terms of cultural 'assets' and 'heritage' have different implications in Korean language. As the Korean legislations dealt in this paper included the Korean term that can be translated in 'assets', authors used it instead of the term of 'heritage' when we refer to concerned Korean laws.

²⁹ The division of periods comes from the article by Seok, Dae-Kwon (2015). p.10-16.

³⁰ The Korean Folklore Society, National Research Foundation of Korea, Academy of Korean Studies and etc.

led social debates. Of a variety of issues that sparked controversy, two aspects are worthy of notice; a) the demand for a new legislation exclusively for intangible cultural assets, and b) the unitary administration by one competent body for the protection of cultural properties (Seok, 2015: 13-15). In 1999, the Office of Cultural Properties was raised in status to the institution called Cultural Heritage Administration (hereinafter CHA), as a result.

In the course of improvement in national legislations, the third phase has flown in tandem with the UNESCO's new initiative in this area by the introduction of the 2003 Convention. The Republic of Korea joined the Convention in 2005 and ratified it in the following year. In the last decade, the CHPA was amended more frequently than at any other time in an effort to align the scope and regulations with the ones in the Convention. National Intangible Heritage Center was established in 2014 to support the implementation of mandates that the Convention requires of, in safeguarding ICH. After a myriad of academic researches and public discussions, the Act on Safeguarding and Promoting Intangible Cultural Assets (hereinafter the new legislation), was at last enacted in 2015 and entered into force in March 2016.

As of now, there are two main pillars in the legal framework governing the promotion and safeguarding of intangible cultural assets: the CHPA and the new legislation (both entail Enforcement Decrees and Regulations). They are mutually complementary without conflict as they are in general and in special law relations. Such dual structure enables a comprehensive understanding with specific approaches tailored for each issue, thereby reinforcing a legal balance. More importantly, with the legalization, the government has shown its commitment and fulfillment to the Convention.

3.2. The Significance of 'New Legislation' Exclusively for the ICH

The supplementary paper by the CHA (Jong-Seop, Jung, et al., 2011: 7-12) identifies the necessity for the establishment of new legislation of the ICH by pointing out three fundamental reasons. First, the Republic of Korea as a State Party of the 2003 Convention needed to align the previous stipulations in CHPA with the spirit of the Convention. The former CHPA as from the early 2010s³¹ was yet centered on the protection of tangible cultural heritage as ever, so that the scope, the principles and the measures of protection were not compatible to the ones in the Convention. Second, the narrow definition of ICH in CHPA and its resulting problems against sustainability threatened the viability of ICH since the nexus between ICH and sustainability rests upon cultural diversity. Especially, the persistence to the principle named as the preservation of original form in CHPA impeded a natural development and transformation of ICH in response to the change of socio-cultural environment. Last but not least, the implementation of relevant regulations and policies in the last four decades revealed that the processes in designation, transmission, education and training, support, protection and promotion were less transparent, systematic, cohesive, and comprehensive. The concentration of power in the hands of certain interest groups has resulted in imbalanced management or surveillance, and accordingly has distorted the realization of ICH values and its advancement. Inevitably, a more effective administration was in demand.

In an effort to address these issues, a new legislation was finally proposed. As read in

³¹ The referred period is around when CHA initiated the study on the legislation of safeguarding and promoting ICH in 2011.

Article 1 and 3,³² the current Korean law is oriented toward cultural sustainability by safeguarding and promoting the ICH. It establishes its philosophical basis on the humanitarian objectives and cultural understanding. To wit, the Korean approach demonstrates that safeguarding ICH serves to empower the people sharing cognitive commonalities. The relation between Article 1 and 3 implies that ICH is not just a manifestation of traditional culture of one specific community, but an instrument of link by which past meets present and future, and one community meets another. Such interpretation lies on the same line with Article 2 of the Convention where it reads ‘ICH...in response to their interaction with their history...provides them with a sense of identity and continuity, thus promoting respect for cultural diversity...as is compatible with human rights instruments and the requirements of sustainable development’.

In more details, the new approach toward concepts and principles is highly in line with the 2003 Convention. The defined coverage of ICH in Korea is enlarged so that it fits into the domains specified in Article 2.1 and 2.2 of the Convention. Article 2 of the Convention specifies with three elements what constitutes ICH; a) the expression or the nature *per se* of intangible substance, b) the central role of communities (identity building), and c) the transmission from generation to generation (continuity and creativity). Article 2 and 4 of the new legislation explicitly address a) and c), and the fifth clause of Article 2:2 clarifies the significance of community in forming ICH by defining it separately. Besides, the list of types is to a large extent similar to the six relevant domains of ICH³³ enumerated in Article 2:2. It is noteworthy that the conceptual modification of ICH through the new legislation is not a negligible change, because it has enabled to view the characteristic of ICH as a more fundamental force for humanity rather than as a mere recognition of facial value of ICH in terms of art, history and academic progress. In other words, it is a turning point to find ICH values within the human factors. It is quite different from the clarification of tangible cultural heritage, which makes a distinction by the excellence of physical features. By the same token, the designation of ICH even without specifying a certain bearer or transmitter is allowed by Article 18 of the new legislation as long as it can represent the identity of communities.

Furthermore, the principle of maintaining ICH has been modified from protection to safeguarding. Conventionally, CHPA stated in Article 3 that the basic principle of cultural heritage protection is the preservation in original form. The approach was structured to govern simultaneously both tangible and intangible heritages to the benefits of legal coherence. As major concern in the past law was inclined to the protection of tangible assets, the principle was maintained at the expense of ICH. As noted by CHA (2011), the former principle in CHPA has a potential threat to ICH since it might result in a taxidermized ICH or limited access to only a few people. In fact, it has led to the distortion in creativity and advancement of ICH. It revealed a huge gap from the 2003 Convention which views

³² As there is no official English translation for the new legislation yet, authors translated it for partial usages in this paper. Article 1 and 2 can be translated as below:

Article 1 (Objective): ...succeeding to the traditional culture in a creative manner...in order to contribute the development in the culture of mankind.

Article 3 (Principles): 1) The cultivation of national identity, 2) The succession and development of traditional culture, 3) The realization and improvement of intangible cultural assets.

³³ a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; b) cultural heritage; c) performing arts; d) social practices, rituals and festive events, e) knowledge and practices concerning nature and the universe; f) traditional craftsmanship.

safeguarding ICH as ensuring the viability and revitalization of ICH.³⁴ On such grounds, the new Korean legislation adopts the principle of safeguarding as intended in the Convention. The term *the original form* was replaced by the term *embodiment of authentic value*.³⁵ And the term *preservation and promotion* is employed in the place of protection. While it is apparently still debatable among the academics, government officials and other relevant stakeholders to that issue, the new legislation is with no doubt on the path to highlight ICH as a living heritage.

3.3. The Analysis of the New Legislation

In this section, the study looks closely into each Article in the new legislation and restructures it in accordance with four indicators that the 2003 Convention assigns to States Parties. Such clarification is to help understand an integral approach to ICH in the Republic of Korea. The separation from the CHPA, by which intangible heritage is regulated independently, suggests several merits that the Korean model can bring about to other States Parties. In short, the new legislation has enabled the narrowing of the gap with the Convention. However, the study has also found several critical shortcomings in the current legislation.

Inventories

Despite the special attention that the Convention pays to the identifying and inventorying ICH, some States Parties still face challenges as to the objects of inventories, the manner of designation, and the methodology of involving the local community in developing inventories.³⁶ It is partially due to the descriptive issues in Article 12.1 of the Convention stipulated in a comprehensive way with flexibility. National inventories by each State Party shall be selected, managed, and promoted at discretion of a State Party in consideration of the national resources and ability (Blake, 2006: 63-64). Namely, the scope of the ICH inventories is basically within the matter of domestic affairs, and the Convention only urges States Parties to specify them in their Periodic Reports. It signals that the UNESCO underlines not the methodology of inventorying but the alignment of core value in the Convention: the participation of communities and the representation of cultural diversity.³⁷

When it comes to the participation of community, the Periodic Report by the Republic of Korea in 2012 articulates that communities are guaranteed of their opportunities to participate in the entire process of inventorying with their consultative competence. It is also noted that since 2011, NGOs have been able to engage in investigation and evaluation on behalf of communities with the committees that the government organizes. However, this study could not find any concrete provisions or internal directives in CHA as a form of legal framework.³⁸ Without specifying procedures or assured rights for communities or explaining at least the practices unrolled, the government explanation in the Report is no more than

³⁴ Article 2.3.

³⁵ Article 3 (Basic Principles).

³⁶ IOS, op. cit., p.33.

³⁷ When interpreting Article 12, it is logical that Article 11 should be considered as a chapeau.

³⁸ It is admitted that the study has limitations to access to the government documents unless they are open to public. Therefore, the statement that the participation of communities is not protected by a written form of legislation is a finding rather than a fact.

rhetoric. Also, as the procedures for request and deliberation are separated, how far the committee's decision reflects community's opinion remains in question.

Likewise, the new legislation is silent or less expressive in providing operational guidelines to ensure cultural diversity in the inventory management. As opposed to CHPT which concentrates inventorying on arts and performances, it is acknowledged that the new legislation by the definition of the ICH has enlarged the possibility of balancing the items between different types. Even if that is the case, only two articles can be identified to serve such objectives by a rather loose interpretation of the law. Article 9 invites experts and professionals working in a wide range of relevant fields as committee members.³⁹ And the National Research Institute of Cultural Heritage by Article 22 carries out a routine checkup every five years along with the participation of expert groups in similar areas as well. In practice, however, there is little difference observed in the list of inventories in terms of diversity of types to date.

Additionally, one interesting feature in the Korean system is worth mentioning here. According to Chapter 3 and 6 in the new legislation, the typology of inventories in the Republic of Korea is a two-tier system⁴⁰: national and city/province-designated ICH. The former is recognized as one of the important cultural heritages that the central government and CHA manage, while the latter is under the responsibility of 16 local authorities. The criteria of national designation, according to Article 14 of the Enforcement Decree of new legislation, include six components: a) historical value, b) academic value, c) artistic value, d) technical value, e) the representativeness of Korean traditional culture, and f) the maintenance from generation to generation without harming its authentic value, and these also applies to the city/province-designated ICH implicitly. With regard to the scope of the ICH inventorying, the change of term from 'important ICH' in the previous CHPA to 'national ICH' in the new legislation seems to reflect the idea in the Convention that 'outstanding value' or 'authenticity' should not be a part of elements to take into account in inventorying. At a glance, the division between two levels is a *prima facie* case of administrative classification for a better coordination of works between the central and regional governments. However, on the back side of the legislation, there are a couple of reasons to doubt on the scope of ICH in inventorying. Article 12.1 of the new legislation, it is written that the 'important' factor still is needed to qualify for national level even if the meaning of 'important' is not clarified. And the value measuring criteria have existed without a major change since the beginning of CHPA enactment when those values were associated with the 'outstanding' quality. As long as such values function implicitly as a yardstick for national designation, the practices of ranking among ICH are not likely to disappear in Korea. Furthermore, Articles 27 to 30 explicitly provide preferential benefits only to national ICH. Whether implicitly or explicitly, it is important to constantly monitor whether or not the differentiation of values among ICH elements exists.

Institutional Infrastructure

According to Article 13 of the Convention, a State Party shall accommodate appropriate policies, measures and assistance for the safeguarding of ICH in the context of its own

³⁹ 8 in art, 8 in technology, 10 in traditional knowledge as of 2016.

⁴⁰ Further information on the heritage classification of the Republic of Korea can be found at the following link: http://english.cha.go.kr/english/search_plaza_new/state.jsp?mc=EN_03_01 (accessed November 22).

governmental system. The new legislation shows a systematic approach to this issue. According to Article 5 of the new legislation, the general head office in charge of safeguarding ICH is CHA, which is a direct government organization under the Ministry of Culture, Sports and Tourism. As seen from the organizational chart, it locates Intangible Cultural Heritage Division under Heritage Policy Bureau (see Table 4). Its major roles in safeguarding ICH can be identified in the new legislation as designation (Article 12, 13, 17, 18, 19, 36), removal of designation (Article 15, 16, 21), investigation (Article 22, 48), administrative directives (Article 24), protection and promotion (Article 25 to 30, 37 to 45) and the international affairs with the UNESCO and other States Parties (Article 45). Founded on the institutionally centralized delegation of mandates by the new legislation, the CHA can adopt and implement coherent policies along with other agencies and institutions in a cooperative manner. It has, underneath the structure, or as an associate working partner a) several research institutes that document and store materials into archives, b) that train educational centers to support transmission and advancement, c) other corporate institutions and foundations for promotion and cultural events, d) NGOs for support as well as check-and-balance, and e) regional assistance offices to help align policies. The system proves to be of high relevance to the requirements stipulated in the Article 13 of the Convention.

Awareness-raising and Capacity-building

The definition of *safeguarding* in the Convention⁴¹ seeks a broad sense of viability of ICH as a living heritage. Various elements listed in the Article 14 of the Convention invite comprehensive recognition and endeavor not only by the communities and groups concerned, but by the public in general. The aspects that this study explores particularly are pertinent to three issues concerned: documentation, education programs, and network building. First, Article 48 of the new legislation mandates the obligations a) to investigate all the information related to ICH when necessary, b) to operate with expertise, and c) to digitize the data for public access. Already by the 1962 CHPA, the recording system on tangible and intangible cultural assets was established and has been maintained along with a consistent support by the government. It was attributed from the fact that many an ICH element had been transmitted by person-to-person verbally, and thereby the viability of continuity was considerably venerable to internal (personal) and external (societal) factors. As specified in the provision, the process contains several means including visual-audio recording, photographs, and written forms of description. Beside the CHA and the NRICH, other research institutions⁴² have also participated in documentation and the works of archives.

Second, advanced education and training services are already in place for effective transmission of ICH and its promotion. Chapter 5 (Article 25 to 30) and 7 (Article 37 to 46) specify that central and regional government have responsibility to provide academic services in public education, to arrange financial and legal assistance, to designate key bearers with national recognitions, and to arrange a system through which transmitters can sustain their livelihoods by performing or delivering their own ICH. According to other

⁴¹ Article 2.

⁴² In particular, the Intangible Cultural Heritage Research Center at Chonbuk National University has recently developed ICHPEDIA. It is an online encyclopedia, which is similar to Wikipedia. The name was derived by putting together ICH and PEDIA (Encyclopedia).

Table 4. Organizational Chart of the Institutional Infrastructure for the Implementation of the Convention

	Ministry of Culture, Sports and Tourism
Governmental Organization	CHA
	Heritage Policy Bureau
	Intangible Cultural Heritage Division
Associated organizations	National Intangible Heritage Center
	'International Information and Networking Center for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO' (ICHCAP)
	National Gugak Center
Education Centers	Korea National University of Cultural Heritage
	Korea National University of Arts
	National Middle & High School of Traditional Korean Arts
Research Centers	The National Research Institute of Cultural Heritage (NRICH)
	Art Research of Intangible Cultural Heritage
NGOs ⁴³	Inter-City Intangible Cultural Cooperation Network (ICCN)
	International Mask Arts & Culture Organization (IMACO)
	Korea Cultural Heritage Foundation (CHF)
	World Martial Arts Union (WoMAU)
Foundations	The Center for Intangible Culture Studies (CICS)
	Korea Cultural Heritage Foundation
	Korea Craft and Design Foundation
	National Intangible Cultural Heritage Association
Museums	Korean Traditional Performing Arts Foundation
	National Palace Museum of Korea
	National Folk Museum of Korea

Source: Authors

laws,⁴⁴ the public education system through primary, secondary and tertiary levels as well as other cultural classes in communities forms the basis of cultural soil where ICH bearers can utilize their skills and transmit knowledge, while the public can find the venue and resources to enjoy it. Several museums in regions also come in to fill the education gap in remote areas.

Third, networking among different genres of the ICH within or across the nations is ensured by Articles 45 and 47. Especially, Korea has extended its effort to share the archives of ICH with other State Parties and to support technical cooperation to developing countries.

⁴³ Non-Governmental Organizations accredited to provide advisory services to the Committee of the 2003 Convention.

⁴⁴ Article 15 of the Act on the Assistance to Cultural Art Education and the Article 12 of the Act on the Promotion of Culture and Art.

ICHCAP, the International Information and Networking Center for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO established in 2011, has contributed to enhancing regional capacity of ICH safeguarding in the field. At the national level, research centers and cultural foundations take the lead in implementing the development networks among experts, practitioners, and policy makers via seminars, workshops or cooperation programs.

Participation of Communities

According to Article 11 (b) and 15 of the Convention, each State Party is required to ensure the participation of all the relevant stakeholders in taking necessary measures for safeguarding the ICH. Operational Directives of the Convention enumerates in details the guidelines of recommended measures⁴⁵ that a State Party shall facilitate the accessibility of communities to relevant institutions, develop networks of communities, and make all the updated necessary information or knowledge available to communities. It is an inevitable corollary that Articles 12 to 14 are logically stretched to Article 15, as Article 15 of the Convention indicates that the participation of communities should span the entire framework of safeguarding activities at the widest possible range. In other words, the Convention puts a high emphasis on the role of community not only in creating, maintaining and transmitting ICH but in safeguarding and managing it as well (Blake, 2006: 76). The role of the state is, therefore, to remain at supporting communities to ensure the safeguarding of ICH. This conceptual foundation denies the traditional view of relation between a state and its own communities. When it comes to the ICH, communities should stand on an equal footing with the government; thus, support at the state level should be construed as a mandatory commitment, not as management or mobilization of population. It should provide a legal, technical, administrative and financial assistance to communities as a national obligation.

Based on this understanding, the attitude that the new Korean legislation bears toward communities intrinsically casts a critical doubt on the compatibility with the Convention. Putting aside the problem of the lack of provisions within the relevant laws, most Articles that indicate the roles of communities appear to intend to impose obligations to communities rather than to ensure their rights. For example, Article 5 of the new legislation (the responsibility of the ICH transmitter) views the safeguarding and advancement as a duty instead of a right of communities. Similarly, communities take on a responsibility to cooperate with the government institutions during a periodic investigation. Such approaches imply that communities are merely regarded as beneficiaries of government recognition. Such issue is aggravated by the fact that the new legislation does not specify any official channels through which an effective discussion on a regular basis can be shared between the government and communities. In practice, the voices of communities are mostly heard only through public hearings or civil complaints. In such circumstance, little ownership among communities is expected to be feasible in safeguarding the ICH. Without ownership to them, the ICH does not exist as living heritage anymore.

Sustainable Development

In accordance with the 2030 Agenda for Sustainable Development (SDG), the UNESCO has come to agreement at the General Assembly of the 2003 Convention that the 6th revised Operational Directives sheds light on a new direction toward sustainable development at the

⁴⁵ Charter III paragraph 79 to 89.

national level.⁴⁶ Stretching from the view of the Convention that assumes ICH as a guarantee of sustainable development in the Preamble, the structure of Chapter VI in the new Operational Directives implies that the culture is recognized as another pillar of sustainable development along with economic development, social development and environmental protection.⁴⁷ To put it simply, the Operational Directives require considering two respects. First, the national measures for safeguarding the ICH should be maintained in a sustainable manner. Second, the implementation of the Convention should be planned and coordinated to be compatible with a State Party's national development policies and programs as well. Accordingly, the definition of 'safeguarding' in Article 2 of the Convention should be refined along with more consideration to other sectors. It thus acknowledges the necessity of 'cross-cutting approach'. It points out that safeguarding the ICH has a high relevance to food, health, education, gender equality, sanitation, work, environment, and security.

However, as opposed to such new approach for sustainable development by the UNESCO, the new Korean legislation still remains narrow in the realm of culture (Kim, 2016: 263-265). Article 1 of the new legislation places the objective of the law at the cultural progress. Article 3 indicates that safeguarding goes beyond the past and present of the ICH, but still is concerned only with the cultural prospect. Under such principle, the entire provisions serve merely as a buttress for the ICH *per se* or at most the sustainable development of culture itself.⁴⁸ On the contrary, the Operational Directives Paragraph 180 captures the value within the ICH and dictates that a state should promote such value through education in order to contribute to other relevant areas *i.e.*, economic or societal development. Likewise, Articles 39 to 44 in the new legislation see the function of a state as being limited to the task of providing support to the livelihood of transmitters so that sustainability, in the narrowest sense, can be secured. However, the Convention requires the expansion of vision toward the interconnection with other areas and the mutual assistance for development. To sum up, the Korean vision of cultural sustainability according to the new legislation is restricted within the viability of ICH at the moment. Admitting that the official inclusion of the detailed guidelines for the sustainable development in relation with the ICH into the context of the Convention was made only in May this year, it seems the new legislation needs to further elaborate this aspect in the future.

4. CONCLUSION

Considering the relatively short history of the 2003 Convention, it may be too early to analyze and evaluate the overall implementation of the Convention. While the Convention reaches almost universal membership of the international community, many States Parties still have not had enough time to implement the Convention at its domestic level. Like what Korea experienced after its ratification of the Convention, considerable time and efforts are

⁴⁶ ITH/16/6.GA/Resolution 7. Accessed November 22. <http://www.unesco.org/culture/ich/en/6.ga>

⁴⁷ Through Johannesburg Declaration on Sustainable Development in 2002, the UN defined three pillars of sustainable development with economic development, social development and environmental protection.

⁴⁸ Admittedly, it cannot be underestimated that the new legislation has enlarged the viability of the ICH compared to the CHPA, thereby enabling numerous outcomes(?) through cultural industrialization. The detail changes are summarized in Chapter 3.2.

required to incorporate international norms in their own local contexts. Indeed, there exist many misconceptions about the Convention, like the series of debates before the introduction of the Convention concerning the concept and scope of the ICH. Many States Parties still consider the inscription of the elements on the Representative List as a proof of their cultural supremacy, like their listing of ICH elements with outstanding value on their own national inventory. This resulted in an imbalance among the Lists of the Convention, impairing its objectives. Lack of local participation is another important issue to be addressed.

In this vein, the analysis of the new legislation of the Republic of Korea is a good reference to comprehensively review the details of institutionalization of the Convention at the national level. After a long history of protecting cultural heritage including the ICH by law, it has enacted a new law exclusively for the ICH under a strong influence of the Convention. The new legislation showed both improvement and future challenges in safeguarding the ICH. Regarding the positive side, it should be highlighted above all that the Korean approach through legislating a new law enables independent measures exclusively for ICH. In fact, it is found that the new system of Korea is highly aligned with what the Convention dictates. The scope, the principles, and the operative measures are relatively compliant to the ones in the Convention. In terms of institutionalization, four national requirements (inventory, institutional infrastructure, awareness-raising and capacity-building, participation of communities) are more or less stipulated in the new legislation.

However, there still remain several challenges that need to be addressed. First, the question of whether or not ‘outstanding’ element still exists when recognizing and evaluating ICH should be addressed. Second, the participation of communities should be firmly and openly assured in the process of ICH protection. Third, the new concept of sustainable development should receive attention with regard to the relation between safeguarding ICH and the development of other sectors. To date, as of the end of 2016, the new Korean legislation seems to be underway to complement its inadequate measures and policies, and these three issues should be further addressed in a more rigorous manner, in the near future. Further studies can be conducted in this context, with a focus on the national implementation of the new legislation in the coming years.

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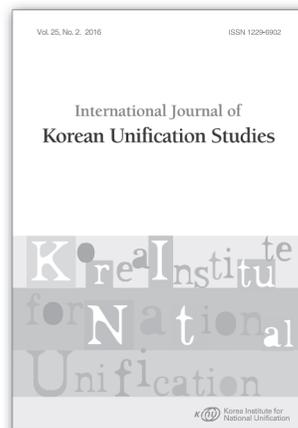
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