

Protection of intangible cultural heritage in international law: the 2003 Convention as a model

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Abstract

Recent years have witnessed multiplication of the sources of threats to the intangible cultural heritage. Indeed, globalization had not only positive effects on societies, but in some cases it was embodied in negative repercussions, affecting the identity of some peoples at their core, given that this category of cultural heritage is not embodied on the ground only in a tangible form, but is manifested in the form of traditions, customs, skills, and experiences passed on from generation to generation verbally and behaviorally; therefore, preserving them in a safe and effective manner requires concerted efforts that require in turn activating the role of local associations that are placed on the front lines in order to draw features of the components of this heritage in a specific area and educate individuals about their true nature, rather, highlighting them at the regional and international levels as the characteristics of a people who are proud of their identity.

In view of the importance of this category of property, members of the international community worked to surround it with adequate legal protection, by programming a number of mechanisms aimed at strengthening the capacities of States to preserve and effectively protect components of intangible cultural heritage, perhaps the most prominent of which is the UNESCO Convention for the Protection of Intangible Cultural Heritage of 2003, which truly constituted a turning point in the international and local policy for the preservation of intangible cultural heritage.

Key words: Intangible heritage; Legal protection; Human rights; International law; Traditions; international mechanisms.

المخلص

سجلت السنوات الأخيرة تضاعفا في مصادر التهديدات التي تحدد بالتراث الثقافي اللامادي. وبالفعل فلم يكن للعولمة على المجتمعات آثار إيجابية فحسب، بل وتجسدت في بعض الحالات في انعكاسات سلبية، مست هوية بعض الشعوب في صميمها، وذلك باعتبار أن هذه الفئة من فئات التراث الثقافي لا تتجسد في أرض الواقع في شكل ملموس، وإنما تتجلى في شكل تقاليد، وأعراف، ومهارات، وخبرات يتم تناقلها من جيل إلى جيل شفهيًا وسلوكيًا، لذلك فإن حفظها بطريقة آمنة وفعالة يقتض تظافر جهود حثيثة تتطلب تفعيل دور الجمعيات المحلية التي توضع في الخطوط الأولى من أجل رسم معالم مكونات هذا التراث في منطقة معينة وتوعية الأفراد حول طبيعتها الحقيقية، بل وابرزها على الصعيد الإقليمي والدولي كميزات شعب يفتخر بهويته.

ونظرًا لأهمية هذه الفئة من فئات الممتلكات عمل أعضاء المجتمع الدولي على إحاطتها بالحماية القانونية الكافية، وذلك من خلال برمجته عدد من آليات كان الهدف منها تعزيز قدرات الدول في الحفاظ على مكونات التراث الثقافي اللامادي، وصونه بشكل فعال، لعل أبرزها اتفاقية اليونسكو لحماية التراث الثقافي اللامادي لسنة ٢٠٠٣، والتي شكلت بحق منعرجًا في السياسة الدولية والمحلية لحفظ التراث الثقافي اللامادي.

الكلمات المفتاحية: التراث غير المادي؛ الحماية القانونية؛ حقوق الإنسان؛ القانون الدولي؛ التقاليد؛ الآليات الدولية.

1.introduction:

Specialists and observers in international law unanimously agree that the protection of human rights has gradually topped the list of priorities set by members of the international community, especially after the Second World War resulted in humanitarian catastrophes from which neither individuals nor property were spared, including behavioral components of cultural heritage whose targeting deliberately by the armed groups with the aim of eliminating their existence and the identity of the human groups to which they belong was revealed by various reports.

It should be noted that the protection of cultural heritage expresses one of the complex tasks that members of the international community had to achieve and embody on the ground, given the combination of a group of variables that actually impede their realization; on the one hand, the absence of a real political will in the concerned countries, and the latter's neglect of the cultural

heritage with its various components at the expense of other considerations makes its protection impossible for the local authorities to rule the principle of sovereignty, and on the other hand, the protection of cultural heritage in general and the intangible cultural heritage in particular requires the employment of advanced technological means and advanced expertise by trained specialists in this field, which is something that many countries fail to provide and allocate sufficient material and human resources to embody it on the ground, which prompted countries to redouble their efforts to oblige the local authorities in each country to take measures and the necessary steps that would protect the intangible cultural heritage from the negative effects that its various components might be exposed to. Perhaps the most prominent means of its programming in this regard is the UNESCO Convention for the Protection of the Intangible Cultural Heritage adopted in 2003, in which the participants in its preparation devoted the necessary mechanisms to protect this category of cultural heritage.

The study of the topic "Protection of the intangible cultural heritage in international law" is of importance, whose main aspects can be summarized as follows:

-The intangible cultural heritage is a reflection of the identity of the peoples and civilizations that emerged from it, it is what distinguishes specific human groups in terms of customs, traditions, skills, knowledge and experiences that have been passed down from generation to generation and have reached the present day, this is what makes them valuable elements that societies keep at any cost.

-The sources of threats to the various components of the intangible cultural heritage have multiplied, referring in particular to globalization, which has removed the existing borders between countries, and led at the same time to the disappearance of many aspects of the intangible cultural heritage in many countries.

The current study aims to achieve a number of objectives, the most important of which are:

-Drawing the features of the intangible cultural heritage based on the relevant legal texts contained in the various international agreements adopted in this regard, in addition to the jurisprudential opinions expressed by a number of jurists and specialists in the field of protecting cultural heritage;

-Determining the nature of the measures included by the members of the international community in international conventions related to the protection of cultural heritage in general, and those related to the protection of intangible cultural heritage in particular, whether in a preemptive or deterrent manner.

From the aforementioned, it appears to us logically to pose the following problematic: How effective are the measures programmed in the UNESCO Convention for the Protection of the Intangible Cultural Heritage of 2003 in protecting the intangible heritage of peoples around the world?

We decided to divide the current study into two complementary axes; in the first one, we present the conceptual framework of the intangible cultural heritage, and extract in the same regard the characteristics attached to it, while we address in the second the measures contained in the UNESCO Convention on the protection of the intangible cultural heritage of 2003 which aimed at protecting the components of intangible cultural heritage in a preventive or deterrent manner.

2. The concept of intangible cultural heritage at the international level

One of the most important characteristics attached to the intangible cultural heritage is its wide scope, as it is not limited to a set of customs and traditions prevailing in a particular human group, but rather includes other elements such as the knowledge and skills that the individual has acquired through the various stages of his development, and in different fields of specialization, and it also includes the practices that members of a particular human group had to follow and passed down from generation to generation, as well as games, songs, folk dishes and other aspects that do not come to mind at first sight.

Due to its wide scope, defining the parameters of this concept was one of the difficult tasks that the members of the international community had to perform and implement, given the tangible difference in the positions on which this or that was proven in this regard in the form discovered at the doctrinal level, and the opinions expressed by specialists in the field of protecting cultural heritage on this issue (2.2), and this was only a result of the vague nature that dyed the definition

that States came up with in the relevant international conventions (2.1). These definitions help us to extract the criteria followed to rank this category of cultural heritage (2.3).

2.1. Definition of intangible cultural heritage:

Due to the importance of intangible cultural heritage, the positions held by different parties regarding its nature have varied, which can be observed by referring to the various legal texts in force (2.1.1) or even the doctrinal opinions expressed in this regard (2.1.2).

2.1.1. Legal definition of intangible cultural heritage:

There are many definitions attributed to the intangible cultural heritage, perhaps the most important of which is contained in Law 98-04⁽¹⁾, where the Algerian legislator initially indicated that cultural property includes, in addition to immovable and movable cultural property, intangible cultural property, which is defined in Article 2, paragraph 2, as: Cultural property interactions resulting from social interactions and the creations of individuals and groups throughout the ages, which continue to express themselves from ancient times to the present day. The Algerian legislator provides a more accurate definition of the intangible heritage in Article 67 of the same law, and indicates that the latter is embodied in: A set of knowledges, social perceptions, skill, competencies or techniques based on traditions in the various fields of cultural heritage, and which represent real indications of connection with cultural identity, and are possessed by a person or a group of persons.

In the framework of the Convention on the Protection of Intangible Cultural Heritage, this last is defined as: The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development”⁽²⁾.

2.1.2. Doctrinal definition of intangible cultural heritage:

There are many definitions attributed to the intangible cultural heritage at the doctrinal level, as presented by (Valentina Vadi), who believes that it is: “A summary of what generations have inherited from each other, generation after generation from the past to the present”⁽³⁾, as (Nada Zuhair Saeed Al-Feel) defines it as: “...the complete record of all aspects of human activity in society, and that everything that this heritage includes in terms of ideas, beliefs, folk arts, wisdom, proverbs, songs, rather, it involves rules of social behavior that reflected the morals of its makers, and was imprinted with the rules of the Islamic religion and what it contains of belief and behavior, and the members of society watched over their formation and consolidation, so Muslims had rules and customs that they felt important in their lives, so they continued to follow them, especially as they extended to all areas of their lives: commerce and industry, transport, intellectual property, productions, professions and the environment”⁽⁴⁾. For her part, (Jannat Black) believes that the intangible cultural heritage is: “the sum of the creations emanating from a particular society, which are expressed by a group or by individuals, and defined as reflecting the expectations of society as much as it reflects its social and cultural identity, as it sees it embodied norms and values

⁽¹⁾ Loi N° 98-04 du 20 Safar 1419 correspondant au 15 juin 1998 relative à la protection du patrimoine culturel, Journal officiel de la République Algérienne, N°44, 17 Juin 1998.

⁽²⁾ Article 2, Para.1 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽³⁾ VADI Valentina, Intangible cultural heritage and trade, in: C. Waelde, C. Cummings, M. Parvis and H. Enright (eds.), research handbook on contemporary intangible cultural heritage, Cheltenham: Edward Elgar forthcoming, 2018, p 3.

⁽⁴⁾ LEVZIRINI Federico, Intangible cultural heritage: the living culture of peoples, the European Journal of International Law, Vol.22, N°01, 2011, p 102.

transmitted orally, by tradition, or in other ways, and embodied in various forms such as language, literature, music, dance, games, myths, rituals, customs, crafts, architecture, and other arts⁽¹⁾.

2.2. Characteristics of intangible cultural heritage:

Based on the definitions referred to above, we were able to derive a number of characteristics attached to this form of cultural heritage, the most important of which can be summarized as follows:

2.2.1. The intangible cultural heritage is the product of the creativity of individuals:

The components of the intangible cultural heritage are embodied in a set of customs and traditions that reflect the proven behaviors of a group of individuals living in a particular region, within the framework of practicing certain rituals related to their religion, culture and beliefs across different periods of time. This, the intangible cultural heritage is not limited to customs and traditions, but also extends to the knowledge acquired by the members of the group over time, in addition to the techniques and inventions that they invented in order to overcome the obstacles that nature put in their face for example, or even in order to raise the challenges they faced by other human beings before⁽²⁾;

2.2.2. The intangible cultural heritage is embodied in various forms:

One of the most important characteristics attached to the intangible cultural heritage is that it is not only embodied in one image, but rather its images and forms are multiplied according to the prosperity of the culture of the people or civilization or not, in addition to the type of approach adopted between those who deal with this subject in general in a way that can be observed at the international level, or vice versa who separates it as accurately as it does on the national level. In this regard, it is noted that the positions of the members of the international community differed among those who draw them in general, as is the case with the Convention on the Protection of the Intangible Cultural Heritage of 2003, and limit them in particular to: Oral traditions and expressions including language as a medium for the expression of intangible cultural heritage; performance arts and traditions; social practices, rituals, and ceremonies; knowledge and practices relating to nature and the universe; Skills associated with traditional craft arts⁽³⁾. At the national level, the Algerian legislator was more accurate in defining these areas, and indicated that they include: the science of ancient music; traditional and folk songs; jingles; melodies; The stage; dance art and kinetic rhythms; religious ceremonies; culinary arts; oral literary expressions; historical stories; anecdotes; judgement; legends; riddles; proverbs; aphorisms and sermons; traditional games⁽⁴⁾.

The protection of intangible cultural heritage was enshrined in the Iraqi Constitution of 2005, whose drafters emphasized that: "This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandaean Sabians"⁽⁵⁾. As for the religious dimension of Iraqi intangible cultural heritage, they point out in Article 10 of the Constitution the following: "The holy shrines and religious sites in Iraq are religious and civilizational entities. The State is committed to assuring and maintaining their sanctity, and to guaranteeing the free practice of rituals in them"⁽⁶⁾.

2.2.3. Transmission of intangible cultural heritage from generation to generation:

The intangible cultural heritage is supposed to be transmitted between individuals who belong to different periods of time in various ways, whether orally or through imitation. However, it is noted in this regard that customs and traditions remain ingrained among the members of the group as long as the latter are committed to perpetuating them on occasions organized for this purpose.

⁽¹⁾ BLAKE Janet, Introduction to the draft preliminary study on the advisability of developing a standard-setting instrument for the protection of intangible cultural heritage, international round table about : « Intangible cultural heritage », working definitions, piedmont, Italy, 14 to 17 March 2001, pp, 8-9.

⁽²⁾ Xiaoting Song, Yongzhong Yang, Ruo Yang, Mohsin Shafi, Keeping watch on intangible cultural heritage: live transmission and sustainable development of Chinese lacquer art, *sustainability*, Vol.11, N°3868, 2019, pp, 2-3.

⁽³⁾ Article 2, Para.2 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽⁴⁾ Article 67, Para. 2 de la loi N° 98-04 du 20 Safar 1419 correspondant au 15 juin 1998 relative à la protection du patrimoine culturel, Journal officiel de la république Algérienne, N°44, 17 Juin 1998.

⁽⁵⁾ See: Article 2/Second from Iraqi constitution of 2005.

⁽⁶⁾ See: Article 10 from Iraqi constitution of 2005.

Intangible cultural heritage also has an undeniable temporal dimension, knowing that its content revolves around transmission from one generation to the next⁽¹⁾.

2.3. Criterias for describing the intangible cultural heritage:

In order for any component of the intangible cultural heritage to rise to the description of the intangible cultural heritage, the various texts in force in this field require that it meet a number of criterias, mainly represented in:

2.3.1. anciently Criterion:

The criterion of anciently is an essential element for the inclusion of any building, artifact within the category of tangible cultural property, and members of the international community have explicitly referred to this issue in the UNESCO Convention for the Protection of the underwater cultural heritage of 2002 which requires that the property concerned with the protection provided by this The Convention has been submerged in water for more than a hundred years⁽²⁾.

It is the same thing that is observed with regard to the intangible cultural heritage, in which, in order to rise to this rank, it is assumed that, for example, the customs and traditions under study are circulated among a group of individuals for a certain period, and this is what is understood from the expression used by the Algerian legislator in the text of article 2 of the text of Law 04-98 When he stipulated that the intangible cultural property should express, on the one hand, the social interactions and creations of individuals and groups throughout the ages, and on the other hand, he explained that it must still express itself from ancient times to the present day. It is noticeable in this regard the vague and comprehensive nature that characterizes this criterion, as no agreement required a specific period of time⁽³⁾;

2.3.2. Criterion of Importance:

We can deduce the importance of the customs and traditions of a particular society or the knowledge and science emanating from its members, by analyzing the role and position occupied by the latter in this society in view of the religion adopted by the majority of individuals, and the entrenchment of some values and principles among its members. In other words, the importance of intangible cultural heritage is measured by the extent society members adhere to some values and principles that guide their lives⁽⁴⁾.

2.3.3. Respect for human rights:

It should be noted in this regard that most of the national legislation did not refer to this criterion in view of the difference in the view held by this or that people on the issue of human rights, and therefore it was logical to note that the only reference to this criterion was in the UNESCO Convention of 2003. What we can conclude from this criterion is that all customs and traditions cannot rise to the level of intangible cultural heritage, and the legal protection that entails if the practices that are embodied in their form involve an infringement on the physical integrity, dignity or honor of individuals, then it is not possible in any way that some religious rituals that are characterized by their violence are classified into this category⁽⁵⁾.

3. The measures adopted to protect the intangible cultural heritage:

Given the importance of the components of the intangible cultural heritage, and the difficulty of surrounding them with adequate legal protection, members of the international community had no choice but to establish an integrated legal arsenal that takes into account the nature of this category of cultural heritage, which is characterized by its fragile nature and the ease of its extinction. The preventive aspect on the approach adopted by the members of the international community within the framework of the UNESCO Convention for the Protection of the Intangible Cultural Heritage of 2003, and the obligations it imposed on the member states of the convention

⁽¹⁾ Pinar Yelmi, Protectiong contemporary cultural soundscapes as intangible cultural heritage: sounds of Istambul, International Journal of heritage Studies, Vol.22, N°04, March 2016, p 304.

⁽²⁾ Article 1 from the convention on the protection of the underwater cultural heritage adopted in Paris, on November 2nd, 2001.

⁽³⁾ Article 2 de la loi N° 98-04 du 20 Safar 1419 correspondant au 15 juin 1998 relative à la protection du patrimoine culturel, Journal officiel de la république Algérienne, N°44, 17 Juin 1998.

⁽⁴⁾ JAUSE Helga, UNESCO's convention for safeguarding of the intangible cultural heritage and the 'goodness criteria', International Journal of Intangible Heritage, May 2003, p 19.

⁽⁵⁾ BLAKE Janet, From traditional culture and folklore to intangible cultural heritage: evolution of a treaty, Santander Art and Culture law review, N°02, Vol.03, 2017, pp, 47-48.

(3.1), or even the steps it took, especially with regard to establishing mechanisms internationally and locally specialized in preserving intangible cultural heritage (3.2).

3.1. Measures and mechanisms for the protection of intangible cultural heritage:

The international arena harnesses a group of international conventions that have been adopted to protect the intangible cultural heritage, with varying degrees of accuracy between those that deal with this issue indirectly, and those that are directly exposed in the form of the Convention on the Protection of the Intangible Cultural Heritage of 2003, the latter of which it included a number of measures and mechanisms, all of which are devoted to the protection of intangible cultural heritage, which are detailed as follows:

3.1.1. Mechanisms for the protection of intangible cultural heritage in the UNESCO Convention:

It should be noted that safeguarding the intangible cultural heritage is among the priorities set by the States parties to the Convention for the Protection of the Intangible Cultural Heritage of 2003 in its framework defines it as: "...measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage." ⁽¹⁾. The convention established a set of mechanisms for the protection of intangible cultural heritage, the most important of which are:

3.1.1.1. The Intergovernmental Committee for the Safeguarding of the Intangible Cultural:

This committee consists of representatives of 18 State parties⁽²⁾ elected by the State parties and is entrusted under the convention with a set of tasks, including:

-promoting the objectives of the agreement and encouraging and ensuring follow-up on its implementation⁽³⁾;

-Advising on best practices and formulating recommendations on measures to safeguard intangible cultural heritage⁽⁴⁾;

-Preparation of a project for the use of the Fund's resources⁽⁵⁾;

-The latter whose various resources are used to achieve the objectives outlined in the convention, which mainly revolve around the protection of the intangible cultural heritage⁽⁶⁾.

3.1.1.2. Programs, projects and activities for safeguarding the intangible cultural heritage:

These programmes, projects, and activities are selected by the intergovernmental committee for the safeguarding of the intangible cultural heritage on the basis of the latter's assessment, which mainly revolves around the extent to which they reflect the principles and objectives of the convention, and the extent to which they take into account the special needs of developing countries⁽⁷⁾.

It is dependent on these programmes, projects and activities to surround the components of the intangible cultural heritage with adequate protection, by adopting best practices in accordance with the methods and means in force in this field⁽⁸⁾.

⁽¹⁾ Article 2, Para.3 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽²⁾ Article 5, Para.1 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽³⁾ Article 7, Para. (a) from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽⁴⁾ Article 7, Para. (b) from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽⁵⁾ Article 7, Para. (c) from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽⁶⁾ Article 25 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽⁷⁾ Article 18, Para.1 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽⁸⁾ Article 18, Para.3 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

3.1.1.3. International cooperation and international assistance between members of the international community:

Cooperation is embodied in the exchange of information and experiences, and joint initiatives between different countries in order to safeguard the intangible cultural heritage⁽¹⁾, while international assistance is embodied in the following forms:

- Conducting studies in various aspects of safeguarding;
- Provision of experts and practitioners;
- Training of necessary personnel;
- Put in place legalizing or other measures;
- Construction and operation of infrastructure;
- provision of technical equipment;
- Providing other forms of financial and technical assistance, including the granting of low-interest loans and donations when appropriate⁽²⁾.

3.2. UN measures to protect the intangible cultural heritage:

In addition to the various mechanisms utilized by the States Parties to the Convention on the Protection of the Intangible Cultural Heritage, the latter has programmed a number of measures at the national and international levels, the respect of which would provide serious protection for this category of cultural heritage.

3.2.1. At the national level:

The Convention distinguishes between measures for the safeguarding of the intangible cultural heritage at the national and international levels; in this regard, the Convention recommends that the States Parties need to take the necessary measures to ensure the preservation of the intangible cultural heritage present in their territories, especially by identifying and defining the various elements of this type of heritage. In this regard, the Convention defines a set of measures that each State Party to the Convention is supposed to adopt, and this includes for example the creation of inventories of this heritage, which are drawn up by each State party, and the latter submits a periodic report thereon to the Committee.

- Adopting a general policy aimed at highlighting the role played by the intangible cultural heritage in society, and integrating the safeguarding of this heritage into planning programmes.
- Encouraging the conduct of scientific, technical and artistic studies, as well as research methodologies for the effective preservation of this type of heritage.
- Adopt appropriate legal, technical, administrative and financial measures, in particular to facilitate the establishment or strengthening of training institutions in the management of intangible cultural heritage, and to ensure access to it⁽³⁾.

3.2.2. At the international level:

At the international level, the Convention has programmed a set of measures that must be taken, including the establishment of a list of intangible cultural heritage that needs urgent safeguarding, and a list of the properties concerned shall be included in it, at the request of the concerned State Parties. Reference may also be made to the preparation of programmes, projects and activities for the safeguarding of the intangible cultural heritage, as the aforementioned committee periodically selects and promotes programs, projects and activities of a national, sub-regional and regional nature concerned with the safeguarding of the heritage, which it deems to best reflect the principles and objectives of this Convention, It takes into account the special needs of developing countries⁽⁴⁾.

4. Conclusion:

It appears from the aforementioned that the doubling of the sources of threats to the components of the intangible cultural heritage, such as the customs and traditions that people mock, has led to an unusual movement at the international level, within which countries have striven to surround the components of the intangible cultural heritage with adequate protection. This movement is

⁽¹⁾ Article 19, Para.1 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽²⁾ Article 21 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽³⁾ Article 13-14-15 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

⁽⁴⁾ Article 16-17 from the convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.

explained in view of the difficulty of protecting this category of cultural heritage categories, in particular due to its intangible nature, which requires resorting to advanced means such as photographic documentation and audio recording, in addition to what is required to ascertain the nature of some rituals through the investigations that are conducted.

The efforts made by the members of the international community to protect the heritage of its various components cannot be denied, through all the legal texts adopted at the international level, which represented a real turning point in the approach that countries had towards the issue of protecting and preserving cultural heritage throughout the world. Indeed, the adoption of the UNESCO Convention for the Protection of the Intangible Cultural Heritage was evidence of the development of the view that countries held for cultural property, as it moved from mere material property to an integral part of the identity of peoples in particular and humanity in general. Despite the recorded developments, the legal system programmed in this field remains limited, and a limitation due to the scarcity of coupling the theoretical texts referred to above with a field application that guarantees the protection of the intangible cultural heritage, which in turn requires the harnessing of huge financial resources, which local authorities often refuse to include in their budget.

The completed study allowed us to draw a set of results, perhaps the most important of which are:

-The various components of the intangible cultural heritage are of great importance that is evident from the confidence of the link that binds them to the society to which they belong, and in some cases to all mankind, as evidence of the achievements that the individual undertook through the various periods of time that he went through, and his ability to overcome the obstacles that he encountered in different stages of its development, so it was vital to preserve it and protect it from the negative effects that might affect it;

-Members of the international community have already adopted an advanced and integrated legal arsenal in the field of protecting the intangible cultural heritage, but it has been criticized for its limitations resulting from its lack of binding rules for States, and its effectiveness depends in all cases on the extent of a real political will to preserve the components of this category from of cultural heritage.

The completed study allowed us to uncover a group of legal voids, in order to fill in which we recommend the following:

-The need to educate global public opinion about the importance of protecting the intangible cultural heritage by organizing international conferences and seminars to be held under the supervision of the United Nations, in which countries are invited to sign and ratify various international treaties related to the protection of intangible cultural heritage, including the UNESCO Convention of 2003;

- Putting non-governmental organizations and representatives of civil society on the first lines in order to inventory and register the various components of the intangible cultural heritage by supporting and encouraging their activities, and facilitating their access to the various areas in which they operate;

-The need to update the content of the UNESCO Convention of 2003 by including the various developments in the international arena in its equation in order to protect the intangible cultural heritage, especially with regard to digital transformation and the qualitative leap that the international community has taken in the field of modern technologies.

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B-Legal Texts:

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2-Iraqi constitution of 2005.

B.2.International Legal Texts:

1-The convention on the protection of the underwater cultural heritage adopted in Paris, on November 2nd, 2001.

2-The convention for safeguarding of the intangible cultural heritage adopted in Paris, October 17th, 2003.