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**Intangible Cultural Heritage
in the People's Republic of China**
The Example of the Miao Nationality

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Introduction

In the process of economic globalization, there are an increasing number of people who tend to ignore the significance of culture with the high speed of the development of the economy. A typical example is the demolition of places of historic interests due to the construction of modern cities. Hence many people neglect to understand the value of cultural heritage in their hometowns. This is exactly why greater attention has been paid to the protection of cultural heritage by the international community. The protection of cultural heritage, however, comprises of two aspects, namely the first concerning tangible cultural heritage and the second intangible cultural heritage.¹ Gradually a legal regime has been established for the protection of cultural heritage at the international level. As the cornerstone of the recognition of cultural heritage at the international level, the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the Convention concerning the Protection of the World Cultural and Natural Heritage in 1972. At that time, cultural heritage only included tangible aspects of cultural heritage.² However, monuments and collections of objects are not all of cultural heritage. Traditions or living expressions inherited from our ancestors and passed on to our descendants are also belonging to the scope of cultural heritage. While fragile, intangible cultural heritage is an important element in maintaining cultural diversity in the growing globalization.³ Thus, three decades after the adoption of the said convention, the international community slowly started to focus on another form of cultural heritage, the protection of intangible cultural heritage. As a result of this shift in focus, the Convention for the Safeguarding of the Intangible Cultural Heritage was adopted by UNESCO in 2003. Only two years later a third and related aspect was added when the Convention on the Protection and Promotion of the Diversity of Cultural Expressions was adopted to focus on the

¹ P. K. Yu., "Cultural Relics, Intellectual Property, and Intangible Heritage", (2008) 81 *Temple Law Review*. 433.

² Article 1 of the Convention concerning the Protection of the World Cultural and Natural Heritage

³ UNESCO, "What Is Intangible Cultural Heritage", available at: <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00002> (last visited: March 1, 2011).

diversity of cultural expressions. This convention sets forth to “create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner” and to encourage dialogue among cultures and countries.⁴ Not only UNESCO has spotted the significance of intangible cultural heritage, the World Intellectual Property Organization (WIPO) has done so as well. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, established in September 2000, addressed the misappropriation of folklore, traditional knowledge and indigenous practice by the WIPO.⁵ The committee was established when the debate of how to use intellectual property rights to protect traditional knowledge was initiated. So far, there exists no international legally binding document with respect to intellectual property rights and traditional knowledge and folklore except for the 2003 UNESCO Convention. However, the 2003 UNESCO Convention has advised that intellectual property rights can be a protective instrument.⁶ The suggestion is not legally binding. Meanwhile, there are a vast number of overlaps between intangible cultural heritage, traditional knowledge and folklore in accordance with the 2003 UNESCO Convention. Therefore, striking a balance wisely between intangible cultural heritage protection and intellectual property rights would have profound repercussions for the sustainable development of intangible cultural heritage at international level. Taking all of those conventions and the intergovernmental committee into consideration, it is safe to infer that the establishment of an international legal framework for the protection of intangible cultural heritage is indeed a tendency of the international community. Additionally, those conventions and the intergovernmental committee have also emphasized on the relationship between human rights and intangible cultural heritage. They have already recognized the significance of the culture of minorities and indigenous peoples in terms of intangible cultural heritage protection. In order to further demonstrate

⁴ Article 1(b) and (c) of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

⁵ P. K. Yu, “Traditional Knowledge, Intellectual Property, and Indigenous Culture”, (2003) 11 *Cardozo Journal of International Law and Comparative Law* 239.

⁶ Article 3(b) of the Convention for the Safeguarding of the Intangible Cultural Heritage.

whether the legal framework of intangible cultural heritage is adequate or not, we can have a close look at the national level. And China is a good example of an old civilization, with many distinct cultures and a booming economy.

It is obvious that the People's Republic of China (PRC) is the member state of those conventions outlined above, and the intergovernmental committee as well. The legal regime in the cultural field of China still features no legal definition with regard to intangible cultural heritage, except for a proposed Draft of the Law of the People's Republic of China on the Protection of Folk and Ethnic Traditional Culture.⁷ In this proposed text, intangible cultural heritage is understood as those traditional cultural expressions which are handed down from generation to generation in all nationalities. Intangible cultural heritage in China is divided into five categories. Specifically, oral traditions and languages consists the first part of intangible cultural heritage. The second category contains traditional arts, calligraphies, music, dances, dramas and folk arts. The third one refers to as the traditional skills, medicines and calendars while the fourth is the traditional rituals, festivals and other folks. Eventually, the traditional sports, recreations and acrobatics and others compose the final category of intangible cultural heritage in China.⁸ Nevertheless, the Draft has not regulated the governance of intangible cultural heritage of the Chinese minority nationalities. Given that Chinese culture is constituted by one majority nationality, the Han nationality, together with fifty-five minority nationalities, and there is still no general definition of the Chinese minority nationalities in the legal document of China.⁹ The protection of intangible cultural heritage of the Chinese minority nationalities becomes very essential.¹⁰

⁷ The Ministry of Culture and Committee of Education, Science, Culture, Health and Sports of National People's Congress have drafted of Law of the People's Republic of China on the Protection of Folk and Ethnic Traditional Culture (Draft), and referred it to the National People's Congress in August 2002. The Law is still not adopted now. Available at: Ministry of Culture, "Protection of Intangible Cultural Heritage", <http://chinagate.cn/english/reports/48277.htm> (last visited: December 3, 2010).

⁸ Article 2 of the Draft of the Law of the People's Republic of China on the Protection of Folk and Ethnic Traditional Culture.

⁹ The Preamble of the White Paper on Regional Autonomy for the Chinese Minority Nationalities in PRC (published on February 28, 2005).

¹⁰ First Recital, Preamble of the Constitution of the People's Republic of China.

In terms of intangible cultural heritage protection, China has come up with certain successful practices indeed. In spite of that, there are still many challenges that need to be addressed. More precisely, China needs to establish a more adequate and consistent legal regime in the cultural field, and strike a balance between the copyright and traditional knowledge for the sake of intangible cultural heritage preservation. Moreover, whether the scope of ecotourism should contain intangible cultural heritage is still a challenge that China has to confront. Those challenges are deemed as useful for the overall improvement of the protection of intangible cultural heritage in China.

Being regarded as one of the most typical minority nationality among the fifty-five Chinese minority nationalities, the Miao nationality is one of the most ancient nationalities with a history of more than 4,000 years in China. The groups of this nationality are located in the following provinces of mainland China: Guizhou, Hunan, Yunan, Guangxi, Chongqing, Hubei and Sichuan, respectively. The Miao nationality has many distinctive cultures compared with other Chinese nationalities. The batik, embroidery skills as well as shaman of the Miao nationality enjoy a well reputation both domestically and internationally.¹¹ A critical analysis of the protection of intangible cultural heritage of the Miao nationality reflects the general characteristics of intangible cultural heritage protection of the overall Chinese minority nationalities.

Against this background, Chapter I discusses the Chinese minority nationalities in general and the Miao nationality in particular. Then Chapter II specifies the protection of intangible cultural heritage at the national level. After that, Chapter III explores the legal protection of intangible cultural heritage from an international perspective. Chapter IV promotes both certain principles and concrete approaches for the improvement and further development of the protection of intangible cultural heritage in China. Eventually, the conclusion looks for ways to achieve a greater balance of the

¹¹ C. Mackerras. *China's Ethnic Minorities and Globalisation*, (New York: Routledge Curzon, 2003), at 188.

protection of intangible cultural heritage based on the inclusion of both intellectual property rights and traditional knowledge.

