

21 Savane – le mot *cerrado* signifie fermé ou dense ; il a été appliqué à cette végétation à cause de la difficulté à la parcourir. Il s'étend à partir des frontières méridionales de la forêt amazonienne aux secteurs périphériques dans le sud-est des États de São Paulo et de Paraná, occupant plus de 2° de latitude et d'une altitude allant du niveau de la mer jusqu'à 1 800 m.

22 Prairies boisées – des aires avec une prédominance des espèces herbacées et quelques arbustives. Il y a peu d'arbres dans le paysage. Serviço Florestal Brasileiro. 2010. *Florestas do Brasil em resumo – 2010: Dados de 2005–2010*. Brasília: SFB. Voir http://www.ciflorestas.com.br/arquivos/doc_florestas_resumo_22648.pdf.

23 Appelé au Brésil *Cartório do Registro de Imóveis e Anexos*.



ASEAN Cultural Heritage – Forging an Identity for Realisation of an ASEAN Community in 2015? –

by Koh Kheng-Lian*

One Vision, One Identity, One Community

– Association of Southeast Asian Nations (ASEAN) Motto; ASEAN Charter, 2007, Article 36

To promote an ASEAN identity through the fostering of greater awareness of the diverse culture and heritage of the region

Charter of the Association of Southeast Asian Nations, 2007, Article 1(14)

Residents of ASEAN should forge a new regional identity in addition to their nationality in order to strengthen political and economic integration

Secretary-General Dr Surin Pitsuwan, 2010

.. ASEAN is moving towards establishing an ASEAN Community in 2015. Pursuant to that, ASEAN is gearing up to forge a regional identity for ASEAN through various cultural and information projects that cover the arts – visual, performing, literary, musical and other art forms whether traditional, contemporary, or modern – cultural heritage, information and the mass media, as well as in collaboration with our Dialogue Partners.

H.E. Dato' Misran Karmain, Deputy Secretary-General of ASEAN for ASEAN Socio-Cultural Community¹

The aim of this paper is to examine whether cultural heritage can be used as a mechanism for developing a transnational ASEAN identity in addition to the nationality of each ASEAN Member Country (AMC) in order to promote unity in the establishment of the ASEAN Community by 2015. It focuses on cultural issues, particularly intangible cultural heritage (ICH), in this context, and the relevance of these issues to a variety of ASEAN declarations and other soft instruments on cultural heritage.

The ten AMCs (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam) have diverse cultures and heritages arising from different languages, religions, traditions, etc. Even within a country, sub-cultures complicate the origins of a cultural heritage, as does the mixture of cultures derived through inter-marriages and other influences, such as from migrants. On the other hand, certain ethnic groups such as Chinese, Indians and Malays are found in the various AMCs. Current discussions of national rights and obligations with regard to cultural heritage can raise difficult questions in this context. What if each race/group were to claim that a tradition, or other

element of cultural heritage, belongs only to its race *living in that particular country* and refused to acknowledge that there could be shared cultures across national boundaries? For example, as noted below, the Chinese from Singapore may claim a dish as theirs even though the Chinese in Malaysia also claim it as their own. Could there be a joint claim of tradition or heritage of all Chinese whether in Singapore, Malaysia or other AMCs? Alternatively, different groups may each contribute to the creation of a heritage. What is the scope of an ASEAN cultural heritage under the ASEAN Declaration on Cultural Heritage, 2000 (ADCH)?² Is it impacted by the modifications made to traditional cultures as creations of subsequent generations? Does the branding of cultural heritage as “ASEAN” also allow for an “ASEAN-ness” of culture – a single, inclusive ASEAN and/or shared culture between two or more AMCs?

The *potpourri* of sources of culture would seem to lead to an inevitable result: diversities that may have an impact on any attempt to recognise a unified ASEAN cultural heritage, particularly with regard to the intangible aspects of such a heritage. Amidst its diversity of cultures, ASEAN in its wisdom has brought cultural heritage to a different legal level – beyond simply safeguarding and protecting it. It has attempted to use culture as a *unifying* mechanism to forge an ASEAN identity. Is this an impossible dream?

The following examples illustrate why the author is posing the question, demonstrating that, paradoxically, cultural heritage can unify or divide. A case in point is

* Emeritus Professor at the National University of Singapore's Faculty of Law; former Director of the Asia-Pacific Centre for Environmental Law and currently its Honorary Director; awarded the 2012 Elizabeth Haub Prize for Environmental Law.

the 2012 controversy between Indonesia and Malaysia concerning the *Tor-tor* dance. The headline in *The Sunday Times* of 24 June 2012³ says it all: “Riots erupt as culture controversy worsens: Malaysian embassy in Jakarta targeted by Indonesian protesters over music and dance heritage”. Indonesia claimed the dance as its national heritage and rioters torched the Malaysian flag and hurled eggs at the Malaysian embassy in Indonesia.⁴

Another example is the Preah Vihear temple between Cambodia and Thailand, controversy over which had to be settled by the International Court of Justice (ICJ). In April 2013, Cambodia requested a reinterpretation of the 1962 ICJ ruling on the Hindu temple to settle the dispute over the 4.6 km² piece of land on which it is located.⁵ On 18 April 2013, about 500 nationalists of the Patriot Thai Group raised the Thai flag to assert Thai sovereignty over Preah Vihear.⁶

Yet another recent controversy, discussed in greater detail below, relates to the *Yu Sheng/Lo Hei* – a dish served during the Chinese Lunar Festival, traditionally thought to be auspicious and to bring prosperity. Some have raised the question as to whether it is the cuisine of the Chinese in Singapore or the Chinese in Malaysia.⁷

Such controversies also arise regarding music, such as the song “*Terang Bulan*” (Bright Moon). Indonesia has long claimed that Malaysia has “stolen” this Indonesian musical piece, which is now Malaysia’s national anthem “*Negaraku*”. Indonesia claims that the music is based on the Indonesian song *Terang Bulan*.⁸ However, historians have noted that, long before it came to be known as an Indonesian song, *Terang Bulan* could have been a French sailors’ ditty that was made popular by European sailors who travelled across the Pacific Ocean. The song was said to have been composed by French lyricist Pierre-Jean de Béranger (1780–1857), popularised in Mahe in the Seychelles and later spread to Southeast Asia.⁹

Apart from Preah Vihar, these examples are of intangible cultural heritage (ICH). Tangible heritage such as monuments, buildings, batiks and the ASEAN Heritage Parks can also be branded as ASEAN heritage. This paper will examine the criteria for branding, as well as the very different question of whether all these could be useful in forging an ASEAN identity. It moves on to pose another question: Is there a transnational ASEAN-ness of culture, apart from just branding something as ASEAN (as in ASEAN Heritage Parks, or other tangible heritage under Section 2 of ADCH), that can promote an ASEAN identity?

ASEAN’s evolution from an association in 1967 to the current plan to establish an “ASEAN Community” by 2015¹⁰ is now enshrined in the Charter for the Association of Southeast Asian Nations 2007 (ASEAN Charter).¹¹ It is being promoted in numerous other instruments, including those laying out the three mutually reinforcing ASEAN pillars:¹² the ASEAN Political-Security Community Blueprint; the ASEAN Economic Community Blueprint; and the ASEAN Socio-cultural Community Blueprint.

The pursuit of ASEAN’s development goal can be said to date from 15 December 1997 – 30 years after the establishment of ASEAN as an association – when the

ASEAN Vision 2020¹³ was adopted by the Heads of State/Government. It envisioned the existence of “an ASEAN community conscious of its history, aware of its cultural heritage and bound by a common regional identity” by the year 2020 (subsequently shifted to 2015). An ASEAN community with an ASEAN identity can promote harmonisation and/or integration of environmental laws and sustainable development, as well as supporting the political and economic pillars.

ASEAN’s latest commitment with regard to cultural heritage is set out in the Declaration on ASEAN Unity in Cultural Diversity: Towards Strengthening ASEAN Community, 2011 (AUCD),¹⁴ which seeks to promote a “Think ASEAN” mindset as the framework for designing regional policies on cultural diversity. The framework is meant to promote a shared cultural discourse at the regional ASEAN level towards the strengthening of the ASEAN Community. Other relevant instruments (soft laws) with this goal include the ADCH and the ASEAN Declaration on Heritage Parks 2003.¹⁵

What Is ASEAN Identity?

The concept of an ASEAN identity was elaborated in the ASEAN Socio-cultural Community Blueprint, 2009–2015 (ASCC),¹⁶ in Part III, Section E (“Building ASEAN identity”), introduced at para. 42:

The ASEAN identity is the basis of Southeast Asia’s regional interests. It is our collective personality, norms, values and beliefs as well as aspirations as one ASEAN community. ASEAN will mainstream and promote greater awareness and common values in the spirit of unity in diversity at all levels of society. The strategic objective is ...to create a sense of belonging, consolidate unity in diversity and enhance deeper mutual understanding among AMCs about their culture, history, religion and civilization (strategic objectives).

An external normative perspective is required for the ASEAN-isation of culture. As will be demonstrated, the definition of cultural heritage in ADCH is too narrow to achieve one of its aims, namely, promoting an ASEAN identity. This point is also addressed in the objectives set out in Article 1 of the ASEAN Charter, 2007:

- (13): *to promote a people oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN INTEGRATION and community building.*
- (14): *to promote an ASEAN identity through the fostering of greater awareness of the diverse culture and heritage of the region....*

The ASCC expresses an objective that reinforces those provisions:

...to contribute to realizing an ASEAN Community that is people-centered and socially responsible with a view to achieving enduring solidarity and unity among the nations and peoples of ASEAN by forging a common identity and building a caring and sharing society which is inclusive and harmonious.

The ASEAN identity is important for the future implementation of ASEAN policies. It is a counterpoint to the harsh principles of sovereignty and non-intervention – the ASEAN Way – which can, without the recognition of a cultural bridge, hinder the implementation of ASEAN instruments including environmental laws and policies.

The ADCH and AUCD

The ADCH and AUCD bring to the fore the commitment of ASEAN to forging an ASEAN identity as a tool to help it meet its 2015 commitment.

The ASEAN Declaration on Cultural Heritage, 2000

The ADCH covers both tangible and intangible heritages. This paper will focus primarily (but not exclusively) on ICH – a concept that is relatively new, not only in ASEAN but globally. Although the origins of the ICH concept date back earlier, its global recognition has been recent: the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, 2003 (UNESCO Convention). ICH has a potential for further development in ADCH in light of the process of globalisation and social transformation among communities, groups and individuals.

The Preamble to ADCH underlines the importance of cultural heritage in developing an ASEAN identity, and affirms the importance of cultural discourse, awareness and literacy in enhancing inter- and intra-cultural understanding of the shared history of the ASEAN countries. Then in Section 1 (“National and Regional Protection of ASEAN”), it reads:

It is primarily the duty of each ASEAN Member Country to identify, delineate, protect, conserve, promote, develop significant cultural heritage within its territory and to avail of regional and international cooperation, wherever necessary and appropriate. While fully respecting each Member Country's sovereignty and national property rights, ASEAN recognizes that the national cultural heritage of Member Countries constitute the heritage of Southeast Asia for whose protection it is the duty of ASEAN as a whole to cooperate.

The scope of this duty appears to focus on national cultural rather than transboundary (shared) heritage, though there might be room for interpretation that in the identification of “heritage”, an AMC can avail of regional cooperation. Can such cooperation include a merger of the heritage of two or more AMCs? Is its focus on “national property rights” conducive to promoting a transnational shared culture? The Preamble to the ADCH mentions the importance of “regional identity”:

UNDERSTANDING that cultural traditions are an integral part of ASEAN's intangible heritage and an effective means of bringing together ASEAN peoples to recognize their regional identity (emphasis added).

Section 6 of the ADCH (Enhancement of Cultural Education, Awareness and Literacy) also mentions regional identity:

ASEAN Member Countries shall undertake continuing cultural exchanges and programs of cultural awareness and sensitivity as a basic component of ASEAN cooperation. The development of ASEAN perspectives and the validation of ASEAN cultural strengths and resources, particularly historical linkages and shared heritage and sense of regional identity could be effectively achieved through these programs (emphasis added).

As the ADCH (adopted in 2000) comes after the 1997 ASEAN Vision 2020 (though it predates the ASEAN Charter 2007 and the ASCC), it can be considered the forerunner of the novel concept of forging an ASEAN identity through a cultural heritage mechanism.

Although there is specific tangible cultural heritage attributable to each AMC, ASEAN cultural heritage (particularly ICH) can, as noted above, be intertwined – comprising a fusion/merger of cultures from different community/ethnic groups across AMCs. Cultural influences can also extend beyond the ASEAN region, particularly when overlaid by religious practices and traditions. Hinduism is practised both inside and outside ASEAN, so that India has a great influence on ASEAN culture, typified by the Ramayana, for example. There is a great deal of movement and inter-marriage among ethnic races and national origins, e.g., Indians, Chinese, Malays, Thais, Indonesians and Filipinos, to mention but a few. Can the recognition of cultural heritage at the national level be transposed to a transnational recognition of cultural heritage – an ASEAN-ness of cultural heritage – and branded as ASEAN cultural heritage? This suggests a possible need to recognise two types of ASEAN cultural heritage:

- (1) the branding as “ASEAN heritage” of heritage that is territorial within an AMC (this is clearly contemplated within ADCH); and
- (2) the branding of elements of shared/merged culture that cut across two or more AMCs, such as a cuisine that is common to all Chinese whether in Singapore, Malaysia or other AMCs. (This is, in the author's opinion, the “ASEAN-ness” of cultural heritage. Is this contemplated in ADCH's statement that sovereign integrity is to be maintained?)

Cultural heritage is defined in ADCH, Section 1. This definition is based on the definition of culture:

“Culture” means the whole complex of distinctive spiritual, intellectual, emotional and material features that characterize a society or social group. It includes the arts and letters as well as human modes of life, value systems, creativity, knowledge systems, traditions and beliefs.

It goes on to state that cultural heritage includes intangible heritage, although it includes no separate definition of intangible heritage comparable to that found in the UNESCO Convention. Instead, the relevant portions of its cultural heritage definition simply describe intangible elements along with the tangible:

- (a) *significant cultural values and concepts;...*
- (d) *oral or folk heritage: folkways, folklore, languages and literature, traditional arts and crafts, architecture, and the performing arts, games, indigenous knowledge systems and practices, myths, customs and beliefs, rituals and other living traditions;...*
- (f) *popular cultural heritage: popular creativity in mass cultures (i.e. industrial or commercial cultures), popular forms of expression of outstanding aesthetic, anthropological and sociological values, including the music, dance, graphic arts, fashion, games and sports, industrial design, cinema, television, music video, video arts and cyber art in technologically-oriented urbanized communities.*

In the UNESCO Convention, the definition of intangible cultural heritage is spelt out in more detail:¹⁷

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

Article 2. The “intangible cultural heritage”, as defined in paragraph 1 above, is manifested, inter alia, in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship (emphasis added).

In seeking to forge a transnational identity through cultural heritage, ASEAN should incorporate the more comprehensive ICH definition found in the UNESCO Convention, particularly emphasising that ICH is associated with communities, and constantly recreated by communities and groups in response to their environment. This is tacitly recognised through ASEAN’s efforts to actively involve youth in the process. It also appears that the element of heritage should be regarded not in its traditional sense of being something linked to the past and frozen in time, at least with regard to ICH. There should be room for re-creation, if it does not affect the question of authenticity.

To date, as discussed in more detail below, seven of the AMCs (Brunei Darussalam, Cambodia, Indonesia, Lao

PDR, Malaysia, Philippines and Viet Nam) have ratified or acceded to the UNESCO Convention. Under the UNESCO Convention, Member States can inscribe elements of cultural heritage on the UNESCO Representative List of the Intangible Cultural Heritage of Humanity (the UNESCO Representative List). All five of the AMCs that are members of the UNESCO Convention have inscribed some cultural heritage (including ICH) on the UNESCO Representative List. In contrast, some 13 years have passed since adoption of the ADCH and the author has not found any declaration under it (not even those made under the UNESCO Convention). The author awaits confirmation of this inaction from the ASEAN Secretariat. It is possible that this is based on several distinguishing factors between the two instruments, especially the fact that the ADCH is soft law (a declaration) while the UNESCO Convention is hard law; and the differences in the underlying goals – that although on the surface both seek to safeguard and preserve heritage, the ASEAN objective is driven by the goal of developing a transnational ASEAN identity. Does this indicate a need to ensure national branding of ICH that is declared to be ASEAN-ICH. Such a declaration by one AMC could become “transnational ASEAN cultural heritage for declaration/inscription”, if there were a joint declaration involving two or more AMCs. Would such a “shared heritage” approach (limiting the branding of ASEAN cultural heritage to these situations) bring unity in diversity in its true sense? Is such a transnational dimension workable?

The mixture of different ethnic groups (through inter-marriages) and of religions of the same or similar groups, as well as the influence of transnational migration may produce other inputs that might not easily fit into the construct of culture envisaged in ADCH. In light of the aim of ASEAN cultural heritage to link culture with identity and the ASEAN community, the notion of “metaculture” (see Box 1) from social-cultural anthropology may be incorporated into the ADCH definition of culture. Metaculture is defined as “the transcultural patterning of human civilisation that is the metasystemic consequence of mainly progressive scientific technological development and the development of metaphysical and meta-ethical philosophy in regard to human social organisation and the anthropological construction of reality”.¹⁸

An interpretation of ICH under ADCH should be flexible enough to incorporate the notion of metaculture as defined by socio-cultural anthropologists, rather than the notion from traditional anthropologists that has been incorporated in the ADCH definition. The element of humanity is crucial.

Box 1. Alternative anthropology

Metaculture may ... be used at a cross-cultural level to refer to systematic patterns of difference, sharing, contact, diffusion, change and integration of human cultural patterning at many different levels and in many different areas in which this patterning becomes manifest.

Human metaculture is the natural and rational consequence of a human behavioural response to environments that is symbolically and cognitively mediated and socially shared and reinforced.

I distinguished the term “metaculture” from the traditional anthropological concept of “culture” in order to highlight the sense of holism and systems reference that the former concept has, and the latter traditional definition has only implicitly or, at worst, lacks completely in some material and analytical attempts at definition.... I also use the term metaculture to emphasise the situatedness of human cultural patterning and processes in larger metasystemic contexts and frameworks, and to emphasise as well the sense of civilisation that has accompanied and grown with our anthropological notion of traditional culture. At the same time, the notion of metaculture was concocted deliberately to separate the ideas it embodies from the linkages to the sense of culture, history and philology that is embedded in the “traditional” notion of anthropological culture.

The concept of metaculture is also related to another notion, that of ethnoculture, that I have previously elaborated and expanded upon in relation to various groups of people in time and place, as for instance the... Peranakan peoples of the Straights Settlements, Overseas Chinese in general and Hokkien-speaking clan-based fishermen.

Unlike UNESCO, which has promulgated the *UNESCO Convention Representative List (criteria) for inscription of ICH for nomination*, the ADCH has not promulgated operational guidelines for its own implementation.¹⁹ The UNESCO Convention’s criteria cover a range of points, relating to whether a particular element qualifies for listing:

- *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. ...*

The framework on intangible (and tangible) cultural heritage under ADCH should be elaborated, based on these rules as inspiration, further developed or modified in the ASEAN context.

Cuisine as ASEAN-ICH under the ADCH

Cuisine is one of the most enduring ways to win a person’s heart (there is a saying about winning a person’s heart through his/her stomach), and why not capitalise on this to have different foods declared as “ASEAN cuisine”? The ASEAN peoples’ love of eating and food is almost a pastime. It is often stated that when a Singaporean or other AMC national is abroad, he/she is always homesick for the foods of his/her home region.

ASEAN should recognise cuisines shared across the ASEAN region by different ethnic races. These could be declared an ASEAN cultural heritage. In some cuisines, a mixture of cultures has contributed, even though a particular dish may have originated from a particular culture from within or outside the ASEAN region. In determining whether or not to brand such a dish as ASEAN heritage cuisine, more liberal interpretation of the ADCH is needed, as noted above.

Cuisine is also an example of how the requirement of (historical) heritage can be an obstacle for the ADCH. As noted, in light of the aims of ADCH to develop a transnational ASEAN identity, the idea of heritage should be given a liberal interpretation. With regard to cuisine, it is only very recently, under the UNESCO Convention, that cuisine has come to be formally recognised as ICH. Even French cuisine was so recognised by UNESCO only in 2011, despite its international reputation and the fact that UNESCO is headquartered in France. Subsequently, Mexican, Caribbean and Portuguese cuisine have all been added to the UNESCO Representative List.

What about the ADCH? Although there is no domain for cuisine/food in the ADCH, the existing domains are not exhaustive (the UNESCO Convention also does not have a domain for food). Intangible cultural heritage is still at its formative stage and, as noted above, ASEAN should start developing a representative list with operational guidelines. Such guidelines could address the concept of cuisine as ICH.

Cuisine as ICH Generally

The first recognition of cuisine as ICH – French cuisine in 2011 – under the UNESCO Convention is significant. It was pointed out that the designation was not for the particular cuisine as such but rather as part of the “social custom aimed at celebrating the important moments in the lives of individuals or groups”, and a way of preserving food and culinary heritage. In the form required under the UNESCO Convention, the following characteristics must be included for nomination:

- Identification of the communities, groups or, if applicable, individuals concerned.
- Geographic location and range of the element and location of the communities, groups or, if applicable, individuals concerned.
- Domain(s) represented by the element.
- Brief summary of the element.

The summary for inscription of French cuisine under the UNESCO Convention reads as follows:

The gastronomic meal of the French is a customary social practice for celebrating important moments in the lives of individuals and groups, such as births, weddings, birthdays, anniversaries, achievements and reunions. It is a festive meal bringing people together for an occasion to enjoy the art of good eating and drinking. This very popular practice, with which all French people are familiar, has flourished in France for centuries. It is constantly changing and being transmitted.

This social practice is associated with a shared vision of eating well, rather than with specific dishes. Its homogeneity in the whole community stems from:

- *The meaning that it confers, namely, togetherness, consideration of others, sharing the pleasure of taste, the balance between human beings and the products of nature;*
- *Specific rites it follows, including the search for good products, references to a repertoire of codified recipes, culinary know-how, setting a beautiful table, the order of courses, food and wine pairing, conversation about the dishes;*
- *The gastronomic meal gives rhythm to the lives of community members. It draws circles of family and friends closer together and, more generally, strengthens social ties. It constitutes an important reference point for identity and gives rise to feelings of belonging and continuity.*

Within ASEAN, food-related cultural controversies exist, along with shared and unshared food cultures that are recognised around the world.

Yu Sheng/Lo Hei

As mentioned above, *Yu Sheng/Lo Hei* is a dish that is served during the Chinese New Year by Chinese in many different AMCs (*Yu Sheng* means “raw fish” and *Lo Hei* means “toss up”). Some Chinese in Singapore and Malaysia have claimed that the cuisine originated from them, as reported in a number of newspaper reports entitled, “Singapore and Malaysia in food fight over *Yusheng*”.²⁰ The level of controversy indicates a situation that could be usefully addressed by formally considering the dish to be a shared heritage under ADCH. Surprisingly, in voicing their respective claims, the contestants did not make any reference to ADCH but instead referred to the UNESCO Convention, which Singapore has not ratified.

The *Yu Sheng/Lo Hei* dish has been popular since the 1960s. When the salad is being tossed, as high up as possible before it lands on the plate, auspicious sayings corresponding to the sound of the ingredients that are being added to the dish are recited. The sound of each ingredient also sounds like an auspicious saying, such as “abundance”, “good luck”, “attract wealth and treasures”. The significance of the dish is not so much the food itself but rather the sound of each ingredient that goes into the dish; also the festivity and celebration. Box 2 provides a

list of ingredients in the dish and the meaning from the sound of each ingredient.²¹

Box 2. Yu sheng: The meaning of the ingredients

When putting the *yu sheng* on the table, offer New Year greetings.

恭喜发财 (Gong Xi Fa Cai) meaning “Congratulations for your wealth”. 万事如意 (Wan Shi Ru Yi) meaning “May all your wishes be fulfilled”.

The raw fish is added, symbolising abundance and excess through the year. 年年有余 (Nian Nian You Yu) meaning “Abundance through the year”, as the word “fish” in Mandarin also sounds like “abundance”.

The pomelo or lime is added to the fish, adding luck and auspicious value. 大吉大利 (Da Ji Da Li) meaning “Good luck and smooth sailing”.

Pepper is then dashed over in the hope of attracting more money and valuables. 招财进宝 (Zhao Cai Jin Bao) meaning “Attract wealth and treasures”.

Then oil is poured out, circling the ingredients and encouraging money to flow in from all directions.

一本万利 (Yi Ben Wan Li) meaning “Make 10,000 times of profit with your capital”. 财源广进 (Cai Yuan Guang Jin) meaning “Numerous sources of wealth”.

Carrots are added indicating blessings of good luck. 鸿运当头 (Hong Yun Dang Tou) meaning “Good luck is approaching”. Carrot (红萝卜) is used as the first character 鸿 it also sounds like the Chinese character for red.

Then the shredded green radish is placed, symbolising eternal youth. 青春常驻 (Qing Chun Chang Zhu) meaning “Forever young”. Green radish is used as the first character 青 it also sounds like the Chinese character for green.

After which the shredded white radish is added – prosperity in business and promotion at work.

风生水起 (Feng Sheng Shui Qi) meaning “Progress at a fast pace”. 步步高升 (Bu Bu Gao Sheng) meaning “Reaching higher level with each step”.

The condiments are finally added.

First, peanut crumbs are dusted on the dish, symbolising a household filled with gold and silver.

金银满屋 (Jin Yin Man Wu) meaning “Household filled with gold and silver”.

Sesame seeds quickly follow, symbolising a flourishing business. 生意兴隆 (Sheng Yi Xing Long) meaning “Prosperity for the business”.

Deep-fried flour crisps in the shape of golden pillows are then added with wishes that literally the whole floor would be filled with gold. 满地黄金 (Man Di Huang Jin) meaning “Floor full of gold”.

Source: <http://en.wikipedia.org/wiki/Yusheng>.

According to Wikipedia:²² “while versions of *Yu Sheng/Lo Hei* are thought to have existed in China, the contemporary version is created and popularised in the

1960s amongst the ethnic Chinese community and its consumption has been associated with Chinese New Year festivities in Malaysia and Singapore". In Singapore, the government, community and business leaders often take the lead in serving *Yu Sheng/Lo Hei* as part of official functions during the Chinese New Year festive period.

The contestants in the *Yu Sheng/Lo Hei* controversy have appeared in newspapers. One of these, Tan Wee Cheng, is quoted in *Today*,²³ under the headline: "I Say: Yusheng, Heritage, Opportunities". This suggests a great opportunity for a joint ICH application to the UNESCO Convention. Another, Lee Choo Kiong, said only "*Lo! Hei!* That's my dish, not yours!"²⁴

In the ADCH definition of ICH, the emphasis is focused on the practices, representations, knowledge of communities and groups, intending to broaden the participatory view of ICH, with the objective of promoting mutual awareness and understanding. A joint declaration of the Chinese community across ASEAN, under ADCH, could suggest that the dish should be recognised as ASEAN cuisine. Tan Wee Cheng's suggestion of a joint application to UNESCO would also be useful, but given that Singapore has not ratified the UNESCO Convention, why not ADCH?

Tok Panjang Peranakan (Nonya) cuisine

The *Tok Panjang* (long table) has many dishes that are a fusion of Chinese and Malay recipes – such as *Ngoh Hiang*, *Otah Otah*, *Durian Pekat*, *Ayam Buah Keluak*, *Cincaluk Omelete* and *Babi Pongteh*. These dishes are placed on a long table. Box 3 provides a brief note on *Peranakans*, while Box 4 provides a more detailed discussion of *Peranakan/Nonya cuisine*. They too have become controversial.

Box 3. The Peranakans

The Peranakan people are the Sino-Malay ethnocultures that developed as a result of interaction between Chinese traders and pioneers and Indo-Malay speaking natives, particularly during the colonial periods of both the first and second phase of European imperial colonialism.

These people elaborated particular and characteristic ethnocultural patterns in food, language, customs, clothing, arts and crafts, architecture, literature and business that was distinctive to their heritage and that represented the amalgamation of both Chinese and indigenous elements. They are interesting as they represent a prototypical ethnoculture that emerged as the result of creative transcultural processes between multiple groups of people.

Source: Peranakan Studies, a Lewis Notes E-book.

Summation Regarding Cuisine as ICH

The recognition of foods/cuisines as ICH has not been altogether without critics. Harriet Deacon, medical historian and author of *The Subtle Power of Intangible Heritage*,²⁵ has discussed the kinds of food preparation and consumption that would be defined as intangible heritage in the UNESCO Convention. Should such nominations

emphasise tangible heritage for the promotion of tourism and trade, and de-emphasise ICH? Should food-related ICH elements all relate to specific events such as festivals or feasts? Or can everyday foods and related practices be included? An expert meeting on this topic was held in April 2009 which paved the way for the three successful cuisine nominations to the UNESCO Convention Representative List.²⁶ At that time, Deacon noted:²⁷

It has been argued that the ICH domain in the UNESCO Convention is not exhaustive, and there is no reason why intangible heritage should not be extended to cuisines.

Box 4. Peranakan cuisine

Nonya food, as the name suggested, is the food of the Baba-Nonya in Malaysia and Singapore. Known also as the Peranakan or the Straits Chinese (Straits-born Chinese), these groups of people are descendants of the very early Chinese immigrants to the Nanyang or 南洋 in Chinese – which literally means the "south sea" region.

The origins of the *Baba* and *Nonya* could be traced all the way back to the Chinese Admiral explorer Cheng Ho, who sailed across the Indian Ocean more than 400 years ago to Melaka, a busy and prosperous trading port back in the early 15th century. Nanyang or 南洋 refers to the Malay peninsula and the islands of Java. *Nonya* cuisine is generally referred to as the result of inter-marriages between the Chinese immigrants and the local Malays, which produced a unique cuisine where local ingredients such as chilies, belacan (Malaysian shrimp paste) lemon grass, galangal, turmeric, etc., are used. To assimilate the local culture, these early days Chinese immigrants also adopted local Malay traditions – the men were called *Babas* and the women were called *Nonyas*.

Source: Wikipedia.

Given their potential within the scope of ADCH and under the UNESCO Convention, it is worth further exploring food and cuisine as ICH. The subject is not without problems. Criticisms include the fact that by its very nature the concept of food as "heritage" is too generic, and the concern that such designation would "fossilise" food – preventing innovation and leading to questions about whether the ICH designation would allow for changes, and, if so, what kind? Currently heritage experts, academics and other interest groups are engaging in discourse on these issues. The expanding UNESCO nominations are encouraging.

In the ASEAN context, there is a need to contend with food issues not only within an AMC but across cultural and national boundaries, as the *Yu Sheng/Lo Hei* and *Tok Panjang* controversies demonstrate. Certain issues to be addressed in this connection include the need for defined criteria that recognise that certain foods whatever their origin may have, over time, become a *potpourri* of contributions by different cultures. It should embrace the

notion of metaculture, and the potential of ASEAN ICH as a means of solving conflicts among peoples of different cultures. Heritage should be given a more flexible and non-timebound meaning that recognises contemporary contributions and cultural transition, as well as the disbursement of some ethnic races across more than one AMC. This will not be easy, particularly in the need to deal with the sensitivities of different races/groups which may claim that “this is my dish, not yours”. ICH should be separate from property rights that promote cultural heritage. Laws on trade marks and other intellectual property rights can deal with these issues.

With globalisation, promotion of tourism and trade, as well as ASEAN’s goal of promoting unity in diversity, the new phenomenon of food as cultural heritage presents great opportunities to bring nations together.

Other Categories of Cultural Heritage

There are numerous other possible items under the two heritage categories (intangible and tangible) that can be considered under ADCH – from dances, costumes, songs, designs, monuments, *etc.* It is not possible to discuss them in this paper.

The Declaration on ASEAN Unity in Cultural Diversity: Towards Strengthening the ASEAN Community, 2011²⁸

The AUCD²⁹ was signed on 17 November 2011 in Bali, at the 19th ASEAN Summit. It has reinforced the goal of promotion of cultural diversity in the region. Its Preamble reaffirmed its commitments to create an ASEAN sense of belonging, consolidate unity in diversity and enhance deeper mutual understanding among AMCs about their culture, history, religion and civilisation in order to establish the ASEAN Community by 2015. The Declaration, undeniably, considers arts and crafts as important elements in promoting not only an ASEAN identity, but a potential for economic growth, sustainable development and achieving the United Nations Millennium Development Goals (MDGs). It acknowledges the importance of an ASEAN identity through the fostering of greater awareness of the diverse cultures.

Inscriptions by AMCs under the UNESCO Convention: Can These Also Come under ASEAN ADCH?

As listed above, seven AMCs have ratified the UNESCO Convention. Of these, the following five have inscribed at least one ICH: Indonesia has inscribed its *Batik* and *Wayang Kulit*; Cambodia, its Royal Ballet; Malaysia, its *Mak Yong* (ancient Malay Dance Theatre); the Philippines, the Hudhud Chants of the Ifugao; and Viet Nam, the *Nha Nhac* (Vietnamese Court Music). Brunei Darussalam and Lao PDR have not inscribed. The fact that none of these inscribed ICHs have also been declared as ICH under the ADCH tells a story.

The examples presented in this paper demonstrate that cultures do not always have fixed political borders. Many of these cultures developed in ancient times during Muslim, Hindu, Buddhist or Christian periods, but practices

within the region continued to be shaped by the various peoples. They could be considered shared cultures. Often, lack of knowledge of the historical roots and evolution of particular cultural elements and practices can result in too nationalistic a view. There should be space for two forms of heritage, complementing/merging but not in conflict. The AMCs should continue to build on the current set of cultures to make them identifiable as ASEAN as well as national. Where cultural elements are shared, these could be characterised as ASEAN. An analogy may be drawn from the early characteristics of the ASEAN Sub-regional Programme on Environment (ASEP), namely, the ASEP Phase I, 1978–1982, where the following were criteria for consideration of a project for the Programme:³⁰

- It is participated in by at least three countries;
- It is endorsed by all AMCs;
- It benefits the ASEAN region;
- It strengthens national capabilities;
- It develops ASEAN cooperation.

The above criteria for branding a project as ASEAN deal mainly with ASEAN environmental programmes in the context of natural resources and other environmental areas. This approach could be extended to other contexts such as cultural heritage. Although the context of culture is more sensitive, it is submitted that for the peoples of ASEAN to forge an identity, they need to recognise that a mixture or fused culture under the ADCH would enhance cooperation and promote the ASEAN Vision 2020.

Tangible Heritage: The ASEAN Declaration on Heritage Parks 2003

The ASEAN Declaration on Heritage Parks 2003 had its origin in 1984, before the ASEAN Community and ASEAN identity concepts were conceived. Its main aim continues to focus on cooperation among AMCs to develop a regional conservation and management plan of ASEAN Heritage Parks (AHPs). The declaration of an AHP advances protected area goals expressed under, *inter alia*, the Convention on Biological Diversity, the UNESCO World Heritage Convention, the Ramsar Convention on Wetlands of International Importance and also UNESCO’s Man and the Biosphere Programme. Currently AHPs from all AMCs have been listed, and their number is increasing.

The criteria for AHPs include high ethno-biological significance, uniqueness, and representativeness of the region. Their designation advances ASEAN’s unique identity. Though these parks are territorial, branding them as AHPs strengthens cooperation, awareness and appreciation among the AMCs. Together with the other aspects of ASEAN cultural heritage, this designation also promotes the twin objectives of community building and identity.

Cultural Heritage and Human Rights under the ASEAN Charter 2007

The establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) under Article 14 can be viewed as a mechanism for the advancement of an ASEAN regional identity. Seen in the context of

the new and invigorated ASEAN with a legal personality, working towards the ASEAN Vision of a community, taking a people-to-people approach, AICHR has come at an opportune time to provide yet another regime addressing common challenges and integration through law. Although political and civil human rights are obviously within its scope, ASEAN leaders have made statements that these still have to evolve. From its people-oriented position, it appears that, through AICHR, ASEAN can create a more multi-dimensional community. AICHR can enhance cooperation in the environmental area in the transnational sphere. Cultural rights are an aspect of human rights.

The scoping of the ADCH and its development of a representative list will largely be influenced by politics and the voice of the people. In the area of intangible cultural heritage, these factors will be even more of an influence, given that sovereignty issues are involved. At the same time the people, through groups and communities, should have a voice in decision making in this area, as their values, beliefs and customs form the traditions and heritages to be protected and safeguarded. While politicians are interested from the angle of “identity”, the people may be interested for different reasons, which may be overlapping. Such issues may involve a “cultural right” within the domain of human rights.³¹

Cultural differences should not be seen as obstacles, but instead as challenges and opportunities to develop a unique concept of multicultural regional identity, where ASEAN people could associate themselves as ASEAN but could also call themselves Indonesian, Malaysian, Singaporean, *etc.* Younger generations should be taught to perceive ASEAN as part of their identity.

The ASEAN City of Culture

The ASEAN City of Culture concept was first discussed and adopted at the Third Meeting of the ASEAN Ministers Responsible for Culture and Arts on 12 January 2008 at Nay Pyi Taw, Myanmar.³² Its objectives are to strengthen the ASEAN identity and raise the profile of ASEAN in the region and internationally, to celebrate ASEAN’s unique and rich culture and promote the growth of the region’s creative industries. The ASEAN City of Culture seeks to promote people-to-people exchanges and to cultivate awareness of the unique and rich culture of each member State. Over the coming years, each AMC will take turns to designate the City of Culture. A series of activities would be held over a two-year period in each City of Culture to showcase and promote the arts and culture of the region.

Cebu City (Philippines) was designated as the first ASEAN City of Culture, from 2010–2011, and Singapore was the second one from 2012–2013.

Conclusion and Way Forward

The importance of forging an ASEAN identity cannot be gainsaid. ASEAN’s evolution from association to community is inclusive across all peoples in the AMCs. The ASEAN identity is crucial to bringing about enhanced cooperation to supplement the ASEAN Way and make it more meaningful, and to encouraging all to “Think ASEAN” instead of only to “Think National”. The 16

years of continued development of an ASEAN community, encapsulated in the 1997 adoption of the ASEAN Vision 2020, has produced some positive evidence of the growing ASEAN identity as reflected in the proliferation of the AHPs. It is not clear that the same can be said in the context of a different kind of cultural heritage?



Koh Kheng Lian, 2013 Laureate of the Elizabeth Haub Prize for Environmental Law

Collective action, in the form of maintaining, supporting, safeguarding and spreading awareness of heritage treasures, is a major step toward addressing the problems of ignorance and prejudice. However, the challenges faced in preserving cultural heritage – the soul of each nation – originate from the lack of appreciation of local culture, compounding the difficulty of enhancing cross-cultural understanding among nations. The ADCH 2000 called for national and regional networking for the protection, preservation and promotion of ASEAN cultural heritage, with specific policies and strategies on the protection of cultural treasures and properties.

Although little has been done to implement the ADCH since its adoption in 2000, the process has begun, and it is one of the hallmarks of an ASEAN identity which is embedded as a principle in the ASEAN Charter. Globally, it is recognised that individual cultures are falling away, not only in the ASEAN region, but elsewhere as well. Even the EU is experiencing threats to cultural heritage. Why?

It is time to assess the value of culture as a building block of regional coherence. The forces of globalisation and social and economic transformation can cause peoples across nations, particularly the younger generation, to either forget or marginalise their heritage. The challenge for ASEAN is to engage in a discourse among its members on modification of the concept of cultural heritage to include a fusion of culture in order to bring about the political objective of an ASEAN identity. Toward this end, a number of recommendations are suggested:

- (1) As a mechanism for transnational ASEAN identity in the making, ASEAN should not slavishly follow conservation based on property rights, and a narrow interpretation of past heritage and

traditions. Cultural diversity in ASEAN, as with other regions, has been influenced by migration, inter-marriage, and close proximity; hence, ICH-related activities in ASEAN should assertively promote the sharing of cultures – a process that has already been hastened or advanced by globalisation. If the law is to consider who and which country has the property rights in ICH, this might lead to riots as we have seen in the *Tor-tor* and “this is my dish” controversies. The ICH process should not tear ASEAN peoples and nations apart.

- (2) It is inevitable that policy makers will wish to direct the course of events connecting cultural heritage with transnational identity, seeking to bring about a groundswell from stakeholders, including youths. Unless they can merge cultural heritage into their mobility, globalisation might make them aliens to their own culture, or ICH might be lost in favour of Western culture or hype.
- (3) How much relevant input has been contributed by ethnic communities, youths and other stakeholders toward the formulation of the normative constructs in the global and ASEAN cultural instruments? For example, a monument to be classified as tangible cultural heritage may have intangible associations that are relevant to that designation. Who should sit on the various committees that make decisions on, *inter alia*, representative lists? Cultural-heritage designation is a dynamic process with many interlinkages, suggesting that these choices may be crucial. Even the dichotomy of tangible and intangible heritage can become unworkable and stifle the broadening of these categories, should there be, for example, different managers of each category. A neutral approach, focusing on the “intermixture” of both tangible and intangible elements, may help make this system more workable.
- (4) Heritage is dynamic yet frozen in time. As the lifeblood of ASEAN nationality-in-the-making, however, its recognition must include both bottom-up and top-down negotiations of what can be recognised as ASEAN’s heritage. For an ASEAN identity to develop, it has to win the hearts and minds of the people. Culture can have many winning ways, but it has its sensitivities too. Better communication interlinkages among the AMCs, more ASEAN activities of more types (not only arts/culture but games), and more exchanges across all fields are necessary.
- (5) Cultural heritage is a national pride and to suggest a merger of cultures or common linkages between two or more countries sharing the creation or contribution of it often appears to be a “no-go area”. It is also an emotional issue that may even reflect enmity between communities within the same country.

The collective responsibility for the preservation, protection and promotion of cultural activities falls upon the youth and educational institutions. This is an important factor. As noted, above, it was young people who took the lead in the incidents in Jakarta and elsewhere. Youths and their enthusiasms can easily become very strong movements in ASEAN (and the world) – with a tendency to be very nationalistic rather than giving way to regionalism. It is not easy to cultivate a sense of ASEAN belonging or an identity as an ASEAN member where nationalistic sentiments prevail. The cultural aspects of transnational identity can involve a conflict with deep-seated national pride. As such, they call for very sensitive handling by policy makers. Would deeply embedded resistance to an ASEAN identity be diminished by a merger of cultures? Is this an impossible dream?

The foregoing paper has raised more questions than answers, but the author hopes that it foreshadows the beginning of intensive ASEAN efforts to deal with sensitive issues that are important in ASEAN community building. As has been observed by Arjun Appadurai,³³ a social-cultural anthropologist, the word “cultural” should include “differences, contrasts and comparisons” that can overcome race ethnicity in order to share the bond despite some differences. He also points out that “culturalism” can be considered “identity politics” – a feature of a movement that involves identities consciously in the making and is usually targeted at nation States. Can it be extended to regional groupings, like ASEAN?

Notes

- 1 Keynote remarks by H.E. Dato’ Misran Karmain, Deputy Secretary-General of ASEAN for ASEAN Socio-Cultural Community, at the first International Innovative Crafts Symposium, “ASEAN Innovative Arts and Crafts”, Craft Innovation Centre, Ayutthaya, Thailand, 8–11 August 2012.
- 2 See Koh, K.L. (Compiler and Ed.) 2012. *ASEAN Environmental Law, Policy and Governance, Selected Documents. Vol. II*, at 543 *et seq.* Singapore: World Scientific Publishing Co.
- 3 The newspaper is from Singapore.
- 4 “Tor-tor row: Indonesian rioters damage Malaysia Hall”. *FMT News*, 22 June 2012, see <http://www.freemalaysiatoday.com/category/nation/2012/06/22/tor-tor-row-rioters-damage-malaysia-hall/>.
- 5 *The Sunday Times*, 14 April and 8 May 2013.
- 6 “Protesters seek to raise flag near Preah Vihear”. *The Nation*, 18 April 2013, at <http://www.nationmultimedia.com/national/Protesters-seek-to-raise-flag-near-Preah-Vihear-30204205.html>.
- 7 See <http://munchadoaboutnothing.blogspot.sg/2012/01/yusheng-undiscovered-dish-americans.html>.
- 8 “Malaysian Anthem Actually Indonesian, Says Record Company”. *Jakarta Globe*, at <http://www.thejakartaglobe.com/archive/malaysian-anthem-actually-indonesian-says-record-company/>; see also <http://www.youtube.com/watch?v=cY3muiGERS>.
- 9 See <http://malaysiafactbook.com/Negaraku>.
- 10 See also Declaration of ASEAN Concord II (Bali Concord II), 2003 in Koh, K.L. (Compiler and Ed.) 2009. *ASEAN Environmental Law, Policy and Governance, Selected Documents. Vol. I*, at 79 *et seq.* Singapore: World Scientific Publishing Co.
- 11 See Koh, *ibid.*, at 179 *et seq.*
- 12 Pillar 1, see Koh, *ibid.*, at 593 *et seq.*; Pillar 2, see <http://www.asean.org/communities/asean-economic-community>; Pillar 3, see Koh, *ibid.*, at 615 *et seq.*
- 13 See Koh, *ibid.*, at 57 *et seq.*
- 14 *Supra*, note 2, at 543 *et seq.*
- 15 *Ibid.*, at 33 *et seq.* See also Regional Action Plan for ASEAN Heritage Parks and Protected Areas, *ibid.*, at 43 *et seq.*
- 16 See Koh, *supra*, note 10, at 615 *et seq.*
- 17 See <http://www.unesco.org/culture/ich/en/convention>.
- 18 See <http://www.lewismicropublishing.com/AlternativeAnthropology/home.htm>.
- 19 See <http://www.unesco.org/culture/ich/en/lists>.

- 20 "Singapore, Malaysia in food fight over Yu Sheng". *The Straits Times*, 30 January 2012.
 21 *Supra*, note 7.
 22 See <http://en.wikipedia.org/wiki/Yusheng>.
 23 See also *Today*, 6 February 2012.
 24 *Supra*, note 20.
 25 See http://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/subtle_power.pdf.
 26 Food nominations to the Intangible Heritage Convention's Lists at http://www.archivalplatform.org/blog/entry/identity_heritage_part.
 27 *Ibid*.
 28 *Supra*, note 2, at 1317 *et seq*.

- 29 *Ibid*.
 30 See Koh, *supra*, note 10, at 311 *et seq*.
 31 Shaheed, F. 2011. "Report of the independent expert in the field of cultural rights". Human Rights Council, 17th session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/17/38, 21 March 2011 – an analysis of the right of access to and enjoyment of cultural heritage, in particular regarding its normative content, related State obligations and possible limitations.
 32 See <http://59.77.27.55/Article/ShowArticle.asp?ArticleID=1342>.
 33 Appadurai, A. 1988. *The Social Life of Things: Commodities in Cultural Perspective*. Cambridge: Cambridge University Press.



EU Enforcement of Environmental Laws: From Great Principles to Daily Practice – Improving Citizen Involvement

by Ludwig Krämer*

The economic crisis, which is affecting the European Union (EU) at present, has also had an impact on the protection of the European environment. Already, for about 15 years, the proponents of a market economy who wanted to make the EU "the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion",¹ have been tempted to reduce environmental protection to a marginal aspect of EU policy. Proponents of this line of thinking have increased during the economic crisis. They have succeeded in reducing environmental legislative activity almost to zero.² Perhaps the most obvious demonstration of this strategy was the European Commission's proposal for a seventh EU Environment Action Programme (EAP)³ which does not contain one single concrete proposal for legislative action; this in itself is remarkable when compared to the first six EAPs, adopted by the EU between 1973 and 2002.

In view of this determination not to fill the gaps in European environmental protection by new legislative initiatives, the implementation and application of existing environmental legislation becomes all the more important; it comes as no surprise that the seventh action programme proposal mentions the implementation and/or application of existing provisions, not less than 14 times in various paragraphs discussing "required" measures.⁴ At the same time, despite the words in Article 1 of the Treaty on European Union (TEU) that "this Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken *as openly as possible and as closely as possible to the citizen*",⁵ the process of monitoring the application of EU environmental law remains an almost entirely

closed business between the EU Commission and the EU Member States. EU environmental law would be much better applied, if citizens had the option of actively taking part in the monitoring process. The following paper will try to suggest a number of concrete measures to improve the present situation as regards the enforcement of EU environmental law at EU level,⁶ after having described the actual structure and practice of monitoring implementation of EU environmental legislation.

The Present State of Monitoring Implementation of EU Environmental Legislation

The EU exercises its environmental legislative activity through regulations, directives and decisions.⁷ Regulations are of general application, binding in their entirety and directly applicable in all Member States. Directives are addressed to Member States and ask them to achieve a specific result, leaving them the choice of form and methods to achieve this result. Decisions – which are in particular used to adhere to international environmental agreements – are binding for those States or others, to whom they are addressed. Article 192(4) of the Treaty on the Functioning of the European Union (TFEU) stipulates that "without prejudice to certain measures adopted by the Union, the Member States shall... implement the environment policy". The phrase "certain measures" obviously refers to EU regulations; and implementation means the transposition of EU directives and, where appropriate, decisions into the national legal order of each Member State, as well as their application to concrete situations. The European Commission "shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice".⁸

Once an EU directive is adopted, the Member States are obliged to transpose its provisions into their national legal order; each directive determines the time-span within which this has to happen. The transposing legislation must

* Director of environmental law consultancy *Derecho y Medio Ambiente* in Madrid; Director of ClientEarth's Aarhus Centre in Brussels; served in the European Commission Directorate General for the Environment, 1972–2004; has lectured on EU environmental law at some 60 European and North American universities, and published some 20 books and 230 articles on that subject; awarded the 2001 Elizabeth Haub Prize for Environmental Law.

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