


## Analysis

# Unfolding the Incidental Process: Nominations Contested in the UNESCO Memory of the World Programme

Kyung-ho Suh 

College of Liberal Studies, Seoul National University, Seoul, Korea

### Abstract

This paper aims to analyze the impact of the Incidental Process activated during the UNESCO Memory of the World (MOW) 2022/23 nomination cycle and the Memory of the World Regional Committee for Asia and the Pacific (MOWCAP) 2021/22 nomination cycle. The Incidental Process is a mechanism that allows a Member State to contest nominations submitted by other Member States in the inscription process of the MOW Register. Japan became the first Member State to initiate the Incidental Process in 2022, contesting five nominations submitted by Korea and China. Japan's initiative, seemingly part of its decade-long campaign, concentrated on identifying the elements in the nominated documents that would evoke the image of perpetrators and removing them from inscription. However, the MOW and MOWCAP responded in different ways to the contestation, which highlighted several contentious issues that were not effectively addressed by the General Guidelines. Furthermore, the disputes surrounding Japan's contestation revealed the institutional weakness of the International Advisory Committee (IAC), the main operational body of the program. This paper, after examining the extraordinary situations that arose during the MOW and MOWCAP inscription process, attempts to identify the origin of the contentious issues and suggests the need to implement the provisions of the Incidental Process for the future operation of the MOW.

**Keywords:** memory of the world; memory of the World Regional Committee for Asia and the Pacific; general guidelines; contestation; incidental process

### Introduction

This article aims to analyze the impact of the Incidental Process activated in the 2022/23 nomination cycle of the UNESCO Memory of the World Programme (MOW). The Incidental Process is a mechanism that enables a Member State to contest nominations submitted by other Member States in MOW's inscription process. The regulations for this mechanism were incorporated into the MOW General Guidelines with its revision in 2021, signifying a significant change resulting from the comprehensive review conducted by UNESCO from 2018 to 2021. Japan emerged as the first Member State to invoke the Incidental Process in 2022 by contesting two Korean nominations for the MOW's International Register and three nominations, two from Korea and one from China, for the Regional Register of the Memory of the World Regional Committee for Asia and the Pacific (MOWCAP). It marked the first instance of formal

contestation in the 30-year history of the MOW Programme (UNESCO 2021). The action taken by the Japanese government was apparently part of its decade-long efforts to suppress historical memory that could revive international perceptions of its role as an early 20<sup>th</sup> century perpetrator of war and aggression. But the contestation in 2022 provoked considerable disputes within the MOW. The MOW Secretariat and the MOWCAP Bureau offered conflicting reactions to the same method of contestation, underscoring issues that the General Guidelines fail to sufficiently address. Ultimately, a quasi-diplomatic negotiation outside the MOW's jurisdiction resolved the cases, resulting in the inscription of all five nominations on the Regional and International Registers in 2022 and 2023, respectively. Nonetheless, the incidents indicated that the issues that the contestation process during this cycle raised necessitate immediate attention to avert more such disputes.

The controversy stemmed from an ambiguous statement in the relevant paragraphs in the revised MOW General Guidelines. The Japanese government initiated the Incidental Process using Paragraph 8.6.5.2.1, which states that a nomination can be contested on "other grounds" (in addition

Email: [kyunghs52@naver.com](mailto:kyunghs52@naver.com)

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to admissibility<sup>1</sup> and technicality<sup>2</sup>), but it lacks explicit criteria or procedures to determine the validity of contestation. This means that “other grounds” can constitute almost anything. In addition, there is an absence of mediation procedures to effectively address discrepancies among the parties concerned. As a result, this allows the contesting party to exploit the provision even be it with negative intent. It also led to disagreement during the 2022/2023 cycle over how to handle the issue within the program’s operating bodies at different levels. This generated much concern about the role of the International Advisory Committee (IAC), which serves as the primary operating entity of the program at the international level.<sup>3</sup> In contrast to the MOWCAP Bureau, which proactively sought to resolve disagreements by facilitating moderated dialogue between the nominating and contesting parties, the IAC remained completely absent during the conflicts. Instead, the Secretariat rendered the majority of important decisions. This could indicate a change in the way the program functions, leading to a considerable decrease in the influence and authority of the expert group that the program has relied upon for the past 30 years.

The implementation of the Incidental Process transcends a mere procedural issue as it is the outcome of external pressures that have been directed at the program during the past decade. In fact, since 2015, the IAC’s voice has been stymied in political controversies regarding a number of nominations. The autonomy of the IAC was significantly eroded and its decision-making procedures were frequently overridden by external bodies, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) leadership, in contravention of the regulations outlined in the Statute and General Guidelines of the program (Edmondson 2020; Suh 2020). The disputes over the Incidental Process during the 2022/23 nomination cycle exemplified the present state of the IAC. Nevertheless, the disputes were neither made known to the MOW-related community nor even mentioned in the program’s official documents. Neither the 14<sup>th</sup> Session of the IAC nor the 9<sup>th</sup> MOWCAP General Meeting formally addressed it as a topic on the agenda.<sup>4</sup> It appears probable that the contestation cases would be ignored as if they never took place, unless detailed records of the development are maintained—this is the impetus for composing this paper.

The author of this paper, who was in a position to assist the contested nominators when the Incidental Process was initiated, here reconstructs a factual narrative from the correspondence exchanged among the MOW Secretariat, the

MOWCAP Bureau, and the contested institutions. However, much of the primary source material was unavailable for citation as the MOW Secretariat and the concerned Japanese officials refused to allow the email texts to be quoted directly. Consequently, I was compelled to articulate their contents in my own words. In the emails that have been quoted with the consent of the senders and uploaded on my Google blog,<sup>5</sup> I have redacted all names and email accounts to protect privacy, showing only official titles. This narrative, known to very few people even within the MOW-related community, provides a foundation for analyzing the consequences of the disputes. This paper focuses more on the institutional challenges stemming from the conflict than the issue of “history war,” a subject commonly addressed in recent works regarding the MOW Programme (Gustafsson 2015; Houdek 2016; Lee et al. 2023; Nakano 2021; Suh 2020). This research will delineate the deficiencies in the General Guidelines and the concerns that require further implementation measures for the MOW’s future activities.

This paper is divided into five sections. After this current introduction, the second section provides an overview of the evolving situation pertaining to the MOW, which contextualizes the contestation the Japanese government triggered in 2022. The third and fourth sections focus on reconstructing the events that transpired during the inscription processes of MOW and MOWCAP, respectively. These sections outline the contestation methods utilized by Japanese officials and the differing measures adopted by MOW and MOWCAP in tackling the issue. In the final section, I summarize the intricate issues presented by these cases for future discussion, with the expectation that these subjects will be addressed in MOW and MOWCAP during the forthcoming nomination process.

## The contextual background

Launched in 1992 as one of UNESCO’s flagship heritage initiatives with the aim of safeguarding, facilitating access to, and raising awareness of documentary heritage, the MOW has been a tiny program compared with World Heritage and Intangible Cultural Heritage, both backed up by respective conventions.<sup>6</sup> Despite being perpetually understaffed and underfunded, and dependent on the volunteer contributions of diverse document-related professionals around the world, the program has effectively established a small yet dynamic network where academic discourse and professional competence mutually enhance one another. Its sphere of activity has steadily expanded, embracing the three Regional Committees for Asia-Pacific (MOWCAP), Latin America and the Caribbean (MOWLAC), and Africa (ARCMOW). It is endorsed by 95 national committees of MOW globally and

<sup>1</sup> There is no definition of admissibility, but a definition is implied by the list of inadmissible documents in Paragraph 8.2.2 of the General Guidelines.

<sup>2</sup> Technicality, or technical grounds, is not clearly defined in the General Guidelines. Paragraph 8.6.2 of the General Guidelines states that contestations will only be considered if they relate to the inscription criteria set out in Section 8.3 or the admissibility threshold set out in Section 8.2. Paragraph 8.6.5 states that nominations may be contested on technical or other grounds. Apart from these, there are few paragraphs with any mention of technical grounds.

<sup>3</sup> This committee is composed of 14 document-related experts appointed by the UNESCO Director-General, with consideration given to geographical representation.

<sup>4</sup> The Meeting Report of the 14<sup>th</sup> IAC Meeting is not yet available as of October 2024.

<sup>5</sup> <http://resource-mow.blogspot.com>.

<sup>6</sup> The World Heritage Programme is underpinned by the *Convention Concerning the Protection of the World Cultural and Natural Heritage*, adopted in 1972, which defines the types of natural and cultural sites that can be considered for inscription on the World Heritage List. Detailed information can be found at <https://whc.unesco.org/en/convention/>. The Intangible Cultural Heritage Programme is supported by *The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*. Further information is available at <https://ich.unesco.org/en/convention>.

sustains collaborations with eight Knowledge Centers.<sup>7</sup> The International Center for Documentary Heritage (ICDH), which was recently established in the Republic of Korea as a UNESCO Category II Center, is anticipated to provide additional contributions toward the implementation of the program's objectives.

The inscription process for international and regional registers has functioned, among other activities of the program, as a key strategic tool to achieve its objectives. The registers are the most prominent of its accomplishments, serving as a crucial conduit for memory institutions and individuals to familiarize themselves with the program. The International Register expanded from 38 in 1997 to 494 by 2023. However, the inscription process has increasingly been mired in political conflicts among Member States, culminating in a temporary freeze imposed by the UNESCO Director-General in December 2017. Evidence suggests that the Japanese government's reactions to the inscription of the *Documents of the Nanjing Massacre* in 2015, coupled with the contentious nominations of documents pertaining to the Comfort Women during World War II in 2017, precipitated this decision (Edmondson 2020; Nakano 2021). Subsequently, UNESCO undertook a comprehensive review of the program, which culminated in a revision of the General Guidelines 4 years later.

In this context, the year 2022 was atypical for those associated with the program. The year marked the 30<sup>th</sup> anniversary of MOW and witnessed the reinstatement of the inscription process after the suspension was lifted upon the completion of the comprehensive review. However, there were conflicting assessments of the program's status. A modest ceremony commemorating MOW's 30<sup>th</sup> anniversary took place alongside the World Day for Audiovisual Heritage during the MOW Global Symposium at UNESCO Headquarters in Paris on October 27, 2022 (UNESCO, 2022a). A commemorative statement was released at this event, which outlined the program's developments, future goals, and challenges (UNESCO, 2022b). Despite its emphasis on the need for collaboration within the MOW-related community, the statement neglected to explicitly address the apprehensions voiced among the experts regarding the unpleasant reality the program was facing. The outcome of the comprehensive review caused serious concern owing to its emphasis on marginalizing the role of experts and empowering the Member States to intervene in the inscription process.

The concern was reflected in a document released in December of 2022, *The Future of the UNESCO Memory of the World Program: Discussion Paper*, which emerged from a series of meetings hosted by a think tank at a German university. A group of 18 experts from diverse global regions participated in the discussions, the summary of which offered a candid yet thorough overview of the events that had unfolded since 2017, together with the concerns expressed by many individuals associated with the program

(Chair of Technoscience Studies, BTU Cottbus-Senftenberg and Institute Heritage Studies, INA gGmbH 2022).

At the core of the apprehension was the provision called the Incidental Process, which was the most important change in the revised General Guidelines. Outlined in Section 8.6, the provision stipulates that "concerned" Member States can contest nominations by other Member States. It enables contesting either on technical grounds or on "other grounds" if the reason falls beyond the scope of technicality. The concern about contestation turned into a reality as soon as the inscription process resumed in 2021. Japan, seen to have played an influential role during the comprehensive review, became the first Member State to activate the Incidental Process.

In 2022, the Japanese government contested two Korean nominations for the International Register, as well as contesting two Korean and one Chinese nominations for the Regional Register. This signified a Japanese government policy shift over the last decade, evolving from indifference to proactive initiatives through the MOW Programme. Prior to 2014, the Japanese government had scarcely acknowledged the MOW Programme. However, the intense Japanese media reaction to the Chinese government's announcement of the nomination of *Documents of Nanjing Massacre* and *Records of the Comfort Women* during the 2014/2015 nomination cycle prompted the Japanese government to acknowledge the political importance of MOW inscription. Since that time, MOW has become a crucial component of Japan's diplomatic initiatives focused on UNESCO, frequently referenced by top leaders of the government.

The notion of contestation was not novel in MOW's history; it had previously dealt with instances where nominations faced opposition, although such instances were considered extraordinary. In 2012, the nomination of *The Life and Works of Che Guevara* by Cuba and Bolivia elicited sensitive reactions from the U.S. media, accompanied by statements of opposition by several politicians. Nonetheless, the Director-General sanctioned the IAC's recommendation to inscribe the collection in 2013 (Edmondson 2020). Then, four nominations in the 2014/2015 cycle, all pertaining to World War II, sparked a wave of controversy. They were: (1) *Return to Maizuru Port*; (2) *Kamikaze Pilots' Letters and Photographs*; (3) *Documents of Nanjing Massacre*; and (4) *Records of the Comfort Women*. The news of these nominations exacerbated diplomatic tensions between China and Japan, further accentuated by a contentious media conflict. Still, the IAC followed the normal process for reviewing nominations and decided to add (1) and (3) to the International Register and agreed to consider an expanded version of (4) in the next round of inscription, with no need to assess (2), since it was withdrawn by the nominator (Suh 2020).

In the same round, however, there was a lesser-known case in which the Director-General personally intervened in the MOW's due process. She refused to accept the nomination of *Liberation Graphics Collection of Palestine Posters*, stating that certain posters went against UNESCO's values and goal of promoting peace, as they could contribute to hatred and anti-Semitic beliefs (Houdek 2016; Lee et al. 2023). She wrote a private letter to the IAC Chair well in advance, instructing the

<sup>7</sup> A MOW Knowledge Centre is a facility that combines a library and an archive to preserve and raise awareness of documentary heritage. By 2025, there will be nine of them in six countries: Australia, Côte d'Ivoire, South Korea, Kyrgyzstan, Mexico, and China, which has four facilities in Beijing, Fuzhou, Macau, and Suzhou.

Register Sub-committee (RSC) not to conduct the preliminary assessment on that nomination. The IAC could not withstand the Director-General's pressure, despite it being a clear infringement on the regulations stipulated in its statutes (Edmondson 2020).

In 2017, MOW faced a stand-off in which two organizations submitted partially overlapping records regarding the same historical fact, but with conflicting interpretations. The International Committee for Joint Submission of the Documents on the Japanese Military "Comfort Women" made a submission titled *Voices of the Comfort Women*. A consortium of entities from Japan and the United States presented a counter-nomination titled *Documentation on 'Comfort Women' and Japanese Army Discipline*. Faced with this unprecedented dilemma, IAC could not reach a decision owing to internal and external pressures from UNESCO, opting to temporarily defer both nominations while proposing a dialogue among the involved nominators to discuss a joint nomination that encompasses all documents from both submissions. As of September 2024, after 7 years, the dialogue has yet to occur. The current facilitator, appointed by UNESCO after the resignation of two predecessors before her, is still mediating the negotiation of the terms and conditions for the first physical gathering.

While these incidents were mostly driven by conflicting interpretations of historical sources, the contestation in 2022 was notably different from these occurrences. Japanese officials commenced the Incidental Process to ascertain if any components of the nominated archives conflicted with its interests. This method of contestation led to disagreements over its suitability among the parties involved, as will be elaborated in the following sections, and underscored the issues that could not be sufficiently addressed under the existing General Guidelines.

### Contestations in the international register

In March 2022, UNESCO established an online platform where the MOW Secretariat published 64 freshly submitted nominations for the 2022/2023 cycle of the International Register, pursuant to Paragraph 8.5.3.2.1 of the updated General Guidelines. The portal is exclusively available to UNESCO Member States and associated professionals, designed to enable stakeholders from each Member State to submit comments or objections within a 90-day period. On June 22, nearing the deadline, an official from the Japanese Permanent Delegation to UNESCO posted formal contestations to two Korean nominations: the *Archives of the April 19 Revolution* (#119) and the *Archives of the Donghak Peasant Revolution* (#120). The statement for each contestation read respectively:

(For Submission #119) The Government of Japan has keen interest in whether Japan is referred to in the nominated documentary heritage and, if so, how. Therefore, the Government of Japan would like to request the nominating state to share the content of the nominated documentary heritage and also request the assessment process of this nomination to be suspended in the meantime (Source 1).

(For Submission #120) The Donghak Peasant Revolution is an event in which Japan was deeply involved and thus the Government of Japan has keen interest in the content of the nominated documentary heritage, especially as the nominated heritage includes photographs of official documents of the Japanese Legation in Joseon. Therefore, the Government of Japan would like to request the nominating state to share the content of the nominated documentary heritage and also request the assessment process of this nomination to be suspended in the meantime. It would be very unusual for a nominating party to nominate photographs of official documents produced by other countries (Source 2).<sup>8</sup>

The Secretariat transmitted these texts to the respective nominator via the Korean National MOW Committee (KNMC), advising them to reply within 30 days in accordance with Paragraph 8.6.3. KNMC viewed the statements by the Japanese officials as more of an inquiry or request for additional information than a contestation and urged the nominators to provide as much detailed information as possible.

The nominator of Submission #119, which documented the students' uprising in 1960 that was sparked by election irregularities and state violence, and ultimately led to the downfall of the Republic of Korea's first regime under President Syng-man Rhee,<sup>9</sup> identified four pieces of documentation related to or originating from Japan: two photographs depicting street rallies by Korean residents in Japan, a statement from Korean student organizations in Japan endorsing the ongoing uprising in Korea, and an oral testimony from a former media correspondent to Japan (Source 3).

Submission #120 addressed the peasant uprising of 1894, which sparked confrontations between the military forces of China and Japan, ultimately precipitating the Sino-Japanese War. The nominator replied to the contesting party with nine documents: correspondences and personal narratives from Japanese Army field personnel, reports produced by Korean prefecture offices regarding supplies for Japanese forces, and a letter from the Japanese Legation to local authorities. A notable item among them was a compilation of data in 46 volumes covering the period from 1894 to 1895, which includes numerous accounts on the circumstances surrounding the peasant uprising. Subsequent to the conclusion of World War II, the Japanese Legation relinquished this collection in Korea, where it became the possession of the Korean government. In rebuttal to the assertion that nominating images of official papers from other nations is unusual, the nominator emphasized that Benin, Senegal, and Mauritius had inscribed the materials bequeathed by former colonizers into the MOW's International Register (Source 4).

However, Japanese officials were not satisfied with that level of information and insisted on maintaining the contestation for both nominations, citing the need for a more thorough examination of the documents. They claimed that the contestation was based on Paragraph 8.6.5.2.1, which

<sup>8</sup> I tried to contact the individual who posted these, using the given email address. My messages were returned repeatedly with notifications that the address was invalid.

<sup>9</sup> For further details of the incident, refer to April Revolution—Wikipedia at [https://en.wikipedia.org/wiki/April\\_Revolution](https://en.wikipedia.org/wiki/April_Revolution).



enables contestation on “other grounds” if the reasons advanced for the contestation fall outside the scope of admissibility or technicality. The Secretariat also sent an email relaying the message from the Japanese officials that the contestation was maintained and advising the nominators to engage in bilateral dialogue with the contesting party.

KNMC issued a letter of protest to the Secretariat, asserting that the contestation, lacking specific points of contention, should be considered invalid (Source 5). KNMC attached a letter to the Japanese Delegation to UNESCO to this email, stating that its action resembled an attempt at veto rather than a legitimate contestation (Source 6). However, the Secretariat never responded to this email. Instead, the head officer of the Secretariat referenced the email and advised the KNMC Chair to engage in bilateral dialogue during a conversation,<sup>10</sup> saying that the Secretariat was not authorized to determine whether the contestation was valid or not. He also declined a proposal by the RSC Chair, who volunteered for a mediating role, on the ground that the RSC was not authorized to intervene. Though the head officer of the Secretariat advised initiating the bilateral dialogue as “established by the concerned parties,” it was, in fact, an imposition of a proposal by the contesting party upon the contested party without soliciting consent. Furthermore, the Secretariat did not follow the sequential steps prescribed by Paragraphs 8.6.5.2.3–8.6.5.2.5 of the General Guidelines, which encompass RSC’s evaluation and a mediated dialogue (UNESCO 2021b).

As Japanese officials initiated direct communication with the nominators, it became evident that the Incidental Process established a scenario in which the contesting party held an advantage over the contested party. The contested party was compelled to acquiesce to the contesting party’s demands to keep the nominations on the assessment track. Furthermore, there were no regulations delineating the permissible scope of demands that the contesting party might impose or the degree of compliance that the contested party was obligated to maintain. The communication served exclusively as a mechanism for the contesting party to attain its goals, precluding the contested party from articulating and defending its stance.

Japanese officials retracted the objection to Submission #119 in October 2022. The RSC swiftly released the result of its preliminary assessment for this submission, which was to recommend inscription. Nevertheless, the Japanese government maintained its objection to Submission #120, arguing that additional scrutiny was necessary. Despite the KNMC’s stance denying the legitimacy of the contestation, certain government officers overseeing MOW-related matters in Korea ultimately consented to initiate a dialogue with the Japanese officials, excluding the non-government members of the committee. Although the details of the conversation remained undisclosed, it became known that the Japanese officials demanded the removal of documents generated by Japanese military officers and the Japanese Legation from the nominated archive.

<sup>10</sup> This conversation took place in September 2022 at the MOW Workshop hosted by the Korean National Commission for UNESCO in Amman, Jordan.

The Japanese government ultimately withdrew the contestation to Submission #120, just 1 day before the 14<sup>th</sup> IAC session in March 2023, and the Secretariat sent an email during the late hours of the night to notify the nominator of the preliminary assessment result. It turned out that the RSC had recommended rejection, much to the surprise of the Korean observers who were about to attend the session. The Secretariat, however, notified the nominator that a 1-month period would be granted to resubmit the nomination after revision, which would then be evaluated by the IAC in an “extraordinary session.” It was an unprecedented measure that took into account the nominator’s lack of the usual opportunity to modify the nomination after receiving a preliminary assessment result. The nominator complied and submitted the revised nomination for the RSC’s assessment. It excluded the materials Japanese officials asked to remove, but the RSC seemed to have been given little information on the removal (personal communication). Eventually, the *Archives of the Donghak Peasant Revolution* was included in the list of new inscriptions in 2023, leaving no trace of disputes over it.

### Contestations in the Regional Register

The Japanese government attempted to initiate the Incidental Process in MOWCAP’s assessment for the Regional Register in 2022 by focusing on three nominations from China and Korea, using the same method of contestation that it had used 2 months earlier for the International Register.

MOWCAP, one of the three regional MOW committees, has an autonomous decision-making process, for which the General Meeting serves as the platform for discussion and voting. MOWCAP’s General Meeting is made up of delegations from national MOW committees in the Asia-Pacific region. It also has its own inscription rules, known as the Register Procedure, which are consistent with the pertinent sections in the MOW General Guidelines. In 2021, MOWCAP revised the Register Procedure in line with the revisions to the MOW General Guidelines, incorporating a new provision for the Incidental Process. MOWCAP does not have an apparatus comparable to the MOW Secretariat, which is staffed by UNESCO’s regular employees; the majority of operational tasks are undertaken by the Secretary-General, who is invited by the Bureau on a voluntary basis.

Japan had been quite inactive in MOWCAP activities. To the best of this author’s knowledge, no Japanese delegation attended any MOWCAP events until 2015, when a number of Japanese officials attempted to join the MOWCAP Bureau Meeting amidst intense animosity between the Japanese and Chinese media.<sup>11</sup> A full delegation, consisting of five staff members of the Japanese National Commission for UNESCO, represented by a professor of Greek archaeology, attended the 7<sup>th</sup> General Meeting held in Hue, Vietnam, in 2016. Since

<sup>11</sup> This happened in the spring of 2015 when the MOWCAP Bureau Meeting was held in Bagan, Myanmar. As the Bureau refused the request to allow Japanese delegates to attend the meeting, the entire delegation remained outside the meeting room throughout the day, staging a kind of sit-in.

then, the Japanese government has dispatched delegations to every MOWCAP General Meeting, and in 2018, the archaeology professor was elected as one of the three Vice Chairs of MOWCAP. Nonetheless, it is apparent that Japan's involvement in the MOWCAP does not inherently lead to initiatives aimed at improving MOW-related activities in the Asia-Pacific region. Japan has not nominated any document to the Regional Register, and the Japanese delegation rarely highlights MOW-related activity within its border. The Japanese delegation seems to be chiefly concerned in monitoring the MOWCAP sessions to discern elements that conflict with the interests of the Japanese government. During the 7<sup>th</sup> General Meeting, the delegation successfully opposed a nomination from Singapore, which comprised voice recordings reflecting on the Japanese occupation period in the 1940s, by persuading the voting members that the material lacked credibility. It also opposed the inscription of *Archives of Nanyang Volunteer Drivers and Mechanics* that was nominated by China at the 8<sup>th</sup> General Meeting (Nakano 2021). Despite its assertion that the documents were inaccessible to Japanese visitors who sought such access,<sup>12</sup> the nomination received sufficient support for inscription.

MOWCAP received 16 nominations in February 2022, of which its RSC deemed 13 to be admissible. The Secretary-General published the titles of the 13 nominations on MOWCAP's official website, accompanied by a summary for each, and solicited comments and/or objections by the deadline of August 15. Owing to MOWCAP's lack of a platform for posting these comments, some Japanese officials commenced the Incidental Process by personally reaching out to the Secretary-General. Although the specifics of the private communication were unavailable, Japanese officials reportedly intended to put all 13 nominations to scrutiny. This was revealed by an excerpt from the emails that were later cited in one of the RSC's internal documents. The email excerpt requested that the Secretary-General extend the deadline for comment/contestation to September 30 to exercise their rights, which would secure enough time to examine all of the documents. They stated that they would not mind if the RSC proceeded with its scheduled preliminary assessment. The Secretary-General dissuaded them, indicating that the effort to contest all nominations would not gain support from the Member States attending the 9<sup>th</sup> General Meeting on November 24. He requested an official letter from the Japanese National Commission for UNESCO to the MOWCAP Chair, detailing the rationale behind the intended scrutiny of the documents. Japan then sent a formal letter contesting three nominations: (1) Submission #02, *Naebang-gasa: Song of the Inner Chamber*, from Korea; (2) Submission #04, *SamgukYusa: Memorabilia of the Three Kingdoms*, from Korea; and (3) Submission #12, *Archives of the Initial Dasheng Spinning Factory*, from China. The letter's wording was identical to that used in the case of the International Register, stating that the Government of Japan wanted to

know if the nominated documents contained any passages related to Japan.<sup>13</sup>

The MOWCAP Bureau reacted with a contrasting stance to that of the MOW Secretariat's. After a deliberation within the Bureau, the Chair commissioned the Secretary-General to work out a measure to reconcile the interests of both parties. The Bureau declined to recognize the contestation owing to the absence of any specific grounds, but at the same time, was not against the idea of allowing more time to examine the documents. Subsequently, the Secretary-General proposed suggestions in the following statement, which was to be applied for each of the contested nominations:

Firstly, the Japanese team raising the contestation are advised to access the online and catalog information which has been provided as part of the nomination to provide any specific grounds for contestation/objections.

Secondly, the nominators have kindly agreed to facilitate a visit by the Japanese team to view the nominated documentary heritage. The contact person to arrange this visit is: (redacted). Please kindly inform us if there are any issues accessing this material. Please kindly note that some material may not be accessible due to condition of the collection/other factors.

Thirdly, please kindly share the results of this analysis/site visit by the 30 September 2022. At this stage, please provide any specific grounds for contestation or advise if the contestation has been withdrawn.

Fourthly, the MOWCAP RSC assessment of this dossier will continue in parallel with this process (Source 7).

There was no confirmation as to whether the Japanese officials accepted the suggestions. However, upon receiving the proposal, they promptly started the suggested process of examining the documents. The nominator of Submission #12 responded by arranging a site visit for staff members of the Japanese Consular Office in Shanghai. With regard to Submissions #02 and #04, pathways for online access were delivered to personnel at the Japanese Embassy in Seoul.

There were a couple of protocol-related disputes between Japanese officials and the KNMC. Upon receiving an email in Korean from a staff member of the Japanese Embassy, the KNMC promptly requested that both sides communicate through the Secretary-General. Furthermore, the KNMC insisted on using English to generate documentation to be included in the future archive of MOWCAP (Source 8). There arose another problem related to language. The officials realized that they could not read the text of Submission #04, a 13<sup>th</sup> century historical account written in classical Chinese. They inquired with the KNMC about the availability of an English translation. The KNMC resolved the issue by informing them about several websites providing Japanese translations of the document.

An additional linguistic obstacle was identified in Submission #02, which originated from the traditional practice of exchanging song lyrics among women during

<sup>12</sup> Members of the Japanese delegation had previously visited the memory institution where the nominated archive was housed. However, their request to view the documents was refused by the custodian for unknown reasons.

<sup>13</sup> I refrained from directly quoting the text of this email owing to the Japanese official's refusal to consent to citing. He further argued in the same email that the contestation case should be kept confidential. I responded to him, expressing my disagreement with his perspective.

the period ranging from the late 19<sup>th</sup> to the mid-20<sup>th</sup> century. The 348 songs in this archive were written in an old-style colloquial language that is unintelligible to modern-day Korean speakers, with the exception of a few individuals with professional training. Evidently, the difficulties stemmed from the erroneous belief that the documents could be understood by any Korean-speaking person. Furthermore, the officials apparently had not consulted with Japanese experts in the relevant academic disciplines. However, an issue beyond the linguistic barriers emerged from these communications: the uncertainty surrounding the acceptable level of demands from the contesting party and the required level of compliance from the contested party. At one point, Japanese officials asked the nominator of Submission #02 to find references to Japan in the documents on their behalf. They even specified that they wished to be informed of any elements of antipathy toward Japanese colonization. KNMC dismissed the request on the grounds that such a task would require significant extra work and expenses and that the contested party was not obliged to do so (Source 9).

This denial of the request served as a justification for the officials' further demand to the Secretary-General: (1) that the contesting party had not obtained adequate information to examine Submission #02; (2) that the examination deadline be extended to November 7 in accordance with the Register Procedure that permits the Incidental Process to proceed within a maximum of 90 days from the formal submission of the contestation, which in this case had been August 12; and (3) that concerning the grounds for contestation, the Government of Japan wanted to examine whether there were any descriptions related to Japan, including any elements concerning anti-Japanese resistance and/or the Japanese colonial era in the nominated documents. The Secretary-General dismissed these demands, urging the officials to provide specific grounds for contesting the three nominations by September 30 (Source 10). This reflects the noticeable discrepancy in the way each party understood the situation. Japanese officials claimed that the Incidental Process was functioning; however, the MOWCAP Bureau considered the contestation to be unfounded.

On September 25, the Bureau members were astonished to receive a letter from the Secretary-General announcing his resignation. The letter was imbued with irritation arising from political difficulties and the adverse climate surrounding recent MOWCAP efforts. He criticized the inappropriate use of the new MOWCAP contestation procedures, asserting that it was a deliberate tactic to indefinitely obstruct nominations and impede open discourse (Source 11). Shortly thereafter, the Bureau decided to invite an Acting Secretary-General, whose appointment is subject to approval at the forthcoming General Assembly. Japanese officials withdrew the contestations to Submissions #04 and #12, following the resumption of communication with the Acting Secretary-General. Nevertheless, the officials maintained that they were still contesting Submission #02, claiming that it required additional examination. At this stage, the Bureau had not yet reached a consensus regarding whether the Incidental Process the Japanese government triggered should be considered valid or not. The Chair decided to extend the

period for the officials' examination of Submission #02 by 2 more weeks (Source 12), while the RSC released the preliminary assessment results for the three contested nominations, all of which were recommended for inscription in the MOWCAP Regional Register.

In their examination of Submission #02, the Japanese officials narrowed down their focus to two songs, no. 148 and no. 268, on the basis of their titles, and then opted to thoroughly examine only no. 148. The nominator translated the title of this song as "Lyrics on Liberation, Hooray," and the Japanese officials formally requested, through the RSC, that the nominator convert its text into contemporary Korean. Following the release of the transcription, they contended that the song contained expressions of animosity, which were against the MOW's principle of prohibiting offensive language. They stated that the Japanese government was prepared to retract the contestation to Submission #02 if song no. 148 was removed from the catalogue of the nominated archive.

Song no. 148, composed in 1945, consists of 80 lines. The text commences by exalting the delights of liberation in the initial 40 lines, then shifts to portray the sorrow and struggles of the colonial period in the next 22 lines, and finally ends with a pledge to build a just nation in the last 18 lines. The translated version of the passage, which was deemed to contain inappropriate language by the officials, is as follows:

Looking back on the past, a fleeting nightmare is ridiculous. How was the pressure pain? Be engaged and resentment, a fierce love affair like a tiger and a viper, the bleeding looks terrible without the light of the mountains and streams.

What's wrong with the collapse of the people? We have a lot of patriots, when we fight outside the sea. After a long and hard life, how many times did they torture us for misdeeds? Patriotic enthusiasm, will we avoid the mud? A firm resolution, what kind of people can't do it? Japanese people who can't handle it, the ambition to invade is unjust. Many lives in the millions, be full of smoke and torrential rain and rain. An insanely heavy sin, will there be no anger from God?<sup>14</sup>

With the 9<sup>th</sup> MOWCAP General Meeting only a week away, the Bureau struggled to identify a solution that would bring together the differing perspectives of both sides based on the spirit of cooperation rather than confrontation. To convey the RSC's proposition, the Acting Secretary-General dispatched a letter to the nominator of Submission #02, suggesting redacting the song Japanese officials demanded to exclude (Source 13). But the idea was found to be problematic. It encountered resistance from a number of experts, including KNMC members, concerning the consequent loss of integrity of the collection. At the same time, the Japanese officials expressed doubt in its efficacy in resolving their concern. The KNMC Chair suggested that the matter be presented before the General Meeting and settled via a vote

<sup>14</sup> The translation of this song was done by a staff member of the nominating institution. He translated into English a modern Korean version of the song that had been transcribed by an expert in the old colloquial language in which these songs were written. While the RSC intended to share this translation with the participants at the General Assembly, the Japanese officials were given the modern Korean version.

among the delegations. The Bureau opposed the suggestion, as such a vote may have been perceived as a confrontation, something the Bureau had sought to avoid for months. Despite the Japanese officials articulating their definitive stance to uphold the contestation, the Bureau remained indecisive until it faced unexpected external pressure (Source 14).

Subsequently, 2 days ahead of the 9<sup>th</sup> General Meeting, the MOWCAP Chair participated in the 3<sup>rd</sup> MOW Global Policy Forum held in Tokyo. He encountered there the head officer of the MOW Secretariat, who was also scheduled to participate in the forthcoming MOWCAP General Meeting. During their conversation, the officer mentioned that the contestation by the Japanese government should be deemed valid despite the lack of specific grounds. Afterwards, the Bureau stopped talking about the grounds for contestation and instead engaged the nominator and inquired whether they would consent to the request for the removal of song no. 148 from the nominated archive. The suggestion caused an internal split within the nominating institution, as well as among the families who entrusted the documents to it. The families' leaders, who had high hopes of having their inherited materials inscribed to the MOWCAP Regional Register, were not concerned by removing a single piece from the archive. The nominator, in the end, submitted an amended dossier that removed song no. 148 from the collection. All three of the contested nominations were subsequently approved by the General Meeting and included in the MOWCAP Regional Register. Nevertheless, akin to the procedure for the International Register, there exists no formal documentation confirming that the Incidental Process was ever commenced during this cycle, nor were the voting members of the General Meeting apprised of the events that transpired.

## Discussion and conclusion

The activation of the Incidental Process by the Japanese government during the MOW 2022/2023 nomination cycle raises several questions that require careful examination. The method by which the Japanese officials activated the provision was beyond the scope of prior experiences shared in the MOW-related community. The Japanese government's approach to initiating the Incidental Process through the use of the "other grounds" provision in Paragraph 8.6.5.2.1 may be considered problematic owing to the potential for abuse. It was linked to other contentious matters, resulting in a scenario where the contesting party may make unlimited demands, even requesting the nominators search for the elements that the contesting party was looking for. Thus, the case illustrated that "other grounds" may morph into "any ground," enabling any Member State to obstruct or censor the documents nominated by other Member States.

One significant issue originating from the disputes deserves particular attention: the demand to exclude specific records from the nominated documents. The officials who issued the demand showed no concern for the possible compromise of the archive's integrity, a crucial criterion for inscription. The demand to remove the records generated by

Japanese military personnel and the Japanese Legation, which were crucial components in maintaining the integrity of the documents in Submission #120 for the International Register,<sup>15</sup> highlighted tension between the desire to preserve historical memory and the government's political objective to obstruct it. Should the MOW approve this practice, the Incidental Process provision could serve as a tool for the selective erasure of certain historical memories.

A more serious issue, however, was the way in which this issue was handled. By encouraging bilateral dialogue, the MOW Secretariat turned the disputes into a game played outside the MOW's domain. While the removal of certain records was negotiated by the parties involved, which was in fact a process of demand and compliance, the program's major operational body failed to assume a constructive role. The RSC and IAC were excluded from handling the case, and there were few attempts to evaluate the ramification of the bilateral dialogue, particularly whether it undermined the integrity of the archives, not to mention the question of the contestation's modality. The Secretariat did not seek to benefit from collective endeavors but instead maintained exclusive control over all decision-making on the sensitive issues of the Incidental Process.

It is beneficial to analyze the approach employed by the MOWCAP Bureau to address the disputes over the Incidental Process, as the measures implemented in the Regional Register may have similarly facilitated the resolution of conflicts in the International Register. The MOWCAP Bureau resolved the matter through mediated compromise between both sides, with a strategy designed to reconcile the interests of both parties. It chose to allow the Japanese officials to examine the nominated documents, even though it did not acknowledge the contestation as legitimate. It also actively coordinated the extent of information solicited or supplied, arranging access to the nominated documents and making available the English translation of song no. 148 in Submission #02.

The Incidental Process of the 2022/2023 nomination cycle did not result in a peaceful resolution of conflicts, nor did it preclude the possibility of similar occurrences in the future. While writing this paper, I learned that Japanese officials were considering contesting the nominations submitted for the MOWCAP's 2023/2024 inscription process. They were carefully reviewing all nomination dossiers to identify any references to Japan. Although they did not activate the Incidental Process this time owing to the lack of targets, they seem to be attempting to establish their manner of contestation as the norm.

The Incidental Process was briefly referenced in the 15<sup>th</sup> Session of the IAC in 2023. In her report on MOW-related activities at the regional level, the MOWCAP's RSC Chair mentioned the contestation by the Japanese government in

<sup>15</sup> When the peasant militia advanced toward the capital in the autumn of 1894, the Joseon government turned to Japan for support. The Japanese Army, armed with western-style weaponry such as the Gatling machine gun, led a series of joint operations with Joseon's regular army and forced the peasant militia to retreat with heavy casualties. The reports from the Japanese military commanders and officials at the Japanese Legation, who closely monitored the progress, constitute a substantial portion of this database and offer vital insights into the peasant uprising.



MOWCAP. On the contrary, there was no report or remark on the issue at the IAC level, except for a comment by one of the Vice Chairs that consideration might be taken to add some implementing measures to the Companion to the General Guidelines. Months after this IAC session, the head officer of the MOW Secretariat also acknowledged the need for greater clarity in initiating the Incidental Process in the future.<sup>16</sup> Nevertheless, it is unlikely that these intermittent remarks will lead to the development of substantial implementation strategies to address the issue, as there have been no discernible efforts at such since the last IAC meeting.

MOWCAP, however, revised its Register Procedure subsequent to its General Meeting in 2022. Paragraph no. 3 of the revised version outlines the change, advising the Member States to “consider whether they might be able to resolve any concerns more smoothly and amicably by first utilizing the channel of comments on nominations.” And Paragraph no. 7 stipulates that “Contestation must be made with clear reasons within a designated timeframe, subsequent to the maturation of the period for comments.”<sup>17</sup>

Although the disputes over the Incidental Process may be attributed to the ambiguities in the General Guidelines, it is not feasible to propose a revision solely to resolve the contestation issue alone. It is the IAC that should tackle the issue within the confines of the current rules. There is a need to establish a protocol to complement the General Guidelines through open discussions among the members. This protocol should facilitate the active involvement of the IAC in every stage of the Incidental Process, employing a collective decision-making approach. The IAC should be tasked with determining whether the contestation is admissible in accordance with the relevant provisions and, if necessary, should serve as a mediator in the dialogue. The IAC should be empowered to make a final decision in cases where the parties involved are unable to reach agreement. The impact of such a protocol would go beyond simply addressing conflicts related to the Incidental Process. If the IAC can effectively address conflicts initiated by Member States through collective decision-making and open dialogue, it will serve as a catalyst for reinforcing the fundamental principle that this program operates under the competence of a dedicated group of experts, rather than solely in an administrative or political sphere.

The 2024/2025 nomination cycle is currently underway, and it is possible that certain Member States may initiate the Incidental Process. The program’s resilience will again be put to the test during this round of inscription. I propose that the cases be managed through an open process that capitalizes on collective intelligence. This is because the excessive focus on confidentiality in the previous round impeded the sharing of ideas and rational problem-solving. The IAC must take the initiative to address the challenges it is facing to ensure that

the MOW functions as an impartial platform for dialogue between parties with varying perspectives.

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<sup>16</sup> He made this observation in a lecture he delivered at the 2023 MOW Workshop hosted by the Korean National Commission for UNESCO held in Tashkent, Uzbekistan.

<sup>17</sup> Refer to the sections in MOWCAP (2023) comparing the corresponding paragraphs in MOWCAP (2022).

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### Author Biography

**Kyung-ho Suh** is a Professor Emeritus at Seoul National University, where he taught Chinese literature for 30 years and served as the dean of the College of Liberal Studies and director of the university library. He was associated with the MOW by serving as an IAC member from 2005 to 2013, and has been a member of MOWCAP's RSC since 2011. In addition, he is currently serving as the chair of the KNMC.