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**Subject: Preliminary report and preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions**

Sir/Madam,

In conformity with 32 C/Resolution 34 and with a view to the first meeting of government experts (category II), which is to take place at UNESCO Headquarters from 20 to 25 September 2004, I am pleased to send you herewith a preliminary report together with a preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions. The report illustrates the ongoing standard-setting process, while the preliminary draft convention could serve as a basis for discussions during the above-mentioned meeting.

In line with the relevant rules and regulations, I invite your Government to submit its comments and observations on this preliminary report and on the preliminary draft convention **until mid-November 2004** addressing them to Ms Katérina Stenou, Director of the Division of Cultural Policies and Intercultural Dialogue (1, rue Miollis, 75732 Paris Cedex 15; [email: p.forest@unesco.org](mailto:p.forest@unesco.org), tel.: 33.(0)1.45.68.47.31; fax: 33.(0)1.45.68.55.97). These comments and observations will be the subject of a consolidated report to the Executive Board at its 171 st session (April 2005) and will be distributed to future intergovernmental meetings of experts (category II) on this topic.

Please accept, Sir/Madam, the assurances of my highest consideration.

Koïchiro Matsuura  
Director-General

*Enclosures: 3*

1. Preliminary report of the Director-General
2. Preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions
3. 32 C/Resolution 34

cc: National Commissions for UNESCO  
Permanent Delegations to UNESCO

To Ministers responsible for relations with UNESCO





**Preliminary draft convention  
on the protection of the diversity of cultural  
contents and artistic expressions**

**Preliminary report of the Director-General**

**I. Background**

1. UNESCO's commitment to promoting cultural diversity is in keeping with its specific mandate within the United Nations system and with the continuity of the action that it has been carrying out for nearly 60 years "with a view to preserving ... the fruitful diversity of the cultures" and in order to "recommend such international agreements as may be necessary to promote the free flow of ideas by word and image" (UNESCO Constitution).

To this end, the Organization has expended efforts on two fronts: on the one hand by reflecting on and defining concepts,<sup>1</sup> and on the other, by preparing standard-setting instruments with a view to establishing an ethical and legal framework accepted by the international community.

2. The growing pace of globalization has raised new challenges for cultural diversity which the Member States of UNESCO have chosen to meet through standard-setting action by adopting in 2001 the *UNESCO Universal Declaration on Cultural Diversity* and its action plan. That instrument, which binds States together in an ethical commitment, recognizes cultural diversity for the first time as the "common heritage of humanity". It also commits UNESCO to "pursue its activities in standard-setting, awareness-raising and capacity-building in the areas related to the present Declaration within its fields of competence" (Article 12(c)). Moreover, the first paragraph of the action plan recommends "taking forward notably consideration of the advisability of an international legal instrument on cultural diversity". Since the adoption of the Universal Declaration on Cultural Diversity, there have been many international initiatives to encourage reflection on the desirability of reinforcing standard-setting action in relation to cultural diversity.

3. The Member States have thus deemed it advisable to draw up a binding standard-setting instrument on cultural diversity, in particular on one of the domains identified by the Director-General in his preliminary study on the technical and legal aspects relating to the advisability of a standard-setting instrument on cultural diversity (166 EX/28, March 2003). The four following options were proposed: (a) a new comprehensive instrument on cultural rights; (b) an instrument on

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<sup>1</sup> See for example the conclusions of the World Conference on Cultural Policies (MONDIACULT, Mexico, 1982) and the World Decade for Cultural Development (1988-1997); the work of the World Commission on Culture and Development (*Our Creative Diversity*, 1995); the first and second *World Culture Report* (1998 and 2000); the work of the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998), the symposium "Culture: A form of merchandise like no other? Culture, the market and globalization", UNESCO, June 1999 and the Experts Committee on the Strengthening of UNESCO's Role in Promoting Cultural Diversity in the Context of Globalization, UNESCO, Paris (France), 21-22 September 2000; and the conclusions of the round tables of ministers of culture held in 1999, 2000 and 2002.

the status of the artist; (c) a new Protocol to the Florence Agreement; or (d) a new instrument on the protection of the diversity of cultural contents and artistic expressions.

4. Following 166 EX/Decision 3.4.3, adopted on the basis of the preliminary study, the General Conference, at its 32nd session (October 2003), after having examined document 32 C/52, adopted by consensus 32 C/Resolution 34 inviting the Director-General to submit to it at its 33rd session, in 2005, a preliminary report accompanied by a preliminary draft convention on the fourth option proposed (the protection of the diversity of cultural contents and artistic expressions), in accordance with the Rules of Procedure concerning recommendations to Member States and international conventions. That option touches on two areas that are particularly threatened by globalization, and for which there is no suitable international treaty. It was decided that they would form the core of the preliminary draft convention, without however losing sight of the full range of elements included in the scope of the Universal Declaration.

5. Following the Organization's customary practice, the Director-General set up a multidisciplinary international group of 15 experts whose task was to submit to him suggestions and views on the elaboration of the preliminary draft convention. At the conclusion of its three meetings (defined as category VI), held between December 2003 and May 2004, the group produced a draft text which it submitted to the Director-General. Thanks to the consensus-based efforts of the experts over the last six months, the Director-General is now ready to transmit to the Member States the present preliminary report together with a preliminary draft convention, in compliance with the statutory deadline, that is, at least 14 months before the opening of the 33rd session of the General Conference. The preliminary draft convention is being sent to Member States for their written comments and observations, which may be submitted up to mid-November 2004.

6. In addition, in its progress report on the preparation of the draft convention, the Executive Board, at its 169th session (April 2004), invited "the Director-General to convene meetings of government experts (category II) aimed at taking forward the preparation of the preliminary draft convention in order to report to the General Conference at its 33rd session" (169 EX/Decision 3.7.2).

## **II. Progress of the work**

7. Pursuant to 32 C/Resolution 34 adopted by the General Conference at its 32nd session, and in line with the procedures followed at UNESCO for the elaboration of international instruments, the Director-General has decided to adopt a multi-stage approach based on the experience acquired during the preparation of other standard-setting instruments relating to protection of the cultural heritage. He has asked 15 independent experts chosen by virtue of their diverse areas of specialization (anthropology, international law, economics of culture, philosophy) to make recommendations and give legal opinions on the drafting of an outline of a convention on the protection of the diversity of cultural contents and artistic expressions.

### ***First meeting of experts (17-20 December 2003)***

8. The independent experts brought together by the Director-General began by proposing to consolidate the gains of the Universal Declaration. They agreed that their first priority was to prepare a preliminary draft that would enhance the capacity of States to define cultural policies for the protection and promotion of cultural contents and artistic expressions. The overall thrust of their work has remained that of the Universal Declaration: the link between respect for fundamental rights, democracy and creative diversity, the link between cultural diversity, dialogue and development, the equal importance of the cultural and economic aspects of development, recognition of the specific character of cultural contents and artistic expressions, meaning the dual –

cultural and economic – nature of cultural goods and services, and lastly, promotion of creative activity and of the cultural goods and services that are the main channels thereof.

9. At their first meeting, the experts expressed the wish that the convention, a binding legal instrument, should not take the form of a catalogue of sanctions, but rather be a generous document ensuring a climate conducive to cultural diversity, dialogue and renewed international cooperation. Most of the experts thus considered that the convention's primary aim should be to tackle the imbalances apparent in the relevant fields which are liable to threaten the diversity of cultural contents and artistic expressions to the detriment of developing countries and minorities in particular.

Acknowledging that cultural development underlies many aspects of economic development, the experts agreed that the convention should define its own norms in order to ensure that cultural and economic development may go hand in hand. Agreeing that the convention should define the rights and obligations of the States Parties at the national and international levels, the experts proposed from the start that the term "protection" should under no circumstances be taken to mean that States Parties should turn in on themselves or close themselves off from others. Rather, the diversity of cultural contents and artistic expressions should always be guaranteed by freedom of expression, and the public should be afforded the broadest possible access to them.

The experts then set about defining the aims and principles, the scope, and the basic ideas of the convention, taking care to arrive at precise, but not fixed, definitions in the very broad and constantly evolving field that is the subject of the convention. The definitions selected are purely operational, and are intended to facilitate joint understanding among the States Parties throughout this process, which has a precise and limited goal. That is why, for example, the terms "culture" and "cultural diversity" were not approached in the full range of their acceptations and manifestations, but only in relation to the term "cultural expressions", which are notably transmitted by means of "cultural goods and services", having due regard for the Universal Declaration of Human Rights. The experts also tackled the themes of international cooperation and assistance, in particular for the developing countries. They stressed the need to escape the development assistance mentality and to devise mechanisms which could help those countries to enhance the field of their cultural expressions sufficiently to allow their economies to benefit therefrom. One idea was to institute partnerships and to set up databanks and indicators relating to the cultural sectors of the developing countries.

The experts suggested that the term "cultural expressions" should be used in the preliminary draft convention because it is more condensed, encompassing both the idea of "cultural contents" and that of "artistic expressions". That does not imply any modification of the objective or scope of the convention. The term was adopted by the Director-General, and is used in the preliminary draft convention.

### ***Second meeting of experts (30 March-3 April 2004)***

10. At the second meeting, proposals for articles were formulated against the background of a debate whose underlying themes were the principles of dialogue and development. Constant reference was made to other fundamental principles of the UNESCO Universal Declaration on Cultural Diversity: respect for human rights, democracy, the free flow of ideas, and the preeminence of the cultural value of "cultural goods and services" over their commercial value. Other topics of discussion included the preamble, the objectives and principles, which should ensure consistency between the Universal Declaration and the convention, the scope, and the definitions, which the experts endeavoured to make functional with a view to optimum legal clarity. Two nonexhaustive lists of cultural goods and services and cultural policies were provided in the form of

annexes. The experts also discussed the rights and obligations of States Parties in relation to protection and promotion of the diversity of cultural expressions, and agreed on a series of binding provisions, on most of which a consensus was reached. They also examined the topic of international cooperation, which should benefit the developing countries in particular, and lastly, the topic of the follow-up bodies and mechanisms for the convention (a governmental body, a committee of independent experts, or a body composed of both at the same time, with UNESCO providing secretariat services in all three cases).

At the end of the meeting, a first outline of the preliminary draft convention was drawn up.

### *Third meeting of experts (28-31 May 2004)*

11. At their third meeting, the experts concentrated on topics that had not been discussed in depth at the second meeting, and reviewed the entire draft text. One important conclusion reached at that meeting was that international cooperation should be a core feature of the rights and obligations of States Parties in order to protect and promote the diversity of all cultural expressions. The mechanisms of such cooperation, as well as its “tools” (an observatory on cultural diversity, and dynamic partnerships), were refined with a view to providing maximum benefit to countries lacking strong cultural industries, in particular developing countries.

At the national level, the experts agreed on an obligation for States Parties to protect vulnerable forms of cultural expression. The concept of vulnerability, and the criteria by which it is defined, will be one of the priority tasks assigned to the Advisory Group. The Advisory Group, defined as a follow-up mechanism which is essential to ensuring that the convention’s objectives are attained, constitutes an innovative addition to the other follow-up mechanisms, which also include a General Assembly of States Parties and an Intergovernmental Committee. The Advisory Group is an independent body charged with responding to requests from the Director-General and/or the Intergovernmental Committee which may also act on its own initiative by advising or encouraging States Parties to adopt appropriate cultural policy measures or alerting them to the need to do so.

The establishment of an observatory on cultural diversity highlights once again a determination to translate the convention’s objectives into action. The observatory is to collect, analyse and disseminate data in this field in question, and, at the same time, compile a data bank designed to foster dynamic partnerships among all the potential partners. The experts then worked to refine the dispute settlement mechanisms, on which States are invited to agree in good faith. The principles of the convention were clarified and separated into basic and operational principles based on balance, openness, proportionality and transparency. Their prescriptive force was increased. The dispute settlement mechanisms were refined and the idea of sanctions definitively ruled out. Overall funding for all these mechanisms was envisaged but not determined; as the draft convention indicates that that task should be the responsibility of the category II intergovernmental meeting of experts.

Two options were identified in regard to the relationship of the convention to other legal instruments: either the convention would not affect the rights and obligations of States Parties under other international instruments, or it could affect them wherever exercise of those rights or compliance with those obligations might give rise to serious damage to the diversity of cultural expressions or might threaten such diversity, except in the case of international instruments concerning intellectual property rights.

Aside from the last item, the final meeting of experts produced a consensus text divided into seven chapters: “Preamble”, “Objectives and guiding principles”, “Scope of application and

definitions”, “Rights and obligations of States Parties”, “Relationship to other instruments”, “Follow-up bodies and mechanisms” and “Final clauses”.

### ***Information meetings by the Director-General with the Permanent Delegations***

12. During the past six months of work, the Director-General, wishing to provide Member States and governmental and non-governmental organizations with the most transparent and comprehensive information possible, has decided to ensure broad and regular dissemination of the reports of the three meetings of experts,<sup>2</sup> and also to publish frequent press bulletins on the work being carried out at UNESCO. This regularly disseminated information has enabled Member States who so wish to compile documentation for consultation and reflection among the various parties involved in the project. In addition, the Director-General brought together the Permanent Delegations of the Member States on three occasions – 22 January, 7 April and 21 June 2004, and provided information to the Executive Board at its 169th session, in April 2004. On these occasions, the Director-General thanked the Member States for their trust and for having endorsed the process of work embarked upon. He emphasized that the six months of tenacious work accomplished by the experts, in an excellent working climate, had made it possible, having due regard for the mandate of the General Conference and integrating their respective approaches, to adjust positions, iron out differences, and come up with a balanced text which is based on consensus and sufficiently elaborated to facilitate to the greatest extent possible the forthcoming intergovernmental discussions. The experts made an in-depth review of a broad spectrum of questions and problems, ensuring that the preliminary draft reflects the various concerns and demonstrating the complementarity between the economic and cultural spheres.

### ***Consultations with WHO, WIPO and UNCTAD***

13. Following the three meetings, and pursuant to 32 C/Resolution 34, which invites the Director-General to undertake consultations with the World Trade Organization (WTO), the United Nations Conference on Trade and Development (UNCTAD) and the World Intellectual Property Organization (WIPO), meetings were held with the secretariats of WTO and WIPO on 16 and 17 June 2004 in Geneva. Because it was holding its general conference in Brazil on those dates, UNCTAD could only be consulted in writing. The meetings with those two organizations, whose chief mandate is ensuring observance of the agreements concluded, highlighted the complementarity of UNESCO’s approach, which is aimed at encouraging States to develop innovative cooperation policies at the national and international levels. Both WTO and WIPO congratulated UNESCO for holding inter-agency consultations at such an early stage in the process of drawing up a new standard-setting instrument, and stressed that they were available to pursue informal exchanges between secretariats in the coming months.

The representatives of the WIPO secretariat have welcomed with interest the main lines of emphasis and objectives of a preliminary text which recognizes the full importance of the protection of intellectual property rights. They have promised to transmit their detailed, albeit preliminary, written remarks to UNESCO.

WTO, while affirming that its secretariat was available for informal exchanges with UNESCO on technical and legal aspects common to the draft convention and WTO agreements, has indicated that it wishes to consult its specialized councils and its General Council in a formal manner.

The Director-General has agreed to communicate the preliminary draft convention to the WTO secretariat in mid-July, at the same time as he will be sending it to the UNESCO Member

<sup>2</sup> The three reports of the meetings of experts (category VI) are available on the Internet at the following address: <http://www.unesco.org/culture/diversite/convention>.

States. WTO will circulate the draft convention among its specialized councils (Services Council, Intellectual Property (TRIPS) Council, Goods Council), and then transmit it, with their comments, to its General Council before bringing them to the attention of UNESCO. UNESCO should thus be informed of WTO's official position by December 2004. In this way, the Director-General hopes that the Member States of both institutions will have plenty of time to express consistent and concerted views, following interministerial consultations within each Member State.

### **III. The next steps**

14. In accordance with 169 EX/Decision 3.7.2, adopted by the Executive Board at its 169th session, in which the Board invited the Director-General to “convene meetings of government experts (...) aimed at taking forward the preparation of the preliminary draft convention in order to report to the General Conference at its 33rd session”, the first of these meetings will be held from 20 to 25 September 2004 at UNESCO Headquarters, funded principally by extrabudgetary funds. The meeting will provide an opportunity for all Member States and invited observers to express their views on the preliminary draft of UNESCO's future convention on the protection of the diversity of cultural contents and artistic expressions annexed to the present report. Further intergovernmental expert meetings should then be held to take the debate forward. Suggestions and observations by Member States on the preliminary draft and on the present report should be sent to the Director-General by mid-November 2004, whether or not they are submitted by government experts at the first intergovernmental meeting in September 2004.



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**Preliminary draft of a convention on the protection  
of the diversity of cultural contents and artistic expressions**

**PREAMBLE**

The General Conference of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as UNESCO, meeting in Paris from xxx to xxx at its xxx session,

*Afirming* the fundamental right of all individuals and societies to share in the benefits of diversity and dialogue as primary features of culture, as the defining characteristics of humanity,

*Being aware* that cultural diversity, the common heritage of humanity, is a mainspring of sustainable development, and that it is thus as vital for humankind as biological diversity is for living organisms,

*Being aware* that cultural diversity, flourishing within a framework of democracy, tolerance and social justice, is indispensable for peace and security at the national and international levels,

*Celebrating* the importance of cultural diversity for the full realization of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments,

*Recognizing* that cultural diversity is nurtured by constant exchanges between cultures, and that it has always been a result of the free flow of ideas by word and image,

*Reaffirming* that freedom of thought, expression and information, and its corollary, pluralism of the media, ensure that cultural expressions may flourish within societies, and that the greatest possible number of individuals may have access thereto,

*Recognizing* that the diversity of cultural expressions, which illustrates the plurality of identities, is an enriching factor for peoples and individuals because it allows them to express and to share with others their ideas, values and imaginaries,

*Recognizing* the fundamental right of social groups and societies, in particular of members of minorities and indigenous peoples, to create, disseminate and distribute their cultural goods and services, including their traditional cultural expressions, to have access thereto, and to benefit therefrom for their own development,

*Emphasizing* the vital role of the creative act, which nurtures and renovates cultural expressions, and hence the vital role of artists and other creators, whose work needs to be endowed with appropriate intellectual property rights,

*Being convinced* that cultural goods and services are of both an economic and a cultural nature, and that because they convey identities, values and meanings, they must not be treated as ordinary merchandise or consumer goods,

*Noting* that while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, these same processes also constitute a threat to diversity and carry with them a risk of impoverishing cultural expressions,

*Being aware* of the specific mandate that UNESCO has to ensure respect for the “fertile diversity of culture” and to recommend “such international agreements as may be necessary to promote the free flow of ideas by word and image”,

*Referring* to the provisions of the international instruments promulgated by UNESCO relating to cultural diversity and the exercise of cultural rights, and in particular the Universal Declaration on Cultural Diversity,

*Adopts* this Convention on this xxx day of xxx.

## **I. OBJECTIVES AND GUIDING PRINCIPLES**

### **Article 1 – Objectives**

The objectives of this Convention are:

- (a) to protect and promote the diversity of cultural expressions;
- (b) to give recognition to the distinctive nature of cultural goods and services as vehicles of identity, values and meaning;
- (c) to facilitate the development and adoption of cultural policies and appropriate measures for the protection and promotion of the diversity of cultural expressions;
- (d) to provide a framework within which cultures may freely evolve and interact;
- (e) to encourage dialogue between cultures and civilizations with a view to ensuring wider and more balanced cultural exchanges between the countries of the world;
- (f) to foster respect for the diversity of cultural expressions and raise awareness of its value at the national and global levels;
- (g) to strengthen international cooperation and solidarity in a spirit of global partnership with a view, in particular, to fostering the capacities of developing societies to protect and promote the diversity of cultural expressions.

### **Article 2 – Principles**

#### **1. Principle of respect for human rights**

No one may invoke the provisions of this Convention in order to infringe human rights guaranteed by international law or to limit the scope thereof.

**2. Principle of fundamental freedoms**

Cultural diversity can be protected and promoted only if fundamental freedoms such as freedom of expression, information and communication as well as the ability of individuals to choose cultural expressions are guaranteed.

**3. Principle of free access and participation**

The right of access of all people to a rich and diversified range of cultural expressions from all over the world, and the possibility for all cultures to have access to the means of cultural expression and dissemination are essential guarantees of cultural diversity.

**4. Principle of equal dignity of all cultures**

The protection and promotion of the diversity of cultural expressions presupposes recognition of the equal dignity of and equal respect for societies and social groups, including minorities and indigenous peoples, and the cultures they express.

**5. Principle of the complementarity of economic and cultural aspects of development**

Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, and individuals have the fundamental right to benefit from both.

**6. Principle of international solidarity and cooperation**

International cooperation and solidarity shall be aimed at enabling countries, especially developing countries and countries in transition, to strengthen their means of cultural expression, including cultural industries that are viable at the national and international levels.

**7. Principle of sustainability**

Cultural diversity is an asset and constitutes an essential aspect of the cultural capital of societies, in the same way as biodiversity is a critical element of natural capital. The protection and maintenance of cultural diversity for the benefit of future generations is an essential requirement for the sustainability of cultural development.

**8. Principle of balance, openness and proportionality**

When States adopt measures which they deem relevant to support the diversity of cultural expressions at the national level, they commit themselves to guaranteeing, in an appropriate manner, openness to the other cultures of the world, and to ensuring that such measures are geared to the objectives pursued under the present Convention.

**9. Principle of transparency**

States Parties shall ensure transparency in the development and implementation of their cultural

policies.

## II. SCOPE OF APPLICATION AND DEFINITIONS

### Article 3 – Scope of the Convention

This Convention shall apply to the cultural policies and measures that States Parties take for the protection and promotion of the diversity of cultural expressions.

### Article 4 – Definitions

For the purposes of this Convention:

#### 1. Culture

“Culture” refers to the set of distinctive spiritual, material, intellectual and emotional features of society or a social group and encompasses in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.

#### 2. Cultural diversity

“Cultural diversity” refers to the manifold ways in which the cultures of social groups and societies find expression. From the diverse forms taken by culture over time and space stem the uniqueness and plurality of the identities and cultural expressions of the peoples and societies that make up humankind. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humankind is protected, augmented and transmitted to future generations, but also through the variety of cultural expressions which are borne by cultural goods and services, in all parts of the world at any given time, through diverse modes of production, dissemination, distribution and consumption.

#### 3. Cultural expressions

The term “cultural expressions” includes both the notions of “cultural contents” and “artistic expressions”, and refers to the various ways in which cultural goods, services and other activities may communicate symbolic meaning or convey cultural values. The “cultural content” of such goods, services and activities refers to the meaning and values thus conveyed. The “artistic expression” of these goods, services and activities is a cultural expression resulting from creative work or aesthetic creation.

#### 4. Cultural goods and services

“Cultural goods and services” (a non-exhaustive list of which is annexed to the Convention, see Annex I) refer to those goods, services and activities that embody or yield cultural expressions and have the following characteristics:

- (a) they are the outcome of human labour (industrial, artistic or artisanal) and require the exercise of human creativity for their production;
- (b) they express or convey some form of symbolic meaning, which endows them with a cultural value or significance distinct from whatever commercial value they may possess;
- (c) they generate, or may generate, intellectual property, whether or not they are protected under existing intellectual property legislation.

## **5. Cultural industries**

The term “Cultural industries” refers to industries producing cultural goods and services as defined above.

## **6. Cultural capital**

“Cultural capital” refers to tangible or intangible items of cultural value or significance which are inherited from the recent or distant past, cared for in the present, and handed on to future generations. Items of cultural capital, being assets deriving from human creativity and resources, exist in the form of works of art, buildings and sites, customs and traditions, etc.

## **7. Cultural policies**

“Cultural policies” refer to policies, whether at the local, regional, national or international level, which address or affect any aspect of the cultural expressions of an individual, community, or society, including the creation, production, distribution, dissemination of, and access to, cultural goods and services. (A non-exhaustive list of cultural policies is annexed to the Convention, see Annex 2).

# **III. RIGHTS AND OBLIGATIONS OF STATES PARTIES**

## **Article 5 – General rules on rights and obligations**

1. The States Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, affirm their sovereign right to adopt measures to protect and promote the diversity of cultural expressions within their territory, and recognize their obligations to protect and promote it both within their territory and at the global level.
2. When a State Party takes a measure to protect and promote the diversity of cultural expressions within its territory, it shall ensure that such measure is in conformity with this Convention, its objectives, principles and scope.

## **Section III.1 – Rights and obligations at the national level**

### **Article 6 – Rights of States Parties at the national level**

1. Within the framework of its cultural policies as defined in Article 4.7, and taking into account its own particular circumstances and needs, each State Party may adopt measures, especially regulatory and financial measures, aimed at protecting and promoting the diversity of cultural expressions within its territory, particularly in cases where such expressions are threatened or in a situation of vulnerability.
2. Such measures may include the following:
  - (a) measures which in an appropriate manner reserve a certain space for domestic cultural goods and services among all those available within the national territory, in order to ensure opportunities for their production, distribution, dissemination and consumption, and include, where appropriate, provisions relating to the language used for the above-mentioned goods and services;

- (b) measures which guarantee independent cultural industries effective access to the means of producing, disseminating and distributing cultural goods and services;
- (c) measures which grant public financial aid; in granting such aid, States Parties may determine the nature, amount and beneficiaries thereof;
- (d) measures which promote the free exchange and circulation of ideas, cultural expressions, and cultural goods and services, encourage non-profit organizations, and stimulate the entrepreneurial spirit;
- (e) measures which encourage and support public service institutions.

#### **Article 7 – Obligation to promote the diversity of cultural expressions**

1. States Parties shall provide all individuals in their territory with opportunities:
  - (a) to create, produce, disseminate, distribute, and have access to their own cultural expressions, goods and services, paying due attention to the special circumstances and needs of the various social groups, in particular, minorities and indigenous peoples;
  - (b) to have access to the cultural expressions, goods and services representing cultural diversity in other countries of the world.
2. States Parties shall also ensure:
  - (a) that the legal and social status of artists and creators is fully recognized, in conformity with international existing instruments, so that their central role in nurturing the diversity of cultural expressions is enhanced;
  - (b) that intellectual property rights are fully respected and enforced according to existing international instruments, particularly through the development or strengthening of measures against piracy.

#### **Article 8 – Obligation to protect vulnerable forms of cultural expression**

If some cultural expressions are deemed to be vulnerable to or threatened by the possibility of extinction or serious curtailment (hereafter referred to as “situations”), States Parties shall take appropriate measures to protect the diversity of cultural expressions within their territory according to the following provisions:

- (a) each State Party may at any time bring before the Intergovernmental Committee referred to in Article 21 situations which may require action under this Article. Such situations shall be identified in conformity with the criteria established by the Advisory Group referred to in Article 22, exception being made for cases covered by existing international instruments relating to the protection of cultural heritage;
- (b) the Intergovernmental Committee shall consider each case according to criteria established by the Advisory Group. In cases where the Intergovernmental Committee determines that action is necessary, it shall require the relevant State Party or Parties to take appropriate measures within a reasonable period of time;

- (c) a State Party required to take appropriate measures by the Intergovernmental Committee may, through this body, seek international cooperation and assistance in identifying the necessary resources for effective action.

### **Article 9 – Obligation of information and transparency**

States Parties shall:

- (a) establish competent authorities to be in charge of the protection and promotion of the diversity of cultural expressions;
- (b) determine how to establish a mechanism to share and exchange information relating to the protection and promotion of the diversity of cultural expressions;
- (c) develop sectoral and cross-sectoral policies, strategies, plans or programmes for the protection and promotion of the diversity of cultural expressions, and publicize the measures taken in order to ensure transparency;
- (d) notify UNESCO on a biennial basis of the new measures that have been taken to protect and promote the diversity of cultural expressions within their territory and to ensure openness towards foreign cultural expressions.

### **Article 10 – Obligation of public awareness and education**

States Parties shall:

- (a) encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions through public relations, the media and educational programmes;
- (b) cooperate with other States Parties and international organizations in developing educational and public awareness programmes relating to the protection and promotion of the diversity of cultural expressions;
- (c) endeavor to strengthen production capacities by setting up continuing education and training programmes in the field of cultural industries.

### **Article 11 – Responsibility and participation of civil society**

States Parties shall encourage civil society to assume its share of responsibility for the protection and promotion of the diversity of cultural expressions, and shall foster the participation of civil society in their efforts in this domain.

## **Section III.2 – Rights and obligations relating to international cooperation**

### **Article 12 – Objectives**

1. States Parties shall cooperate for the creation of international conditions conducive to cultural development;

2. States Parties shall, within the framework of their development cooperation agreements, foster aspects relating to the protection and promotion of the diversity of cultural expressions, and shall undertake to strengthen their cooperation, particularly in order to:

- (a) support the creation or consolidation of cultural production capacities, particularly in developing countries, countries in transition and least developed countries;
- (b) enable, to this end, the emergence of viable local and regional markets for cultural goods and services;
- (c) facilitate wider access to the global market and international distribution networks for the cultural goods and services of all countries;
- (d) foster the free circulation and mobility of artists and creators;
- (e) enhance public sector strategic and management capacities and increase public-sector competitiveness, so that the cultural industries sectors do not rely exclusively on private sector initiatives, and allow the establishment of strong public/private partnerships;
- (f) develop a system of positive exhortation in support of national policies for cultural exchanges with a view to raising broad awareness of the diversity of cultural expressions;
- (g) introduce incentive measures for the transfer of technology and know-how, notably in the areas of cultural industries and enterprises.

### **Article 13 – International consultation and coordination**

States Parties shall bear in mind the objectives of this Convention when making any international commitments. They undertake, as appropriate, to promote its principles and objectives in other international fora. For these purposes, States Parties shall consult each other within UNESCO in order to develop common approaches.

### **Article 14 – Aid for co-production and dissemination**

States Parties shall encourage, as needed, the conclusion of cinematographic and other audiovisual co-production and co-distribution agreements, thereby enabling foreign productions to be considered as national and, as such, facilitating their access to national aid, devoting particular attention to developing countries and countries in transition.

### **Article 15 – Establishment of a Cultural Diversity Observatory**

1. States Parties agree to develop the exchange of information and expertise concerning data and statistics on the diversity of cultural expressions as well as on best practices for its protection and promotion.

2. To this end, the Intergovernmental Committee shall set up within UNESCO a Cultural Diversity Observatory to collect, analyse and disseminate all relevant information, statistics and best practices. The Observatory shall also establish and update a data bank on all partner sectors (governmental, private and non-profit) that wish to cooperate in the area of cultural diversity and exchanges.

3. All such information collected by the Cultural Diversity Observatory shall be communicated in an annual or biennial report to the Intergovernmental Committee. This report shall inform Member States for the purposes of formulating or applying their cultural policies. In addition, it will enable the Advisory Group to define international strategies for the protection and promotion of the diversity of cultural expressions.

4. To facilitate the collection of data, the Cultural Diversity Observatory shall pay particular attention to capacity-building and the strengthening of expertise in States Parties that submit a request for such assistance.

#### **Article 16 – Cooperation for development**

For the purposes of this Convention, States Parties shall undertake to support cooperation for development by the following means:

- (a) exchange of information and experience as well as the training of human resources in developing countries and countries in transition to support the formulation of their cultural policies;
- (b) support for creative work, cultural production and creators to foster the emergence of a dynamic cultural sector in developing countries and countries in transition;
- (c) strengthening of the cultural production and distribution capacities of developing countries and countries in transition in order to increase their presence at both the national and international levels;
- (d) adoption of appropriate measures, in countries which have strong cultural industries, with a view to facilitating access to their territory for the cultural goods and services of States Parties whose cultural industries are weak;
- (e) other forms of financial and technical assistance, such as the establishment of an International Fund for Cultural Diversity, the modalities of which would be determined by the Intergovernmental Committee, or the provision of low-interest loans and grants to stimulate and support creativity;
- (f) any other form of assistance which may be deemed appropriate.

#### **Article 17 – Preferential treatment for developing countries**

Developed countries shall facilitate cultural exchanges with developing countries and least developed countries by granting appropriate preferential treatment to their professionals, artists and other creators as well as to their cultural goods and services.

#### **Article 18 – Partnerships for development**

1. In pursuance of the objectives of this Convention, States Parties shall emphasize the development of innovative partnerships, between and within the public and private sectors and non-profit organizations, in order to promote the diversity of cultural expressions and increase the exchange of cultural goods and services. Partnerships shall focus on the development of infrastructure, human resources and policies necessary for the responsible and sustainable exploitation of cultural resources in developing countries.

2. The Intergovernmental Committee provided for in Article 21 shall draw up, on the proposal of the Advisory Group, the criteria, rules and operational guidelines that shall govern the establishment of the partnerships mentioned in the preceding paragraph.

3. For the purposes of the establishment of such partnerships, States Parties wishing to obtain aid should apply to the Intergovernmental Committee and submit an inventory of their infrastructure, policies and concrete activities relating to cultural production and distribution. If need be, technical and financial assistance to draw up such an inventory may be provided by the Intergovernmental Committee.

4. The Intergovernmental Committee shall transmit the application for support together with the inventory to the Advisory Group for evaluation and recommendations.

5. Upon receipt of the evaluation and recommendations from the Advisory Group, the Intergovernmental Committee, in consultation with the requesting country, shall identify potential partners, establish contact between such partners and the requesting country, and contribute, if necessary, to the conclusion of a partnership agreement.

6. Partnerships shall be developed, to whatever extent possible, with a view to providing, whenever required, a regional response to the needs identified.

#### **IV. RELATIONSHIP TO OTHER INSTRUMENTS**

##### **Article 19 – Relationship to other instruments Option A**

1. Nothing in this Convention may be interpreted as affecting the rights and obligations of the States Parties under any existing international instrument relating to intellectual property rights to which they are parties.

2. The provisions of this Convention shall not affect the rights and obligations of any State Party deriving from any existing international instrument, except where the exercise of those rights and obligations would cause serious damage or threat to the diversity of cultural expressions.

##### **Option B**

Nothing in this Convention shall affect the rights and obligations of the States Parties under any other existing international instruments.

#### **V. FOLLOW-UP BODIES AND MECHANISMS**

##### **Article 20 – General Assembly of States Parties**

1. A General Assembly of States Parties, hereinafter referred to as “the General Assembly”, shall be established. The General Assembly shall be the sovereign body of this Convention.

2. The General Assembly shall meet in ordinary session every two years. It may meet in extraordinary session if it so decides or if the Intergovernmental Committee receives a request to that effect from at least one-third of States Parties.
3. The General Assembly shall adopt its own rules of procedure.
4. The functions of the General Assembly shall be, *inter alia*:
  - (a) to elect the Members of the Intergovernmental Committee;
  - (b) to receive and examine the summary reports of the States Parties to the Convention transmitted by the Intergovernmental Committee (cf. Article 21.3(c));
  - (c) to approve the operational guidelines prepared by the Intergovernmental Committee;
  - (d) to take whatever other measures it may consider necessary to further the objectives of this Convention.

#### **Article 21 – Intergovernmental Committee**

1. An Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Intergovernmental Committee”) shall be established within UNESCO. It shall be composed of representatives of 18 States Parties, elected by the General Assembly of States Parties upon the entry into force of this Convention pursuant to Article 28. The Committee shall meet once a year.
2. The number of States Members of the Intergovernmental Committee shall be increased to 24 once the number of States Parties to the Convention reaches 50.
3. Without prejudice to the other responsibilities conferred upon it by this Convention, the functions of the Committee shall be:
  - (a) to promote the objectives of this Convention, and to encourage and monitor the implementation thereof;
  - (b) to prepare and submit for approval by the General Assembly operational guidelines for the implementation and application of the provisions of the Convention in different situations;
  - (c) to transmit to the General Assembly summary reports from States Parties, together with general comments;
  - (d) to establish the Cultural Diversity Observatory as defined in Article 15;
  - (e) to draw up criteria, rules and operational guidelines aimed at supporting the establishment of partnerships;
  - (f) to propose appropriate actions to be taken in situations brought to its attention by States Parties in accordance with Article 8;

- (g)
- (h) to establish procedures and other mechanisms for consultation aimed at promoting the principles and objectives of this Convention in other international arenas;
- (i) to determine, in consultation with international financial institutions and development banks, mechanisms for allocating a share of international financing to international cooperation in favour of the diversity of cultural expressions;
- (j) to establish such subsidiary bodies as may be useful for the efficient implementation of the Convention;

to consult the Advisory Group on a regular basis in order to ensure the promotion of the objectives of this Convention and its implementation.

### **Article 22 - Advisory Group**

1. An Advisory Group, serving as a source of independent and informed advice, shall be established by the Director-General of UNESCO. The Advisory Group shall consist of 12 members of recognized competence in the field of cultural diversity, serving in a personal capacity and coming from various regions of the world. The members shall be appointed for a term of three years and shall be eligible for reappointment once. The Advisory Group shall meet at least once a year.

2. Without prejudice to the other responsibilities conferred upon it, the functions of the Advisory Group shall be:

- (a) to respond to requests for advice from the Director-General and/or the Intergovernmental Committee on the implementation of the Convention and on related matters, including cases of cultural expressions which are deemed to be vulnerable or threatened by the possibility of extinction or serious curtailment, as described in Article 8;
- (b) to alert and advise the Director-General of UNESCO and/or the Intergovernmental Committee, on its own initiative, with respect to all questions concerning the implementation of the Convention, in particular in the case of a threat to the diversity of cultural expressions. If it considers it appropriate, the Advisory Group shall make proposals to enhance the effectiveness of this Convention, such as work programmes, partnerships, national and international policies for cultural exchanges, as well as criteria or rules for supporting the development of the States Parties' capacities for cultural production and distribution.

3. The Advisory Group shall establish its own rules of procedure.

### **Article 23 – UNESCO Secretariat**

UNESCO shall provide the secretariat of the General Assembly of States Parties, the Intergovernmental Committee and the Advisory Group.

### **Article 24 – Settlement of Disputes**

1. In the event of a dispute between States Parties concerning the interpretation or the application of this Convention, the parties concerned shall seek solution by negotiation.

2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. If good offices or mediation are not undertaken or if there is no settlement by negotiation, good offices or mediation, the parties concerned may have recourse to one of the following means of dispute settlement:

(a) arbitration, at their joint request, in accordance with the procedure laid down in Annex III to this Convention; the arbitral award shall be binding. Parties shall implement the award in good faith;

(b) submission, at their joint request, of the dispute to the International Court of Justice.

4. If the parties concerned have not accepted either of the procedures provided for in paragraph 3 above, the dispute shall be submitted to conciliation in accordance with the procedure laid down in Annex IV of this Convention. The parties shall consider in good faith the proposal made by the Conciliation Commission for the resolution of the dispute.

## **VI. FINAL CLAUSES**

### **Article 25 – Ratification, acceptance or approval**

1. This Convention shall be subject to ratification, acceptance or approval by States Members of UNESCO in accordance with their respective constitutional procedures.

2. The instruments of ratification, acceptance or approval shall be deposited with the Director-General of UNESCO.

### **Article 26 – Accession**

1. This Convention shall be open to accession by all States not Members of UNESCO that are invited by the General Conference of UNESCO to accede to it.

2. This Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but which have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.

3. The instrument of accession shall be deposited with the Director-General of UNESCO.

### **Article 27 - Competent authorities**

Upon ratification, States Parties shall designate the “competent authorities” referred to in Article 9.

### **Article 28 – Entry into force**

This Convention shall enter into force three months after the date of the deposit of the 30th instrument of ratification, acceptance, approval or accession, but only with respect to those

States that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other State Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.

### **Article 29 – Federal or non-unitary constitutional systems**

The following provisions shall apply to States Parties which have a federal or non-unitary constitutional system:

- (a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;
- (b) with regard to the provisions of this Convention, the implementation of which comes under the jurisdiction of individual constituent States, countries, provinces or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

### **Article 30 – Denunciation**

1. Each State Party may denounce this Convention.
2. The denunciation shall be notified by an instrument in writing deposited with the Director-General of UNESCO.
3. The denunciation shall take effect 12 months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the denouncing State Party until the date on which the withdrawal takes effect.

### **Article 31 – Depositary functions**

The Director-General of UNESCO, as the Depositary of this Convention, shall inform the States Members of the Organization, the States not Members of the Organization referred to in Article 26, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 25 and 26, and of the denunciations provided for in Article 30.

### **Article 32 – Amendments**

1. A State Party may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all States Parties. If, within six months from the date of dispatch of the communication, no less than one half of the States Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the General Assembly for discussion and possible adoption.
2. Amendments shall be adopted by a two-thirds majority of States Parties present and voting.

3. Once adopted, amendments to this Convention shall be submitted to the States Parties for ratification, acceptance, approval or accession.
4. For States Parties which have ratified, accepted, approved or acceded to them, amendments to this Convention shall enter into force three months after the deposit of the instruments referred to in paragraph 3 of this Article by two-thirds of the States Parties. Thereafter, for each State Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that State Party of its instrument of ratification, acceptance, approval or accession.
5. The procedure set out in paragraphs 3 and 4 shall not apply to amendments to Article 21 concerning the number of States Members of the Intergovernmental Committee. These amendments shall enter into force at the time they are adopted.
6. A State which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered to be:
  - (a) a Party to this Convention as so amended; and
  - (b) a Party to the unamended Convention in relation to any State Party not bound by the amendments.

#### **Article 33 – Authoritative texts**

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, all six texts being equally authoritative.

#### **Article 34 – Registration**

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of UNESCO.



## ANNEX I

### NON-EXHAUSTIVE LIST OF CULTURAL GOODS AND SERVICES

**Cultural goods and services** include, but are not limited to, goods and services in the following categories:<sup>\*</sup>

***Publishing, printing and literature:*** books, newspapers, periodicals, other printed matter, e-books, e-magazines, etc.; services for the publication, distribution, dissemination and promotion of books, newspapers, printed matter, electronic publications, etc.; library services, etc.; royalties and licence fees;

***Music and the performing arts:*** music recordings, musical instruments, musical compositions and publications, etc.; festivals, concerts, plays and artistic performances, dance, opera, orchestral music, songs,<sup>\*\*</sup> other performing arts (circus, puppet theatre,<sup>\*\*</sup> pantomime,<sup>\*\*</sup> street performances, etc.), etc.; performing arts venues (theatres, concert halls, marquees, etc.); music and performing arts production, dissemination, operation and promotion services; royalties and licence fees;

***Visual arts:*** painting (oils, drawings, engravings), sculpture, photography, photo-engraving, video art, computer graphics, graphic arts, electronic imaging; services for the production, dissemination, promotion and exhibition of visual arts; royalties and licence fees;

***Crafts, design and architecture:*** ceramics, fabrics, embroidery, basketry, glass, jewellery, leather, wood, wrought metal work, metals, garments and accessories, furniture, interior decoration; designer objects; architectural services; services for the production, distribution and promotion of crafts and designs, etc.;

***Audiovisual and new media:*** film, video recording, radio and television programmes, entertainment software (video games, educational programmes, etc.), Internet creativity sites, virtual reality, broadband video broadcasting (videostreaming), etc.; radio and television services, radio broadcasting service, services for the production, distribution, operation, dissemination and promotion of film, video recording, and radio and television programmes; royalties and licence fees;

***Cultural heritage:***<sup>\*\*</sup> antiquities, collectors' items, museum services, archive services (documents, recordings of items of the intangible cultural heritage, etc.), preservation services for historic sites and monuments; services relating to the safeguarding and transmission of rituals, narratives, folktales, etc.;

***Cultural activities:*** sociocultural facilities, voluntary and community associations, recreational and sporting services, games, culinary traditions, costumes, cultural tourism, etc.

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<sup>\*</sup> As defined and adapted on the basis of the 10 categories of the UNESCO Framework for Cultural Statistics, UNESCO Institute for Statistics (UIS): <http://www.uis.unesco.org>.

<sup>\*\*</sup> Certain cultural goods and services in this list are already covered by other UNESCO standard-setting instruments. However, such goods and services may be concerned by this Convention to the extent that spin-off products such as films, CD-ROMS, books, catalogues, etc. are brought into circulation. Among these instruments, one may note the Florence Agreement of 1950 and its Nairobi Protocol of 1976, the Universal Copyright Convention of 1952, the Declaration of Principles of International Cultural Cooperation of 1966, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, the Convention for the Protection of the World Cultural and Natural Heritage of 1972, the Recommendation concerning the Status of the Artist of 1980, and the Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, and other newly adopted conventions such as the Convention on the Protection of the Underwater Cultural Heritage of 2001 and the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003.



## ANNEX II

### NON-EXHAUSTIVE LIST OF CULTURAL POLICIES\*

#### 1. Cultural policies are aimed in particular at:

***Enhancing development by integrating cultural strategies into social and economic development policies:*** cross-sectoral policies and regional development programmes;

***Supporting creativity and promoting participation in cultural life:*** urban cultural policies; policies that cater needs and aspirations of the young and elderly people;

***Preserving and safeguarding tangible and intangible cultural heritage\*\**** : policies to recognize new heritage categories such as cultural landscape, industrial heritage or tourism; policies to inventory and register oral traditions and traditional performing arts, and improve scientific conservation policies; policies to protect buildings, sites, ensembles and landscapes of cultural significance in urban and regional development plans;

***Promoting pluralism, cultural and linguistic diversity in and for the information society:*** policies that enhance media pluralism and develop community, linguistic and minority services in public radio and television and on the World Wide Web; policies to digitalize archives, museums and libraries and facilitate access to that content; policies that educate and train children in the use of new media technologies; develop research on the relationship between culture and its dissemination in the media and through new communication services; promote cultural contents in formal and non formal education and the learning of mother tongues as well as of foreign languages (see Article 5 of the UNESCO Universal Declaration on Cultural Diversity);

***Promoting culture among young people:*** enhance and enforce the rights of the child and vulnerable groups with special educational and cultural needs; encourage the young generation to appreciate the existing diversity of contents and forms of cultural expressions, including expressions of the communities or peoples they form part of;

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\* This non-exhaustive list has been elaborated on the basis of the document *Cultural Policy for Development – Evaluation of the Stockholm Action Plan 1998*, prepared by Professor Jens Cavallin and Professor Tobias Harding from the University of Linköping (Sweden, 2003).

\*\* Some of the cultural policies mentioned in the above list may be covered by other UNESCO standardsetting instruments. However, they might also be concerned by the present Convention, in particular to the extent that spin-off products such as films, CD-ROMS, videos, books, catalogues, etc. are brought into circulation. UNESCO normative instruments referred to above comprise the Florence Agreement of 1950 and its Nairobi Protocol of 1976, the Universal Copyright Convention of 1952, the Declaration of the Principles of International Cultural Cooperation of 1966, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, the Convention for the Protection of the World Cultural and Natural Heritage of 1972, the Recommendation concerning the Status of the Artist of 1980, and the Recommendation of Safeguarding Traditional Culture and Folklore of 1989, as well as other conventions recently adopted such as the Convention on the Protection of Underwater Cultural Heritage of 2001 and the Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

**Strengthening cultural industries:** training schemes for national specialists, cultural administrators and managers; assisting artists, designers and craftspeople by safeguarding and improving the rights of creators;

**Enhancing and supporting new and traditional media:** support local/national production and distribution; develop innovative funding systems and foster the complementarity between public and private initiatives; support access to the new technologies;

**Improving international cooperation and research for cultural policy;** support developing countries to consolidate their cultural institutions and to train cultural professionals; encourage the development of civil society, professional and research networks; increase consultation and coordination among ministers of culture at the regional and international levels; develop comparable statistical data and indicators; and

**Mobilizing more human and financial resources for cultural development:** increase investment in cultural development; develop fiscal frameworks for cultural activities; promote business support for cultural development; develop public endowment and other revenue-earning projects by cultural institutions.

**2. To attain such objectives, cultural policies should cover, *inter alia*, the following areas:**

**Law, Administration, Finance:** Legislation in the field of culture; financing of culture; improvement of socio-economic conditions for those engaged in the field of culture; framework for foundations and regulation of tax exemption; copyright; pension schemes for artists and freelancers; taxes for national and international artists; training for cultural administration; participation in culture for communities, groups and ethnic minorities; cultural decentralization;

**Arts education:** cultural and artistic education; supporting young artists; cultural education for children, youth and adults inside and outside school;

**Cultural relations and exchanges:** International relations in the field of culture; the running of cultural institutes abroad; exchange between groups and communities within States;

**Cultural heritage:** Cultural and natural heritage (tangible and intangible) \*\*; involvement of the communities in heritage conservation \*\*; information technology to preserve and sustain cultural heritage \*\*; museums \*\*; archives;

**Fine Arts:** Music; visual arts; theatre; sculpture; painting;

**Traditional arts and handicraft:** traditional arts; handicraft; basketry; weaving; ceramics; oral literature \*\*; social and cultural traditions \*\* (oral expressions, songs, dance, other traditional performing arts); fostering intangible culture \*\*; rewarding living national treasures \*\*; recognizing and rewarding living national treasures \*\*;

**Applied arts:** Architecture; design;

**Books:** Libraries; book policy; publishing; public reading;

**Media and Cultural Industries:** Television; radio; mass-media; cinema; multimedia and network projects; the arts and cultural industries (film industry, books, music industry, on-

and off-line publishing); games, animation; improvement of technical equipment of the cultural sphere; establishing of information banks and broadening the communication sphere; access for minority ethnic groups in the electronic and broadcasting media;

***Community, recreation and sports:*** amateur culture; community culture; cultural centres; tourism, sports and youth; recreation;

***Values:*** the development of an ecological conscience and the construction of a pluralistic citizenship; spiritual values and beliefs; languages; as vehicles of cultural values;

***Research:*** The creative knowledges; research on contemporary materials; cultural investigation.



## **ANNEX III**

### **ARBITRATION PROCEDURE**

#### **Article 1 – Establishment and Composition of the Arbitration Tribunal**

1. Subject to Article 2 below, in disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

4. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Director-General of UNESCO shall, at the request of a party, designate the President within a further two-month period.

5. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request for arbitration or acceptance thereof, the other party may inform the Director-General who shall make the designation within a further two-month period.

6. The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention, any protocols concerned, and international law.

7. The arbitral tribunal shall determine its own rules of procedure.

8. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

9. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

#### **Article 2 – Initiation of the Arbitration**

1. A party wishing to have recourse to arbitration (hereinafter called “the claimant”) shall submit its request for arbitration to the UNESCO Secretariat (hereinafter called “the Secretariat”). The request for arbitration shall contain the name of the party against which the claim is filed and the description of the nature and circumstances of the dispute giving rise to the claim.

The Secretariat shall send a copy of the arbitration request and the statement of the claim to the other party (hereinafter called “the respondent”).

2. Within 30 days after the receipt of the aforementioned document from the Secretariat, the respondent shall notify the Secretariat whether or not it accepts recourse to arbitration in accordance with the provisions of this Annex. In case of acceptance, the respondent shall designate an arbitrator and shall communicate to the Secretariat the comments as to the nature and circumstances of the dispute giving rise to the claims submitted by the claimant.

3. Following the acceptance by the respondent, the claimant shall designate an arbitrator within 30 days.

4. If the respondent does not reply to the request of the claimant for arbitration within the deadline as provided in paragraph 2, or expressly rejects the arbitration procedure, the Secretariat shall inform the claimant within 30 days of the deadline that an arbitration procedure cannot take place.

5. Should an arbitration procedure be accepted by the parties, the Secretariat shall assist with the establishment of the Tribunal in accordance with Article 1 above and forward to it the information and statement received by the parties.

### **Article 3 – Award**

1. Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

2. The Arbitration Tribunal shall render its final award within six months of the date on which the Arbitration Tribunal is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed six more months.

3. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

4. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

5. An award shall be made in writing and, unless the parties have agreed upon otherwise, shall specify the grounds on which it is based. Once an award has been made, the Secretariat shall notify to the parties the text signed by the Arbitration Tribunal.

### **Article 4 – Costs**

Unless the Arbitration Tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The Arbitration Tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

## ANNEX IV

### CONCILIATION PROCEDURE

#### **Article 1 – Conciliation Commission**

A Conciliation Commission shall be created upon the request of one of the parties to the dispute. The Commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

#### **Article 2 – Members of the Commission**

In disputes between more than two parties, parties in the same interest shall appoint their members of the Commission jointly by agreement. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

#### **Article 3 – Appointments**

If any appointments by the parties are not made within two months of the date of the request to create a Conciliation Commission, the Director-General of UNESCO shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

#### **Article 4 – President of the Commission**

If a President of the Conciliation Commission has not been chosen within two months of the last of the members of the Commission being appointed, the Director-General of UNESCO shall, if asked to do so by a party, designate a President within a further two-month period.

#### **Article 5 – Decisions**

The Conciliation Commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

#### **Article 6 – Disagreements**

A disagreement as to whether the Conciliation Commission has competence shall be decided by the Commission.





united nations educational, scientific and cultural organization  
organisation des nations unies pour l'éducation, la science et la culture  
CLT/CPD/2004/CONF.201 /5 Paris, July 2004 Original: French

**INTERGOVERNMENTAL MEETING OF EXPERTS  
ON THE PRELIMINARY DRAFT CONVENTION  
ON THE PROTECTION OF THE DIVERSITY OF CULTURAL  
CONTENTS  
AND ARTISTIC EXPRESSIONS**

*Paris, UNESCO Headquarters, 20-25 September 2004, Room I*

**32 C/RESOLUTION 34**

**DESIRABILITY OF DRAWING UP AN INTERNATIONAL  
STANDARD-SETTING INSTRUMENT ON CULTURAL DIVERSITY  
(17 October 2003)**

The General Conference,

Having examined document 32 C/52 containing the Preliminary study on the technical and legal aspects relating to the desirability of a standard-setting instrument on cultural diversity, and the observations made by the Executive Board in that regard at its 166th session,

Having taken note of the reference included in that document, in accordance with 166 EX/Decision 3.4.3, to the relevant international legal instruments with regard to cultural diversity, and more particularly the protection of the diversity of cultural contents and artistic expressions (option (d), para. 23, of the preliminary study),

Recalling the efforts made by UNESCO in support of cultural diversity, including the UNESCO Universal Declaration on Cultural Diversity,

Emphasizing the importance of Article 19 of the Universal Declaration of Human Rights, which declares that everyone has the right to freedom of opinion and expression, including the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers,

Recalling that among the fundamental purposes of UNESCO are the promotion of the free flow of ideas by word and image and the preservation of the independence, integrity and fruitful diversity of cultures,

Reaffirming the principle of openness of each culture to all other cultures,

Recognizing the importance to artists and creators of intellectual property protection,

Bearing in mind that when elaborating a new international standard-setting instrument it is essential to take account of existing international legal instruments, and that it is appropriate to this end that the Director-General undertake consultations with the World Trade Organization (WTO), the United Nations Conference on Trade and Development (UNCTAD) and the World Intellectual Property Organization (WIPO),

1. Decides that the question of cultural diversity as regards the protection of the diversity of cultural contents and artistic expressions shall be the subject of an international convention;
2. Invites the Director-General to submit to the General Conference at its 33rd session, in accordance with Article 10 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution, a preliminary report setting out the situation to be regulated and the possible scope of the regulating action proposed, accompanied by the preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions.