

**UNITED NATIONS EDUCATIONAL,  
SCIENTIFIC AND CULTURAL ORGANIZATION**

**EXECUTIVE BOARD**

Hundred and seventy-first session

Item 19 of the provisional agenda

**APPENDICES 1 AND 2 TO THE PRELIMINARY REPORT BY THE DIRECTOR-  
GENERAL ON THE DRAFT CONVENTION ON THE PROTECTION OF THE  
DIVERSITY OF CULTURAL CONTENTS AND ARTISTIC EXPRESSIONS**

This document is transmitted to the Members of the Executive Board, in addition to the Report by the Director-General on the progress towards the Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions (171 EX/44), Annex III to which contains the Preliminary Report by the Director-General (CLT/CPD/2005/CONF.203/6) addressed to the Member States on 3 March 2005. The Preliminary Report envisages two appendices.

Appendix I, entitled “Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions – A Composite Text”, consists of a text reflecting the progress made following the second session of the Intergovernmental Meeting and showing the progress made, together with the work still to be done. This “composite” text has already been communicated to the Member States with the dispatch of the above-mentioned Preliminary Report.

Appendix II, entitled “Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions – A Consolidated Text”, is being prepared by the Chairperson of the Intergovernmental Meeting of Experts, pursuant to the recommendation of the latter at its second session, requesting it “to prepare a consolidated text consisting of the draft provisions recommended by the Drafting Committee together with proposals by the Chairperson himself based on the specific directives of the Plenary for the remainder of the draft text, using, wherever necessary, options or footnotes to take into account different approaches that might require further consideration”. This “consolidated text” had been announced in the aforesaid Preliminary Report as due to be sent “shortly”. It is in the process of being translated into all the other official languages of the Organization and will be transmitted to the Member States as soon as possible.

The Director-General submits, for the information of the Members of the Executive Board, the two drafts of the Convention, which are complementary and should be read together. They should be regarded as a working draft enabling Member States to pursue their deliberations.





inf\_18\_Append\_1\_co  
nf.203\_6.pdf



**PRELIMINARY DRAFT OF A CONVENTION  
ON THE PROTECTION OF THE DIVERSITY OF CULTURAL CONTENTS  
AND ARTISTIC EXPRESSIONS**

**APPENDIX 2**

**CONSOLIDATED TEXT  
PREPARED BY THE CHAIRPERSON  
OF THE INTERGOVERNMENTAL MEETING**

April 2005  
Cape Town and Paris

## **INTRODUCTION BY THE CHAIRPERSON OF THE INTERGOVERNMENTAL MEETING**

### **Background**

1. The second session of the Intergovernmental Meeting of Experts on the Preliminary Draft of a Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions (31 January-11 February 2005) adopted a recommendation asking the Chairperson “to prepare a consolidated text consisting of the draft provisions recommended by the Drafting Committee together with proposals by the Chairperson himself based on the specific directives of the Plenary for the remainder of the draft text, using, wherever necessary, options or footnotes to take into account different approaches that might require further consideration”. In accordance with this recommendation, the Chairperson has produced the attached consolidated text (Appendix 2 of the Preliminary Report of the Director-General, in accordance with circular letter CL 3747 of 3 March 2005).

2. To ensure consistency between this text and the spirit of the debates that took place during the second session, the Chairperson convened a meeting in Cape Town (1-4 April 2005) with the Chairperson of the Drafting Committee and the Rapporteur of the Plenary. He asked the Secretariat, the Assistant Director-General for Culture, the Director of the Office of International Standards and Legal Affairs and the Director of the Division of Cultural Policies and Intercultural Dialogue, to assist him in this task.

3. Intended to facilitate future work and progress, this consolidated text has been guided by intellectual integrity and the need for consistency, as reflected in the debates and the conclusions of the Plenary, the Drafting Committee and the informal working groups. The Chairperson paid particular attention to the results achieved by the Drafting Committee as well as to certain cross-cutting issues requiring further debate. Throughout this exercise, which was intended to find a common ground for various positions, the Chairperson has endeavoured to take into account concerns expressed by Member States, ensuring the greatest possible clarity within the text. In order to offer the reader a clear document free from intrusions in the text’s structure, vocabulary and style, he has deleted square brackets and footnotes as well as options. In certain cases, it was necessary to reconcile some outstanding issues by suggesting new language and to restructure the text to endow it with a more logical structure and an easier-flowing style. Moreover, the text was refined with a view to eliminating redundancy and enhancing its clarity and elegance.

4. The removal of square brackets is not intended to reflect that the particular word or words have been finally accepted in the consolidated text but to reflect the general view or approach reflected in the plenary debates. In an attempt to forge a broad-based consensus on the Convention, a number of divergent points are also reflected in the consolidated text. The deletion of footnotes and square brackets is also intended to assist the Plenary in its forthcoming consultations to focus on the thematic content of each article so as to move towards a degree of consensus. To ensure an analytical reading of the present consolidated text, word or words in brackets along with relevant footnotes, can be consulted in Appendix 1 for cross references, when needed.

5. It was considered important that a convention designed to create a favourable environment for the flourishing of the diversity of cultural expressions in the world should be drafted in accessible language without recourse to obscure technocratic words that would do a disservice to the cause of all cultures, which are permanently evolving.

**Title, Preamble, Objectives and guiding principles, Scope of application and Definitions  
(Parts I-III, Articles 1-4)**

6. A provisional title has been formulated in accordance with the basic issues of the Convention. It may be reconsidered subsequently in the light of the final comments of the Plenary. The Preamble, which was not examined in Plenary Session, was revised to highlight, among others, the recommendations of the Drafting Committee by integrating notions such as social cohesion, which previously appeared in Part I “Objectives and guiding principles”. This Part as well as the “Scope of application” (Part II) were slightly revised with a view to ensuring editorial consistency, clarity, and a more rationally organized text. It should be underlined that, despite his efforts to avoid redundancy, the Chairperson maintained the notion of “sovereignty”, which appears three times: in “Objectives”, in “Guiding principles” and in “Rights and obligations of Parties” (Article 5). In particular, as far as the “Scope of application” is concerned, it has to be noted that the Chairperson has suggested language intended to reconcile the differences expressed during the Drafting Committee.

7. In so far as possible, clear definitions of complex notions have been proposed with a view to limiting the number of interpretations and avoiding unnecessary and, often, sterile debate. In this regard, it has to be pointed out that the definitions were slightly revised, such as “cultural goods and services” which has become “cultural activities, goods and services”, and that a new definition was proposed for “protection”. These definitions take into account points previously discussed by the Plenary and the Drafting Committee and propose coherent solutions; they now appear in Part III, which has been separated from the part that deals with the “Scope of application” (Part II).

**Rights and obligations of Parties (Part IV, Articles 5-19)**

8. The consolidated text proposes a clear interpretation of the conclusions of the Plenary, the Drafting Committee and the informal working groups, particularly with regard to two points. Firstly, concerning rights and obligations of Parties, the wording has been carefully selected in order to eliminate the notion of “protectionism”, while at the same time reaffirming the Parties’ commitment to protect and promote the diversity of cultural expressions. In this context, it has to be stressed that an effort has been made to focus on cultural questions and to avoid using trade or commercial language.

9. The consolidated text points out that the Chairperson has respected the wishes of the Plenary in proposing an article on the issue of “vulnerability”. In this regard, he has found a more appropriate way of expressing this term in new Article 8, by replacing “vulnerability” with “serious threat”. In fact, this proposal is in line with the wording used in other UNESCO conventions (e.g. the Convention Concerning the Protection of the World Cultural and Natural Heritage foresees in Article 11.4 the establishment of a “List of World Heritage in Danger”. The term “danger” is understood as any condition that “threatens the very characteristics for which a property was inscribed on the World Heritage List”. Although the Convention does not actually define the term “danger”, examples of “threats” are given). Secondly, concerning the obligations of Parties with respect to international cooperation, the obligations of Parties have been expressed in more explicit terms in an attempt to ensure consistency and to reflect accurately the work of the informal working group. Therefore, the work accomplished by this group has been split into separate articles whose scope is reflected in their titles. In addition, a new article dedicated to “The International Fund for Cultural Diversity” has been drafted (new Article 18), in accordance with a similar article in the Convention for the Safeguarding of the Intangible Cultural Heritage. Stylistic revision was undertaken in order to harmonize the various articles.

### **Relationship with other instruments (Part V, Articles 20 and 21)**

10. Concerning former Article 19 (new Article 20 – Relationship to other instruments), in view of the recommendations of the Plenary, new wording has been proposed to ensure that all international instruments be “complementary and mutually supportive”. Moreover, former Article 13 was moved closer to the new Article 20 and has become Article 21 of the consolidated text, in accordance with the indications of the Plenary.

### **Organs of the Convention (Part VI, Articles 22-24)**

11. Concerning Part VI, the instructions of the Plenary, where available, were taken into consideration. When no precedent existed, the wording used in other UNESCO conventions was employed. For example, the wording proposed in the new Article 23.3 (“The Members of the Intergovernmental Committee shall be increased to 24 once the number of Parties to the Convention reaches 50”), Article 23.4 (“The principles of equitable geographical representation as well as rotation”) and Article 23.6 (“The Intergovernmental Committee may invite at any time public or private organizations or individuals to participate in its meetings for consultation on particular problems”) are based on Articles 6.1 and 8.4 of the Convention for the Safeguarding of the Intangible Cultural Heritage, and on Article 10 of the Convention Concerning the Protection of the World Cultural and Natural Heritage. Former Article 24 (Settlement of disputes) was transferred to the new Part VII dedicated to “Final clauses”. Moreover, the text was harmonized to ensure consistency in cross-referencing to other articles and the use of proper legal terminology.

### **Final clauses (Part VII, Articles 25-35 and Annexes 1 and 2)**

12. This Part was not examined in detail by the Plenary. In light of the absence of specific instructions, three approaches have guided the Chairperson’s work: in the first case, the original text was retained (e.g. new Articles 25 “Settlement of disputes” and 26 “Ratification, acceptance or approval”); in the second case, the Chairperson relied on UNESCO language and usage (e.g. new Article 30 “Federal or non-unitary constitutional systems” is identical to Article 35 of the Convention for the Safeguarding of the Intangible Cultural Heritage, and to Article 34 of the Convention concerning the Protection of the World Cultural and Natural Heritage); finally, in the third case, when no UNESCO precedent existed, United Nations language and usage was employed (e.g. the sources of new Article 27 “Accession” which enables regional economic integration organizations to become Parties to the Convention, are the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, and the WHO Framework Convention on Tobacco Control).

13. It should be stressed that throughout the elaboration of the consolidated text, the Chairperson has attempted to provide a draft which would assist the participants in the next round of discussions to grapple with a text which would provide a clearer basis for negotiations and a new impetus for deliberation. He has taken no liberties but has acted in good faith in pursuit of his mandate.

14. The Chairperson wishes to express his gratitude to the Chairperson of the Drafting Committee, the Rapporteur of the Plenary, the Assistant Director-General for Culture, the Director of the Office of International Standards and Legal Affairs and the Director of the Division of Cultural Policies and Intercultural Dialogue, for their valuable assistance in this complex task.

## TITLE

# CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

## PREAMBLE

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

1. *Affirming* that cultural diversity is a defining characteristic of humanity,
2. *Conscious* that cultural diversity forms a most precious heritage and should be cherished and preserved for the benefit of all,
3. *Being aware* that cultural diversity creates a rich and varied world which increases the range of choices and nurtures human capacities and values and therefore is a mainspring for sustainable development for communities, peoples and nations,
4. *Recalling* that cultural diversity, flourishing within a framework of democracy, tolerance and social justice and mutual respect between peoples and cultures, is indispensable for peace and security at the national and international levels,
5. *Celebrating* the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments,
6. *Emphasizing* the need to incorporate culture as a strategic element in national and international development policies, as well as in international development cooperation, taking also into account the United Nations Millennium Declaration (2000), with its special emphasis on poverty eradication,
7. *Taking into account* that culture takes diverse forms across time and space and that this diversity is embodied in the uniqueness and plurality of the identities and cultural expressions of the peoples and societies making up humanity,
8. *Recognizing* the need to take measures to protect the diversity of cultural expressions including its contents, especially in situations where cultural expressions may be threatened by the possibility of extinction or serious impairment,
9. *Emphasizing* the importance of culture for social cohesion in general, and in particular its potential for the enhancement of the status and role of women in society,
10. *Aware* that cultural diversity is strengthened by the free flow of ideas, and that it is nurtured by constant exchanges and interaction between cultures,
11. *Reaffirming* that freedom of thought, expression and information enable cultural expressions to flourish within societies,
12. *Recognizing* that diversity of cultural expressions, including traditional cultural expressions, is an important factor that allows peoples and individuals to express and to share with others their ideas and values,

13. *Recalling* that linguistic diversity is a fundamental element of cultural diversity,
14. *Taking into account* the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, manifested in their freedom to create and to disseminate and distribute their traditional cultural expressions, to have access thereto, so as to benefit them for their own development,
15. *Emphasizing* the vital role of cultural creativity, which nurtures and renews cultural expressions, and enhances the role played by those involved in the development of culture for the progress of society at large,
16. *Recognizing* the importance of intellectual property rights in sustaining those involved in cultural creativity,
17. *Being convinced* that cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value,
18. *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, also represent a challenge to cultural diversity,
19. *Being aware* of the specific mandate that UNESCO has to ensure respect for the diversity of cultures and to recommend such international agreements as may be necessary to promote the free flow of ideas by word and image,
20. *Referring* to the provisions of the international instruments adopted by UNESCO relating to cultural diversity and the exercise of cultural rights, and in particular the Universal Declaration on Cultural Diversity of 2001,

*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 create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner;
- (c) to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace;
- (d) to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples;
- (e) to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels;
- (f) to reaffirm the importance of the link between culture and development for all countries, particularly, for developing countries and support actions undertaken nationally and internationally to secure recognition of its true value;
- (g) to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;
- (h) to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;
- (i) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.

### ***Article 2 – Principles***

#### **1. Principle of respect for human rights and fundamental freedoms**

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. 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.

#### **2. Principle of sovereignty**

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.

### **3. Principle of equal dignity of and respect for all cultures**

The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.

### **4. Principle of international solidarity and cooperation**

International cooperation and solidarity should be aimed at enabling countries, especially developing countries, to create and strengthen their means of cultural expression, including their cultural industries, whether nascent or established, at the local, national and international levels.

### **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, which individuals and peoples have the fundamental right to participate in and enjoy.

### **6. Principle of sustainability**

Cultural diversity is a rich asset for individuals and societies. The protection, promotion and maintenance of cultural diversity are an essential requirement for sustainable development for the benefit of present and future generations.

### **7. Principle of access**

Access to a rich and diversified range of cultural expressions from all over the world and access of cultures to the means of expressions and dissemination constitute important elements for enhancing cultural diversity and encouraging mutual understanding.

### **8. Principle of openness and balance**

When States adopt measures to support the diversity of cultural expressions, they should seek to promote, in an appropriate manner, openness to other cultures of the world and to ensure that these measures are geared to the objectives pursued under the present Convention.

## **II. SCOPE OF APPLICATION**

### ***Article 3 – Scope of application***

This Convention shall apply to the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions.

## **III. DEFINITIONS**

### ***Article 4 – Definitions***

#### **1. Cultural diversity**

“Cultural diversity” refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among societies.

Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

## **2. Cultural expressions**

“Cultural expressions” are those expressions conveyed by activities, goods and services that result from the creativity of individuals, groups and societies, which have cultural content. The cultural content of such activities, goods and services refers to the symbolic meaning, the artistic dimension and cultural values contained in them.

## **3. Cultural activities, goods and services**

“Cultural activities, goods and services” refers to those activities, goods and services, which at the time they are considered, as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have.

- “Cultural activities” encompass the various ways in which individuals or groups may communicate symbolic meaning or convey cultural values, which derive from or express their cultural identity, beliefs, traditions and/or practices. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services as defined hereafter.
- Cultural goods and services have the following characteristics:
  - (a) they are the outcome of human labour 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.

## **4. Cultural industries**

“Cultural industries” refers to industries producing and distributing cultural goods or services as defined in paragraph 3 above.

## **5. Cultural policies**

“Cultural policies” refers to those policies related to culture, whether at the local, regional, national or international levels, which are either focused on culture as such, or which are designed to have a direct effect on cultural expressions of individuals, communities or societies, including the creation, production, dissemination, distribution of and access to cultural activities, goods and services.

## **6. Protection**

“Protection” means the adoption of measures aimed at the preservation, safeguarding and enhancement of the diversity of cultural expressions.

“Protect” means to adopt such measures.

## **7. Interculturality**

“Interculturality” refers to the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect.

# **IV. RIGHTS AND OBLIGATIONS OF PARTIES**

## ***Article 5 – General rule regarding rights and obligations***

1. The Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention.

2. When a Party takes measures to protect and promote the diversity of cultural expressions within its territory, its measures shall conform to the principles and objectives of this Convention.

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

1. Within the framework of its cultural policies as defined in Article 4.5 and taking into account its own particular circumstances and needs, each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory.

2. Such measures may include the following:

- (a) regulatory measures aimed at protecting and promoting diversity of cultural expressions;
- (b) measures which in an appropriate manner provide opportunities for domestic cultural activities, goods and services among all those available within the national territory for their production, dissemination, distribution and enjoyment, including provisions relating to the language used for such activities, goods and services;
- (c) measures aimed at providing domestic independent cultural industries effective access to the means of production, dissemination and distribution of cultural goods and services;
- (d) measures aimed at providing public financial assistance;
- (e) measures aimed at encouraging non-profit organizations, as well as public and private institutions, to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural goods and services, and to stimulate both the creative and entrepreneurial spirit in their activities;

- (f) measures aimed at establishing and supporting appropriate public institutions;
- (g) measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions.

***Article 7 – Measures to promote cultural expressions***

1. Parties shall endeavour to create in their territory an environment that encourages individuals and groups:
  - (a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples;
  - (b) to have access to the cultural expressions representing cultural diversity in other countries of the world.
2. Parties shall also endeavour to recognize the important contribution of artists, others involved in the creative process, cultural communities, and organizations that support their work, and their central role in nurturing the diversity of cultural expressions.

***Article 8 – Measures to protect cultural expressions***

1. Without prejudice to the provisions of Articles 5 and 6, Parties may determine those special situations where cultural expressions on their territory are at risk of extinction, or under serious threat or otherwise in need of urgent safeguarding.
2. Parties may take all appropriate measures to protect and preserve cultural expressions in situations referred to in paragraph 1 in a manner consistent with the objectives and principles of this Convention.
3. Parties shall report to the Intergovernmental Committee all measures taken to meet the exigencies of the situation and the Committee may make appropriate recommendations.

***Article 9 – Information sharing and transparency***

Parties shall:

- (a) provide appropriate information in their reports to UNESCO every four years on measures taken to protect and promote the diversity of cultural expressions within their territory;
- (b) designate a point of contact responsible for information sharing, especially with other Parties in relation to this Convention;
- (c) share and exchange information relating to the protection and promotion of the diversity of cultural expressions;

***Article 10 – Education and public awareness***

Parties shall:

- (a) encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, *inter alia*, through educational and greater public awareness programmes;
- (b) cooperate with other Parties and international and regional organizations in achieving the purpose of this article;
- (c) endeavour to encourage creativity and strengthen production capacities by setting up educational, training and exchange programmes in the field of cultural industries. These measures should be implemented in a manner that does not have a negative impact on traditional forms of production.

***Article 11 – Participation of civil society***

Parties shall encourage civil society to participate actively in the protection and promotion of the diversity of cultural expressions and foster its role in this domain.

***Article 12 – Promotion of international cooperation***

Parties shall endeavour to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions, taking particular account of the situations referred to in Articles 8 and 17, in order to:

- (a) facilitate dialogue among Parties on cultural policy;
- (b) enhance public sector strategic and management capacities in cultural public sector institutions, through professional and international cultural exchanges and sharing of best practices;
- (c) reinforce partnerships with and among civil society, non-governmental organizations and the private sector in fostering and promoting the diversity of cultural expressions;
- (d) promote the use of new technologies and encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions;
- (e) encourage the conclusion of co-production and co-distribution agreements.

***Article 13 – Integration of culture in sustainable development***

Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development, and within this framework foster aspects relating to the protection and promotion of the diversity of cultural expressions.

***Article 14 – Cooperation for development***

Parties shall endeavour to support cooperation for sustainable development, especially in relation to the specific needs of developing countries in order to foster the emergence of a dynamic cultural sector by, *inter alia*, the following means:

1. The strengthening of the cultural industries in developing countries through:
  - (a) the creation and strengthening of cultural production and distribution capacities in developing countries;
  - (b) facilitating wider access to the global market and international distribution networks for their cultural goods and services;
  - (c) enabling the emergence of viable local and regional markets;
  - (d) the adoption, where possible, of appropriate measures in developed countries with a view to facilitating access to their territory for the cultural goods and services of developing countries;
  - (e) the provision of support for creative work and facilitation of the mobility, to the extent possible, of artists from the developing world;
  - (f) encouragement of appropriate collaboration between developed and developing countries in the areas, *inter alia*, of music and film;
2. Capacity-building through the exchange of information, experience and expertise, as well as the training of human resources in developing countries, in the public and private sector relating to, *inter alia*, strategic and management capacities, policy development and implementation, promotion of distribution of cultural expressions, small-, medium- and micro-enterprise development, the use of technology, and skills development and transfer;
3. Technology transfer through the introduction of appropriate incentive measures for the transfer of technology and know-how, especially in the areas of cultural industries and enterprises;
4. Financial support through:
  - (a) the establishment of an International Fund for Cultural Diversity as provided in Article 18;
  - (b) the provision of official development assistance, as appropriate, including technical assistance, to stimulate and support creativity;
  - (c) other forms of financial assistance such as low interest loans, grants and other funding mechanisms.

#### ***Article 15 – Collaborative arrangements***

Parties shall encourage the development of partnerships, between and within the public and private sectors and non-profit organizations, in order to cooperate with developing countries in the enhancement of their capacities in the protection and promotion of the diversity of cultural expressions. These innovative partnerships shall, according to the practical needs of developing countries, emphasize the further development of infrastructure, human resources and policies, as well as the exchange of cultural goods and services.

***Article 16 – Preferential treatment for developing countries***

Developed countries shall facilitate cultural exchanges with developing countries by granting through the appropriate institutional frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.

***Article 17 – International cooperation in situations of serious threat to cultural expressions***

Parties shall cooperate in providing assistance to each other and, in particular, to developing countries in situations referred to under Article 8.

***Article 18 – International Fund for Cultural Diversity***

1. An “International Fund for Cultural Diversity”, hereinafter referred to as “the Fund”, is hereby established.

2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.

3. The resources of the Fund shall consist of:

- (a) voluntary contributions made by Parties;
- (b) funds appropriated for this purpose by the General Conference of UNESCO;
- (c) contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organizations; and public or private bodies or individuals;
- (d) any interest due on resources of the Fund;
- (e) funds raised through collections and receipts from events organized for the benefit of the Fund;
- (f) any other resources authorized by the Fund’s regulations to be drawn by the Intergovernmental Committee.

4. The use of resources of the Fund shall be decided by the Intergovernmental Committee on the basis of guidelines determined by the Conference of Parties.

5. The Intergovernmental Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by the Intergovernmental Committee.

6. No political, economic or other conditions which are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.

***Article 19 – Exchange, analysis and dissemination of information***

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

2. UNESCO shall facilitate through the use of existing mechanisms within the Secretariat the collection, analysis and dissemination of all relevant information, statistics and best practices.
3. UNESCO shall also establish and update a data bank on all sectors, governmental, private and non-profit organizations that are involved in the area of cultural expressions.
4. To facilitate the collection of data, UNESCO shall pay particular attention to capacity-building and the strengthening of expertise for Parties that submit a request for such assistance.
5. The collection of information identified in this Article shall complement the information collected under the provisions of Article 9.

## **V. RELATIONSHIP TO OTHER INSTRUMENTS**

### ***Article 20 – Relationship to other instruments***

1. This Convention shall not affect the rights and obligations of Parties derived from other international agreements. Nor shall other international agreements affect the rights and obligations of Parties under this Convention.
2. When interpreting and applying other international instruments or when entering into other international obligations, Parties shall take into account the objectives and principles of this Convention.

### ***Article 21 – International consultation and coordination***

Parties undertake to promote the principles and objectives of this Convention in other international forums. For this purpose, Parties shall consult each other bearing in mind these objectives and principles.

## **VI. ORGANS OF THE CONVENTION**

### ***Article 22 – Conference of Parties***

1. A Conference of Parties shall be established. The Conference of Parties shall be the plenary body of this Convention.
2. The Conference of Parties 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 the Parties.
3. The Conference of Parties shall adopt its own rules of procedure.
4. The functions of the Conference of Parties shall be, *inter alia*:
  - (a) to elect the Members of the Intergovernmental Committee;
  - (b) to receive and examine reports of the Parties to the Convention transmitted by the Intergovernmental Committee;
  - (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 23 – 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 Parties to the Convention, elected for a term of four years by the Conference of Parties upon entry into force of this Convention pursuant to Article 29.

2. The Intergovernmental Committee shall meet annually.

3. The Members of the Intergovernmental Committee shall be increased to 24 once the number of Parties to the Convention reaches 50.

4. The election of Members of the Intergovernmental Committee shall be based on the principles of equitable geographical representation as well as rotation.

5. Without prejudice to the other responsibilities conferred upon it by this Convention, the functions of the Intergovernmental 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 Conference of Parties operational guidelines for the implementation and application of the provisions of the Convention;
- (c) to transmit to the Conference of Parties reports from Parties to the Convention, together with its comments;
- (d) to draw up criteria, rules and operational guidelines aimed at supporting the establishment of partnerships;
- (e) to propose appropriate action to be taken in situations brought to its attention by Parties to the Convention in accordance with Article 8 of the Convention;
- (f) to establish procedures and other mechanisms for consultation aimed at promoting the principles and objectives of this Convention in other international forums;
- (g) to establish such subsidiary bodies as may be useful for the effective implementation of the Convention.

6. The Intergovernmental Committee may invite at any time public or private organizations or individuals to participate in its meetings for consultation on particular problems.

7. The Intergovernmental Committee shall adopt its own rules of procedure.

***Article 24 – UNESCO Secretariat***

The organs of the Convention shall be assisted by the UNESCO Secretariat.

## VII. FINAL CLAUSES

### *Article 25 – Settlement of disputes*

1. In the event of a dispute between Parties to the Convention concerning the interpretation or the application of this Convention, the Parties shall seek a 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 I 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 II of this Convention. The Parties shall consider in good faith the proposal made by the Conciliation Commission for the resolution of the dispute.

### *Article 26 – Ratification, acceptance or approval*

1. This Convention shall be subject to ratification, acceptance or approval by Member States 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 27 – 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 following provisions apply to regional economic integration organizations:
  - (a) this Convention shall also be open to accession by regional economic integration organizations, to which its Member States have transferred competence in respect of matters governed by this Convention and which have been duly authorized in accordance with its internal procedures, to become a party to it;
  - (b) any regional economic integration organization which becomes a Party to the Convention without any of its Member States being a Party shall be bound by all the

obligations under the Convention. In the case of such organizations, one or more of whose Member States is a Party to the Convention, the organization and its Member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the Member States shall not be entitled to exercise rights under the Convention concurrently;

- (c) In their instruments of accession, regional integration organizations shall declare the extent of their competence with respect to matters governed by the Convention. These organizations shall also inform the depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.
- (d) “Regional economic integration organizations” means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.

#### ***Article 28 – Competent authorities***

Upon becoming Parties to this Convention, each Party shall designate the “competent authorities” referred to in Article 9.

#### ***Article 29 – Entry into force***

This Convention shall enter into force three months after the date of deposit of the 30th instrument of ratification, acceptance, approval or accession, but only with respect to those States or regional economic integration organizations 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 Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.

#### ***Article 30 – Federal or non-unitary constitutional systems***

The following provisions shall apply to 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 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 31 – Denunciation***

1. Any Party to this Convention 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 Party denouncing the Convention until the date on which the withdrawal takes effect.

#### ***Article 32 – Depositary functions***

The Director-General of UNESCO, as the Depositary of this Convention, shall inform the Member States of the Organization, the States not members of the Organization and regional economic integration organizations referred to in Article 27, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 26 and 27, and of the denunciations provided for in Article 31.

#### ***Article 33 – Amendments***

1. A Party to this Convention may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all Parties. If, within six months from the date of dispatch of the communication, no less than one half of the Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the Conference of Parties for discussion and possible adoption.
2. Amendments shall be adopted by a two-thirds majority of Parties present and voting.
3. Once adopted, amendments to this Convention shall be submitted to the Parties for ratification, acceptance, approval or accession.
4. For 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 Parties. Thereafter, for each 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 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 23 concerning the number of Members of the Intergovernmental Committee. These amendments shall enter into force at the time they are adopted.
6. A State or a regional economic integration organization referred to in Article 27 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) Party to this Convention as so amended; and
  - (b) a Party to the unamended Convention in relation to any Party not bound by the amendments.

#### ***Article 34 – Authoritative texts***

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

***Article 35 – 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.

## **ARBITRATION PROCEDURE**

### **ANNEX 1**

#### **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.

## **CONCILIATION PROCEDURE**

### **ANNEX 2**

#### **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.