



United Nations Educational, Scientific and Cultural Organization
Organisation des Nations Unies pour l'éducation, la science et la culture

Distribution limited

CLT/CPD/2005/CONF.203/6

Paris, 3 March 2005

Original: English/French

**PRELIMINARY REPORT OF THE DIRECTOR-GENERAL
CONTAINING TWO PRELIMINARY DRAFTS OF A CONVENTION
ON THE PROTECTION OF THE DIVERSITY OF
CULTURAL CONTENTS AND ARTISTIC EXPRESSIONS**

This document, produced in compliance with 32 C/Resolution 34 and in accordance with the statutory timetable, is the Director-General's Preliminary Report recording the various milestones passed since the process began in 2003, up to the conclusion of the second session of the Intergovernmental Meeting of Experts (31 January-11 February 2005). The report contains two appendices: a "composite" text (Appendix 1), which reflects the state of progress at the end of that second session of the intergovernmental meeting: this "composite" text shows what has been done, and what remains to be done. The draft is in three parts, at different stages of completion: Part I – Results of the Work of the Drafting Committee (Articles 1 to 11, with the exception of Article 8); Part II – Results from the Informal Working Group on Section III.2 (new Articles 12, 13, 14 and 15); and Part III – Plenary Session Comments on the Remainder of the Text (Article 8, former Article 15, former Article 13 and Article 19, Articles 20 to 34 and Annexes). The Preamble was not examined in Plenary Session, but has been kept in its original version. Noting this progress but well aware of how much work remains, the Plenary of the second session of the Intergovernmental Meeting authorized its Chairman to draft a consolidated document (Appendix 2), which will be distributed to the Member States as soon as possible.

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PRELIMINARY REPORT OF THE DIRECTOR-GENERAL

I. Introduction

1. UNESCO's commitment to promoting cultural diversity is in keeping with its specific mandate within the United Nations system, and with the work it has been carrying on 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).

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".

3. In this situation, the Member States 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 desirability of a standard-setting instrument on cultural diversity" (166 EX/28, March 2003). The following four options were proposed: (a) a new comprehensive instrument on cultural rights; (b) an instrument on 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), 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 (2005) a preliminary report, accompanied by a preliminary draft convention on the fourth option proposed (**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.

5. In accordance with this resolution and UNESCO's standing procedures for the preparation of international instruments, the Director-General 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. First he asked 15 independent experts to make recommendations and give legal opinions for drafting the outline of a convention on the protection of the diversity of cultural contents and artistic expressions. Next the UNESCO Executive Board invited the Director-General to convene meetings of government experts ("category II" meetings) by 169 EX/Decision 3.7.2, aimed at taking forward the preparation of the preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions in order to report to the General Conference at its 33rd session in 2005. These intergovernmental meetings are Stage Two of the preliminary draft preparation process. The first such session was held at UNESCO Headquarters from 20 to 24 September 2004, and the second from 31 January to 11 February 2005; this session recommended the holding of a third, which, if its convocation by the Director-General was authorized by the 171st session of the Executive Board (18-28 April 2005), could take place at the end of May 2005. The present document, then, reports on the stages that have been completed from

the start of the process in October 2003 up to and including the work of the second session of the Intergovernmental Meeting of Experts.

II. Meetings of independent experts (category VI)

6. In accordance with his mandate, the Director-General began the first stage of the preparation of a preliminary draft convention by initiating a preliminary exercise to ponder the objectives of the proposed convention and its main issues, the ways that might be considered for reaching those objectives and the best response to the challenges they entailed. Following the Organization's customary practice, the Director-General set up a multidisciplinary international group of 15 experts with a brief to provide him with suggestions and views on the preparation of a preliminary draft convention. At the conclusion of its three meetings (category VI – held between December 2003 and May 2004), this group submitted a first preliminary draft text.

7. The independent experts 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; and it was with this in mind that they considered the Convention's field of application, or scope. The experts were of the view that the mandate given to the Director-General must be respected, which meant retaining the option which had been approved at the General Conference ("Protection of the diversity of cultural contents and artistic expressions"). They did opt, though, for a more condensed formulation, preferring "protection and promotion of the diversity of cultural expressions" to "protection of the diversity of cultural contents and artistic expressions". The group stressed, however, that this formula was not to be taken as either restricting or broadening the scope of the intended instrument, since the term "cultural expressions" was to encompass both "cultural contents" and "artistic expressions".

8. 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 expressions should always be guaranteed by freedom of expression, and the public should be afforded the broadest possible access to them. In fact all the experts agreed that "protection" must be understood in a positive sense, that is to say, not only in terms of preserving cultural expressions but also as creating the conditions in which they might develop and flourish.

9. On this basis the experts prepared a set of aims and principles to guide the actions of Member States. They wanted the aims to include at least the following: the protection and promotion of cultural expressions; the recognition of the distinctive nature of cultural goods and services; the preservation of the right of States Parties to maintain or adopt cultural policies and appropriate measures for the protection and promotion of cultural expressions; and the strengthening of cooperation and international solidarity so as to improve developing countries' capacity to promote and enrich the diversity of cultural expressions throughout the world. As to principles, the experts recommended that these should provide States with rules of conduct applicable to all situations envisaged by the Convention. A list of new principles was therefore proposed.

10. The experts thus moved towards identifying a series of fundamental concepts that would need to be defined for the purposes of the Convention. They agreed that the terms "culture" and "cultural diversity" should not be tackled in their full range of accepted meanings or manifestations, but only in relation to the term "cultural expressions", which are transmitted by means of "cultural goods and services" as well as in other ways. Though some experts made the point that the notion of "cultural goods and services" evokes the vocabulary used in agreements on international trade, the Group felt that the proposed definition boiled down to a more cultural conception of this notion, thus allowing

for a distancing from the strictly trade-related understanding, while recognizing the dual nature of these goods and services.

11. Concerning the rights and obligations of the States Parties in relation to protection and promotion of the diversity of cultural expressions, the experts insisted on the importance of maintaining a balance between the sovereign right of States to adopt measures to protect and promote diversity of cultural expressions within their territory and their obligations to protect and promote it at the international level also. This idea of balance was reflected in a specific provision on general rules concerning rights and obligations of States Parties. The experts then agreed on a series of binding provisions, on most of which a consensus was reached. It was recognized that the effectiveness and credibility of the future convention would depend on the nature of the commitment by States Parties and the degree of constraint placed upon them. Here the group of experts recalled that its brief was to draw up a draft convention, and it was therefore unavoidable that its vocabulary should be forthright in expressing the commitments of States under the Convention – otherwise the text would turn into the statement of a set of principles whose impact would be no greater than that of a mere declaration. The provisions regarding rights and obligations were divided into two categories, “Rights and obligations at the national level” and the “Rights and obligations relating to international cooperation”.

12. At the national level, the experts agreed on an obligation for States Parties to protect vulnerable forms of cultural expression: they recalled that certain forms of cultural expression occupy a major share of world trade while others scarcely manage to make themselves heard or even subsist. They stressed the weaknesses as well as the strengths of the market: it was because of these weaknesses that intervention could, where there was vulnerability, appear necessary to preserve the diversity of cultural expressions. At the international level, the experts paid special attention to the topic of international cooperation, which ought to benefit the developing countries in particular and should be the cardinal feature of the future convention. In the experts’ view, the issue of international cooperation and assistance should focus on the possibility of access by all countries, close or distant, to the diversity of each others’ cultural contents and artistic expressions, and on support for developing countries so that they could set up cultural industries capable of meeting the domestic and international demand for cultural goods. In order to ensure that those mechanisms were not scattered throughout the section on the Rights and Obligations of States, moreover, the experts grouped the relevant provisions together in their own sub-section devoted specifically to international cooperation. The establishment of a Cultural Diversity Observatory with the task of collecting, analysing and disseminating information on this field, and maintaining a data bank designed to foster dynamic partnerships among all potential partners, was also envisaged.

13. The experts also considered that the success of the future convention would greatly depend on its follow-up mechanisms. Their choice of such mechanisms was based on criteria of effectiveness and necessity, and guided by the desire to avoid any mechanism that entailed unduly burdensome procedures, administrative tasks or high costs. Several experts also considered that a mechanism for the settlement of disputes would be the key to the effectiveness of the instrument: they wished the Convention to have such a mechanism so that disputes might be settled from a strictly cultural point of view. The experts made it clear that this was a useful precautionary measure, to which States might turn if necessary, given that no sanctions were being provided for in the text of the Convention.

14. Lastly, the experts’ discussions showed a constant concern about other international agreements that might interact with the future convention. The question of this convention’s relationship with such other legal instruments gave rise to two alternative versions.

15. The six months of tenacious work accomplished by the experts, in an excellent working climate, made it possible, with due regard for the General Conference mandate and by combining their individual approaches, to come up with a text which was sufficiently advanced to facilitate the forthcoming intergovernmental discussions as much as possible. The experts made an in-depth review of a broad spectrum of questions and problems, ensuring that the preliminary draft reflected their various concerns and demonstrating the complementary nature of the economic and cultural domains. Their work produced a document that was generous in its inspiration and designed to promote conditions conducive to cultural diversity, dialogue and renewed international cooperation.

III. Director-General's information meetings with the Permanent Delegations

16. While these independent experts were carrying on their work, the Director-General, wishing to provide Member States and governmental and non-governmental organizations with the most transparent and comprehensive information possible, decided to ensure broad and regular dissemination of the reports from these three meetings of experts¹ and also to publish frequent press bulletins on the work being carried out at UNESCO. This regular distribution of information enabled Member States which so wished to compile documents for consultation and consideration among the various parties involved in the project. The Permanent Delegations of the Member States met three times, on 22 January, 7 April and 21 June 2004, and the various sessions of the Executive Board were also kept informed.

IV. Consultations with WTO, WIPO and UNCTAD

17. Following the three meetings of independent experts, and in accordance with 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 with the WTO and WIPO secretariats were held in Geneva on 16 and 17 June 2004. UNESCO also took part, at the invitation of the WTO Director-General, in an informal consultative session with the delegates of the WTO members in Geneva on 11 November 2004; a summary of the views expressed on this occasion was provided to the Director-General of UNESCO and made available to Member States (CLT/CPD/2004/CONF.607/1, Part IV, pp. 23-27).

V. Intergovernmental consultations

V.1. Preliminary Report by the Director-General, accompanied by a preliminary draft of a convention

18. The work which the experts carried out between December 2003 and June 2004 enabled the Director-General to send Member States a preliminary report (CLT/CPD/2004/CONF.201/1, July 2004), accompanied by a preliminary draft convention (CLT/CPD/2004/CONF.201/2, July 2004),² within the statutory deadline (at least 14 months before the opening of the 33rd session of the General Conference). Member States were invited to comment on this preliminary draft by mid-November 2004.

19. The text submitted for the Member States' consideration had a structure consisting of a Preamble followed by six sections: "Objectives and Guiding Principles", "Scope of Application and

¹ The three reports of the meetings of experts (category VI) are available online: <http://www.unesco.org/culture/diversite/convention>.

² The preliminary report and preliminary draft convention are available online: <http://www.unesco.org/culture/diversite/convention>.

Definitions”, “Rights and Obligations of States Parties”, “Relationship to Other Instruments”, “Follow-up Bodies and Mechanisms” and “Final Clauses”. The section devoted to the Rights and Obligations of States Parties was divided into three sub-sections, on “General rules on rights and obligations”, “Rights and obligations at the national level”, and “Rights and obligations relating to international cooperation”. The text is the result of a consensus which emerged during the first phase of the independent experts’ work: only Section IV, and within it only Article 19 on “Relationship to Other Instruments” gave rise to two alternative versions. All the Convention’s other articles were put to the Member States in a single version only.

20. 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”, Stage Two in the preparation of this preliminary draft began in September 2004. This second stage of the process was intended to 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.

V.2 First session of the intergovernmental meeting (20-24 September 2004)

21. The first session of the meeting took place from 20 to 24 September 2004. The government experts worked on the basis of the text of the preliminary draft convention which had been prepared by the small group of independent experts and was proposed by the Director-General. This session was attended by nearly 550 experts from 132 Member States, two permanent observers to UNESCO and representatives from nine intergovernmental organizations and 20 non-governmental organizations. At this session a Bureau was chosen for the full duration of the process.³ The Member States also decided to establish a Drafting Committee⁴ and designated 24 members⁵ to serve on this.

22. This first session saw a general exchange of ideas and a constructive discussion of the content of the preliminary draft which had been submitted to Member States for their consideration. The nature and objectives of the meeting were primarily designed to enable the government experts to exchange opinions on the future convention without embarking on a formal exercise of redrafting or amending the preliminary draft of the convention. During the four days of discussions, 77 Member States took the floor. Fifty submitted written comments to the Secretariat. Twelve IGOs and NGOs also expressed their opinions.

23. The meeting began with an initial exchange of views on the text prepared by the independent experts; all those who spoke agreed that this could be taken as a sound basis for their work. The States and observers went on to share their thoughts more specifically on the three themes proposed

³ These were the Chairperson, Professor Kader Asmal (South Africa), four Vice-Chairs, the representatives of Tunisia, Santa Lucia, Lithuania and the Republic of Korea, and the Rapporteur, Mr Artur Wilczynski (Canada). The Chairperson’s opening speech is available online at: www.unesco.org/culture/diversite/convention/intergov_1_fr (French) and www.unesco.org/culture/diversite/convention/intergov_1_en (English).

⁴ It was agreed that meetings of this Drafting Committee would be open to any Member State wishing to send an observer.

⁵ Group I: Finland, France, Switzerland, United States of America
 Group II: Armenia, Croatia, Hungary, Russian Federation
 Group III: Barbados, Brazil, Costa Rica, Ecuador
 Group IV: China, India, Japan, Republic of Korea
 Group Va: Benin, Madagascar, Nigeria, Senegal
 Group Vb: Algeria, Lebanon, Saudi Arabia, United Arab Emirates

by the Chairman: the title, preamble, objectives, principles, definitions and scope of application (Theme 1: Preamble and Articles 1 to 4); the rights and obligations of States and the relationship to other instruments (Theme 2: Articles 5 to 19); Follow-up Bodies and Mechanisms, Final Clauses and Annexes (Theme 3: Articles 20 to 34 and Annexes I to IV).

24. Concerning the title and Preamble, the speakers were satisfied on the whole, but a number of experts wished to see certain ideas and concepts inserted, particularly in the Preamble. Additions to the preliminary draft's list of objectives were put forward as well. Though this list was not unanimously approved, favourable comments were expressed. The importance of the article on the principles of the future convention was widely recognized, but the list proposed was criticized by several speakers who considered that it was too long, or contained statements that were not principles. The principles of respect for human rights and respect for fundamental freedom drew a great number of comments, many representatives insisting on the importance of these. It was suggested, among other things, that it would be better to merge these two principles into one. The principle of balance, openness and proportionality aroused some concern. As for the definitions, the speakers broadly considered that a good number of concepts needed further work, and several of them proposed deleting some definitions so that only terms useful in the correct interpretation of the Convention were defined. The experts also hoped to give definitions for other concepts, such as "measures" and "public service". The definition of "cultural goods and services", and the very use of such terminology (sometimes regarded as too commercial), were the subject of debate. Lastly, concerning the Convention's scope of application, several delegations said that they were content with that defined by the preliminary draft, since it accurately reflected the mandate given to the Director-General by the General Conference (32 C/Resolution 34). Differences of opinion became apparent, however, as the scope seemed too broad for some who wished to see it curtailed, while others considered it too restrictive on the grounds that it ought to cover cultural diversity in all its manifestations.

25. Theme 2 on the Rights and Obligations of States Parties was debated at length. This section of the preliminary draft, and Article 5 in particular, was acknowledged to be essential, although speakers said that it would be necessary to specify some of the "rights and obligations at the national level". Furthermore, several of them called for greater flexibility in the application of this Section's provisions, given the States Parties' different levels of development and the administrative costs of implementing the Convention. Several however said it was imperative that the sovereign right of States to adopt policies in favour of the diversity of cultural expressions should be preserved. In the course of their discussion of this section, speakers also queried the concepts of "threat" and "vulnerable situation" as applied to the diversity of cultural expressions. As to rights and obligations at the international level, States reiterated the importance they attached to Section III.2 on international cooperation, and several of the provisions for that purpose were warmly approved. On the other hand, the need to set up a new body for cultural diversity in the form of an "observatory" was questioned: most of the experts, while approving the work such a mechanism was intended to do, nevertheless recommended the use of existing UNESCO structures, in cooperation with the Institute for Statistics, in order to avoid additional expense. Lastly, the issue of the relationship to other international instruments (Article 19) provoked considerable comment, many speakers expressing a preference for Option A but others for Option B; there were also several who called for a third alternative to be explored.

26. With regard to the third and last theme (Follow-up Mechanisms and Bodies, etc.), a substantial number of States wished to avoid undue complication of institutional structures and to keep down the costs linked to the functioning of the bodies set up by the Convention. In particular, doubts were expressed as to the need to set up an independent Advisory Group. As to mechanisms for the settlement of disputes, several speakers reiterated how strongly their delegations favoured such mechanisms, while others considered that it would be premature to consider these, as the rights

and obligations of States should first be defined before any decisions on such mechanisms (or on the corresponding Annexes). There were few comments on the Final Clauses.

27. In conclusion, this first session gave the delegations an opportunity for deeper reflection on the various themes into which the preliminary draft convention was organized, and enabled them to become more familiar with that preliminary draft, the options it presented and the challenges it covered. In other words, the meeting of government experts provided delegations with the necessary clarification for understanding certain concepts that would be useful in formulating the written comments to be communicated to the Secretariat before 15 November 2004.⁶

V.3 Written contributions from the Member States, IGOs and NGOs

28. Following the constructive discussions of the first session of the intergovernmental meeting (September 2004), several Member States engaged in an intense process of departmental consultations in order to prepare their written contributions, which were to be submitted by mid-November at the latest (a statutory deadline). Despite the very short time available, the deadline was met, and a great number of contributions were sent to the Secretariat in response to the Director-General's circular letter 3726 of 15 July 2004: the Secretariat received over 100 replies, from 89 Member States, 15 NGOs and 3 IGOs. In no way are States which did not send any comment or propose any amendment to be assumed to have expressed either their approval or their disapproval; they retain the right to take part in later discussions. The contributions received were then put together by the Secretariat in a five-part document (CLT/CPD/2004/CONF.607/1, December 2004) for the first meeting of the Drafting Committee. These contributions were presented in five distinct sections (each in a document of its own), in accordance with the varied nature of the responses submitted by the Member States. These were: general comments (Part I), specific comments (Part II), amendments (Part III), comments put forward by the three IGOs – UNCTAD, WTO and WIPO – (Part IV), and comments and amendments submitted by NGOs (Part V). A 16-page summary was prepared by the Secretariat, so as to make the consolidated document of some 400 pages easier to understand (CLT/CPD/2004/CONF.607/2, December 2004).

V.4 Meeting of the Drafting Committee; dispatch of the preliminary draft as revised in December 2004

29. The Drafting Committee set up by the first intergovernmental meeting during its first session met for the first time. That session was open to observers from States not represented on the Committee) from 14 to 17 December 2004 at UNESCO Headquarters.⁷ The Committee's aim was to propose a revision of the preliminary draft on the basis of Member States' written comments; and the new text was in turn to provide a basis for the work of subsequent sessions of the intergovernmental meeting. The Drafting Committee's brief was accordingly to submit new draft proposals to the Plenary, based on the comments and amendments presented by Member States, IGOs and NGOs.

30. At the end of its first meeting the Committee produced a draft revision containing a series of options stemming from Member States' contributions, together with the Drafting Committee's own

⁶ The Rapporteur of the meeting presented his conclusions on the debates in a very detailed oral report which was welcomed by all the participants. This report is available online at: www.unesco.org/culture/diversite/convention/intergov_1_fr (French) and www.unesco.org/culture/diversite/convention/intergov_1_en (English). The Chairman's closing address is also available online at the same URL.

⁷ The Drafting Committee was chaired by Mr Jukka Liedes (Finland); Mr Robert Dossou (Benin) was appointed as its Rapporteur.

remarks on the Title and Articles 1 to 11 of the preliminary draft. It proved impossible to examine the preliminary draft's Preamble, Articles 12 to 34 and the Annexes. Nevertheless, options were identified by taking into account the comments and amendments presented by the Member States. The main outcome of the Drafting Committee's work at its first meeting was the preparation, starting from a five-part document of more than 400 pages containing 1,025 options, of a revised text of 130 pages with 650 options.

V.5 Second session of the intergovernmental meeting (31 January to 11 February 2005)

31. The second session of the intergovernmental meeting took place at UNESCO Headquarters from 31 January to 11 February 2005. This session was attended by nearly 540 participants representing 135 Member States, 2 permanent observers, 9 intergovernmental organizations and 23 non-governmental organizations. This was a continuation of the first session of the intergovernmental meeting which had been held at UNESCO Headquarters from 20 to 24 September 2004.

32. During this second session, the government experts based their work on the text of the preliminary draft convention as revised in the first meeting of the Drafting Committee (CLT/CPD/2004/CONF.607/6, December 2004), which included a number of options for each of the preliminary draft's articles. The Member States made every effort to significantly reduce the number of options in the revised text: this was evidence that their positions had in some respects converged since the beginning of this intergovernmental consultation.

33. Debates in the Plenary were organized in three parts: Debate 1: Title, Objectives, Principles, Scope of the Convention and Definitions (consideration of the Preamble was left to a later stage); Debate 2: Rights and Obligations, and Relationship to Other Instruments; Debate 3: Follow-up Bodies and Mechanisms, and Final Clauses. The discussion of the conceptual framework immediately raised a number of so-called "cross-cutting" issues – ones that affected more than one section ("protection", "protect", "cultural contents and expressions", "cultural expressions", "cultural contents", "artistic expressions", "cultural goods and services", "cultural industries", "States Parties"). These terms were discussed both in the Plenary and outside it, in informal working groups to facilitate exchanges and reconcile the various positions on questions which were regarded as fundamental and were often controversial: international cooperation and the idea of vulnerability, definition of "cultural goods and services", definition of the concept of "protection", inclusion of a federal clause in the Convention. These informal groups made the Plenary's work very much easier.

34. In addition to the "cross-cutting" themes dealt with by some informal groups, a number of recurrent issues ("minorities and indigenous peoples"; "local", "regional", and "international" levels of action; "countries in transition") occupied the delegations, and they finally recommended that UNESCO practice in the matter should be taken into account, by which they meant the terminology developed and chosen by the Organization in the course of preparing other international instruments and enshrined in those instruments as adopted.

35. So far as concerns the actual work done in this session on each of the preliminary draft convention's 34 articles, we may distinguish three groups: (i) the articles discussed in the Drafting Committee, on the basis of guidance from the Plenary (Articles 1 to 11, with the exception of Article 8 which is to be examined together with the new Article 15, see Part I, page 21); (ii) the articles examined in an informal working group whose report was approved in principle by the Plenary (former Articles 12, 14, 16, 17 and 18); and lastly, (iii) the remaining articles, which were discussed by the Plenary in broad terms (Article 8, former Article 13 and Article 19, former Article 15, Articles 20 to 34, and Annexes).

36. Certain tendencies emerged from the exchanges on Articles 1 to 11 (tackled in the Plenary) , and it proved possible to formulate recommendations to the Drafting Committee, which was asked to reword each of these articles so that the work could be carried on more fruitfully in the Plenary. The Committee managed to reduce the original 52 proposals for Article 1 to a list of nine objectives, and likewise to sift the 63 formulations offered for Article 2 (Principles). Similar progress was made on Articles 3 to 11 of the preliminary draft. Though there are still some footnotes and alternatives in square brackets, proving that further consultations are needed on a few of these “cross-cutting” issues, the new wordings proposed do form the basis for a new text.

37. On Article 1 (Objectives of the Convention), the Committee recommended nine objectives, two of them new (one on the link between culture and development, the other on interculturality). In the case of the Principles, the Committee members’ concern for consistency led them to combine Principles 1 and 2 (respect for human rights; respect for fundamental freedoms), to remove the principle of transparency (already covered under “Rights and obligations at the national level”), and to add a new principle concerning national sovereignty. On the Convention’s scope, the Committee met the Plenary’s requirement for a more precise formulation for certain terms used in the original text. As to the definitions in Article 4, the Committee managed to achieve a considerable amount of rationalization and improvement in precision. Moreover, the informal working groups asked to consider the terms “cultural goods and services”, “cultural expressions” and “protection” provided Member States with opportunities to clarify their positions and move forward in the search for a consensus. The groups working on “cultural goods and services” and “protection” in fact joined forces after a while, in view of the interdependence of these subjects and the interactions between them. In the end progress was made, even though some definitions of transversal concepts will need further thorough discussion; and the forthcoming session of the intergovernmental meeting should enable Member States to move towards common positions.

38. Section III.1 (Rights and Obligations) also occasioned intense debate, in which the delegations were able to exchange views on the component elements of the various Articles. The process brought the members of the Drafting Committee closer on many points, while bringing out others on which further negotiation remains necessary. The wording of Articles 5, 6, 7, 9, 10 and 11 was reworked, providing a foundation for the two parts “General rules on rights and obligations”, and “Rights and obligations at the national level”. On the other hand, the discussion on Article 8 (Obligation to protect vulnerable forms of cultural expression) was held over for examination in the light of the results of the informal working group on a new Article 15 dealing with the issue of vulnerability. Since this matter might prove particularly significant for the developing countries, the Member States decided to hear the results of the informal group on international cooperation and the concept of vulnerability before discussing Article 8 in depth.

39. Discussions, in the Plenary and in some informal working groups, of the preliminary draft convention’s remaining articles (original text Articles 12 to 34, not dealt with by the Drafting Committee) enabled positions to be brought closer on some points.

40. For instance, it should be noted that the work of the informal group on international cooperation was particularly fruitful. It reviewed Articles 12, 14, 16, 17 and 18 (Part II, p. 28) of Section III.2 of the original draft text, and brought a series of proposals before the Plenary, aiming for a clearer and more coherent layout of the section on the Rights and Obligations of States on these issues. Over 50 Member States took part in the work of this informal group, and it managed to evolve a consensus on this key portion of the Convention, making it more consistent and coherent. The group produced a new Section III.2 on international cooperation, and composed four articles (new Articles 12 to 15), on the following subjects: the promotion of international cooperation, the promotion of the central role of culture in sustainable development, the preferential treatment due to developing countries, and vulnerable forms of cultural expression. The Plenary in general received

the basic idea of the new articles very favourably: there were reservations from some delegations on certain articles, especially that concerning vulnerable forms of cultural expression; these appear as footnotes to Part II (page 32, note 12). It should also be noted that the “cross-cutting” issues are to be regarded as having been dealt with in Part I (wordings in square brackets; footnotes).

41. As to the setting up of a Cultural Diversity Observatory (former Article 15), many delegations wished to avoid the creation of new bodies, though the functions proposed for this new observatory were thought very useful nonetheless. It was therefore agreed to look into the possibility that the UNESCO Secretariat or some other existing body (such as the UNESCO Institute for Statistics) might collect, analyse and disseminate all relevant information, statistics and best practices in fields related to the scope of the Convention.

42. The Plenary examined Articles 13 (International consultation and coordination) and 19 (Relationship to other instruments) of the original text as a pair, in view of the requests from many delegations for these two articles, being complementary in nature, to be placed one after the other in the proposed convention. The comments on Article 13 mainly brought out the delegations’ desire that consultation should not be restricted to just one forum (UNESCO) and that the States Parties to the Convention should enjoy a certain degree of flexibility. So far as Article 19 is concerned, the delegations did express support for one of the two alternative versions proposed in the original text, but the discussion revealed that they would really rather look at some third way, one which would establish that there was to be no precedence among international instruments and which would search for ways of ensuring that they were complementary. Some Member States submitted proposals along these lines, and consultations will continue during the third intergovernmental meeting.

43. Follow-up bodies and mechanisms (Articles 20 to 23) were also debated in the Plenary; discussion is to continue. The delegations supported the setting up of a General Assembly and an Intergovernmental Committee, but the need for an Advisory Group was again questioned. The Member States did not want to make the structures set up under the future convention unduly burdensome. They also underlined the important part which the UNESCO Secretariat would be called on to play. As for the disputes settlement mechanism (Article 24, with the relevant Annexes), it proved impossible to tackle this subject in the Plenary discussions.

44. Lastly, the Plenary also conducted a general discussion of the Final Clauses (Articles 25 to 34 of the original text). Article 25 in particular (Ratification, acceptance or approval) was debated at length, and the advisability of granting Membership status to regional economic integration organizations was discussed: the Plenary considered using the term “Contracting Parties” instead of “States Parties” for this reason. This issue was judged to be fundamental in that it affected other articles, and discussion of it will need to continue. Some tendencies emerged from the discussion of Articles 26, 27 and 28 in Part III of the preliminary draft convention (pp. 41-43). As for Article 29 (Federal or non-unitary constitutional systems), an informal working group was asked to look into this technical matter and reconcile divergences: opinion eventually favoured keeping the clause, but its wording will need to be revised.

45. At the end of the closing session, the second session of the intergovernmental meeting noted that much progress had been made but also that much remained to be done; it adopted a recommendation asking the Chairman “to prepare a consolidated text consisting of the draft provisions recommended by the Drafting Committee together with proposals by the Chairman 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”. The Member States further asked “that such a consolidated text be

circulated to [them] as soon as possible” and have recommended “the convening of a third session”; this last matter will be considered and determined by the Executive Board at its 171st session.

46. As a whole, then, this second session of the intergovernmental meeting enabled Member States to discuss each part of the future convention in greater depth. The session gave them an opportunity to work at bringing their individual positions closer and identifying those points which will need more thorough discussion at a later stage.

VI. Conclusion

47. Lastly, this session made it possible for the Director-General to prepare the present Preliminary Report containing two preliminary draft conventions: the first, which is a “composite” text, reflects the current state of progress and shows what has been done as well as what remains to be done (Appendix 1). It is in three parts, at different stages of completion: Part I – Results of the Work of the Drafting Committee (Articles 1 to 11, with the exception of Article 8); Part II – Results from the Informal Working Group on Section III.2 (new Articles 12, 13, 14 and 15); and Part III – Plenary Session Comments on the Remainder of the Text (Article 8, former Article 15, former Article 13 and Article 19, Articles 20 to 34 and Annexes). The Preamble was not examined in Plenary Session, but is being kept in its original version. In accordance with the statutory timetable, this document has been sent out to Member States on 3 March 2005, seven months before the start of the next session of the General Conference (3-21 October 2005).

48. The second preliminary draft convention, which is the consolidated text by the Chairman of the Plenary (Appendix 2) promised in Paragraph 45, will be sent to the Member States as soon as possible.

APPENDIX 1

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

(“COMPOSITE” TEXT)

TITLE

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

(Original text)

The title will be considered subsequently, on the basis of comments of the Plenary and with due regard for the comments/amendments received by the Secretariat in November 2004, reproduced in the form of options and new proposals in document CLT/CPD/2004/CONF.607/6 (December 2004, pp. 8-9).

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,

Affirming 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.

(Original text)

At this stage, the Preamble has not been examined by the Plenary. It will be considered subsequently, on the basis of the guidance of the Plenary and with due regard for the comments/amendments received by the Secretariat in November 2004, reproduced in the form of options and new proposals in document CLT/CPD/2004/CONF.607/6 (December 2004, pp. 10-20).

PART I

SECTIONS I, II, III.1

(I: OBJECTIVES AND GUIDING PRINCIPLES; II: SCOPE OF APPLICATION AND DEFINITIONS; III.1: RIGHTS AND OBLIGATIONS AT THE NATIONAL LEVEL)

RESULTS OF THE WORK OF THE DRAFTING COMMITTEE

Part I presents the results of the Drafting Committee that took place from 2 to 10 February 2005. The Committee examined Section I (Objectives and Guiding Principles), Section II (Scope of Application and Definitions) and Section III.1 (Rights and Obligations at the National Level), i.e. Articles 1 to 11, not including Article 8. The sources of the provisions are clearly indicated. However, given that certain issues are still subject to ongoing discussion, the Drafting Committee, with a view to advancing its work, adopted the following method:

1. Terms concerning certain cross-cutting issues requiring further debates (e.g. “protection”, “protect”, “cultural expressions and contents”, “cultural expressions”, “cultural contents”, “artistic expressions”, “cultural goods and services”, “cultural industries”, “States Parties”, reference to “minorities and indigenous peoples” and “countries in transition”) appear in brackets and an explanation is provided in the form of a footnote, as required.
2. Alternative drafting suggestions for which consensus could not be reached appear in brackets with an explanatory footnote, as required (ex: Article 3: [have an impact on]; Article 4.5: [address or affect], etc.).
3. When there is more than one recommendation, such recommendations are expressed as options. No brackets are used except for those terms pertaining to cross-cutting issues (Article 2.7 and Article 4.2).

I. OBJECTIVES AND GUIDING PRINCIPLES

Article 1 – Objectives

Chapeau (Heading)

Original text

The objectives of this Convention are:

Option

The objective of this Convention is to create a framework that encourages cooperation and dialogue among [States Parties]¹ to promote cultural diversity, in order to:

Recommendation of the Drafting Committee: TO BE DISCUSSED IN PLENARY

Objective 1(a)

to [protect]² and promote the diversity of [cultural contents and expressions]³ and to foster intercultural respect;
(Former Option 5)

Objective 1(b)

to give recognition to the distinctive nature of [cultural goods and services]⁴ as vehicles of identity, values and meaning;
(Original text)

Objective 1(c)

to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the [protection]⁵ and promotion of the diversity of [cultural expressions]⁶ on their territory;
(Former Option 3)

Objective 1 (d)

To create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner.

¹ The term “States Parties” vs. “Contracting Parties” are a cross-cutting issue and subject to further discussion. Although the heading of this article was not discussed in the Drafting Committee, brackets are used for the sake of consistency.

² Some reservation was expressed as to the use of the term “protect” or “protection”. The Drafting Committee noted that the use of the term “protect” or “protection” is subject to separate discussion and would be examined at a later stage.

³ The terms “cultural contents and expressions”, “cultural contents”, “artistic expressions” and “cultural expressions” are subject to further discussion. They are to be re-examined for consistency once the title and the scope of the Convention have been determined.

⁴ The term “cultural goods and services” is subject to further discussion.

⁵ See footnote 2.

⁶ See footnote 3.

Objective 1 (e)

to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of a culture of peace;

(Original text)

Objective 1 (f)

to foster respect for the diversity of [cultural expressions]⁷ and raise awareness of its value at the local, national and global levels;

(Original text)

Objective 1 (g)

to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to fostering the capacities of developing countries to [protect]⁸ and promote the diversity of [cultural expressions]⁹;

New objective (h) – link between culture and development

to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of its true value;

(Former proposal 3h)

New objective (i) – Interculturality¹⁰

to foster interculturality in order to develop cultural interaction with the spirit of building bridges among peoples.

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]¹¹ 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]¹² are guaranteed.

(Former principles 1 and 2)

⁷ *Ibid.*

⁸ See footnote 2.

⁹ See footnote 3.

¹⁰ It was suggested that a new definition of the term “Interculturality” be added under Article 4 – Definitions (see Article 4.6, p. 23).

¹¹ See footnote 2.

¹² See footnote 3.

2. Principle of Access

Access to a rich and diversified range of [cultural expressions]¹³ 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.

(Former Principle 3)

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

The [protection and]¹⁴ promotion of the diversity of [cultural expressions]¹⁵ presuppose[s] the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous [cultures] [peoples]¹⁶.

(Former Principle 4)

4. Principle of the complementarity of economic and cultural aspects of development

(Former Principle 5)

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.

5. Principle of international solidarity and cooperation

International cooperation and solidarity [shall/should]¹⁷ be aimed at enabling countries, especially developing countries [and countries in transition]¹⁸ to create and strengthen their means of cultural expression, including their [cultural industries]¹⁹ whether nascent or established, at the local, national and international levels.

(Former Principle 6)

6. Principle of sustainability

Cultural diversity is a rich asset to individuals and societies. The [protection],²⁰ promotion and maintenance of cultural diversity is an essential requirement for sustainable cultural development for the benefit of present and future generations.

(Former Principle 7)

7. Principle of openness and balance

Option 1

When States adopt measures to support the diversity of [cultural expressions],²¹ they should seek to promote, in an appropriate manner, openness to the other cultures of the world and to ensure that these measures are geared to the objectives pursued under the present Convention.

¹³ *Ibid.*

¹⁴ See footnote 2.

¹⁵ See footnote 3.

¹⁶ Language referring to “minorities and indigenous peoples” should be made consistent throughout the Convention.

¹⁷ The use of “shall” vs. “should” in this provision is subject to further discussion.

¹⁸ It is for the Plenary to decide on the use of the term “countries in transition”.

¹⁹ Brackets requested by some Member States.

²⁰ See footnote 2.

²¹ See footnote 3.

Option 2

States, when adopting measures that they deem relevant to support the diversity of [cultural expressions]²² at the national level, should guarantee, in an appropriate manner, openness to other cultures of the world and ensure that these measures are adapted to the objectives of the present Convention.

(Former Principle 8)

8. New Principle of Sovereignty

or

Principle of Sovereign Equality

Text

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]²³ and promote the diversity of [cultural expressions]²⁴ within their territory.²⁵

Former Principle 9 – Principle of transparency

DELETED

II. SCOPE OF APPLICATION AND DEFINITIONS**Article 3 – Scope of Convention**

This Convention shall apply to the policies and measures by the [States Parties]²⁶ that [have an impact on]²⁷ the diversity of [cultural expressions]²⁸.

(Former Option 3)

Article 4 – Definitions**Former 1. Culture**

DELETED

1. Cultural Diversity

“Cultural diversity” refers to the manifold ways in which the cultures of social groups and societies find expression. These expressions are passed on within and among societies and are not necessarily confined by national borders.

²² *Ibid.*

²³ See footnote 2.

²⁴ See footnote 3.

²⁵ The Chairman of the Plenary proposed two options respectively for the title and text based on language used in existing legal instruments. A few Member States pointed out that a similar provision exists in Article 5 – General rules on rights and obligations and therefore advised that this principle be re-examined once other relevant articles, namely Article 5 and 19 have been discussed.

²⁶ See footnote 1.

²⁷ Two Members have expressed their reservation regarding the expression “have an impact on”.

²⁸ See footnote 3.

From the diverse forms taken by culture over time and space stem the uniqueness and plurality of the identities and [cultural expressions]²⁹ 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 expressed, [protected],³⁰ augmented and transmitted to future generations but also through the variety of [cultural expressions]³¹ which are borne by [cultural goods and services],³² as well as through diverse modes of production, dissemination, distribution and consumption, whatever the means and technologies used.

(Former Article 4.2)

2. [Cultural Expressions]³³

Option 1

[“Cultural expressions”]³⁴ are the expressions/manifestations that are conveyed by [goods, services]³⁵ and activities that result from the creativity of individuals, groups and societies, which have [cultural content].³⁶ The [“cultural content”]³⁷ of such [goods, services]³⁸ and activities includes the symbolic meaning, the artistic dimension and cultural values that may be conveyed through them.

Option 2

[“Cultural contents”]³⁹ include the values and symbolic meanings (and identities) which are created and conveyed by individuals, groups and societies.

[“Cultural expressions”]⁴⁰ comprise the [goods, services]⁴¹ and activities that are carriers of/convey [cultural contents]⁴² as defined above.

[“Artistic expressions”]⁴³ of these [goods, services]⁴⁴ and activities are an aesthetic expression resulting from creativity.

(Former Article 4.3)

3. [Cultural goods and services]⁴⁵

[“Cultural goods and services”]⁴⁶ (a non-exhaustive list of which is annexed to the Convention, see Annex I) refer to those [goods, services and activities]⁴⁷ that embody or yield [cultural expressions]⁴⁸ and have the following characteristics:

29

Ibid.

30

See footnote 2.

31

See footnote 3.

32

See footnote 4.

33

See footnote 3.

34

Ibid.

35

See footnote 4.

36

See footnote 3.

37

Ibid.

38

See footnote 4.

39

See footnote 3.

40

Ibid.

41

See footnote 4.

42

See footnote 3.

43

Ibid.

44

See footnote 4.

45

Ibid.

- (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.

(Former Article 4.4, original text)

4. [Cultural industries]⁴⁹

The term [“Cultural industries”]⁵⁰ refers to industries producing and distributing [cultural goods and services]⁵¹ as defined above.

(Former Article 4.5; Option 6)

5. Cultural policies

“Cultural policies” refer to policies, which [address or affect],⁵² whether at the local, national, regional or international level, any aspect of the [cultural expressions]⁵³ of an individual, community, or society, including the creation, production, distribution, dissemination of, and access to [cultural goods and services]^{54 55}.

(Former Article 4.7; original text)

Former 6. Cultural capital

DELETED

6. New definition – Interculturality

“Interculturality” refers to the presence and equitable interaction of diverse cultures and the possibility to generate shared [cultural contents]⁵⁶ acquired through dialogue and an attitude of mutual respect.

III. RIGHTS AND OBLIGATIONS OF [STATES PARTIES]⁵⁷

Article 5 – General rules on rights and obligations

1. The [States Parties],⁵⁸ in conformity with [the obligations they have assumed under] the Charter of the United Nations, the principles of international law and universally recognized human

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ See footnote 3.

⁴⁹ See footnote 19.

⁵⁰ *Ibid.*

⁵¹ See footnote 4.

⁵² Alternative terms.

⁵³ See footnote 3.

⁵⁴ See footnote 4.

⁵⁵ The Drafting Committee questioned the need for a definition of “cultural policies” in this instrument. If a definition is required, it may be necessary to define “cultural policies” *stricto sensu*.

⁵⁶ See footnote 3.

⁵⁷ See footnote 1.

⁵⁸ *Ibid.*

rights instruments [to which they are parties],⁵⁹ [and consistent with other international obligations],⁶⁰ reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to [protect and]⁶¹ promote the diversity of the [cultural expressions]⁶² within their territory, and recognize their obligations to [protect]⁶³ and promote it both within their territory [and at the international level].

(Former Option 4)

2. When a [State Party]⁶⁴ takes measures to [protect]⁶⁵ and promote the diversity of [cultural contents and expressions]⁶⁶ within its territory, its measures shall conform to the provisions of this Convention [and other international obligations]⁶⁷.

(Former Option 1)

New 3.

[No [State Party]⁶⁸ may invoke the provisions of the present Convention to infringe human rights guaranteed under international law or to restrict their scope.]⁶⁹

Section III.1 Rights and Obligations at the National Level

Article 6 – Rights of [States Parties]⁷⁰ at the national level

1. Within the framework of its cultural policies as defined in Article 4.7,⁷¹ [consistent with its international obligations]⁷² and taking into account its own particular circumstances and needs, each [State Party]⁷³ [may] adopt measures, [such as regulatory and financial measures] aimed at [protecting and]⁷⁴ promoting the diversity of [cultural expressions]⁷⁵ within its territory. [These measures may include those that take into consideration cases where cultural diversity is threatened or in a situation of vulnerability].⁷⁶

2. Such measures may include the following:

(Original text)

- (a) measures which in an appropriate manner [reserve]⁷⁷ [a certain space]⁷⁸ for domestic [cultural goods and services]⁷⁹ among all those available within the national territory,

⁵⁹ Some Member States suggested adding this phrase, in light of the comments of the UNESCO Legal Adviser.

⁶⁰ Pending the results of the deliberations on Article 19, some Members stressed the importance of consistency with international obligations.

⁶¹ See footnote 2.

⁶² See footnote 3.

⁶³ See footnote 2.

⁶⁴ See footnote 1.

⁶⁵ See footnote 2.

⁶⁶ See footnote 3.

⁶⁷ See footnote 60.

⁶⁸ See footnote 1.

⁶⁹ This paragraph needs to be reviewed in light of Article 2.1.

⁷⁰ See footnote 1.

⁷¹ See footnote 55.

⁷² See footnote 60.

⁷³ See footnote 1.

⁷⁴ See footnote 2.

⁷⁵ See footnote 3.

⁷⁶ Subject to re-examination on the basis of the outcome of the deliberations of Articles 12 to 18, in particular new Article 15.

⁷⁷ Proposed alternatives: “provide” / “reserve and enhance” / “make provision”.

⁷⁸ Proposed alternatives: “an appropriate space” / “choice space” / “favourable space”.

⁷⁹ See footnote 4.

[in order to ensure]⁸⁰ opportunities for their production, distribution, dissemination and [consumption],⁸¹ and include, where appropriate, provisions relating to the language used for the above-mentioned [goods and services]^{82,83};

(Original text)

- (b) measures which aim at providing domestic independent cultural industries effective access to the means of producing, disseminating and distributing [cultural goods and services]⁸⁴;

(Original text)

- (c) measures aimed at providing public financial aid; in granting such aid, [States Parties]⁸⁵ may determine the nature, amount and beneficiaries thereof;

(Original text)

- (d) measures which aim at developing and promoting the free exchange and circulation of ideas, [cultural expressions],⁸⁶ and [cultural goods and services],⁸⁷ encouraging non-profit organizations and government public-service institutions,⁸⁸ and stimulating both the creative and the entrepreneurial spirit;

(Former Option 1)

- (e) measures which aim at establishing, encouraging and supporting appropriate public service institutions⁸⁹;

(Original text)

New (f)

Measures which aim at encouraging and supporting the creators of [cultural expressions]⁹⁰.

(Former Proposal 1)

Article 7 – Obligation to promote [and protect]⁹¹ the diversity of [cultural expressions and contents]⁹²

(Former Option 1)

1. [States Parties]⁹³ shall endeavour to create in their territory an environment that encourages individuals and social groups:

(Former Option 5)

⁸⁰ Proposed alternative: “with a view to ensuring”.

⁸¹ Proposed alternatives: “access” / “enjoyment”.

⁸² See footnote 4.

⁸³ Two Members expressed their reservations concerning the content and operation of this provision. As discussions on the notion of “goods and services” are ongoing, the question was once again raised concerning the meaning of the terms “a certain space for domestic goods and services”, and “space”.

See footnote 4.

⁸⁴ See footnote 1.

⁸⁵ See footnote 3.

⁸⁶ See footnote 3.

⁸⁷ See footnote 4.

⁸⁸ The term “public service institution” is subject to further clarification.

⁸⁹ *Ibid.*

⁹⁰ See footnote 3.

⁹¹ See footnote 2.

⁹² See footnote 3.

⁹³ See footnote 1.

- (a) to create, produce, disseminate, distribute, and have access to their own [cultural contents and expressions],⁹⁴ [goods and services],⁹⁵ paying due attention to the special circumstances and needs of the various social groups, in particular, minorities and indigenous peoples⁹⁶;
(Former Option 3)
- (b) to have access to the [cultural expressions],⁹⁷ [cultural goods and services]⁹⁸ representing cultural diversity in other countries of the world.
(Original text)

2. [States Parties]⁹⁹ shall also endeavour to recognize the important contribution of artists, creators, cultural communities, and the organizations that support their work, and their central role in nurturing the diversity of [cultural expressions]¹⁰⁰.
(Former 7.2 a; Option 5)

New 3

[States Parties]¹⁰¹ shall ensure [intellectual property rights] are [fully respected and enforced] according to existing international instruments to which States are parties, particularly through the development [or strengthening] of measures against piracy.¹⁰²
(Former original text 7.2b)

New 4

[States Parties]¹⁰³ undertake to ensure in their territory [protection against unwarranted appropriation]¹⁰⁴ of traditional and popular [cultural contents and expressions],¹⁰⁵ [with particular regard to preventing the granting of invalid intellectual property rights]¹⁰⁶.
(Former proposal g)

Article 8 – Obligation to protect vulnerable forms of [cultural expression]¹⁰⁷

TO BE DISCUSSED IN PLENARY (see Part. III, p.41)

Article 9 – Obligation of information and transparency

[States Parties]¹⁰⁸ shall:

- (a) designate or appoint a point of contact responsible for information-sharing with relation to this Convention;
(Former Option 3)

⁹⁴ See footnote 3.

⁹⁵ See footnote 4.

⁹⁶ See footnote 16.

⁹⁷ See footnote 3.

⁹⁸ See footnote 4.

⁹⁹ See footnote 1.

¹⁰⁰ See footnote 3.

¹⁰¹ See footnote 1.

¹⁰² Consistency in references to intellectual property rights in the Preamble and in the text of the Convention must be ensured in the text if this article is maintained. A question was raised as to the concept of “piracy”.

¹⁰³ See footnote 1.

¹⁰⁴ The subject matter is under extensive consideration in other fora.

¹⁰⁵ See footnote 3.

¹⁰⁶ See footnotes 102 and 104.

¹⁰⁷ See footnote 3.

¹⁰⁸ See footnote 1.

- (b) share and exchange information relating to the [protection]¹⁰⁹ and promotion of the diversity of [cultural expressions]¹¹⁰;
(Former Option 4)

Former (c)
DELETED

- (c) shall provide appropriate informative reports to UNESCO every four years of the new measures that have been taken to [protect]¹¹¹ and promote the diversity of [cultural expressions]¹¹² within their territory.¹¹³
(Former (d); Option 3)

Article 10 – Education and public awareness

[States Parties]¹¹⁴ shall:

- (a) encourage and promote understanding of the importance of the [protection]¹¹⁵ and promotion of the diversity of [cultural expressions],¹¹⁶ *inter alia*, through educational programmes, knowledge and public awareness building;
(Original text)
- (b) cooperate, [as appropriate], with other [States Parties]¹¹⁷ and international and regional organizations in developing, *inter alia*, educational and public awareness programmes relating to the [protection]¹¹⁸ and promotion of the diversity of [cultural expressions]¹¹⁹.
(Original text)
- (c) endeavour to encourage creativity and strengthen production capacities by setting up education, training and exchange programmes in the field of [cultural industries]¹²⁰ without having a negative impact on traditional forms of production.
(Original text and Option 2)

Article 11 – Participation of civil society

[States Parties]¹²¹ [shall, as appropriate, / may] encourage civil society to participate actively in the [protection]¹²² and promotion of the diversity of [cultural contents and expressions],¹²³ and [shall, as appropriate, /may] foster the participation of civil society in their efforts in this domain.
(Former Option 2)

*Proposal submitted by NGOs.*¹²⁴

¹⁰⁹ See footnote 2.

¹¹⁰ See footnote 3.

¹¹¹ See footnote 2.

¹¹² See footnote 3.

¹¹³ This subparagraph should be considered in conjunction with ex-Article 15.

¹¹⁴ See footnote 1.

¹¹⁵ See footnote 2.

¹¹⁶ See footnote 3.

¹¹⁷ See footnote 1.

¹¹⁸ See footnote 2.

¹¹⁹ See footnote 3.

¹²⁰ See footnote 19.

¹²¹ See footnote 1.

¹²² See footnote 2.

¹²³ See footnote 3.

¹²⁴ “States Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural contents and expressions. States Parties shall work in close association with civil society to achieve the objectives of this Convention.” This proposal was supported by two Member States.

PART II

SECTION III.2

(RIGHTS AND OBLIGATIONS RELATING TO INTERNATIONAL COOPERATION)

RESULTS OF THE INFORMAL WORKING GROUP

Part II summarizes the results of the informal working group on Section III.2 (Rights and Obligations relating to International Cooperation), whose mandate was to revise Articles 12, 14, 16, 17 and 18 of the previous text of the preliminary draft Convention with a view to producing a more coherent alternative text on International Cooperation. Article 13 of the previous text of the preliminary draft convention was examined by the Plenary in conjunction with Article 19 in Section IV and Article 15 of the previous text of the preliminary draft convention was also examined by the Plenary in relation with Section V – Follow-up Bodies and Mechanisms).

This section now includes new Articles 12, 13, 14 and 15.

When applicable, the sources for the new articles are indicated at the end of each text. The explanatory notes prepared by the informal group appear in the footnotes.

The comments of the Plenary concerning new articles are summarized in the boxes.

The results of the informal working group appear in this document in the form presented by that group in the Plenary. For this reason, the cross-cutting issues (e.g. “protection”, “protect”, “cultural expressions”, “cultural contents”, “artistic expressions”, “cultural goods and services”, “cultural industries”, “States Parties”, reference to “minorities and indigenous peoples” and “countries in transition”) do not appear in brackets along with relevant footnotes. It is to be noted however that the above-mentioned cross-cutting issues should be considered as treated and presented in Part I.

SECTION III.2 – RIGHTS AND OBLIGATIONS RELATING TO INTERNATIONAL COOPERATION¹

Comments of the Plenary on Section III.2:

Some Member States were in favour of maintaining the part on international cooperation as an independent section. It was suggested that the word “rights” should be deleted from the title, since international cooperation is more a matter of commitments than of rights. The need to take account in this section of cross-cutting issues, for example, “protection” and “cultural goods and services”, was expressed.

NEW Article 12 – Promotion of International Cooperation²

States 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 different forms of vulnerability of such expressions, in order to:

- (a) facilitate dialogue among States 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 exchange of information and expertise through data collection, analysis and dissemination of information, through existing mechanisms and institutions such as the UNESCO Institute of Statistics;
- (e) promote the use of new technologies and encourage innovative partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions;

¹ **General explanatory note on the Section III.2:** Some Member States expressed reservations on some of the cross-cutting terms and concepts such as cultural goods and services, protection, cultural expressions, intellectual property, preferential treatment, contracting parties vs. states parties, indigenous peoples etc., until they are defined in the Convention. Some Member States expressed reservations about “cultural industries”; one Member State expressed reservations about the use of the word “Rights” in the title; one Member State expressed reservations about “cultural production”; one Member State proposed the use of “cultural activities”. Some Member States proposed the insertion of “small island states”; one Member State expressed reservations about “co-productions”.

² This new Article 12 incorporates former Article 15 in the original text. As to the heading of the article, it was proposed that even though the notion of “vulnerability” is captured in this article, a more detailed reference to “vulnerability” should be included in the preamble and definitions. The notion of “vulnerability” is included in this article on general international cooperation to address the fact that the “vulnerability” of cultural expressions is a global phenomenon.

- (f) encourage, when possible and appropriate, the conclusion of production and co-distribution agreements.³

Comments of the Plenary

The Plenary accepted by consensus new **Article 12** and decided to keep it in the same place, namely, in the section on rights and obligations.

NEW Article 13 – Promotion of the Central Role of Culture in Sustainable Development

1. State Parties shall endeavour to incorporate the dimension of culture in their development policies (***Likewise they commit themselves to cooperate***) for the creation of international conditions conducive to sustainable development (***which is inseparable from cultural development***), and within this framework foster aspects relating to the protection and promotion of the diversity of cultural expressions (*combination of former articles 12.1 and 12.2 of the original text, using option 2*).

2. In pursuance of the objectives of this Convention, States Parties shall encourage the development of innovative 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 and the increase of the exchange of cultural goods and services. These innovative partnerships shall, according to the practical needs of developing countries, emphasize the development of necessary infrastructure, human resources and policies necessary for the sustainable utilization of cultural resources (*former Article 18 in the original text incorporating the use of Option 3*).

3. States Parties shall endeavour to support cooperation for sustainable development, according to the specific needs of developing countries to foster the emergence of a dynamic cultural sector by, *inter alia*, the following means (*former 16.b in original text*):

- (a) The strengthening of the cultural industries in developing countries by:
- (i) the creation and strengthening of cultural production and distribution capacities in developing countries (*former articles 12.2.a and 16.c in original text*),
 - (ii) facilitating wider access to the global market and international distribution networks for their cultural goods and services⁴ (*former Article 12.2.c in original text*),
 - (iii) enabling the emergence of viable local and regional markets (*former Article 12.2.b in original text*),
 - (iv) 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 countries⁵ (*former Article 16.d in original text*),

³ Some Member States expressed reservations about this subparagraph in the context of their commitments at the WTO. There was a suggestion to use option 8 as an alternative to the original text with modifications as above. At least one Member State objected strongly to this subparagraph and proposed replacing the word “encourage” with “consider”. The Member State also objects of the use of the word “co-production”.

⁴ Some Member States wish to end the first sentence after “distribution networks”.

- (v) the provision of support for creative work and facilitation of the mobility, to the extent possible, of artists⁶ from the developing world (*former Article 12.2.d in original text*),
 - (vi) encouragement, when possible, of appropriate innovative collaborations between developed and developing countries in the areas of, *inter alia*, music and film;
- (b) Capacity-building by:
- (i) the exchange of information, experience and expertise, as well as the training of human resources in developing countries, *inter alia*, in the public and private sector strategic and management capacities, policy development and implementation, marketing of cultural goods and services,⁷ small medium & micro enterprise (SMME) development, the use of technology, and skills development and transfer (*former articles 16.a and 12.2.e in original text*);
- (c) Technology transfer by:
- (i) the introduction of appropriate incentive measures for the transfer of technology and know-how, notably in the areas of cultural industries and enterprises⁸ (*former Article 12.2.g in original text*⁹)
- (d) Financial support by:
- (i) the establishment of an International Fund for Cultural Diversity,¹⁰ contributions to which will be voluntary and the modalities of which would be determined by the General Assembly of States Parties to the Convention (*former Article 16.e in original text*).
 - (ii) the provision of official development assistance, as appropriate, including technical assistance, to stimulate and support creativity (*former Article 16.e in original text*).
 - (iii) Other forms of financial assistance such as low interest loans, grants and other innovative funding mechanisms (*former Article 16.e in original text*).

⁵ This subparagraph could duplicate the content of the preferential treatment article. One Member State expressed that it could duplicate Article 13,3(a)(ii).

⁶ It was suggested to use “cultural practitioners” after “artists” in this phrase.

⁷ Some Member States expressed reservations about the inclusion of “marketing of cultural goods and services”.

⁸ It was suggested to include other references to technology such its use in documenting, providing access to, and disseminating information and knowledge about the diverse cultures, cultural expressions and cultural manifestations throughout the word. “Incentive measures” was not discussed.

⁹ Some Member States preferred option 2 from the original text for subparagraph 12g which refers to intellectual property. Some Member States expressed the view that the word “appropriate” deals with the issue of intellectual property.

¹⁰ There was a general trend favouring the principle of the establishing of a fund. It was also agreed that the objective of the fund should be elaborated in the draft convention itself; The nature of the contributions to this fund was discussed as to whether they will be compulsory or voluntary.

Comments of the Plenary

The Plenary recommended that new **Article 13** be accepted, inviting the Drafting Committee to renumber the article, avoiding the use of Roman numerals. A reformulation of paragraph 13.1 was proposed for the French version so as to make the text more expressive (see text in *italic bold*). With regard to paragraph 13.3.a, it was stressed that the article should not be aimed solely at cultural industries but all areas of creativity. Concerning the International Fund for Cultural Diversity (paragraph 13.d.i), it was pointed out that “voluntary” contributions would not be enough to make it operational.

NEW Article 14 – Preferential treatment for developing countries¹¹

Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional frameworks, preferential treatment to their artists and other cultural professionals and practitioners, as well as to their cultural goods and services, with a view to assisting developing countries to promote and protect the diversity of cultural expressions, in accordance with their international obligations (*former Article 17 in original text*).

Comments of the Plenary:

In new **Article 14**, the wording “in accordance with their international obligations” gave rise to debate in the Plenary: some Member States questioned the relevance of such wording while others considered it important to keep the wording. The need to include the idea of respect for national law was also stressed (see also footnote 11). Lastly, the Plenary recommended that the text be transmitted as it stood to the Drafting Committee.

NEW Article 15 – Vulnerable forms of cultural expression¹²

In the application of articles 12-14, States Parties shall endeavour to provide appropriate recognition and attention to endangered and vulnerable cultural expressions, specifically those that are at the risk of extinction, as well as to cultural actors facing discrimination, marginalization or exclusion, such as persons belonging to minorities and indigenous peoples.

¹¹ One Member State requested that a reference to domestic law should be included in this article.

¹² Some Member States expressed the view that the language should reflect a stronger orientation to action regarding the measures taken to assist vulnerable cultural expressions. A proposal was made by several Member States to include the word “action” as follows: ... “to provide appropriate recognition, attention and action to endangered”.

It was proposed that the words “*inter alia*” be included in Article 12 as follows: 12.1. Member States 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 different forms of vulnerability of such expressions, in order to *inter alia* : (...) The insertion of “*inter alia*” as above would allow some Member States to accept the current formulation of Article 15. Without the “*inter alia*” in Article 12, these Member States would not be able to accept Article 15. Two Member States expressed very strong reservations regarding the insertion of these words.

The omission of issue of the role of education and media in the promotion of cultural diversity generally, and as it affects vulnerable cultural expression specifically, was raised.

Some Member States requested that “women” be specifically mentioned in the article. Some Member States expressed objections to the use of the word “women” in the article.

Comments of the Plenary:

The Plenary adopted new **Article 15**, which represented the consensus of 50 States. Nevertheless, several Member States expressed reservations with respect to the article:

- concerning the risk of an overly restrictive acceptance of vulnerable forms of cultural expression;
- concerning the idea of recognition, which could give rise to a new right, when it had been decided that the Convention could not establish new rights;
- concerning the reference to persons belonging to minorities and indigenous peoples;
- concerning the term “cultural actors”, regarded as ambiguous.

Lastly, some Member States pointed out that the new **Article 15** would not necessarily lead to the deletion of **Article 8** (Obligation to protect vulnerable forms of cultural expressions), but on the contrary would confirm its place in Section III.1 (Rights and obligations at the national level).

PART III

ARTICLE 8, EX-ARTICLE 13 AND 15, SECTIONS IV-V-VI, ANNEXES

(ARTICLE 8: OBLIGATION TO PROTECT VULNERABLE FORMS OF CULTURAL EXPRESSION; EX-ARTICLE 13 – INTERNATIONAL CONSULTATION AND COORDINATION; EX-ARTICLE 15 – ESTABLISHMENT OF A CULTURAL DIVERSITY OBSERVATORY; IV: RELATIONSHIP TO OTHER INSTRUMENTS; V: FOLLOW-UP BODIES AND MECHANISMS; VI: FINAL CLAUSES)

COMMENTS OF THE PLENARY

Part III summarizes the comments of the Plenary on the articles it examined but which have not been redrafted. This part concerns **Article 8** (Obligation to protect vulnerable forms of cultural expressions), **ex-Article 15** (Establishment of a Cultural Diversity Observatory), **Section IV** (Relationship to other instruments: **ex-Article 13** and **Article 19**), **Section V** (Follow-up bodies and mechanisms: **Articles 20 to 24**), **Section VI** (Final clauses: **Articles 25 to 34**) and the annexes. Those articles will be examined subsequently, on the basis of the comments made by the Plenary at the second session of the Intergovernmental Meeting.

Article 8 – Obligation to protect vulnerable forms of cultural expressions

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.

(Original text)

Comments of the Plenary

Article 8 was not examined by the Drafting Committee, which preferred to wait for the results of the informal group on international cooperation. Following the work of that group, new **Article 15 – Vulnerable forms of cultural expression** was accepted by consensus in the Plenary. However, some Member States wished to keep **Article 8 – Obligation to protect vulnerable forms of cultural expressions**, regarded as necessary within Section III.1 on the rights and obligations at the national level. Debate on **Article 8** will be pursued at a later stage.

Ex-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.

(Original text)

Comments of the Plenary

Very few Member States were in favour of maintaining that structure in view of the cost it implied. At the same time, many Member States wished to preserve its function. Following the debate, the Chairman concluded that the provision would have to be redrafted, taking account of the present UNESCO mechanism, in particular the UNESCO Institute for Statistics, which could help in the collection and dissemination of all necessary information and of good practices. The Chairman's conclusion was endorsed by the Plenary.

IV. RELATIONSHIP TO OTHER INSTRUMENTS

Ex-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.

(Original text)

Article 19 – Relationships to the 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.

(Original text)

Comments of the Plenary on ex-Article 13 and Article 19:

The Member States reiterated the importance of examining at the same time **ex-Article 13** (International consultation and coordination) and **Article 19** (Relationship to other instruments) and giving consideration to joining those two provisions.

The trend in the Plenary was to maintain **ex-Article 13** while deleting the words “within UNESCO” so that consultation could take place within a larger framework than that of UNESCO.

Concerning **Article 19**, following the debate on options A and B, the Chairman suggested that another version should be drafted. Such a version should avoid establishing a hierarchy among international instruments and should, on the contrary, emphasize the complementarity among those 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.

(Original text)

Comments of the Plenary:

With regard to **Article 20**, the Plenary was in favour of a General Assembly which would be renamed the “Conference of States Parties” and would meet at the same time as the General Conference of UNESCO.

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) to establish procedures and other mechanisms for consultation aimed at promoting the principles and objectives of this Convention in other international arenas;
- (h) 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;
- (i) to establish such subsidiary bodies as may be useful for the efficient implementation of the Convention;
- (j) to consult the Advisory Group on a regular basis in order to ensure the promotion of the objectives of this Convention and its implementation.

(Original text)

Comments of the Plenary:

With regard to **Article 21**, the Plenary was in favour of the establishment of an Intergovernmental Committee. The Committee should operate on the basis of two explicitly expressed principles: equitable geographical distribution and the principle of rotation. Elections would be held every four years. Clearly, only States Parties to the Convention could become members of the Committee. The Committee would not set up subsidiary bodies, a role that would be assumed by the General Assembly. It remains to be seen whether the rules of procedure should be adopted by the Committee or by the General Assembly.

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.
(*Original text*)

Comments of the Plenary:

With regard to **Article 22**, many Member States did not want to establish an Advisory Group.

Article 23 – UNESCO Secretariat

UNESCO shall provide the secretariat of the General Assembly of States Parties, the Intergovernmental Committee and the Advisory Group.
(*Original text*)

Comments of the Plenary:

With regard to **Article 23**, the original text is maintained without the words “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.
(Original text)

Comments of the Plenary:

Article 24 and its two **Annexes 3 and 4** will be examined at a later time.

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.
(Original text)

Comments of the Plenary:

With regard to **Article 25**, the Plenary debated the question of whether regional economic integration organizations could become parties to the Convention.

In that regard, the UNESCO Legal Adviser said that since the early 1990s, a certain number of conventions have included provisions authorizing the accession of regional economic integration organizations. He cited the 1992 Rio Conventions (in particular the *Convention on Biological Diversity* and the *United Nations Framework Convention on Climate Change*), the conventions of the World Health Organization (WHO) (in particular the *WHO Framework Convention on Tobacco Control*, 2003) and those of WIPO (the Internet treaties). The Legal Adviser also pointed out that there was no such precedent in UNESCO conventions. He also stressed that, in the present case, the decision as to whether regional economic integration organizations could accede to the Convention was up to the Member States participating in the negotiation process and that it was therefore incumbent on the Plenary to take a decision on that matter. Finally, the Legal Adviser said that account must be taken of the fact that adding such a provision would have an impact on the other provisions, in particular the replacement of the words “States parties” by “Contracting Parties”. It was, therefore, a cross-cutting issue.

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.
(*Original text*)

Comments of the Plenary:

With regard to **Article 26**, the Plenary concluded that paragraph 1 should be maintained. Concerning paragraph 2 (*accession by territories which enjoy full internal self-government*), the Chairman recommended that it be deleted because only the Member States of the United Nations were concerned.

Article 27 – Competent authorities

Upon ratification, States Parties shall designate the “competent authorities” referred to in Article 9.
(*Original text*)

Comments of the Plenary:

With regard to **Article 27**, the Chairman concluded that the article should be maintained because it specified exactly when the States Parties would designate or establish the competent authorities defined in **Article 9** (Obligation of information and transparency).

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.

(Original text)

Comments of the Plenary:

With regard to **Article 28**, the Chairman concluded that the original text of the article should be maintained. The Member States expressed the wish that the Convention should rapidly enter into force and considered that 30 ratifications would be sufficient, as is customary at UNESCO. A real consensus emerged on that point. The Chairman noted that the article would not be discussed by the Drafting Committee.

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.

(Original text)

Comments of the Plenary:

The Legal Adviser recalled that federal clauses were included in some UNESCO conventions but that there was no obligation to include such a clause in the preliminary draft – it all depended on the consensus that might emerge in the Plenary. Following the debate in the Plenary, the Chairman decided to maintain **Article 29**. He also requested that an informal working group be set up to reach a consensus on that question.

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.
(Original text)

Article 31 – Depository functions

The Director-General of UNESCO, as the Depository 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.

(Original text)

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.

(Original text)

Article 33 – Authoritative texts

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

(Original text)

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.

(Original text)

Comments of the Plenary:

Articles 30, 31, 32, 33 and 34 were regarded as standard provisions by the Chairman and for that reason there was no debate in the Plenary on those articles.

ANNEX 1 – NON-EXHAUSTIVE LIST OF CULTURAL GOODS AND SERVICES

Comments of the Plenary:

Following the debate in the Plenary, the Chairman concluded that **Annex 1** should be deleted.

ANNEX 2 – NON-EXHAUSTIVE LIST OF CULTURAL POLICIES

Comments of the Plenary:

Following the debate in the Plenary, the Chairman concluded that **Annex 2** should be deleted.

ANNEX 3 – 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.

(Original text)

ANNEX 4 – 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.

(Original text)

Comments of the Plenary:

The Chairman recommended that **Annexes 3 and 4** be examined subsequently at the intergovernmental meeting, at the same time as **Article 24** (Settlement of disputes).

APPENDIX 2

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

**(CONSOLIDATED TEXT PREPARED BY THE CHAIRPERSON OF THE
INTERGOVERNMENTAL MEETING)
*TO BE SENT SHORTLY***