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**PRELIMINARY REPORT BY THE DIRECTOR-GENERAL SETTING OUT  
THE SITUATION TO BE REGULATED AND THE POSSIBLE SCOPE OF THE  
REGULATING ACTION PROPOSED, ACCOMPANIED BY THE PRELIMINARY  
DRAFT OF A CONVENTION ON THE PROTECTION OF THE DIVERSITY OF  
CULTURAL CONTENTS AND ARTISTIC EXPRESSIONS**

**OUTLINE**

**Source:** 32 C/Resolution 34, 169 Decision 3.7 and 171 EX/Decision 19.

**Background:** Following the examination of the *Preliminary Study on the technical and legal aspects relating to the desirability of a standard-setting instrument on cultural diversity* (166 EX/28) and the decision taken on the basis of that study (166 EX/Decision 3.4.3), the General Conference at its 32nd session, after examining document 32 C/52, adopted by consensus 32 C/Resolution 34. By that resolution, the General Conference (i) decided “that the question of cultural diversity as regards the protection of the diversity of cultural contents and artistic expressions shall be the subject of an international convention” and (ii) invited the Director-General to submit to the General Conference at its 33rd session, in 2005, “a preliminary report setting out the situation to be regulated and the possible scope of the regulating action proposed, accompanied by the preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions”.

Furthermore, within the statutory deadline, seven months before the opening of the 33rd session of the General Conference, the Director-General sent Member States a preliminary report containing two preliminary drafts of a convention (CL/3747 of 3 March 2005). In the light of the progress achieved and the work remaining to be done, the Executive Board at its 171st session authorized the holding of a third session of the Intergovernmental Meeting of Experts (25 May-3 June 2005). At that session a preliminary draft convention was adopted and the General Conference was recommended to adopt it without changes at its 33rd session.

**Purpose:** In conformity with 32 C/Resolution 34, the Director-General submits to the General Conference a report on the successive stages that have been completed from the start of the process in 2003 up to the end of the third session of the Intergovernmental Meeting of Experts and on the debates and recommendations of the meeting of governmental experts, accompanied by a preliminary draft convention.

## **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 (Annex) 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, Annex II), 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 was held from 25 May to 3 June 2005, after authorization to convene that session had been given to the Director-General by the Executive Board at its 171st session (171 EX/19, April 2005, Annex III).

## **II. Meetings of independent experts (category VI)**

6. In accordance with his mandate, the Director-General began Stage One 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 independent 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. In performing the task assigned to them, 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 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 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 chapter on the Rights and Obligations of States, moreover, the experts grouped the relevant provisions together in their own subsection 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 experts<sup>1</sup> 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. 22 to 26).

### **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),<sup>2</sup> 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 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 subsections, 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

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

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

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. The 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.<sup>3</sup> The Member States also decided to establish a Drafting Committee<sup>4</sup> and designated 24 members<sup>5</sup> 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 had 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 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).

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<sup>3</sup> These were the Chairperson, Professor Kader Asmal (South Africa), four Vice-Chairpersons, 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](http://www.unesco.org/culture/diversite/convention/intergov_1_fr) (French) and [www.unesco.org/culture/diversite/convention/intergov\\_1\\_en](http://www.unesco.org/culture/diversite/convention/intergov_1_en) (English).

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

<sup>5</sup> 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.

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 freedoms 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 the section 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 they 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.<sup>6</sup>

### **V.3 Written contributions from 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 CL/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).<sup>7</sup> 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 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.

<sup>6</sup> The Rapporteur of the meeting submitted his conclusions in a very detailed oral report that was favourably received by all the participants. This report is available online at:  
[www.unesco.org/culture/diversite/convention/intergov\\_1\\_fr\\_\(French\)](http://www.unesco.org/culture/diversite/convention/intergov_1_fr_(French))  
[www.unesco.org/culture/diversite/convention/intergov\\_1\\_\(English\)](http://www.unesco.org/culture/diversite/convention/intergov_1_(English)).

<sup>7</sup> The Chairperson's closing address is also available online at the same address.  
 The Drafting Committee was chaired by Mr Jukka Liedes (Finland). Mr Robert Dossou (Benin) was appointed Rapporteur.



## **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, two permanent observers, nine 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, Preamble 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. 32) 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 those concerning vulnerable forms of cultural expression; these appear as footnotes to Part II (page 39, 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, in particular through 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, pages 48-49). 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" (see paragraph 50).

46. As a whole, 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.

## **V.6 Preliminary report by the Director-General**

47. Following the second session of the intergovernmental meeting, the Director-General drew up a preliminary report which was sent to Member States, within the statutory deadline, seven months before the opening of the 33rd session of the General Conference (3-21 October 2005), namely 3 March 2005 (CL/3747). The report contained two preliminary drafts of the convention: the first (Appendix 1), a “composite text”, reflected the status of the work of the intergovernmental meeting and illustrated the progress made as well as the work remaining to be done; the second (Appendix 2), a “consolidated text”, was drawn up by the Chairperson, in response to the recommendation of the intergovernmental meeting at its second session (see paragraph 45). The latter text was submitted, for information, to the Member States of the Executive Board at its 171st session in April 2005 (171 EX/INF.18) and subsequently sent to all the Member States of UNESCO on 3 May 2005 (CL/3751).

## **V.7 Preparation of the consolidated text (Appendix 2)**

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

49. In his introduction, the Chairperson stressed that the consolidated text, intended to facilitate future work and progress, had been guided by intellectual integrity and the need for consistency, as reflected in the debates and the conclusions of the Plenary, the Drafting Committee and the informal working groups. He paid particular attention to the results achieved by the Drafting Committee and to specific cross-cutting issues that required further debate. Throughout this exercise, which was designed to find a common ground for various positions, he endeavoured to take into account concerns expressed by Member States, while ensuring the greatest possible clarity within the text. In order to offer the reader a clear document, with no breaks in the text’s structure, vocabulary and style, he deleted square brackets and footnotes as well as options. Such deletions did not imply final acceptance of the particular word or words in the consolidated text but rather reflected the general view or approach that had emerged in the Plenary debate. In an attempt to forge a broad-based consensus on the convention, a number of divergent points were also reflected in the consolidated text. In some cases, it had been necessary to reconcile some outstanding issues by suggesting new wording and to restructure the text so that it would have a more logical structure and would read more easily. Moreover, the text was refined to avoid repetition and to improve clarity and elegance.

## **V.8 Decision of the Executive Board at its 171st session**

50. At the 171st session of the Executive Board, the Director-General submitted document 171 EX/44 on the progress of the work and document 171 EX/INF.8 containing the Chairperson’s consolidated text (see paragraphs 48 and 49). At the conclusion of the debate, the Executive Board authorized the Director-General to convene a third session of category II experts to further develop the preliminary draft convention (171 EX/Decision 19). In that decision, the Executive Board also requested the Director-General to “report to it at its 172nd session on the progress accomplished on the preliminary draft convention at the third session of the intergovernmental meeting”. The results of that session, held from 25 May to 3 June 2005 at UNESCO Headquarters, are reported below.

## **V.9 Third session of the intergovernmental meeting (25 May-3 June 2005)**

51. The purpose of the third and final session of the intergovernmental meeting, which brought together nearly 550 participants, was to enable the Member States to achieve further progress in drawing up the preliminary draft convention with a view to reporting to the UNESCO General Conference at its 33rd session.

52. In his opening address, while paying tribute to the remarkable work accomplished by the government experts since September 2004, the Director-General laid special emphasis on the spirit in which he wished the third and final session of the intergovernmental meeting to be conducted. He said that the consensus approach was imperative when culture was at stake; the debates should therefore reflect the commitments of the Member States, which had been open and generous.

53. In his opening statement, the Chairperson of the Plenary, Professor Kader Asmal, reported on the stages that had been completed since the previous session of the intergovernmental meeting (31 January-12 February 2005) at which he had been requested to prepare a consolidated text, which constitutes Appendix 2 to the preliminary report by the Director-General.

54. The government experts began their work with an exchange of views on the documents and the working methods to be adopted during the third session. First of all, nearly all of them congratulated the Chairperson on the work accomplished between the second and third sessions of the intergovernmental meeting and described the consolidated text as balanced, coherent and well-structured. Several experts requested that the consolidated text contained in Appendix 2 be used as the basis for discussion, since it marked a significant step forward in the negotiation process. Following that discussion, the proposal was accepted by the Plenary, noting that, at the request of some of the experts, Appendix 1 could constitute an additional reference.

55. With regard to the method of work, the Chairperson proposed that in addition to the Preamble, the debates should focus on six themes (Objectives and Guiding Principles; Scope of Application and Definitions; Rights and Obligations of Parties (including international cooperation); Relationship to Other Instruments; Organs of the Convention; and Final Clauses), thus following the structure of the Convention. In view of the deadlines, the experts were requested to concentrate mainly on the points that were likely to influence their governments' ratification of the Convention. The Chairperson also invited the Plenary to adopt a constructive attitude and to spare no effort to achieve a consensus on all of the Convention's provisions.

56. In the Plenary meetings, several informal working groups were set up by the Chairperson to give States an opportunity to make their positions clear and find common ground on the basic issues. Many delegations took part in those groups in which they discussed, *inter alia*, the definitions, provisions relating to the International Fund for Cultural Diversity and the relationship to other instruments and the mechanism for the settlement of disputes. Smaller groups discussed the federal clause, accession to the Convention by regional economic integration organizations and preferential treatment for developing countries. Such informal consultations played a key role in bridging the points of view expressed since the first intergovernmental meeting.

57. The government experts had the opportunity to propose both substantive and technical or stylistic amendments to each article of the preliminary draft. All the substantive amendments were examined by the Plenary while minor amendments concerning harmonization, style and translation were largely left to the discretion of the Bureau. In all, more than 165 amendments were examined and discussed.

58. The Preamble of the consolidated text was, on the whole, deemed satisfactory because it captured the spirit of the Convention and reflected the work of the second session of the intergovernmental meeting. Nevertheless, various amendments led to the incorporation of a new paragraph on the importance of traditional knowledge and a reference to the diversity of the media, to the fundamental role of education and to the risks of imbalances between rich and poor countries as a result of globalization. The United States of America made a formal objection to paragraph 18 concerning cultural activities, goods and services. The Objectives (Article 1) were considered to be generally satisfactory. Only one amendment to the wording of Article 1(f), as contained in the consolidated text, was accepted by the delegations, namely the insertion of a reference to securing recognition of the “true value” of the link between “culture and development”. The United States of America made a formal objection to paragraph (g) of Article 1, which contains the objective of recognition of the dual nature of cultural goods and services. Lastly, with regard to the Guiding Principles (Article 2), although the list in the consolidated text was favourably received, the Plenary amended three of the principles. Accordingly, a reference to the Universal Declaration of Human Rights was inserted into Principle 1 (Principle of respect for human rights and fundamental freedoms); the title of Principle 6 (Principle of sustainability) was changed to “Principle of sustainable development” and the title of principle 7 (Principle of access) was changed to “Principle of equitable access”. The United States of America made a formal objection to the expression “cultural industries” contained in Principle 4 on international solidarity and cooperation.

59. The Plenary’s work on the Scope of application (Article 3) had originally been deferred owing to the many cross-cutting issues questions covered by this provision. Following the decisions adopted by the Plenary concerning the Definitions, the experts decided to maintain the scope of application as set out in the consolidated text contained in Appendix 2. With regard to the Definitions (Article 4), which were regarded as an essential part of the Convention, much of the work entailed in reconciling divergent points of view had been carried out by an informal working group set up by the Chairperson. After a long debate, the group had identified specific points on which agreement had been reached but had not, however, reached a consensus on all of the definitions. The task had been completed by the Plenary, assisted by a joint proposal from the African Group and the European Union, in a context of informal consultations. The experts ultimately reached agreement on a set of definitions concerning cultural diversity, cultural expressions, cultural activities, goods and services, cultural industries, cultural policies, cultural content, protection and interculturality. The proposal to add a heading to the effect that the definitions were valid “for the purposes of the present Convention” was accepted. The United States of America made a formal objection to five of the definitions (cultural expressions, cultural activities, goods and services, cultural industries, cultural policies, and protection). Saudi Arabia expressed reservations on Article 4. Argentina reserved its position with regard to the definition of cultural activities, goods and services (Article 4.4).

60. The Rights and Obligations of Parties (Articles 5 to 19) were subject to intense negotiations. Although the consolidated text was considered to be a sound basis for their work, several amendments to the provisions therein were proposed by the experts and approved by the Plenary. The discussion on Article 5 centred mainly on the relationship between that article and the Parties’ other international obligations. While considering that Article 20 would resolve the issue to a large degree, the Plenary only took into account a few amendments aimed at further specifying the scope of Article 5 (for example, the replacement of the words “shall conform to the principles and objectives of this Convention” with “shall be consistent with the provisions of this Convention”).

61. Several amendments were made to Article 6 and a new subparagraph was added to the list of measures that may be adopted, namely measures aimed at “enhancing diversity of the media including through public service broadcasting”. Other amendments included adding the notion of “activities” to that of “cultural goods and services”, for the sake of consistency, and adding a

reference to “artists and other cultural professionals”. Moreover, the addition to Article 6.2(b) of the word “creation” to complete the stages of the creative process that must be taken into account in order to protect and promote the cultural activities, goods and services of countries was accepted, as was the insertion in Article 6.2(c) of “and activities in the informal sector” after the words “domestic independent cultural industries”. The United States of America made a formal objection to subparagraphs 2(b) and (c) of Article 6 and Japan reserved its position on paragraph 6.1. Only minor amendments were made to Articles 7 to 9 of the consolidated text, with the exception of subparagraph 1(b) of Article 7, which, has been clarified to require the Parties to encourage individuals and social groups to have access to diverse cultural expressions “from within their territory as well as from other countries of the world”. Israel expressed reservations on Article 9. Article 10 remained unchanged while Article 11 was entirely reworded following an amendment calling on Parties to acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions.

62. With regard to international cooperation and solidarity (Articles 12 to 18), the results obtained by the informal working group at the second session (January-February 2005) and the refinements and reorganization made by the Chairperson in his consolidated text, contained in Appendix 2, were largely endorsed by the Plenary. A few amendments were nevertheless proposed and accepted, such as the addition of the notion of “cultural activities” to goods and services, for the sake of consistency, as mentioned in paragraph 61 above. The Plenary also endorsed the six provisions of the consolidated text relating to cooperation, which included, *inter alia*, three articles – on preferential treatment for developing countries (Article 16), international cooperation in situations of serious threat to cultural expressions (Article 17) and the establishment of an “International Fund for Cultural Diversity” (Article 18). It should be noted that the question of preferential treatment gave rise to intense debate among some delegations, mainly on account of the potential impact of that article on States’ national immigration policies. A small group composed of a few delegations nonetheless found a consensus wording that was accepted by the Plenary. Australia, New Zealand and Canada made a declaration, however, stating that in the light of the debate, it was understood that the text of the article allowed sufficient flexibility in the application of domestic legislation, including immigration law. With regard to the International Fund for Cultural Diversity, an amendment calling for the provision of voluntary contributions on a more regular basis enabled some delegations, which had previously been reluctant to do so, to express support for the provision. Japan and Israel expressed reservations on the “Exchange, analysis and dissemination of information” (Article 19).

63. The article on Relationship to other instruments (Article 20) was the subject of long and intense debate, both in Plenary and in the informal working group set up by the Chairperson. That provision proved to be of fundamental importance to many delegations and a compromise solution was found at the end of the session. It was on the new wording of the article, proposed by the co-chairpersons of the working group and subsequently amended, that the Plenary debates came to an end. The text thus amended was submitted to the Plenary and endorsed by a large number of delegations. The proposal by the United States of America to submit two options on the article for subsequent consideration by the General Conference failed to win support. The United States of America then made a formal objection to the text of the article as adopted. Australia also requested that its objection be entered in the record, while other delegations (Argentina, Israel, Japan, Chile, New Zealand and Turkey) expressed reservations on the article. Argentina subsequently withdrew its reservation, in a letter dated 14 June 2005 to the Chairperson of the Plenary. Chile, which had expressed reservations in the absence of instructions from that country’s authorities, withdrew its reservations after consulting the Chilean Government, in a letter to the Secretariat dated 24 June 2005. The consolidated text on international consultation and coordination (Article 21) was accepted nearly in its entirety (one minor amendment was made by the Plenary).

64. The consolidated text on the Organs of the Convention (Articles 22 to 24) was broadly endorsed by the Plenary although a number of amendments to it were proposed. The amendments adopted related primarily to the Intergovernmental Committee as the governmental experts felt that it should be specified that the Committee should “function under the authority and guidance of, and be accountable to, the Conference of Parties” and added a new subparagraph requiring the Committee to “perform any other tasks as may be requested by the Conference of Parties”. Other amendments were made to specify additional responsibilities that would be entrusted to the Committee under the Convention.

65. The Final clauses (Articles 25 to 34) are generally the same as in the consolidated text contained in Appendix 2, although some technical amendments were made to some provisions. The most important substantive changes concerned Articles 25, 27 and 30. With regard to the mechanism for the settlement of disputes (Article 25), the Chairperson worked strenuously with an informal working group set up in the second week of the session to reconcile the various positions. While the governmental experts generally accepted the idea that the Convention should have a mechanism for the settlement of disputes, views diverged as to the type of mechanism (conciliation or arbitration) and whether it should be binding or non-binding in nature. Some experts disagreed on recourse to arbitration, even if jointly sought, because of its legal implications. Others were opposed to unilateral recourse to conciliation and preferred that such a procedure be set in motion at the request of both Parties. In view of the support expressed by some governmental experts for unilateral recourse to conciliation, India, then joined by the European Union, proposed a new text that provided for recourse to conciliation at the request of only one Party, accompanied by an *opt-out* clause, enabling a State to declare its intention not to be bound by the provision. The new proposal was endorsed by the Plenary.

66. The discussions on accession (Article 27) focused mainly on opening accession to any regional economic integration organization with competence in one or more domains covered by the Convention. A new text was drawn up by a working group composed of Canada, the European Union and Japan. The proposal clarified several basic elements of the article and was broadly supported in Plenary. The debate on federal or non-unitary constitutional systems (Article 30) focused mainly on a joint proposal by Switzerland and Canada to clarify and complete the clause proposed in the consolidated text contained in Appendix 2.

67. The third and last session of the intergovernmental meeting provided an opportunity to conduct a thorough review of all the articles of the preliminary draft convention, to discuss and amend them and even to propose alternative wordings to the text contained in Appendix 2. Thus, although the quality of that text was widely acknowledged by the Member States, many provisions were clarified and refined to reflect as faithfully as possible the wishes and concerns expressed by the experts throughout the intergovernmental negotiation process. Several proposals submitted by the informal working groups were also examined and discussed at length. In their desire to produce a final text for submission to the forthcoming General Conference, the great majority of the delegations chose the path of compromise and joined in the support generally expressed by the Plenary for each article of the Convention.

68. Following the reading of the final text of the draft Convention and the submission of the Rapporteur’s oral report, many delegations expressed satisfaction at the work accomplished over the previous nine months and described as remarkable the results achieved at the end of that negotiating process. Lastly, the experts adopted a recommendation (Annex IV) in which they affirmed that their mandate had been fulfilled and requested the Director-General to submit the draft preliminary Convention unchanged to the General Conference at its 33rd session.



69. In the light of the debates, the Plenary recommended that the General Conference adopt a new title, which reflected better the scope of application of the preliminary draft, namely: “Preliminary Draft Convention on the Protection and Promotion of the Diversity of Cultural Expressions”, instead of “Preliminary Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions”.

70. Several statements stressed the positive contribution of the text to the development of international law, noting that its adoption would be a significant step in the history of contemporary international relations in which culture is required to play a growing role. The United States of America disassociated itself from that conclusion in its final declaration.

71. The Director-General welcomed the efforts of the governmental experts which had resulted in a text proposing a series of measures designed to protect as much as promote the diversity of cultural expressions. As no consensus had been reached on the text, despite the very broad support expressed, he hoped that in the interval between the third session of the intergovernmental meeting and the forthcoming session of the General Conference, and in particular during the 172nd session of the Executive Board or at the meeting of Commission IV during the 33rd session of the General Conference, the few divergent points could be ironed out so that the Member States that had expressed reservations could endorse the future convention.

## **VI. Final observations on the text of the draft preliminary convention**

72. Pursuant to 32 C/Resolution 34, the Director-General submits to the General Conference for examination the text contained in Annex V, which was adopted at the intergovernmental meeting of experts as a preliminary draft convention, and their recommendation that the draft be submitted for adoption unchanged. It should be noted that the time allotted for the deliberations of the third session of the intergovernmental meeting did not allow for harmonization and refinement of the draft. The Chairperson of the Plenary, with the assent of the experts, therefore requested the Secretariat to carry out that task. To that end, the Secretariat decided to act on two levels: first, by incorporating into the preliminary draft a series of minor spelling, grammatical and typographic corrections and, second, by setting out in an annex (Annex VI) some proposals that it had made to ensure that the articles were clear and consistent.

ANNEX I

32 C/Resolution 34

**Desirability of drawing up an international standard-setting instrument on cultural diversity**  
(17 October 2003)

*The General Conference,*

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

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

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

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

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

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

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

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

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

## ANNEX II

### 169 EX/Decision 3.7.2

#### **Cultural diversity: summary of preliminary work and category VI meetings of experts, and prospects**

(169 EX/11, 169 EX/40 and 169 EX/45 Part II (Rev. in English only))

The Executive Board,

1. Recalling 32 C/Resolution 34,
2. Having taken note of document 169 EX/11,
3. Having examined document 169 EX/40,
4. Having been informed of the results of the first two category VI meetings of experts concerning the preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions, held in Paris from 17 to 20 December 2003 and from 30 March to 3 April 2004,
5. Takes note of the timetable proposed by the Director-General and requests him to continue his efforts to ensure the preparation, in accordance with Article 10 of the Rules of Procedure concerning recommendations to Member States and international conventions, of a preliminary report together with a preliminary draft international convention;
6. Invites the Director-General to convene meetings of government experts (category II) aimed at taking forward the preparation of the preliminary draft convention in order to report to the General Conference at its 33rd session;
7. Decides:
  - (a) that invitations to participate with the right to vote in one or more intergovernmental meetings (category II) to draw up an international convention on the protection of the diversity of cultural contents and artistic expressions will be sent to all Member States and Associate Members of UNESCO;
  - (b) that invitations to send observers to one or more meetings, as defined above, will be sent to the States mentioned in the Annex to document 169 EX/40;
  - (c) that an invitation to send observers to one or more meetings, as defined above, will be sent to Palestine, as mentioned in section (c) of the Annex to document 169 EX/40;
  - (d) that invitations to send representatives to one or more meetings, as defined above, will be sent to the organizations of the United Nations system with which UNESCO has concluded mutual representation agreements and which are listed in section (d) of the Annex to document 169 EX/40;
  - (e) that invitations to send observers to one or more meetings, as defined above, will be sent to the organizations, foundations and institutions listed in sections (e) (i), (ii), (iii), (f) and (g) of the Annex to document 169 EX/40;
  - (f) that the Director-General is authorized to send out any other invitations he may deem useful for the work of the above-mentioned intergovernmental meeting or meetings (category II), notifying the Executive Board thereof.

**ANNEX III**

**171 EX/Decision 19**

**Report by the Director-General on the progress towards the draft convention on the protection of the diversity of cultural contents and artistic expressions**

(171 EX/44; 171 EX/INF.18; 171 EX/64 Part I)

The Executive Board,

1. Recalling 32 C/Resolution 34 and 169 EX/Decision 3.7.2,
2. Having examined document 171 EX/44,
3. Having been informed of the results of the two sessions of the category II intergovernmental meeting of experts on the preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions held in Paris from 20 to 25 September 2004 and from 31 January to 11 February 2005,
4. Recognizing the progress made during these sessions, and noting the recommendation adopted by the experts at the second session of the intergovernmental meeting,
5. Requests the Director-General to continue his efforts to move forward the preparation of a preliminary draft international convention;
6. Authorizes the Director-General to convene a third session of the intergovernmental meeting of experts to further develop the preliminary draft convention;
7. Requests the Director-General to report to it at its 172nd session on the progress accomplished on the preliminary draft convention at the third session of the intergovernmental meeting.

## ANNEX IV

3 June 2005

### Recommendation

The third intergovernmental meeting of experts on the preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions, convened in Paris from 25 May to 4 June 2005;

*Taking note of* 32 C/Resolution 34 and 169 EX/Decision 3.7.2 of the Executive Board;

*Emphasizing* that this preliminary draft convention fills a void in international legislation regarding the protection and promotion of cultural diversity;

*Recalling* the three category VI meetings of independent experts (between December 2003 and May 2004) and the first two sessions of the category II intergovernmental meeting of experts (September 2004, January-February 2005) the fruitful results of which led to further progress in the drafting of the text of the preliminary draft convention;

*Expressing* its satisfaction at the results obtained thanks to the richness of the debates and to the will of the Member States to reinforce their international solidarity and their commitment in favour of the diversity of cultural expressions;

*Thanking* the Chairperson, Professor Kader Asmal, for his contribution towards the elaboration of the text with a view to reconciling the various viewpoints and for conducting the work in an open and constructive manner;

*Thanking* the donors for their important financial support towards the organization of the meetings of independent and intergovernmental experts;

*Thanking* the Secretariat for its efforts;

1. *Informs* the Director-General that the intergovernmental meeting has fulfilled the mandate entrusted to it, namely, “to take forward the preparation of a preliminary draft convention in order to report to the General Conference at its 33rd session”, (169 EX/Decision 3.7.2);
2. *Transmits* to the Director-General the text of the preliminary draft adopted by the present session of the intergovernmental meeting;
3. *Recommends* to the Director-General that he take all necessary measures to ensure the conformity between the six linguistic versions of the preliminary draft convention before its submission to the General Conference at its 33rd session;
4. *Recommends* to the General Conference at its 33rd session in October 2005 to take into consideration the following title for the Convention: “Preliminary Draft Convention on the Protection and Promotion of the Diversity of Cultural Expressions”;
5. *Further recommends* to the General Conference to adopt the preliminary draft convention at its 33rd session.

## ANNEX V

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

#### PREAMBLE

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

1. *Affirming* that cultural diversity is a defining characteristic of humanity,
2. *Conscious* that cultural diversity forms a common heritage of humanity and should be cherished and preserved for the benefit of all,
3. *Being aware* that cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for communities, peoples and nations,
4. *Recalling* that cultural diversity, flourishing within a framework of democracy, tolerance, social justice and mutual respect between peoples and cultures, is indispensable for peace and security at the local, national and international levels,
5. *Celebrating* the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments,
6. *Emphasizing* the need to incorporate culture as a strategic element in national and international development policies, as well as in international development cooperation, taking into account also the United Nations Millennium Declaration (2000) with its special emphasis on poverty eradication,
7. *Taking into account* that culture takes diverse forms across time and space and that this diversity is embodied in the uniqueness and plurality of the identities and cultural expressions of the peoples and societies making up humanity,
8. *Recognizing* the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion,
9. *Recognizing* the need to take measures to protect the diversity of cultural expressions, including its contents, especially in situations where cultural expressions may be threatened by the possibility of extinction or serious impairment,
10. *Emphasizing* the importance of culture for social cohesion in general, and in particular its potential for the enhancement of the status and role of women in society,

11. *Being aware* that cultural diversity is strengthened by the free flow of ideas, and that it is nurtured by constant exchanges and interaction between cultures,
12. *Reaffirming* that freedom of thought, expression and information as well as diversity of the media enable cultural expressions to flourish within societies,
13. *Recognizing* that the diversity of cultural expressions, including traditional cultural expressions, is an important factor that allows individuals and peoples to express and to share with others their ideas and values,
14. *Recalling* that linguistic diversity is a fundamental element of cultural diversity, and reaffirming the fundamental role that education plays in the protection and promotion of cultural expressions,
15. *Taking into account* the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit them for their own development,
16. *Emphasizing* the vital role of cultural interaction and creativity, which nurture and renew cultural expressions and enhance the role played by those involved in the development of culture for the progress of society at large,
17. *Recognizing* the importance of intellectual property rights in sustaining those involved in cultural creativity,
18. *Being convinced* that cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value,
19. *Noting* that while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, also represent a challenge for cultural diversity, namely in view of risks of imbalances between rich and poor countries,
20. *Being aware* of UNESCO's specific mandate to ensure respect for the diversity of cultures and to recommend such international agreements as may be necessary to promote the free flow of ideas by word and image,
21. *Referring* to the provisions of the international instruments adopted by UNESCO relating to cultural diversity and the exercise of cultural rights, and in particular the Universal Declaration on Cultural Diversity of 2001,

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

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

### **Article 1 – Objectives**

The objectives of this Convention are:

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

### **Article 2 – Guiding Principles**

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

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law or to limit the scope thereof.

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

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



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

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

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

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

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

Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy.

### **6. Principle of sustainable development**

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

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

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

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

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

## **II. SCOPE OF APPLICATION**

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

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

### **III. DEFINITIONS**

#### **Article 4 – Definitions**

**For the purposes of this Convention, it is understood that:**

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

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

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

##### **2. Cultural Content**

“Cultural content” refers to the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities.

##### **3. Cultural expressions**

“Cultural expressions” are those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.

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

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

##### **5. Cultural industries**

“Cultural industries” refers to industries producing and distributing cultural goods or services as defined in paragraph 4 above.

##### **6. Cultural policies and measures**

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

##### **7. Protection**

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

“Protect” means to adopt such measures.

## **8. Interculturality**

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

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

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

1. The Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention.
2. When a Party implements policies and takes measures to protect and promote the diversity of cultural expressions within its territory, its policies and measures shall be consistent with the provisions of this Convention.

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

1. Within the framework of its cultural policies and measures as defined in Article 4.6 and taking into account its own particular circumstances and needs, each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory.
2. Such measures may include the following:
  - (a) regulatory measures aimed at protecting and promoting diversity of cultural expressions;
  - (b) measures that, in an appropriate manner, provide opportunities for domestic cultural activities, goods and services among all those available within the national territory for their creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services, including provisions relating to the language used for such activities, goods and services;
  - (c) measures aimed at providing domestic independent cultural industries and activities in the informal sector effective access to the means of production, dissemination and distribution of cultural activities, goods and services;
  - (d) measures aimed at providing public financial assistance;
  - (e) measures aimed at encouraging non-profit organizations, as well as public and private institutions and artists and other cultural professionals, to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services, and to stimulate both the creative and entrepreneurial spirit in their activities;
  - (f) measures aimed at establishing and supporting public institutions, as appropriate;
  - (g) measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions;

- (h) measures aimed at enhancing diversity of the media including through public service broadcasting.

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

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

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

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

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

Parties shall:

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

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

Parties shall:

- (a) encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, *inter alia*, through educational and greater public awareness programmes;

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

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

Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention.

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

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

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

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

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

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

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

1. The strengthening of the cultural industries in developing countries through:
  - (a) creating and strengthening cultural production and distribution capacities in developing countries;
  - (b) facilitating wider access to the global market and international distribution networks for their cultural activities, goods and services;

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

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

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

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

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

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

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

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

1. An “International Fund for Cultural Diversity”, hereinafter referred to as “the Fund”, is hereby established.
2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.
3. The resources of the Fund shall consist of:
  - (a) voluntary contributions made by Parties;
  - (b) funds appropriated for this purpose by the General Conference of UNESCO;
  - (c) contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organizations; and public or private bodies or individuals;
  - (d) any interest due on resources of the Fund;
  - (e) funds raised through collections and receipts from events organized for the benefit of the Fund;
  - (f) any other resources authorized by the Fund’s regulations.
4. The use of resources of the Fund shall be decided by the Intergovernmental Committee on the basis of guidelines determined by the Conference of Parties.
5. The Intergovernmental Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by the Intergovernmental Committee.
6. No political, economic or other conditions that are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.
7. Parties shall endeavour to provide voluntary contributions on a regular basis towards the implementation of this Convention.

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

1. Parties agree to exchange information and share expertise concerning data collection and statistics on the diversity of cultural expressions as well as on best practices for its protection and promotion.
2. UNESCO shall facilitate, through the use of existing mechanisms within the Secretariat, the collection, analysis and dissemination of all relevant information, statistics and best practices.
3. UNESCO shall also establish and update a data bank on different sectors and governmental, private and non-profit organizations involved in the area of cultural expressions.
4. To facilitate the collection of data, UNESCO shall pay particular attention to capacity-building and the strengthening of expertise for Parties that submit a request for such assistance.

5. The collection of information identified in this Article shall complement the information collected under the provisions of Article 9.

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

### **Article 20 – Relationship to other treaties: mutual supportiveness, complementarity and non-subordination**

1. Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly, without subordinating this Convention to any other treaty,
  - (a) they shall foster mutual supportiveness between this Convention and the other treaties to which they are parties; and
  - (b) when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention.
2. Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.

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

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

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

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

1. A Conference of Parties shall be established. The Conference of Parties shall be the plenary and supreme body of this Convention.
2. The Conference of Parties shall meet in ordinary session every two years in conjunction with the General Conference of UNESCO to the extent possible. It may meet in extraordinary session if it so decides or if the Intergovernmental Committee receives a request to that effect from at least one third of the Parties.
3. The Conference of Parties shall adopt its own rules of procedure.
4. The functions of the Conference of Parties shall be, *inter alia*:
  - (a) to elect the Members of the Intergovernmental Committee;
  - (b) to receive and examine reports of the Parties to the Convention transmitted by the Intergovernmental Committee;
  - (c) to approve the operational guidelines prepared upon its request by the Intergovernmental Committee;



- (d) to take whatever other measures it may consider necessary to further the objectives of this Convention.

### **Article 23 – Intergovernmental Committee**

1. An Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Intergovernmental Committee”) shall be established within UNESCO. It shall be composed of representatives of 18 States Parties to the Convention, elected for a term of four years by the Conference of Parties upon entry into force of this Convention pursuant to Article 29.
2. The Intergovernmental Committee shall meet annually.
3. The Intergovernmental Committee shall function under the authority and guidance of, and be accountable to the Conference of Parties.
4. The Members of the Intergovernmental Committee shall be increased to 24 once the number of Parties to the Convention reaches 50.
5. The election of Members of the Intergovernmental Committee shall be based on the principles of equitable geographical representation as well as rotation.
6. Without prejudice to the other responsibilities conferred upon it by this Convention, the functions of the Intergovernmental Committee shall be:
  - (a) to promote the objectives of this Convention and to encourage and monitor the implementation thereof;
  - (b) to prepare and submit for approval by the Conference of Parties, upon its request, the operational guidelines for the implementation and application of the provisions of the Convention;
  - (c) to transmit to the Conference of Parties reports from Parties to the Convention, together with its comments and a summary of their contents;
  - (d) to make appropriate recommendations to be taken in situations brought to its attention by Parties to the Convention in accordance with relevant provisions of the Convention, in particular Article 8;
  - (e) to establish procedures and other mechanisms for consultation aimed at promoting the objectives and principles of this Convention in other international forums;
  - (f) to perform any other tasks as may be requested by the Conference of Parties.
7. The Intergovernmental Committee, in accordance with its rules of procedure, may invite at any time public or private organizations or individuals to participate in its meetings for consultation on specific issues.
8. The Intergovernmental Committee shall prepare and submit to the Conference of Parties, for approval, its own rules of procedure.

#### **Article 24 – UNESCO Secretariat**

1. The organs of the Convention shall be assisted by the UNESCO Secretariat.
2. The Secretariat shall prepare the documentation of the Conference of Parties and the Intergovernmental Committee as well as the agenda of their meetings and shall assist in and report on the implementation of their decisions.

### **VII. FINAL CLAUSES**

#### **Article 25 – Settlement of disputes**

1. In the event of a dispute between Parties to the Convention concerning the interpretation or the application of this Convention, the Parties shall seek a solution by negotiation.
2. If the Parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.
3. If good offices or mediation are not undertaken or if there is no settlement by negotiation, good offices or mediation, a Party may have recourse to conciliation in accordance with the procedure laid down in the Annex of this Convention. The Parties shall consider in good faith the proposal made by the Conciliation Commission for the resolution of the dispute.
4. Each Party may, at the time of ratification, acceptance, approval or accession, declare that it does not recognize the conciliation procedure provided for above. Any Party having made such a declaration may, at any time, withdraw this declaration by notification to the Director-General of UNESCO.

#### **Article 26 – Ratification, acceptance, approval or accession by Member States**

1. This Convention shall be subject to ratification, acceptance, approval or accession by Member States of UNESCO in accordance with their respective constitutional procedures.
2. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director-General of UNESCO.

#### **Article 27 – Accession**

1. This Convention shall be open to accession by all States not members of UNESCO but members of the United Nations, or of any of its specialized agencies, that are invited by the General Conference of UNESCO to accede to it.
2. This Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but which have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.
3. The following provisions apply to regional economic integration organizations:

- (a) This Convention shall also be open to accession by any regional economic integration organization, which shall, except as provided below, be fully bound by the provisions of the Convention in the same manner as States Parties;
- (b) In the event that one or more Member States of such an organization is also Party to the Convention, the organization and such Member State or States shall decide on their responsibility for the performance of their obligations under the Convention. Such distribution of responsibility shall take effect following completion of the notification procedure described in sub-paragraph (c). The organization and the Member States shall not be entitled to exercise rights under the Convention concurrently. In addition, regional economic integration organizations, in matters within their competence, shall exercise their rights to vote with a number of votes equal to the number of their Member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice-versa;
- (c) A regional economic integration organization and its Member State or States which have agreed on a distribution of responsibilities as provided in subparagraph (b) shall inform the Parties of any such proposed distribution of responsibilities in the following manner:
  - (i) in their instrument of accession, such organization shall declare with specificity, the distribution of their responsibilities with respect to matters governed by the Convention;
  - (ii) in the event of any later modification of their respective responsibilities, the regional economic integration organization shall inform the depositary of any such proposed modification of their respective responsibilities; the depositary shall in turn inform the Parties of such modification;
- (d) Member States of a regional economic integration organization which become Parties to this Convention shall be presumed to retain competence over all matters in respect of which transfers of competence to the organization have not been specifically declared or informed to the depositary;
- (e) “Regional economic integration organizations” means an organization constituted by sovereign States, members of the United Nations or of any of its specialized agencies, to which those States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to become a Party to it.

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

#### **Article 28 – Point of contact**

Upon becoming Parties to this Convention, each Party shall designate a “*point of contact*” as referred to in Article 9.

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

1. This Convention shall enter into force three months after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession, but only with respect to those States or regional economic integration organizations that have deposited their respective

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

2. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by Member States of the organization.

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

Recognizing that international agreements are equally binding on Parties regardless of their constitutional systems, the following provisions shall apply to Parties which have a federal or non-unitary constitutional system:

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

### **Article 31 – Denunciation**

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

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

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

### **Article 33 – Amendments**

1. A Party to this Convention may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all Parties. If, within six months from the date of dispatch of the communication, no less than one half of the Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the Conference of Parties for discussion and possible adoption.

2. Amendments shall be adopted by a two-thirds majority of Parties present and voting.
3. Once adopted, amendments to this Convention shall be submitted to the Parties for ratification, acceptance, approval or accession.
4. For Parties which have ratified, accepted, approved or acceded to them, amendments to this Convention shall enter into force three months after the deposit of the instruments referred to in paragraph 3 of this Article by two thirds of the Parties. Thereafter, for each Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that Party of its instrument of ratification, acceptance, approval or accession.
5. The procedure set out in paragraphs 3 and 4 shall not apply to amendments to Article 23 concerning the number of Members of the Intergovernmental Committee. These amendments shall enter into force at the time they are adopted.
6. A State or a regional economic integration organization referred to in Article 27 which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered to be:
  - (a) Party to this Convention as so amended; and
  - (b) a Party to the unamended Convention in relation to any Party not bound by the amendments.

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

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

#### **Article 35 – Registration**

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

## ANNEX

### CONCILIATION PROCEDURE

#### **Article 1 – Conciliation**

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.

## ANNEX VI

### REVISIONS SUGGESTED BY THE SECRETARIAT FOR THE SAKE OF CLARITY AND CONSISTENCY

ARTICLE	SUGGESTED REVISION	JUSTIFICATION
Preamble/ paragraph 15	<i>Taking into account</i> the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit <u>from</u> them for their own development,	-grammatical revision - to ensure clarity within the English version and conformity between six linguistic versions
Preamble/ parargaph18	<i>Being convinced</i> that cultural activities, goods and services, <u>conveying identities, values and meanings</u> , have both an economic and a cultural nature, <del>because they convey identities, values and meanings</del> , and must therefore not be treated as solely having commercial value,	to ensure clarity within the English version and conformity between six linguistic versions
Article 4.1	Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment <u>of cultural expressions</u> , whatever the means and technologies used.	to ensure clarity within the English version and conformity between six linguistic versions
Article 4.3	“Cultural expressions” <del>are</del> <u>refers to</u> those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.	<b>to ensure consistency with the other definitions</b>
Article 6.2 (b)	measures that <u>provide opportunities</u> , in an appropriate manner, <del>provide opportunities</del> for domestic cultural activities, goods and services among all those <u>the full range of cultural activities, goods and services</u> available within the national territory for their <u>with regard to the</u> creation, production, dissemination, distribution and enjoyment <u>of such domestic cultural activities</u> , goods and services, including provisions relating to the language used <u>therefor</u> for such activities, goods and services;	to ensure clarity within the English version and conformity between six linguistic versions
Article 8.2	Parties may take all appropriate measures to protect <del>and preserve</del> cultural expressions in situations referred to in paragraph 1 in a manner consistent with the provisions of this Convention.	to ensure consistency with the definition of "protection"
Article 12 (a)	facilitate dialogue among Parties on cultural <del>policy</del> <u>policies and measures</u> ;	to ensure consistency with the definition of cultural policies and measures
Article 14.3	<del>Technology transfer</del> <u>The transfer of technology and know-how</u> through the introduction of appropriate incentive measures <del>for the transfer of technology and know-how</del> , especially in the areas of cultural industries and enterprises,	to ensure clarity within the English version and conformity between six linguistic versions
Article 17	Parties shall cooperate in providing assistance to each other, <del>and</del> , in particular to developing countries, in situations referred to under Article 8.	minor stylistic improvement



33 C/23 Add.  
10 October 2005  
Original: French/English

Item 8.3 of the agenda

**PRELIMINARY REPORT BY THE DIRECTOR-GENERAL SETTING OUT  
THE SITUATION TO BE REGULATED AND THE POSSIBLE SCOPE OF THE  
REGULATING ACTION PROPOSED, ACCOMPANIED BY THE PRELIMINARY  
DRAFT OF A CONVENTION ON THE PROTECTION OF THE DIVERSITY OF  
CULTURAL CONTENTS AND ARTISTIC EXPRESSIONS**

**ADDENDUM**

**OUTLINE**

**Source:** Document 33 C/23 and 172 EX/Decision 19.

**Background:** In accordance with 171 EX/Decision 19, the Director-General reported to the Executive Board, at its 172nd session, on the progress accomplished at the third session of the intergovernmental meeting of experts on the preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions (172 EX/20). After having examined document 172 EX/20, the Executive Board adopted – by show-of-hands vote – 172 EX/Decision 19 (as submitted by 51 Member States in document 172 EX/PX/DR.1).

**Purpose:** The present addendum sets out 172 EX/Decision 19 as a supplement to document 33 C/23.



**172 EX/Decision 19**

The Executive Board,

1. Bearing in mind 32 C/Resolution 34,
2. Recalling 169 EX/Decision 3.7.2 and 171 EX/Decision 19,
3. Having examined document 172 EX/20,
4. Stressing that the governmental experts have fulfilled their mandate, namely “taking forward the preparation of the preliminary draft convention in order to report to the General Conference at its 33rd session”, in accordance with 169 EX/Decision 3.7.2,
5. Takes note of the text of the preliminary draft adopted by the third session of the intergovernmental meeting of experts, held at Headquarters from 25 May to 3 June 2005, which will be examined by the General Conference at its 33rd session, in compliance with 32 C/Resolution 34;
6. Recommends that the General Conference at its 33rd session consider the said preliminary draft as a draft convention and adopt it as a UNESCO convention.