



United Nations
Educational, Scientific and
Cultural Organization

Ref.: LA/DEP/2014/022

Subject: **Convention for the Safeguarding of the Intangible Cultural Heritage
(Paris, 17 October 2003) – Communication from the Government of
Romania**

The Director-General of the United Nations Educational, Scientific and Cultural Organization, acting in her capacity as depositary, communicates the following information.

By a depositary letter, LA/DEP/2013/026, the Director-General informed that the instrument of ratification of the above Convention had been deposited with the Director-General by Malaysia on 23 July 2013 and that it contained the following declaration at the time of deposit:

“Declaration:

The Government of Malaysia declares that the application and implementation of the provisions of this Convention shall be subject to, and in accordance with, the applicable domestic laws of Malaysia and the applicable administrative and policy measures of the government of Malaysia.” [Original: English]

On 17 November 2014, the Director-General received a communication dated 17 November 2014 from the Permanent Delegation of Romania to UNESCO concerning the above-mentioned declaration by the Government of Malaysia.

The text of the communication in question is enclosed (Annex).

ANNEX

“Malaysia has formulated a declaration stating that it will apply and implement the provisions of the Convention for the safeguarding of the intangible cultural heritage (2003) in accordance with its domestic laws, as well as the administrative and policy measures of its government, and the Government of Romania has carefully examined the content of this declaration.

The Government of Romania appreciates this statement as problematic. The declaration made by the Government of Malaysia constitutes a reservation as it seems to modify its obligations under the Convention. A reservation which consists of a general reference to national law without specifying its content does not clearly define for the other parties to the Convention the extent to which the reserving state commits itself to the Convention and therefore may raise doubts as to the commitment of the reserving state to fulfill its obligations under the Convention. Therefore, such a declaration is incompatible with the object and purpose of the convention, which consist in the obligation to safeguard the cultural heritage of state parties.

Such a reservation is also, in the view of the Government of Romania, subject to general principles of treaty interpretation and to Article 27 of the Vienna Convention of the Law of Treaties, according to which a party may not invoke the provisions of its domestic law as justification for failure to perform its treaty obligations.

The objection shall not otherwise affect the entry into force of the Convention between Romania and Malaysia. The Convention is applicable between these two parties without the benefit of the reservation.” [Original: English]