



United Nations
Educational, Scientific and
Cultural Organization

Organisation
des Nations Unies
pour l'éducation,
la science et la culture

Convention on the Protection
and Promotion of the
Diversity of
Cultural Expressions

Convention sur la protection
et la promotion de la diversité des
expressions culturelles



TEN KEYS

TEN KEYS


to
the Convention on the
Protection and Promotion
of the

Diversity of
Cultural
Expressions



United Nations
Educational, Scientific and
Cultural Organization

0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100



The present document is distributed for information purposes only and aims neither to interpret nor to complement the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

TEN KEYS

to
the Convention on the
Protection and Promotion
of the

Diversity of Cultural Expressions

adopted by the General Conference of UNESCO at its 33rd session, 2005

1. WHY THE CONVENTION?.....	2
To remain true to UNESCO's mandate	
To contribute to the development of the notion of culture	
To effectively complement UNESCO's standard-setting action in the field of culture	
<hr/>	
2. WHAT IS THE PURPOSE OF THE CONVENTION?.....	4
<hr/>	
3. WHAT ARE THE SPECIFIC GOALS OF THE CONVENTION?	5
<hr/>	
4. WHAT ARE THE GUIDING PRINCIPLES OF THE CONVENTION?.....	6
<hr/>	
5. WHAT ARE THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE CONVENTION?	6
Rights	
Obligations	
Mutual supportiveness, complementarity and non-subordination	
<hr/>	
6. WHEN DOES THE CONVENTION TAKE EFFECT?	9
Ratification	
Entry into force	
<hr/>	
7. HOW DOES THE CONVENTION OPERATE?	9
Follow-up mechanisms	
The means	
Settlement of disputes	
<hr/>	
8. WHO ARE THE MAIN CUSTODIANS OF THE CONVENTION?	10
<hr/>	
9. WHO ARE THE BENEFICIARIES OF THE CONVENTION?	11
<hr/>	
10. WHAT ARE THE CORE MESSAGES OF THE CONVENTION?.....	11
<hr/>	
ANNEX	13
SELECTED UNESCO DOCUMENTS RELATED TO CULTURAL DIVERSITY	
Documents on cultural diversity	
Documents relating to the Convention	

1 Why the Convention?

TO REMAIN TRUE TO UNESCO'S MANDATE

As expressed in its Constitution (1946) UNESCO, the only United Nations agency with responsibility for culture, is entrusted with the dual mandate of promoting the “fruitful diversity of cultures” and the “free flow of ideas by word and image”.

These fundamental principles of diversity and freedom for the advancement of mutual understanding constantly appear together in the Organization’s goal of ensuring the “orchestration of separate cultures, not into uniformity but into a unity-in-diversity, so that human beings are not imprisoned in their separate cultures but can share in the riches of a single diversified world culture” (Report of the Director-General, 1947).

UNESCO has placed the pursuit of this goal – which is based not only on the acknowledgement of diversity, but also on the opportunities for wider dialogue that it offers – at the heart of its mission and constantly renews its approaches and activities. This is borne out by recognition of the equal dignity of all cultures, the protection of cultural property, the promotion of intercultural dialogue, the respect for cultural rights, the formulation of cultural policies to promote diversity, the promotion of constructive pluralism, the preservation of cultural heritage, etc.

While culture at UNESCO remains an essential platform for building peace in the minds of men and women, the gradual transformation of the international arena has led to changes in the Organization’s conceptual approaches, programmes and forms of action.

TO CONTRIBUTE TO THE DEVELOPMENT OF THE CONCEPT OF CULTURE

Long considered from the angle of fine arts and literature, culture is now regarded as covering a much broader field: “culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs” (Preamble to the UNESCO Universal Declaration on Cultural Diversity, 2001).

With hindsight, four major stages can be discerned in the transformation of the meaning and functions ascribed to culture. It is evident that these stages are not clear-cut and that activities carried out at each stage have been pursued at subsequent stages:

- (i) the broadening of the concept of culture as art production to include the notion of cultural identity (1950s and 1960s). During this period, UNESCO endeavoured to defend cultures in response to particular situations, such as those resulting from decolonization, by recognizing the equal dignity of cultures;
- (ii) building awareness of the vital link between culture and development as the foundation of international cooperation and solidarity with developing

countries (1970s and 1980s). During this period, UNESCO, while continuing to carry out activities undertaken earlier, began to lay emphasis on reciprocal borrowing among countries and societies to pave the way to partnerships established on an equal footing;

- (iii) acknowledgement of cultural aspirations and bases in the construction of democracies (1980s and 1990s). During this period, the Organization demonstrated awareness of the various forms of discrimination and exclusion experienced by persons belonging to minorities, indigenous peoples and immigrant population groups;
- (iv) enhancement of dialogue among cultures and civilizations in their rich diversity, considered as the common heritage of humanity by the UNESCO Universal Declaration on Cultural Diversity (1990s and 2000s). In consonance with the broader definition of the concept of culture, the Declaration addresses the dual challenge of cultural diversity: on the one hand, ensuring harmonious interaction among people and groups with plural, varied and dynamic cultural identities as well as a willingness to live together; and on the other hand, defending creative diversity, i.e., the wide variety of forms through which cultures reveal their heritage-related and contemporary expressions in time and space. During this period, UNESCO sought to meet the needs of societies whose plural character was being enhanced by the accelerating pace of globalization.

As a continuing, flexible and changing process, culture remodels tangible and intangible cultural heritage while inventing new forms of expression, thus revealing its infinite diversity. In a changing international environment, UNESCO has always sought to respond with practical solutions to the particular challenges that each era has posed to the constantly evolving concept of culture. Cultural diversity, through its ability to promote dialogue and creativity, is the essential condition for peace and sustainable development.

TO EFFECTIVELY COMPLEMENT UNESCO'S STANDARD-SETTING ACTION IN THE FIELD OF CULTURE

The renewed challenges raised by culture since UNESCO's establishment have caused the Organization to act by all available means: as a laboratory of ideas in anticipating and identifying appropriate cultural strategies and policies; as a clearinghouse for collecting, transmitting, disseminating and sharing information, knowledge and best practices; as a builder of the human and institutional capacities of Member States; and as a standard-setter in inviting Member States to agree on common rules designed to strengthen genuine international cooperation.

As a standard-setter, UNESCO has produced several binding international legal instruments in the four core areas of creative diversity; namely cultural and natural heritage, movable cultural property, intangible cultural heritage and contemporary creativity. In all, seven conventions have been drawn up:

- the Universal Copyright Convention (1952, revised in 1971);
- the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) (first protocol in 1954, second protocol in 1999);

- the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970);
- the Convention concerning the Protection of the World Cultural and Natural Heritage (1972);
- the Convention on the Protection of the Underwater Cultural Heritage (2001);
- the Convention for the Safeguarding of the Intangible Cultural Heritage (2003);
- the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions stands out among the heritage-related conventions in that it focuses primarily on the diversity of cultural expressions, as circulated and shared through cultural activities, goods and services, the most contemporary transmitters of culture.

It thus effectively complements the set of legal instruments deployed by UNESCO to promote creative diversity and foster a world environment in which creativity of individuals and peoples is protected in its rich diversity.

2 What is the purpose of the Convention?

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions does not cover all the aspects of cultural diversity addressed in the UNESCO Universal Declaration on Cultural Diversity. It deals with specific thematic fields of the Declaration, such as those set out in Articles 8 to 11: on the one hand, the need to recognize that cultural goods and services convey identity, values and meaning and consequently cannot be considered as mere commodities or consumer goods like any others; and on the other hand, the need for States to take all appropriate measures to protect and promote diversity of cultural expressions while ensuring the free flow of ideas and works; and lastly, the need to redefine international cooperation, the keystone of the Convention, as each form of creation bears the seeds of a continuing dialogue.

The Convention addresses the many forms of cultural expression that result from the creativity of individuals, groups and societies and that convey cultural content with symbolic meaning, as well as artistic and cultural values that originate from or express cultural identities. Cultural expressions – whatever the media and technologies used – are transmitted by cultural activities, goods and services which, as acknowledged by the Convention, have a two-fold (economic and cultural) nature. It is for this reason that they cannot be regarded as mere objects of trade negotiations.

The Convention's primary objective is to strengthen the five inseparable links of the same chain; namely, creation, production, distribution/dissemination,

access and enjoyment of cultural expressions conveyed by cultural activities, goods and services – particularly in developing countries.

By focusing on the protection and promotion of the diversity of cultural expressions, the Convention acknowledges that, in an increasingly interconnected world, each individual can have freer and more immediate access to a rich diversity of cultural expressions from either within or outside his or her country; however, this potential has not yet been fully realized in the current global context.

It must be pointed out that, in UNESCO terminology, “protection” refers to the adoption of measures aimed at preservation, safeguarding and enhancement. That is the sense in which the term is used in various instruments such as the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention on the Protection of the Underwater Cultural Heritage (2001) and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003). The term “protection” in this context has none of the connotations that it may evoke in the commercial sphere. When used in conjunction with the term “promotion”, it implies the need to keep alive cultural expressions imperilled by the quickening pace of globalization. “Promotion” calls for perpetual regeneration of cultural expressions to ensure that they are not confined to museums, “folklorized” or reified. Furthermore, the paired terms “promotion and protection” are inseparable. Article 7 of the Convention focuses on promotion and Article 8 on protection; the latter, which reinforces the former, pointedly states that all measures to that end must be taken “in a manner consistent with the provisions of this Convention”, that is, in respect for human rights, fundamental freedoms and existing international treaties.

3 What are the specific goals of the Convention?

Through its main objective – the protection and promotion of the diversity of cultural expressions – the Convention strives to create an enabling environment in which the diversity of cultural expressions may be affirmed and renewed for the benefit of all societies. At the same time, it reaffirms the ties that bind culture, development and dialogue and establishes an innovative platform for international cultural cooperation. To this end, the Convention aims to:

- create conditions for cultures to flourish and to interact freely in a mutually beneficial manner;
- give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;
- identify new arrangements for international cooperation, which is the keystone of the Convention;
- 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, while ensuring the free flow of ideas and works.

By virtue of the latter objective, which also defines the scope of the Convention, the defence of the diversity of cultural expressions can be considered a part of the multidimensional, rather than the strictly economic, processes of globalization.

Culture has thus, for the first time in the history of international law, found its rightful place on the political agenda, out of concern to humanize globalization. In this proactive context, culture has become a genuine platform for dialogue and development, thereby opening up new areas of solidarity.

4 What are the guiding principles of the Convention?

A series of principles recalls and guarantees that no measure or policy designed to protect and promote the diversity of cultural expressions shall infringe human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions.

In addition, the principle of openness and balance ensures that when States adopt measures in support of the diversity of cultural expressions, they should seek to promote, in an appropriate manner, openness to other cultures of the world.

Among the other principles are that of the complementarity of economic and cultural aspects of development, and that of sustainable development, which figures prominently in the Convention.

Lastly, the principle of equitable access is twofold: access to a rich and diversified range of cultural expressions, and access for all cultures to appropriate means of expression and dissemination.

5 What are the rights and obligations of the Parties to the Convention?

One of the fundamental objectives of the Convention is “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”. The aim in reaffirming this right was not to establish a State monopoly but rather to put into practice cultural governance, i.e, interaction between individual and institutional stakeholders in sharing responsibility for the diversity of cultural expressions.

The Convention contains a series of Parties’ rights and obligations, which aim to protect and promote the diversity of cultural expressions in a spirit of mutual reinforcement and complementarity with other international treaties and guided by international concerted action and cooperation.

RIGHTS

Respect for human rights and the fundamental freedoms of individuals constitutes the backdrop of the Convention. In line with the UNESCO Universal Declaration on Cultural Diversity, the Convention recognizes the connecting link between cultural diversity and the full realization of human rights and fundamental freedoms; one could not exist without the other. In that connection, “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”. Thus the risk of cultural relativism, which in the name of diversity would recognize cultural practices that infringe the fundamental principles of human rights, has been eliminated.

The Convention allows the Parties to determine the existence of special situations where cultural expressions on their territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding. It also allows them to take all appropriate measures to protect and preserve cultural expressions in such situations.

Moreover, the Convention acknowledges the sovereign right of the Parties to formulate and implement their cultural policies and to adopt measures designed, *inter alia*, to:

- provide opportunities for domestic cultural activities, goods and services among all those available within the national cultural activities, goods and services;
- provide domestic independent cultural industries and activities in the informal sector with effective access to the means of production, dissemination and distribution of cultural activities, goods and services;
- encourage non-profit organizations and also public and private institutions, artists and other cultural professionals to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services;
- promote the diversity of the media, including through public service broadcasting;
- provide public financial assistance and establish and support public service institutions in an appropriate manner.

OBLIGATIONS

In return for these rights, the Convention provides for a number of obligations that are incumbent on the Parties, which are called upon to:

- endeavour to promote in their territory the creation of an environment which encourages individuals and social groups to create, produce, disseminate, distribute, and have access to their cultural expressions, paying attention to

the special circumstances and needs of women and social groups, including persons belonging to minorities and indigenous peoples on the one hand, and, on the other hand, to have access to diverse cultural expressions within their territory and from other countries of the world;

- ensure information sharing and transparency by providing appropriate information in their reports to UNESCO every four years on measures taken to protect and promote the diversity of cultural expressions;
- foster the public's understanding of the importance of the diversity of cultural expressions through educational and public-awareness programmes;
- acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions by encouraging the active participation of civil society in efforts by Parties to achieve the objectives of the Convention;
- incorporate culture into sustainable development and strengthen international cooperation in support of developing countries by several means, for instance, by strengthening their cultural industries, building their capacities to develop and implement cultural policies, technology transfer, financial support and preferential treatment for their artists and other cultural professionals and for their cultural goods and services.

MUTUAL SUPPORTIVENESS, COMPLEMENTARITY AND NON-SUBORDINATION

Parties to the Convention shall exercise these rights and fulfil these obligations in a spirit of mutual supportiveness, complementarity and non-subordination to other international instruments.

The implementation of the provisions of the Convention may bring to the fore interaction between the Parties' rights and obligations contained in this new treaty, on one hand, and the rights and obligations arising under other international commitments, on the other hand. Owing to the growing number of international agreements, it has become increasingly necessary to insert such a clause on the relationship between treaties in order to provide for the way in which the rules under various instruments should be linked to each other and to clarify the legal status of one convention in relation to other treaties.

Thus, the function of a clause on the relationship between international agreements is to specify the link between these treaties in the event that rights or obligations from different sources overlap. In this respect, the Convention stresses that the Parties shall perform in good faith their obligations under this Convention and under all other treaties to which they are parties, without subordinating the Convention to any other treaty. Accordingly, Parties shall foster mutual supportiveness between the Convention and the other treaties to which they are parties and shall take into account the relevant provisions of the Convention when interpreting and applying the other treaties to which they are parties or when entering into other international obligations. In all cases, the Convention specifically states that nothing in the Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.

6 When does the Convention take effect?

RATIFICATION

In order to become Parties to the Convention, the Member States of UNESCO must deposit an instrument of ratification, acceptance, approval or accession with the Director-General of UNESCO. States not Members of UNESCO but Members of the United Nations, or of any of its specialized agencies, may accede to the Convention if they are invited to do so by the General Conference of UNESCO. Regional economic integration organizations, as defined by the Convention, may also accede to the Convention.

ENTRY INTO FORCE

The Convention shall enter into force three months after the thirtieth instrument of ratification, acceptance, approval or accession has been deposited with the Director-General of UNESCO.

7 How does the Convention operate?

FOLLOW-UP MECHANISMS

When the Convention enters into force, two organs will be established:

- the Conference of Parties, which shall be the plenary and supreme body of the Convention;
- the Intergovernmental Committee, which shall have responsibility for promoting the objectives of the Convention and for encouraging and monitoring its implementation in a spirit of transparency and vigilance.

The first meeting of the Conference of Parties and of the Intergovernmental Committee will have a crucial role to play, not only in drawing up their respective Rules of Procedure but also in establishing guidelines for the Convention's implementation. The UNESCO Secretariat will assist both the Conference of Parties and the Intergovernmental Committee. The Secretariat will compile the documentation for their meetings, assist in the application of their decisions and report on them.

THE MEANS

In addition to the provisions regarding rights and obligations, the material means made available to the Parties by the Convention will be, in particular, the

International Fund for Cultural Diversity, whose resources will include voluntary contributions by Parties, funds appropriated for that purpose by the General Conference of UNESCO and various contributions, gifts and bequests.

In the framework of the implementation of the Convention, UNESCO shall also facilitate the collection, analysis and dissemination of all the information, statistics and best practices concerning the diversity of cultural expressions. Furthermore, the Organization shall establish and update a data bank on the various sectors and governmental private and non-profit organizations involved in the field of cultural expressions.

SETTLEMENT OF DISPUTES

Provision has been made for a dispute settlement mechanism to deal with any possible disagreements on the interpretation or application of particular rules or principles relating to the Convention from a strictly cultural perspective.

The mechanism obliges Parties to negotiate as a first step, then allows them to have recourse to mediation or good offices. If settlement cannot be reached through one or more of these means, a conciliation procedure may be initiated. Parties may, however, decide not to recognize this procedure by making a declaration to that effect at the time of ratification, acceptance, approval or accession.

8 Who are the main custodians of the Convention?

The smooth functioning of the Convention requires the participation of all cultural actors:

- public actors (the State and its institutions) whose sovereignty is recognized by the Convention;
- civil actors, whose fundamental role in protecting and promoting the diversity of cultural expressions must be recognized by the Parties to the Convention. At the same time, the Convention encourages civil society to actively participate in pursuing the objectives of the Convention;
- private actors, namely cultural enterprises and industries, especially those of developing countries, which the Convention seeks to promote in its provisions on international cooperation and development cooperation;
- persons belonging to minorities and indigenous peoples are acknowledged as key actors by the Convention and, to that end, Parties are invited to pay due attention to their special circumstances and needs in the field of creation.

9 Who are the beneficiaries of the Convention?

There are innumerable beneficiaries of the Convention:

- in its spirit, the Convention benefits all individuals and societies because it aims to ensure that they enjoy a diversity of cultural expressions in the interests of openness, balance and freedom;
- recognizing the important contribution of artists and all those involved in the creative process, cultural communities and organizations that support them in their work, the Convention benefits cultural professionals and practitioners in particular;

furthermore, some of the Convention's provisions identify specific beneficiaries:

- countries that lack capacities to produce and disseminate their own cultural expressions, especially the developing countries; the Convention provides for different forms of assistance for these measures (official development aid, low interest loans, grants, etc.) and for preferential treatment for artists and other cultural professionals and practitioners from these countries;
- various social groups, including women and persons belonging to minorities and indigenous peoples, by including among the Parties' obligations that of creating an environment conducive to the creation, production, dissemination and enjoyment of the cultural expressions of these groups.

10 What are the core messages of the Convention?

The Convention takes note of the fact that cultural creativity, which constitutes one facet of cultural diversity, has been bestowed on the whole of humanity. It paves the way to strengthening human relations in a globalized world that sometimes lacks compassion. Although on the cultural supply side, there has never been such a large number of works on offer, the Convention aims to ensure that they are enjoyed by as many people as possible, and that the choice available to them not be limited to a small number of works, whether they be local or foreign in origin.

The Convention seeks to defend cultural wealth which draws its capacity to interact, to be renewed and be transmitted from both its internal and worldwide sources. The broadest dissemination of this creative diversity, whether derived from internal or external sources, brings cultural and social advantages, thus reaching beyond its strictly commercial dimension.

The Convention does not aspire to control or even restrict, but rather to promote and protect the diversity of cultural expressions. The definition of protection ensures that the action taken and the means used by Parties – whose sovereign right has been recognized – will aim to preserve, safeguard and enhance the

diversity of cultural expressions and not to limit the flows on such grounds as protectionism or identity-based isolationism. Moreover, a number of guarantees are enshrined in the Convention which, under the “principle of openness and balance”, ensures that the measures taken by States must also promote “openness to other cultures of the world”.

Furthermore, the Convention allows Parties to take protective measures in cases where cultural expressions are at risk of extinction or under serious threat, and international cooperation is strongly encouraged in order to assist developing countries in such situations. In all cases, the objectives and the principles set out in the Convention must be respected since they aim to foster genuine exchanges between the cultural expressions of all peoples and to enhance the diversity of such expressions nationally and internationally.

In so doing, the Convention helps to strengthen links between “culture and development”, the latter term being understood in its material as well as its symbolic sense: referring to, on the one hand, economic growth, and, on the other hand, the fulfilment of human beings enjoying their fundamental rights, open to the world without losing their own points of reference. It also lays the foundations for a new form of cooperation and local, regional and international solidarity by fostering exchanges and partnerships, particularly advantageous to countries whose cultural expressions are in jeopardy.

Lastly, the Convention recognizes and establishes as a right new forms of dialogue resulting from cultural goods and services that disseminate cultural expressions and make them available to all. Each form of creation serves as a meeting point, opens up new horizons, transforms viewpoints and broadens the scope of our freedom and choices, thus helping to shape a more humane world. Each form of creation creates a link between regions, between individuals and between generations, thus weaving the fabric of tomorrow’s heritage.

By focusing on the diversity of cultural expressions, the Convention contributes towards making “the defence of cultural diversity an ethical imperative, inseparable from respect for human dignity”. By once again turning their attention to cultural expressions and to full respect for their free dissemination, the Member States of UNESCO have demonstrated their sense of responsibility for this inexhaustible source of invention, innovation and imagination that fosters mutual understanding and dialogue among cultures.

Annex

Selected UNESCO documents related to cultural diversity

DOCUMENTS ON CULTURAL DIVERSITY

Culture, Creativity and Markets, World Culture Report, Paris, 1998.

Cultural Diversity, Conflict and Pluralism, World Culture Report, Paris, 2000.

Culture, Trade and Globalization, Questions and Answers, Paris, 2000.

International Flows of Selected Cultural Goods, 1980-98, Institute for Statistics, Paris, 2000.

UNESCO and the Issue of Cultural Diversity: Review and Strategy, 1946-2004, Revised Version, Paris, 2004.

International Flows of Selected Cultural Goods and Services 1994-2003, Institute for Statistics/Sector for Culture, Montreal/Paris, 2005.

DOCUMENTS RELATING TO THE CONVENTION

Preliminary study on the technical and legal aspects relating to the desirability of a standard-setting instrument on cultural diversity, Decision 166/EX/3.4.3, Paris, April 2003.

Desirability of drawing up an international standard-setting instrument on cultural diversity, 32 C/52, , Paris, 18 July 2003.

Desirability of drawing up an international standard-setting instrument on cultural diversity, Resolution 32 C/34, Paris, 17 October 2003.

Report First Meeting of Experts (category VI) on the First Draft of an International Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, UNESCO Headquarters, 17-20 December 2003, CLT/CPD/2003-608/01, Paris, 20 February 2004.

Progress Report on the preparation of a preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions, 169 EX/ Decision 3.7.2, Paris, April 2004.

Report Second Meeting of Experts (Category VI) on the Preliminary Draft on the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, 30 March – 3 April 2004, CLT/CPD/2004/602/6, Paris, 14 May 2004.

Report Third Meeting of Experts (Category VI) on the Preliminary Draft on the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, 28 - 31 May 2004, CLT/CPD/2004/603/5, Paris, 23 June 2004.

Preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions, Preliminary report of the Director-General, CLT/CPD/2004/CONF.201/1, Paris, July 2004.

Preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions, CLT/CPD/2004/CONF.201/2, Paris, July 2004.

First session of the intergovernmental meeting of experts on the Preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions, Report by the Secretariat, CLT-2004/CONF.201/9, Paris, November 2004.

Preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions, Drafting Committee, Part I to V, Paris, December 2004, CLT/CPD/2004/CONF.607/1 to CLT/CPD/2004 CONF.607/5.

Preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions, Text revised by the Drafting Committee, CLT/CPD/2004/CONF.607/6, Paris, December 2004.

Preliminary report of the Director-General containing two preliminary drafts of a Convention on the protection of the diversity of cultural contents and artistic expressions, CLT/CPD/2005/CONF.203/6, Paris, 3 March 2005.

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/Decision 19, April 2005.

Appendix 2 to the Preliminary report of the Director-General containing two preliminary drafts of a Convention on the protection of the diversity of cultural contents and artistic expressions, Consolidated text prepared by the Chairperson of the intergovernmental meeting, CLT/CPD/2005/CONF.203/6 - Add, Paris, 29 April 2005.

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, 33 C/23, Paris, 4 August 2005.

Report by the Director-General on the progress achieved during 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/Decision 19, September 2005.

Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 20 October 2005, 33rd session of the General Conference.

30 QUESTIONS

30 FREQUENTLY ASKED QUESTIONS CONCERNING

the Convention on the
Protection and Promotion
of the

Diversity of Cultural Expressions



United Nations
Educational, Scientific and
Cultural Organization

30 FREQUENTLY ASKED QUESTIONS CONCERNING

the Convention on the
Protection and Promotion
of the

Diversity of Cultural Expressions

THE CONTEXT	2
1. What is the Convention on the Protection and Promotion of the Diversity of Cultural Expressions?	2
2. What is meant by “cultural expressions”?	2
3. What are the challenges facing the Convention?	3
4. What are the conceptual foundations of the Convention?	3
5. Why does the Convention not deal with cultural diversity as a whole?	3
6. What were the stages that led to the adoption of the Convention?	4

THE TEXT	5
7. What are the objectives of the Convention?	5
8. What is the scope of application of the Convention ?	5
9. What rights does the Convention confer on the Parties?	5
10. What are the obligations of the Parties to the Convention?	6
11. What is the role of international cooperation under the Convention?	7
12. What principles will guide the States Parties in the implementation of the Convention?	7

OPERATION OF THE CONVENTION	8
13. When will the Convention take effect?	8
14. What is the procedure for ratifying the Convention?	8
15. What are the follow-up mechanisms?	9
16. What is the Conference of Parties? What are its functions?	9
17. What is the Intergovernmental Committee? What are its functions?	9
18. What are the functions of the UNESCO Secretariat?	9
19. What is the role of civil society in the implementation of the Convention?	10
20. What is the International Fund for Cultural Diversity?	10
21. How does the dispute settlement mechanism work?	10
22. Does the Convention define its relationship with other international legal instruments?	11
23. How does the Convention deal with links to other international instruments?	11

OTHER QUESTIONS	12
24. What are the advantages of ratifying the Convention?	12
25. What are the benefits for developing countries?	12
26. Is the Convention concerned with persons belonging to minorities and indigenous peoples?	12
27. Is the Convention concerned with intellectual property?	13
28. Does the Convention concern itself with linguistic diversity?	13
29. Does the Convention restrict the free flow of ideas and information? Can it be used to justify censorship?	13
30. Can the Convention have an impact on the trade regime of States Parties?	14

THE CONTEXT

1 WHAT IS THE CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS?

Today, cultural ideas and expressions – whether in the form of books, CDs, cassettes, live performances, radio and television programmes, films, videos, DVDs or Internet – are largely transmitted through increasingly technical and industrial forms of production and distribution. Given this radical change in the modes of creation and enjoyment of culture, the question arises as to whether everyone partakes of the same advantages.

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in 2005 by the UNESCO General Conference, is a binding international legal instrument. Its goal is to protect and promote the diversity of cultural expressions, particularly as embodied and conveyed in cultural activities, goods and services, which are the vehicles of contemporary culture. It sets out to create a legal framework favourable to all with regard to the production, distribution/dissemination, access to and enjoyment of a wide range of cultural expressions of diverse origin.

The Convention highlights the decisive role of cultural policies and defines the rights and obligations of Parties with regard to the protection and promotion of the diversity of cultural expressions, both nationally and internationally. States have agreed on the urgent need for this instrument, given that the accelerating processes of globalization tend to heighten the disparities between those countries lacking and those possessing the capacity to create, produce and disseminate their cultural expressions.

2 WHAT IS MEANT BY “CULTURAL EXPRESSIONS”?

The term “Cultural expressions” refers to the various ways in which the creativity of individuals and social groups takes shape and manifests itself. These manifestations include expressions transmitted by words (literature, tales...), sound (music...), images (photos, films...) – in any format (printed, audiovisual, digital etc.) – or by activities (dance, theatre...) or objects (sculptures, paintings...).

Today, the production and dissemination of cultural expressions increasingly conform to an industrial and economic logic. Cultural expressions may thus be said to be transmitted largely through those “cultural activities, goods and services”, which that have become the main vehicles of culture. At the same time, they have taken on great economic importance and have become major stakes in international trade. The dual economic and cultural nature of cultural activities, goods and services has been progressively recognized, together with the fact that, as the bearers of identity, values and meaning, they cannot be treated as mere commodities.

By focusing on the protection and promotion of the diversity of cultural expressions, the 2005 Convention takes account of the fact that, in an increasingly interconnected world, each individual can have freer and more immediate access to a rich diversity of cultural expressions of domestic or foreign origin, and that this possibility has yet to be fully realized in a world in need of greater solidarity.

3 WHAT ARE THE CHALLENGES FACING THE CONVENTION?

The Convention aims to give culture its rightful place on the international political agenda, particularly by recognizing its symbolic value and that it is indissociable from human well-being. More precisely, it takes up a number of challenges faced by cultural expressions in our era:

- to recognize the dual economic and cultural nature of cultural activities, goods and services, which convey and transmit cultural expressions and, in so doing, constitute vehicles of identity, values and meaning, irrespective of their commercial value.
- to avoid jeopardizing the cultural expressions of various social groups, including those of persons belonging to minorities and indigenous peoples.
- to manage the risks of unbalanced flows of cultural expressions between developed countries and developing countries.

4 WHAT ARE THE CONCEPTUAL FOUNDATIONS OF THE CONVENTION?

The Convention is consistent with UNESCO's thinking and activity. In this regard, UNESCO's Constitution assigns it the dual mandate of "preserving the [...] fruitful diversity of the cultures [...] of the States Members" and of "advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend[ing] such international agreements as may be necessary to promote the free flow of ideas by word and image".

From 1946 to the present day, the issue of cultural diversity has been explicitly or implicitly addressed by the Organization according to the changing historical or political contexts. Since the 1990s, in response to the acceleration of the globalization processes, cultural diversity came to the fore particularly during the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998), whose action plan provided inspiration for numerous subsequent works, symposia, and round tables of Culture Ministers as well as for the publication of a periodical report on culture. In this regard, two World Culture Reports were published: *Culture, Creativity and Markets* (1998) and *Cultural Diversity, Conflict and Pluralism* (2000). Drawing on lessons learned from the work accomplished, the UNESCO General Conference unanimously adopted the UNESCO Universal Declaration on Cultural Diversity in 2001. By raising cultural diversity to the status of "common heritage of humanity", the Declaration recognizes the need, on the one hand, to ensure a harmonious co-existence between individuals and groups from diverse cultural horizons, and, on the other hand, to defend a creative capacity through the many different tangible and intangible forms of cultures.

5 WHY DOES THE CONVENTION NOT DEAL WITH CULTURAL DIVERSITY AS A WHOLE?

It is true that the Convention deals with only one aspect of cultural diversity as defined by the 2001 Declaration in the following articles: 8 (cultural goods and services as distinct commodities), 10 (reinforcing capacities for creation and dissemination at the global level); and 11 (creating partnerships between the public and private sectors and civil society). Other aspects of cultural diversity are already covered by six international conventions, which have

been drawn up progressively at UNESCO: the Universal Copyright Convention (1952, revised in 1971); the Convention for the Protection of Cultural Property in the Event of Armed Conflict (first protocol 1954, second protocol 1999); the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970); the Convention concerning the Protection of the World Cultural and Natural Heritage (1972); the Convention on the Protection of the Underwater Cultural Heritage (2001); the Convention for the Safeguarding of the Intangible Cultural Heritage (2003). Today the three pillars of the preservation and promotion of creative diversity are: the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage; the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage; and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The latter differs from the other two heritage-related conventions in that it focuses specifically on the diversity of cultural expressions disseminated and made accessible largely through cultural activities, goods and services.

6 WHAT WERE THE STAGES THAT LED TO THE ADOPTION OF THE CONVENTION?

The preparatory work on the preliminary draft of the Convention was carried out over a period of two years. Negotiations were initiated with the adoption of Resolution 32C/34, at the 32nd session of the General Conference (October 2003). In accordance with this resolution and with the procedures for the elaboration and adoption of international instruments at UNESCO, the Director-General first entrusted fifteen independent experts with the task of undertaking preliminary reflection and submitting to him recommendations on the preparation of a preliminary draft of a Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions. In the course of three meetings, the independent experts succeeded in drawing up a detailed text.

Following these meetings, Mr Koïchiro Matsuura, Director-General of UNESCO, submitted to the Member States a preliminary report accompanied by a preliminary draft convention in mid-July 2004 with a view to gathering their comments and observations by mid-November 2004. At the same time, he undertook consultations with other international governmental organizations: the World Trade Organization (WTO), the United Nations Conference on Trade and Development (UNCTAD) and the World Intellectual Property Organization (WIPO), which forwarded their comments on the preliminary draft convention in November 2004.

The three sessions of the intergovernmental meeting of experts took place between September 2004 and June 2005 so as to enable the representatives of UNESCO's Member States to discuss and improve the text drawn up by the group of independent experts. As for the meetings of the Drafting Committee set up at the first intergovernmental session, they made it possible to finalize the text of the preliminary draft of the Convention. These different stages culminated in the adoption of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, on 20 October 2005, by the General Conference at its 33rd session (148 States voted in favour, 2 voted against and 4 abstained).

For more information on each stage of the process, see www.unesco.org/culture/diversite/convention

THE TEXT

7 WHAT ARE THE OBJECTIVES OF THE CONVENTION?

In pursuit of its main objective – the protection and promotion of the diversity of cultural expressions – the Convention sets out to create a legal framework conducive to the manifestation and renewal of the diversity of cultural expressions while benefiting societies as a whole (Article 1). More specifically, it seeks to ensure conditions favouring the creation, production, distribution/dissemination of a greater diversity of cultural expressions of varied origins together with access to and enjoyment of those cultural expressions by all. To this end, the Convention aims to:

- reaffirm the sovereign right of States to draw up cultural policies;
- recognize the specific nature of cultural goods and services as vehicles of identity, values and meaning; and
- strengthen international cooperation and solidarity with a view to favouring the cultural expressions of all countries, in particular those whose cultural goods and services suffer from lack of access to the means of creation, production and dissemination at the national and international level.

The Convention thereby seeks to help promote intercultural dialogue based on the equal dignity of all cultures and encourage sustainable development, which is understood not simply in terms of economic growth but also as a means of achieving a satisfying intellectual, moral and spiritual life.

8 WHAT IS THE SCOPE OF APPLICATION OF THE CONVENTION?

The Convention defines what a Party to the Convention is authorized or undertakes to do to protect and promote the diversity of cultural expressions. Consequently, the Convention applies to “the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions” (Article 3). For the purposes of this Convention, “cultural policies and measures” are defined as “those policies and measures relating 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” (Article 4.6). These cultural policies and measures, whose main lines are set out in Section IV of the Convention entitled “Rights and Obligations of Parties”, may be aimed at strengthening local cultural industries, supporting artists and cultural professionals or boosting arts education among other activities.

9 WHAT RIGHTS DOES THE CONVENTION CONFER ON THE PARTIES?

The Convention confers on Parties the sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions in conformity with the Charter of the United Nations, the principles of international law and

universally recognized human rights instruments (Article 5). The Convention provides a tentative list of measures that the Parties may adopt in this regard (Article 6):

- regulatory measures aimed at protecting and promoting the diversity of cultural expressions;
- measures that provide opportunities for domestic cultural activities, goods and services to find their place among the whole range of available activities, goods and services;
- measures aimed at providing independent domestic cultural industries and activities in the informal sector with effective access to the means of production, dissemination and distribution of cultural activities, goods and services;
- measures aimed at providing public financial assistance;
- measures aimed at encouraging all cultural stakeholders (public and private institutions, artists and cultural professionals, non-profit organizations) to promote the free exchange and circulation of ideas and cultural expressions;
- measures aimed at supporting public service institutions;
- measures aimed at encouraging and supporting artists and all creators;
- measures to promote media diversity, particularly public broadcasting services.

However, the exercise of this right must be in conformity with the provisions of the Convention, in particular its “Objectives” and “Guiding Principles” (see also Questions 7 and 13).

The Convention also allows Parties to determine the existence of special situations where cultural expressions on their territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding, and, thus, take all appropriate measures to protect and preserve cultural expressions in such situations.

10 WHAT ARE THE OBLIGATIONS OF THE PARTIES TO THE CONVENTION?

As a counterpart to the rights granted to them, Parties to the Convention undertake to protect and promote, domestically and internationally, the diversity of cultural expressions in conformity with the provisions of the Convention (Article 5).

One of the first commitments is to promote the diversity of cultural expressions (Article 7). The Parties are required to take steps to ensure an environment enabling individuals and social groups to create, produce, disseminate, distribute and have access to their own cultural expressions as well as to the full range of cultural expressions worldwide. The Parties also undertake to share information and ensure transparency (Article 9). This commitment with regard to transparency entails submitting a report 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. Education and public awareness are also obligations devolving upon the Parties (Article 10). To this end, Parties are required to encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions and to cooperate with each other and with international and regional organizations. Finally, the Parties assume obligations at the international level concerning cooperation between countries (Question 11) and the role to be played by civil society (Question 19).

11 WHAT IS THE ROLE OF INTERNATIONAL COOPERATION UNDER THE CONVENTION?

The Convention attaches considerable importance to international cooperation, which Parties are required to promote (Articles 12 and 14). International solidarity is an effective response to the inequalities between States with regard to the means available to cultural expressions. The above-mentioned articles set forth practical lines of action based on partnership. They aim to increase capacities for the creation, production, dissemination and distribution of cultural expressions so that Parties, particularly those whose cultural expressions are in danger and/or who lack the means to ensure their protection and promotion, can rely on international solidarity.

This solidarity, as expressed for example through preferential treatment for developing countries (Article 16) and a readiness to provide mutual assistance in situations where cultural expressions are seriously threatened (Article 17), is aimed at reducing in a concrete manner the risks of disparity that globalization processes are liable to pose for the diversity of cultural expressions.

12 WHAT ARE THE GUIDING PRINCIPLES FOR IMPLEMENTATION OF THE CONVENTION BY THE STATES PARTIES?

The rights granted to Parties, and their corresponding commitments, are not to be implemented in any manner a Party pleases. In keeping with the provisions of the Convention, rights must be exercised and obligations assumed, in particular in the light of its purposes and goals. In this connection, the Convention lays down in Article 2 a number of principles that should guide Parties in their interpretation and implementation of the Convention. These principles include respect for human rights and fundamental freedoms, such as freedom of expression, information and communication. The principle of openness and balance is fundamental since it specifies that States, through the policies and measures they adopt, should constantly seek to promote, in an appropriate manner, openness to other cultures of the world. This principle of openness is in itself a guarantee of cultural diversity. Respect for the principle of the equality of all cultures is essential in the development of policies and measures, which should take special account of the cultural expressions of persons belonging to minorities and indigenous peoples. Respect for the principle of equitable access, guaranteeing every individual effective enjoyment of a wide range of cultural expressions, is also crucial to ensuring that cultural diversity is shared and perpetuated. Lastly, mention should be made of the principle of the complementarity of the economic and cultural aspects of development, as well as that of sustainable development, on which the Convention places special emphasis.

OPERATION OF THE CONVENTION

3

WHEN WILL THE CONVENTION TAKE EFFECT?

The Convention will enter into force three months after the date of deposit of the 30th instrument of ratification, acceptance, approval or accession with respect to those States or regional economic integration organizations that have deposited their respective instruments of ratification, acceptance, approval, or accession by that date. It shall enter into force with respect to other Parties three months after the deposit of their instrument of ratification, acceptance, approval or accession (Article 29).

4

WHAT IS THE PROCEDURE FOR RATIFYING THE CONVENTION?

“Ratification” designates the international act whereby a State or regional economic integration organization affirms its consent to be bound by a treaty. The Convention is thus submitted to the ratification, acceptance, approval or accession of the Member States of UNESCO whose instruments have been deposited with the Organization’s Director-General (Article 26). It is also open to accession by non-Member States of UNESCO and regional economic integration organizations (Article 27).

Thus a Member State or regional economic integration organization wishing to become a party to the Convention must ratify it. The internal procedure leading to the deposit of the instrument of ratification with the Director-General of UNESCO varies considerably in terms of its duration and mode of implementation, as it is specific to each Member State or regional economic integration organization.

A model of the instrument of ratification (or acceptance, accession or approval, as appropriate) is set out below:

INSTRUMENT OF RATIFICATION

Whereas the ... *(title of the Convention)* ... is open to ratification by ... *(name of the country)* ..., under the terms of its Article ... *(number of applicable Article)* ...,

Now therefore the Government of ... *(name of the country)* ... having considered the aforesaid Convention hereby ratify the said Convention and undertake faithfully to carry out the stipulations therein contained.

IN WITNESS THEREOF, I have signed and sealed this instrument.

Done at ... *(place)* ..., this day of ... *(date)* ...

(Signature)

Head of State or Prime Minister or Minister of Foreign Affairs (Seal)

Source : http://portal.unesco.org/fr/ev.php-URL_ID=27541&URL_DO=DO_TOPIC&URL_SECTION=201.html

5

WHAT ARE THE FOLLOW-UP MECHANISMS?

The Convention establishes two bodies responsible for implementing and monitoring the Convention: the Conference of Parties and the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions, which is assisted by the UNESCO Secretariat. The first meeting of the Conference of Parties and that of the Intergovernmental Committee will have a key role to play in the effective implementation of the Convention.

6

WHAT IS THE CONFERENCE OF PARTIES? WHAT ARE ITS FUNCTIONS?

The Conference of Parties is the assembly of all the Parties to the Convention and is the Convention's plenary and supreme body (Article 22). It will meet in ordinary session every two years and, if necessary, in extraordinary session. Its functions are the following: to elect the Members of the Intergovernmental Committee; to approve the operational guidelines prepared by the Committee for the implementation and application of the Convention; and to examine the reports of the Parties on the measures they have taken with respect to the Convention (Articles 18.4 and 22.4.b). The Conference of Parties can also take whatever other measures it may consider necessary to further the objectives of the Convention. Moreover, the Conference of Parties approves the Committee's rules of procedure and the basic guidelines for using the resources of the International Fund for Cultural Diversity.

7

WHAT IS THE INTERGOVERNMENTAL COMMITTEE? WHAT ARE ITS FUNCTIONS?

The Intergovernmental Committee is the body responsible for promoting the objectives of the Convention and encouraging and monitoring the implementation thereof (Article 23). The members of the Committee are elected by the Conference of Parties for a term of four years.

The main functions of the Intergovernmental Committee include: preparing operational guidelines for the implementation and application of the Convention; transmitting to the Conference of Parties reports from Parties to the Convention together with its comments and a summary of their contents; and deciding on the use of the International Fund for Cultural Diversity. In addition, the Committee serves as an advisory body since it is required to make recommendations on situations brought to its attention by the Parties, particularly in cases where cultural expressions are "at risk of extinction, under serious threat or otherwise in need of urgent safeguarding" (Articles 8 and 23.6.d). The Intergovernmental Committee also establishes procedures and other mechanisms for consultation aimed at promoting the objectives and principles of the Convention in other international forums.

8

WHAT ARE THE FUNCTIONS OF THE UNESCO SECRETARIAT?

The UNESCO Secretariat assists the Conference of Parties and the Intergovernmental Committee in organizing their meetings and prepares the relevant documentation (Article 24). The Secretariat also assists in and reports on the implementation of their decisions.

UNESCO will also facilitate, through existing Secretariat mechanisms such as the Institute for Statistics, the collection, analysis and dissemination of all relevant information, statistics and best practices relating to the diversity of cultural expressions. UNESCO will furthermore establish and update a databank on different sectors and governmental, private and non-profit organizations involved in the area of cultural expressions (Article 19).

9

WHAT IS THE ROLE OF CIVIL SOCIETY IN THE IMPLEMENTATION OF THE CONVENTION?

Civil society is not only a beneficiary of the Convention but also a partner in its implementation. Non-governmental organizations representing cultural professionals, for example, have actively participated in the process of drawing up the Convention, and it is important that civil society should henceforth play a part in its implementation. In this respect, the Convention explicitly recognizes the “fundamental role of civil society in the protection and promotion of the diversity of cultural expressions” and calls on Parties to strengthen partnerships with civil society, non-governmental organizations and the private sector in pursuit of the objectives of the Convention (Articles 11, 12.c, 12.d).

The Intergovernmental Committee may also invite at any time public or private organizations or individuals to participate in its meetings for consultation on specific issues (Article 23.7).

10

WHAT IS THE INTERNATIONAL FUND FOR CULTURAL DIVERSITY?

The International Fund for Cultural Diversity established under the Constitution (Article 18) is a funds-in-trust placed at the disposal of Parties, particularly developing countries, to help them implement and apply the Convention. Use of the Fund’s resources is decided by the Intergovernmental Committee in accordance with the guidelines provided by the Conference of Parties.

The resources of the Fund will consist, in particular, of voluntary contributions made by the Parties and gifts or bequests by other States, other regional and international organizations, public or private bodies and individuals. Resources may also take the form of funds raised through collections and receipts from events organized for the benefit of the Fund.

11

HOW DOES THE DISPUTE SETTLEMENT MECHANISM WORK?

Provision is made for a dispute settlement mechanism to address any divergences of view between Parties on the interpretation or application of certain rules or principles relating to the Convention (Article 25). This mechanism obliges the Parties to negotiate in the first instance before having recourse to mediation and good offices.

If the Parties are unable to agree on a solution to the dispute by one or other of these means, they can have recourse to conciliation. This procedure can be set in motion at the request of a single party to the dispute. However, the Parties may choose not to recognize this procedure simply by making a declaration to that effect at the time of ratification, acceptance, approval or accession. In this sense, the Convention places its own mechanism at the disposal of Parties

wishing to make use of it to facilitate the effective settlement of conflicts with other Parties that have also accepted it.

Finally, the dispute settlement mechanism only commits the Parties to the Convention, which are necessarily States or regional economic integration organizations. Thus, while the Convention recognizes in many respects the important role of civil society and the private sector in the protection and promotion of the diversity of cultural expressions, the dispute settlement mechanism is not made available to actors not party to the Convention (such as enterprises), which are not legally bound by the Convention.

2 DOES THE CONVENTION DEFINE ITS RELATIONSHIP WITH OTHER INTERNATIONAL LEGAL INSTRUMENTS?

The Convention is an international legal instrument dealing with the diversity of cultural expressions. Although its scope of application is confined “to the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions” (Article 3, see Question 8), the implementation of the provisions of the Convention may reveal certain points of interaction between the rights and obligations of Parties contained in this new treaty and the rights and obligations deriving from other international instruments to which they are party.

In this respect, Article 20 of the Convention defines the relationship with other international treaties and specifies the linkage between these treaties in the case of an overlap of rights and obligations. According to this article, the Parties must perform in good faith their obligations under the Convention as well as those under all other treaties they have signed, without subordinating the said Convention to the other treaties. To this end, the Convention calls on the Parties to foster mutual supportiveness between the Convention and the other treaties. It also calls on them to take into account the relevant provisions of the Convention when interpreting or applying the other treaties to which they are parties or when entering into other international obligations.

3 HOW DOES THE CONVENTION DEAL WITH THE LINKS TO OTHER INTERNATIONAL INSTRUMENTS?

Article 20 of the Convention specifies that nothing in the Convention shall be interpreted as modifying the rights and obligations of the Parties under any other treaties to which they are parties.

This provision applies to all treaties, whether they are already in force or in preparation. Thus, Article 20 faithfully reflects one of the main objectives of the Convention, namely to recognize the dual economic and cultural nature of cultural activities, goods and services. All fields of international legislation likely to interact with the implementation of the Convention are envisaged in a spirit of complementarity and mutual supportiveness; while all international treaties have different objectives, these objectives can be pursued in a compatible and complementary manner.

Finally, in the interests of concerted action and coordination between international legal instruments, the Parties also undertake to promote the objectives and principles of the Convention in other international forums and to consult each other to that end (Article 21). This is another way of acknowledging the interactions liable to arise between the Convention and other international treaties, and Parties are responsible for building such “bridges” between the different international negotiation forums.

OTHER QUESTIONS



WHAT ARE THE ADVANTAGES OF RATIFYING THE CONVENTION?

The merit of the Convention lies in the place it assigns to creativity in the context of globalization. The overall effect of its provisions is to benefit individuals and societies as a whole by guaranteeing them the enjoyment of a diversity of cultural expressions in a spirit of openness, balance and freedom.

Foremost among the beneficiaries are countries lacking the capacities for the production and dissemination of their cultural expressions, particularly developing countries. The Convention will also have positive effects for artists and culture professionals and practitioners, i.e., all those involved in the process of creating, producing and disseminating cultural expressions, whether individually or collectively. Other beneficiaries will be institutions and cultural enterprises, both public and private, including those belonging to the informal sector as well as non-profit organizations engaged in the same process.



WHAT ARE THE BENEFITS FOR DEVELOPING COUNTRIES?

While the developing countries are rich in terms of creativity and cultural expressions, there is a genuine disparity between the capacities of the developed and developing countries when it comes to producing and disseminating their own cultural expressions, thereby reducing the possibilities of developing countries to contribute actively to diversity at the international level. A number of provisions in the Convention are therefore aimed at developing countries. These provisions call for several measures including: the strengthening of their cultural industries and their institutional and management capacities, the transfer of technology and know-how, and different forms of financial assistance (Article 14). Support for some of these cooperation projects could be provided by the International Fund (Article 18).



IS THE CONVENTION CONCERNED WITH PERSONS BELONGING TO MINORITIES AND INDIGENOUS PEOPLES?

Although it is not specifically devoted to the cultural expressions of minorities and indigenous peoples per se, the text of the Convention recognizes the importance of these expressions for the diversity of cultural expressions. Accordingly, the Convention's Preamble reminds us of the importance of traditional forms of knowledge – particularly knowledge systems of indigenous peoples – as a source of intangible and material wealth and of their positive contribution to sustainable development. Moreover, the Convention affirms the principle of the equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples (Article 2.3). It also calls on the Parties to pay “due attention to the special circumstances and needs of various social groups, including persons belonging to minorities and indigenous peoples” (Article 7.1.a) as regards the exercise of their rights at the national level.

Persons belonging to minorities and indigenous peoples are the depositories of knowledge occupying a special place in the diversity of cultural expressions in terms of the wide range and originality of the world views they transmit. However, their cultural expressions are often weakened. For this reason, they will likely become a priority under this Convention.

2

IS THE CONVENTION CONCERNED WITH INTELLECTUAL PROPERTY?

The Convention does not deal specifically with intellectual property, which at the international level falls mainly within the remit of the World Intellectual Property Organization (WIPO), with which UNESCO has consulted informally in the framework of the preparation of this instrument. However, the Convention does not overlook the importance of intellectual property rights in the protection and promotion of the diversity of cultural expressions. In its Preamble, the Convention recognizes the importance of these rights for individuals participating in cultural creativity (paragraph 17) and the need to ensure the protection and promotion of traditional knowledge – particularly the knowledge systems of indigenous peoples – as a source of intangible and material wealth (paragraph 8).

8

DOES THE CONVENTION CONCERN ITSELF WITH LINGUISTIC DIVERSITY?

Languages are an intrinsic part of the diversity of cultural expressions. The fundamental role of linguistic diversity in the promotion of cultural diversity is accordingly underlined in the Preamble. Moreover, Article 6.2.b, concerning the measures that could be taken by the Parties to the Convention to provide, in an appropriate manner, opportunities for domestic cultural activities, goods and services among all those available within the national territory, also refers to measures relating to the language used in such activities, goods and services. That is to say that the Parties, in the context of the policies and measures they are authorized to implement to foster the diversity of cultural expressions, may also, while respecting fundamental freedoms and the principles of balance and openness inherent in the Convention, foster linguistic diversity in the different stages of creation, production, dissemination and distribution of cultural expressions through cultural activities, goods and services (see Question 9).

9

DOES THE CONVENTION RESTRICT THE FREE FLOW OF IDEAS AND INFORMATION? CAN IT BE USED TO JUSTIFY CENSORSHIP?

The Preamble to the Convention reaffirms that “freedom of thought, expression and information, as well as diversity of the media, enable cultural expressions to flourish within societies” (paragraph 12). In addition, the first guiding principle refers to the respect for human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights (Article 2.1). Consequently, the Convention can only be diverted from its purposes insofar as States violate human rights as recognized in international legal instruments.

While the Convention reaffirms the sovereign right of States to adopt policies and measures to foster the diversity of cultural expressions, it specifies that the latter should be respectful of its provisions and therefore of the objectives, principles, rights and obligations that it sets forth. Far from favouring censorship, the Convention provides additional safeguards to existing provisions for the protection of fundamental rights.

The risk of government censorship is all the less likely since the principle of the sovereignty of Parties to the Convention is coupled with the the “principle of openness and balance” (Article 2.8) stipulating that States, by adopting these policies and measures, “should seek to promote, in an appropriate manner, openness to other cultures of the world ...”. This openness moreover takes the form of rights and obligations since under Article 7 “Parties shall endeavour to create in their territory an environment which encourages individuals and social groups (...) to have

access to diverse local expressions from within their territory as well as from other countries of the world". Finally, Parties must see to the sharing and transparency of information by providing every four years, in their reports to UNESCO, appropriate information on measures taken to protect and promote the diversity of cultural expressions (Article 9).



CAN THE CONVENTION HAVE AN IMPACT ON THE TRADE REGIMES OF STATES PARTIES?

The Convention concerns the diversity of cultural expressions and is aimed at protecting and promoting this diversity, in particular through cultural policies and measures and through the strengthening of international cooperation. However, some consider that such policies and measures – aimed, for example, at encouraging domestic artists and local productions – may have an impact on the trade regime of States Parties.

Once the Convention has entered into force for States and regional economic integration organizations, it will neither change nor modify the rights and obligations deriving from other legal instruments to which they are parties, including international trade agreements, whether at the bilateral, regional or multilateral level.

Completing the series of UNESCO's standard-setting instruments in the field of culture, the Convention does not call into question the independence or the autonomy of international trade law. In this connection, it is important to note that the term "protection", employed in the context of this Convention refers to the: "the adoption of measures aimed at the preservation, safeguarding and enhancement of the diversity of cultural expressions" (Article 4.7). This is the sense in which it is used in various UNESCO instruments in the cultural field, such as the 1972 Convention concerning the Protection of the Cultural and Natural Heritage, the 2001 Convention on the Protection of the Underwater Cultural Heritage, and the 2003 Convention on the Safeguarding of the Intangible Cultural Heritage. In this Convention, the term "protection", coupled with the term "promotion" reflects the need to safeguard the vitality – if not the survival – of cultural expressions placed at risk by the accelerating processes of globalization.