

Avant-projet de convention
sur la sauvegarde du patrimoine culturel immatériel

Liste des Etats ayant soumis des commentaires et amendements au Secrétariat

Synthèse des réponses au 22 janvier 2003

ICH = Intangible cultural heritage PCI = patrimoine culturel immatériel

PAYS	Article 2 - Définitions	Articles 8 à 10 bis Comité	Articles 11 et 12 Listes	Articles 15 à 18 Fonds
Algérie	<i>Commentaires généraux</i> : Satisfait de l'élaboration d'une convention internationale. Souhaite que la convention soit comprise comme un processus d'approfondissement de la convention de 1972, c'est-à-dire de reconnaissance et de réhabilitation d'une dimension immatérielle pour rétablir l'équilibre et réduire le décalage existant entre deux aspects (matériel et immatériel) d'un même patrimoine culturel. Mentionne la loi algérienne relative à la protection du patrimoine culturel et naturel qui identifie le bien culturel immatériel uniquement par rapport à ses propriétés culturelles intrinsèques. Les normes et règles nécessaires à la gestion et à la protection des biens considérés comme ressources culturelles immatérielles devraient procéder d'instruments spécifiques relevant de la sphère économique. L'imbrication des approches culturelle et économique risquerait de compromettre le principe de la sauvegarde du PCI dans le sens d'un glissement vers les catégories économiques.			
Allemagne	The definition should not try to cover all elements of the ICH but be restricted to a general outline of the cultural areas covered by the Convention.	The creation of three committees is a far too heavy and expensive structure; the maximum should be a single Committee composed of representatives from State Parties, which would consult with competent experts and NGOs. All references to further Committees should be deleted in the draft.	- - -	The contributions made by State Parties should be <u>voluntary</u> . No new compulsory contributions should be introduced.
Argentine	Proposal of amendment to the definition. Examples of ICH should be presented in an annex to the convention.	Proposes three options: 1. A committee and a list (as proposed in the draft convention with some amendments as follows: Amendment to article 8 para. 3 : Representatives of NGOs may attend the meetings <u>at the request of State Parties</u> . Article 8 para. 4 concerning the establishment of a joint committee is deleted. Article 10 bis concerning the establishment of a scientific committee is deleted. 2. The establishment of an intergovernmental panel of experts composed of ... representatives nominated by State Parties, assisted by a Secretariat appointed by the Director-General. The panel shall select a number of national, sub-regional or regional programmes, projects or activities for the safeguarding of ICH. Those programmes... shall receive the 'UNESCO level for the safeguarding of ICH'. 3. Meetings of State Parties: the Director-General may convene meetings of the representatives of	If option 1 is retained: Amendment to article 11 para. 1: the 'list of items of ICH present in its territory' is replaced by 'list of items of <u>its</u> ICH'. Article 11 para. 5 (concerning the 'Identification of items [of the intangible [cultural] heritage] for inclusion in the List of [Items of the] Intangible [cultural] Heritage in Need of Urgent [safeguarding]') is deleted.	<i>OK for the creation of a <u>compulsory fund</u>.</i> The corresponding articles will require adjustments depending on the option selected for articles concerning the Committee and the list. For instance, if option 2 is retained, the Fund will be used to support financially the programmes, etc. and to prepare candidatures of such programmes, etc.

		State Parties at the request of at least one-fifth of the State Parties. The meetings will study problems concerning the application of the Convention and submit recommendations.		
Australie ¹	The current definition is <u>too broad</u> and would be onerous for many Member States. It could be internally inconsistent as it includes ‘instruments, objects, artefacts and places’ which appears to take the scope of the draft convention beyond the intangible.		A list-based approach is considered inappropriate because of the nature of ICH. It is considered impossible to single out particular cultural practices and difficult to develop specific management regimes for such practices. A listing could create an inappropriate hierarchy and a fossilisation of living cultural practices.	
Autriche	Examples should be stated and the “glossary intangible heritage” should be incorporated in the Convention (e.g. as separate annex). Languages and dialects should be included in the definition of ICH Para. 3 should read “reactivation of aspects of such heritage” (instead of revitalisation...”).	These provisions should be discussed after the scope of the convention has been determined. No additional formal bodies (and expenses) should be created. A Convention on ICH should be administered by existing – e.g. World Heritage – institutions.	Establishing an international catalogue of good practices should be considered. A national list of ICH could be elaborated in every country in co-operation with the cultural communities concerned and assisted by external experts. On this basis an international list of endangered ICH could be prepared. This list could be evaluated by experts who could also assess levels of danger and make suggestions for appropriate safeguarding measures.	At the present state of the discussion, is not in favour of the establishment of an extra ICH fund. The necessary funds for the safeguarding of the ICH of outstanding value should come from restructuring and streamlining current UNESCO heritage activities. Furthermore acquisition of outside money (foundations, sponsors) should be considered.
Azerbaïdjan	No specific comments. Supports the launching of a convention in November 2003.			
Barbade	The term “cultural heritage” is used to define “cultural heritage”. Consider revision for a word cannot be used to define the same word. Also, further clarification is necessary on precisely the scope of what is covered by this term, for expression or manifestation of the cultural heritage can be both tangible and intangible, or a mixture of both. This clarification is critical to the appropriate application of the convention by States parties. While Article 2(1) seeks to provide	We find that only one Committee, made up of governmental experts, is acceptable. We do not see the necessity for any other joint or scientific committees as these are likely to become a financial and administrative burden and create a cumbersome and ineffectual operational structure. Representation on this committee should follow strict geographical distribution similar to other intergovernmental bodies or organs of UNESCO. The mandate of the Committee members should be 4 years, not 6 years in order to encourage rotation among State Parties. No Committee shall be created before the entry into force of the Convention.	We are doubtful as to the effectiveness of the list-based approach proposed , and question its relevance and meaningful application in the context of the intangible heritage. Indeed, we believe that it would create an inappropriate hierarchy and a fossilisation of living culture. We are in support of a the List of Intangible Cultural Heritage in Need of Urgent Safeguarding, a list of the items appearing in the Intangible Cultural Heritage List for which conservation, revitalization or other remedial measures are necessary.	The fund must consist of mandatory contributions by all States Parties (with a scale similar to the Fund of the Convention for the Protection of the World Cultural and Natural Heritage, 1972) in order to secure the future implementation of the Convention. We do not think it is advisable to be fully dependant on voluntary contributions and extrabudgetary funds.

¹ Australia has reservations about the process by which the draft convention has been prepared, the ability of a convention to effectively safeguard ICH, the apparent overlap of the draft convention with other international developments in this area and the workability of this text to deliver effective safeguards. considers that it is essential to continue a discussion on broader issues, rather than an article by article discussion or efforts to engage in textual drafting at the February intergovernmental meeting. Australia has also stressed the unacceptable diminution of the role of Member States whereas an important role is given to NGOs (ref. Articles 3 and 14).

	<p>some definitions to be used in the application and interpretation of the Convention, it does not adequately define the “intangible” nature of the cultural heritage. It does speak of the constant recreation of the material by communities, but a precise definition would be desirable, particularly with respect to modern methods of fixation of performances, whether by digital means, sound recording or film. As a result, the work may be intangible in its initial performance, but it is capable of being rendered tangible by fixation.</p> <p>We are of the view that the identification of intangible cultural heritage to be safeguarded needs to be based on clearly defined criteria with full respect for human rights. Indeed, we need to determine ‘Clear and simple assessment criteria’, and take this opportunity to indicate that the elucidation of the criteria is a critical part of the work and may not be left to other bodies to be determined, for in the end they form the heart of the ICH convention itself. This aspect of our work still remains incomplete</p> <p>Strongly recommends therefore that UNESCO undertake a close examination of the meaning and scope of the term of “traditional cultural expressions” as articulated by WIPO in its recent working document on this subject (pp .6-9), as an essential component of the work still to be completed by the intergovernmental committee on this subject.</p> <p>Article 2 (2) (a-d) requires further clarification and articulation in</p>	<p>The General Assembly shall be the supreme body and the Committee must be accountable to the General Assembly for every matter, unlike the World Heritage Committee.</p> <p>The relationship between the governing bodies and UNESCO and its governing bodies must be clearly delineated in the Convention.</p> <p>The mandate of the Committee will depend on the definition adopted: whether it is a “selective list” of items which are considered as having outstanding specific value or an “inventory” which is the definition we support. The process and the criteria for meritorious selection will of necessity to be based on subjective concepts rather than universal values and we do not consider this a sound basis for evaluation given the nature of intangible heritage.</p> <p>We are in favour of a convention to safeguard the Intangible Cultural heritage as a whole and not just outstanding items.</p>		
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	terms of the above, because both the expression and the production of cultural heritage are currently implied in this grouping without appropriate clarification. A complete separation of the tangible results of intangible heritage would be unacceptable if not impossible. Further work is needed on this and the related annex to the convention.			
Belgique	Propose “par PCI, on entend les pratiques, les représentations, les savoirs et les savoir-faire, tout comme les instruments, objets, artefacts et espaces qui leur sont nécessairement liés”.	Propose de simplifier la gestion de la protection du PCI en n’ayant qu’un seul comité (tel que présenté à l’article 8) assisté d’un comité d’experts restreint (cf. article 10 bis).	Estime qu’on ne peut pas multiplier les listes. Les chefs d’œuvre devraient donc disparaître et s’intégrer à un nouveau système qui permettrait de mettre en valeur un patrimoine bien vivant, exemplaire à la fois par son caractère traditionnel, lié à une communauté et bien connu. Ces critères généraux devraient être précisés dans la convention. Propose amendement aux articles 11-2 et 12 : remplacement du « caractère exceptionnel » par « caractère exemplaire ».	
Bénin	Propose d’ajouter « et l’univers » au paragraphe 2 (d) et « l’inventaire, ..., la préservation, ... » au paragraphe 3.	D’accord avec le principe de « comité ». Propose de sortir du texte de la convention le paragraphe 4 (article 8) concernant la Proclamation des chefs d’œuvre car ce paragraphe devrait faire partie d’un texte régissant la Proclamation.	D’accord avec le principe de « liste ». Propose d’ajouter au paragraphe 6 concernant les mesures urgentes de sauvegarde : (e) documentation des éléments du patrimoine en péril au moyen des techniques les plus sophistiquées et les plus appropriées. (f) formation accélérée des membres des communautés intéressées, notamment des jeunes, en vue de la sauvegarde du patrimoine.	D’accord avec le principe de « fonds obligatoire ». Propose de supprimer les paragraphes 2, 3 et 4 de l’article 16 concernant la possibilité pour un Etat de ne pas être lié à l’obligation de contribution obligatoire.

Bolivie	<p>Propose deux définitions :</p> <p>1. <u>Patrimoine culturel immatériel</u> : Connaissances, pratiques, représentations et techniques qui résultent du patrimoine culturel matériel. Généralement il s'agit des éléments disparus dans sa forme dynamique et sont connus grâce, notamment, à l'archéologie. Les termes matériel et immatériel désignent une dualité presque inséparable. L'existence de l'immatériel est liée au matériel.</p> <p>2. <u>Patrimoine culturel intangible</u> : Comprend des pratiques et représentations - ainsi que des savoirs, savoir-faire, instruments, objets, artefacts et lieux qui leur sont nécessairement associés - qui sont reconnues par les communautés et les individus comme faisant partie de leur patrimoine culturel intangible, et qui sont conformes aux principes universellement acceptés des droits de l'homme, de l'équité, de la durabilité et du respect mutuel entre communautés culturelles. Ce patrimoine culturel intangible est constamment recréé par les communautés en fonction de leur milieu et de leur histoire et leur procure un sentiment de continuité et d'identité, contribuant ainsi à promouvoir la diversité culturelle et la créativité. Pour exister, les éléments intangibles non pas besoin d'être matérialisés ni sont liés aux formes matériels ou tangibles.</p>	En faveur des comités.	En faveur de la liste.	En faveur du fonds.
Brésil	<p><i>Commentaires généraux</i> : Souligne le rôle des communautés concernées dans la formulation et la mise en œuvre des politiques sur le PCI. Il revient à l'Etat d'identifier et de valoriser les manifestations du PCI comme patrimoine culturel de la nation et de reconnaître et de respecter le droit de tous les groupes sociaux à la sauvegarde de leur mémoire.</p> <p>La stratégie la plus importante devrait être la création d'un réseau d'échange d'expériences et de mécanismes de divulgation et d'assistance technique pour soutenir les politiques nationales pour le PCI.</p>		La proposition d'une liste pourrait être une stratégie, si toutefois elle est faite en ayant comme critère la représentativité des biens inscrits et non le caractère exceptionnel. En faveur d'une liste du PCI en péril (en raison de son importance pour les langues orales).	
Bulgarie	Proposes to include or at least mention in the definition the nomenclatures prepared by Member States, with which they recognize the elements of ICH that shall be protected.	<i>General comments</i> : supports the preparation and approval of a convention.		
Cambodge	Commentaire general: donne son accord sur l'avant-projet.			

Canada	The scope of ICH is <u>very broad and unclear</u> . Any instrument should employ plain language, common objectives and a practical scope consisting of model approaches adaptable to different levels of intervention. An appropriate definition can only be articulated after further dialogue and consensus-building on the objectives of an instrument.	<i>General comments:</i> Canada consider that <u>additional work</u> must take place in an intergovernmental experts setting to ensure that key issues such as scope and definitions as well as other considerations can be raised and given full debate prior to determining the <u>type of normative instrument</u> that would best respond to the needs of UNESCO Member States. Canada <u>urges the Director-General to revise the timeline</u> . Concerning the type of instrument, Canada considers that it is better to leave flexibility and choice to Member States with regard to how they implement obligations, than for an instrument itself to be so broad as to attempt to encompass all types of legal regimes, philosophies and perspectives. A federal state clause would be needed. Canada stresses the <u>lack of sufficient study</u> and dialogue <u>regarding some elements of the approach to intellectual property and copyright</u> , and questions whether the approach currently being explored could even constitute an <u>implicit denunciation of WIPO treaties and agreements under WTO/TRIPS</u> . Canada expresses concern about <u>the potential use of a normative instrument to promote the ICH of some sectors of society over others</u> or of the majority to the detriment of that of minorities. Some of the terminology currently in use in the draft text appears to render a possible instrument susceptible to such use. Canada regrets the almost complete <u>absence of observers from communities</u> .		
Chili ²		Pas d'opposition à la création d'un comité.	Article 11 para. 1 : propose qu'un inventaire, et non une liste, soit soumis par les Etats membres au Comité pour éventuelle inscription.	
Chine ³	ICH should be be 'consistent with universally accepted principles of human rights, equity, sustainability, and mutual respect between cultural communities'. Traditional craftsmanship should be listed as item 5 in the annex.	Requests explanation concerning the creation of a Joint Committee. For example, the function of the Joint Committee and of the Committee partly overlaps. No need to establish a Scientific Committee.		
Costa Rica	Proposes to add in the definition: ' <u>languages and spaces</u> that are necessarily relate hereto, and therefore the individuals and communities must recognize it as part of their heritage.' ICH must 'be in conformity with the universally recognized international human rights instruments, equity, sustainability and mutual respect between cultural communities, and respect for the integrity of nature and non human life'.		Suggests two different lists: 1. A general and universal (macro)list that could be assumed as reference to all nations. 2. A national list that emanates from the cultural policies of each country (with the acceptance of State and communities) and related with the identification, safeguarding, promotion and transmission of their ICH (ref. Istanbul Declaration, 7 iii).	

² Traduction non officielle de l'espagnol.

³ A binding clause should be added stating that « a State Party shall not take any measures on purpose, which might directly or indirectly do harm to the ICH mentioned in article 2, within the territory of other State Parties ». The present draft does not clarify the relations with and make reference to some other normative documents (1989 Recommendation and Regulations relating to the Proclamation, and the Proclamation itself).

Croatie	No remarks. Hopes that the continued engagement of experts working on the draft will result in its adoption within the set time limit and that the Convention will be a powerful impetus to the safeguarding of ICH.			
Danemark ⁴	During the September meeting, noted considerable uncertainty regarding the understanding of the definitions and purposes of the draft convention. It will be of great importance for the future work to devote more time and effort to <u>clarify the definition</u> of ICH and to define the goals of the convention. Proposes that the coming experts meeting in February 2003 be based on documents outlining proposals for the more exact understanding of the scope and the objective of the convention and how to reach this objective.		Concerning list of examples of ICH, would find more useful to discuss the possibility of an international catalogue of best practices on how to promote and support the ICH.	An ICH fund as described in article 15, which is detached from the structure of the surrounding society, will not give the desired results.
Egypte	La convention doit clarifier la définition du champ d'application en évitant les formulations imprécises.	Se demande dans quelle mesure il est possible un comité international sur le modèle du Comité intergouvernemental chargé du patrimoine culturel matériel et quelles seraient les modalités de financement de ce comité dans le cas où il serait créé.	- - -	- - -
Espagne	Il conviendrait d'étudier la possibilité d'inclure les <u>langues</u> et les modalités de leur protection, car il y a des langues minoritaires en voie de disparition et les langues constituent un patrimoine culturel très riche et sont une expression de la diversité culturelle. Ajouter aux domaines prévus à l'article 2 para. 2 : « les connaissances et les usages dans le domaine de l'artisanat, ainsi que les technologies traditionnelles employées dans la transformation des produits de la nature ». Annexe : Il convient de réaménager le contenu de l'annexe. Explication : Les points 3 et 4 contiennent une rédaction d'éléments du PCI où sont mélangés des pratiques diverses. Il serait utile de mentionner de façon plus	Supprimer l'alinéa 4 de l'article 8. Explication : Les articles 8 à 10 bis de l'Avant-Projet prévoient une multiplicité d'organes qui rendra très lourde la tâche de gérer la protection du PCI. Considère que, dans ce domaine, le modèle de la Convention de 1972 est plus raisonnable. Propose donc <u>la création d'un Comité du PCI (art. 8 sans alinéa 4) qui pourrait être assisté par un Comité d'experts restreint (art. 10 bis)</u> . On ne devrait pas créer ni un Comité mixte, (art. 8.4) ni un Jury des candidatures (art. 8.4.c). En effet, l'Espagne estime qu'une fois la Convention en vigueur, le système	La rédaction de cet article manque de précision et il faudrait en éclaircir les concepts. Explication : La rédaction des articles 11 et 12 ne permet pas d'établir si les candidatures présentées par les Etats pour l'inscription des biens sur la liste du PCI (art. 11.3) sont ce que l'article 11.1 dénomme "liste" (avec "l" minuscule) ou "inventaire" ou, par contre, les candidatures ne constituent qu'une partie plus réduite de la dite "liste" (avec "l" minuscule) ou "inventaire". Il convient donc de préciser si la "liste" contient toutes les propositions de candidatures présentées par les Etats pour être éventuellement inscrites sur la "Liste" du PCI où, par contre, le terme "liste" évoque l'ensemble des biens du PCI que chaque Etat s'engage à protéger et encourager même s'ils ne figurent pas sur la "Liste" du PCI.	- - -

⁴ *General remarks*: stresses the importance of co-operation between the different relevant organizations in order to avoid overlapping in the establishing of protecting measures. Stresses the importance of taking the necessary time to prepare a normative instrument. Finds it of great importance that the relationship to instruments concerning human rights as well as cultural rights and cultural diversity be given a clearer position.

	ordonnée les pratiques sociales, rituelles, festives, artisanales, etc. Les connaissances et les pratiques artisanales sont mélangées et celles-ci sont ordonnées de façon incomplète. Propose de séparer les connaissances et les pratiques artisanales et de décrire celles-ci de façon plus complète conformément aux critères que nous avons évoqués par rapport au nouveau paragraphe iii) bis de l'article 5.c).	actuel de proclamation de "chefs-d'œuvre" sur proposition d'un "Jury des candidatures" n'a pas raison d'être.	Il est nécessaire également de préciser si la "liste" est élaborée uniquement pour la présentation de candidatures à la Liste du PCI, laissant à chaque Etat membre le soin d'adopter des mesures juridiques internes et d'inventaires pour leur protection. Afin d'éviter toute confusion, propose de <u>remplacer le terme "liste" para celui de "inventaire" et de réserver le terme "Liste" pour les biens proclamés par le Comité du PCI.</u>	
Egypte ⁵	The definition should be in clear terms avoiding the use of expressions not clearly defined. Need to clearly define the technical terms and concepts contained in the draft text so that there is no room for interpretation leading to differences of opinion.	The possibility should be assessed to establish an international committee along the lines of the relevant international committees on the tangible cultural heritage and the modalities for funding it in the event of its creation.	See comments on the committee.	
Ethiopie		It would be better to include a provision that states the importance of establishing national co-ordination and advisory committee by all State Parties.		

⁵ The convention should take into consideration the role of the State and of local and international bodies in the preservation and safeguarding of ICH; the nature of the dangers which threaten the ICH and the ways and means of tackling them; the relationship between the intangible and the tangible heritage; the situation of individuals as representatives of the community; the need to establish archives (databases) on the ICH considering that they are an effective tool.

Finlande	<p>Revision in Article 2: For the purposes of this Convention, the "intangible cultural heritage" means the practices and representations - together with their necessary knowledge, skills, instruments, objects, artefacts and places - that are recognized by communities and individuals as their intangible cultural heritage and are consistent with <i>the principles of universally recognized international human rights instruments</i>, equity, sustainability, and mutual respect between cultural communities. ... Reason: The reference to human rights must be unambiguous. Addition of '...(forms of) oral expression <i>and languages</i>' in Article 2, paragraph 2, line a. Reason: It is not justified to leave language outside the convention. Language represents the strongest form of expression – the very soul – of a culture and an ethnic group. In addition, the significance of language for identity is only highlighted in threatened and/or small language groups. Deletion of 'gender-specific social practices in The annex, on page 17, paragraph 3, line 3. Reason: There are "social practices" in regard of women, which are not in harmony with the general aspiration to equality or the universally recognised human rights instruments. At any rate, all possible questions of "gender-specific social practices" can easily be addressed under other headings.</p>	<p>Articles 8-11 are ineffectual. The premise for listing intangible cultural heritage is untenable. No international "honours list" or "price list" will promote the safeguarding of intangible cultural heritage at the practical level. Proposal 1: That the whole idea of listing be renounced and Articles 8 - 11 deleted. Proposal 2: If there is to be any list, it should concern best practices in the safeguarding of intangible cultural heritage: Revision of article 11, paragraph 1: Each State Party shall, insofar as possible, submit to the Intangible Cultural Heritage Committee a list an inventory of <i>the best practices in the safeguarding of items</i> of the intangible cultural heritage present in its territory which would be suitable for inclusion in the List provided for in paragraph 2 of this Article. This list inventory, which shall be considered non-exhaustive and be open to updating and amendment, shall include documentation concerning the item in question and its significance. (...) The ensuing articles to be deleted or reformulated where necessary. Article 11, paragraph 2, lines 3 and 4: The term (and eventual definition of) "outstanding specific value" is inappropriate in the case of intangible cultural heritage. In a listing of best practices it would not be needed at all. Article 11, paragraph 4: A "List of Intangible Cultural Heritage in Need of Urgent Safeguarding" would be similarly difficult to realise. Finland proposes that the reference to this list and this section be deleted.</p>	
France ⁶	<p>Définition : Pas souhaitable d'intégrer l'annexe à l'article 2. Préférable de laisser la <u>définition « ouverte »</u>, car il n'est pas impensable qu'à l'avenir d'autres types de patrimoine, tel le patrimoine virtuel, soient sauvegardés au titre de la convention. Le <u>champ d'application</u> pose le problème d'une <u>exhaustivité impossible</u>. L'<u>effort de sauvegarde devrait porter principalement sur les éléments du PCI en situation de danger immédiat</u>.</p>	<p>Il est inopportun de débattre du chapitre III (comités et listes) qui ne convient pas au PCI, car il s'agit de sauvegarder et non pas de créer un palmarès en établissant une liste « de valeur universelle exceptionnelle ». Le dispositif liste/comité serait consommateur de ressources. Une mention plus explicite pourrait être ajoutée au sujet des inventaires du PCI, qui pourraient faire l'objet de registres déposés à l'UNESCO et être mis en valeur par l'Organisation dans le cadre d'un « partage de valeurs symboliques ». C'est par ailleurs sur la base de ces inventaires que seraient signalés à l'UNESCO les éléments du PCI nécessitant des mesures de sauvegarde.</p>	<p>Les ressources qui pourront être mobilisés gagneront à être affectées directement à des projets concrets de sauvegarde d'éléments du PCI qui se trouveraient menacés dans leur intégrité, voire en danger de disparition.</p>

⁶ La future convention doit être un instrument simple, souple et évolutif, de nature plus incitative que contraignante.

Géorgie	<i>Commentaires généraux</i> : donne son entier soutien au projet de convention.			
Groupe africain ⁷	Propose d'ajouter « et l'univers » au paragraphe 2 (d) et « l'inventaire, ... , la préservation, ... » au paragraphe 3.	Le groupe africain estime qu'une convention de cette nature et importance a impérieusement besoin de structures de mise en œuvre adéquates à ses buts et objectifs. Il faudrait également un mécanisme permettant de reconnaître et de distinguer tant aux niveaux national qu'international, les efforts et les performances les plus méritoires en matière de promotion du patrimoine culturel immatériel, ainsi que des dispositions qui mettent ce dernier à l'abri des circonstances qui pourraient lui être fatales. On pourrait, par exemple, imaginer un Conseil au niveau international, et un ou des comités au niveau national. Il va sans dire que les états parties devront être les auteurs privilégiés dans ces instances, et qu'ils faudra pour le Conseil International, scrupuleusement respecter une représentation géographique équitable.	On pourrait également avoir un Registre International du Patrimoine Culturel Immatériel de l'humanité, à partir de listes nationales . Dans tous les cas, une liste du Patrimoine Culturel Immatériel en Péril sera nécessaire. On pourrait, par exemple, inscrire les langues en péril ou en voie d'extinction sur cette dernière liste, puisque, si elles venaient à disparaître, elles cesseraient d'être des supports de création et de transmission du Patrimoine Culturel Immatériel. Pour éviter certains problèmes de déséquilibre et de représentativité inadéquats de la Liste observés au niveau de la mise en œuvre de la Convention de 1972, peut-être serait-il souhaitable d'avoir un Jury International , en tout cas une instance qui ait droit de regard sur les décisions du Conseil international du Patrimoine Culturel Immatériel. On pourrait, à cet effet, s'inspirer de certains organes du MAB.	Le groupe africain est convaincu qu'une Convention sans fonds restera lettre morte. Les états partie auront donc l'obligation de contribuer à ce fonds. Les dépenses concernant le patrimoine culturel immatériel seront à coup sûr, moins onéreuses que celles relatives au patrimoine culturel matériel naturel, ce qui justifie d'autant la nécessité de contributions obligatoires des états parties. Aussi il ne sera pas nécessaire d'établir un seuil d'opérabilité du fonds.
Inde ⁸	Definition and Scope The significant part of the draft Convention lies in identifying the constituent elements involved in the intangible cultural heritage. Article 2 of the draft and glossary circulated along with the Convention provide for the meaning of the terms used in the draft Convention. Almost all Member States have expressed their views/comments on the definitional aspects. The very term "intangible cultural heritage" is subject to diverse interpretations as it involves the practices and representations together with their knowledge,	While the establishment of Committees are essential for the functioning of the programme, the exact responsibilities of each of the Committees are not exactly clear. These committees are viz., Intangible Cultural Heritage Committee [Article 8 paragraph 1 (b)]; A Joint Committee [Article 8, paragraph 4] and the Scientific Committee [Article 10 bis], appear to be more bureaucratic in nature for more than one reason. First, the primary purpose of the Intangible Cultural Heritage Committee is to keep up to date and publish the ICH List on the basis of the inventories submitted to it by the States Parties [Article 11 (2)]. Similarly, the Joint Committee has also been entrusted the task to keep up to date the ICH List [Article 8, paragraph 4 (b)]. These two functions entrusted to two different Committees appear to be overlapping. Second, it is	The mode of operation, i.e. making lists of items of heritage according to established criteria and monitoring/assessment through intergovernmental committees again seems to be on the lines of Tangible Heritage. While List-based system seems to be a good method of identifying ICH, the making of the List should be approached with caution and sensitivity, to avoid vested interests, hierarchical considerations and distortion. The drawing up of the List can include such criteria as endangered heritage, unique value, links to an ancient past, status as a masterpiece and so on.	Regarding the need to set up a fund, India holds that there is the need for international funding for the identification, safeguarding and revitalisation of ICH. Vast resources are required for the programme, and national governments cannot be expected to shoulder the entire responsibility. While international funds (like the World Heritage Fund for Tangible Heritage) are essential, details of existing funding provisions are not clear. Once the scope is fully clear and the Convention in place UNESCO could earmark

⁷ Le groupe africain est de l'avis qu'une clause devrait spécifier, dans le Préambule ou sous forme d'article dans le corps de l'instrument, que cette convention ne saurait être utilisée, en partie ou dans son entièreté, à des fins attentatoires à la **souveraineté, l'unité et la cohésion des états-parties**.

⁸ Concerning article 5 (re. the national safeguarding of the ICH, India proposes that "This policy shall not be interpreted as safeguarding of local ICH in a manner contrary to State's unity and stability. (Addition--Included as part of New Article in Preamble also)".

	<p>skills, instruments, objects, artifacts, places covering the oral expressions, performing arts, social practices, rituals, festive events and other cultural manifestations by various communities. In our view, the glossary should be made an integral part of the Convention as many States supported it during the first intergovernmental experts meeting.</p> <p>“Tradition” is an important yardstick in determining heritage because it is a vital aspect of heritage. It is not a static concept since traditions are continually evolving and are dynamic. In this regard, it needs to be addressed as to how an evolving and dynamic tradition can be protected by means of intellectual property rights and other related rights, and the extent to which it can draw on the ICH of other communities while retaining its own distinct and separate identity.</p> <p>The variant provided in paragraph (b) of Article 3 may be considered, as it is more appropriate from drafting point view, wherein each State party has the prerogative to ensure the active participation of communities while determining the criteria in identifying various form of intangible cultural heritage.</p>	<p>not clear whether the Joint Committee is to study the inventories submitted by the States Parties to the ICH Committee or the Joint Committee is to study the inventories, which are proposed to be submitted by the States Parties to the ICH Committee [Article 8, paragraph 4 (a)]. Third, it is also not clear whether the Joint Committee is an integral part of the ICH Committee or it is an independent body like the Scientific Committee. Fourth, the Scientific Committee has been identified as a consultative body to the ICH Committee [Article 10 bis] to provide advice on the scientific and technical aspects of it deliberations. Whereas the relation between the Joint Committee and the ICH Committee has not been addressed in the draft Convention, if the former is independent of the later.</p>		<p>adequate funds under its regular budget to support activities and programmes at the national level. The details have to be worked out carefully during the intergovernmental meeting through discussions.</p>
Irak ⁹	---	---	---	---
Italie	<p>Proposal for article 2, para. 2: ‘the ICH as defined in para. 1 above, covers, inter alia, the following: a) forms of oral expressions, b) the performing arts; (c) social practices, rituals, festive events; (d)</p>	<p>The text of article 8 should be reworded because the relationship between the ICH Committee, the Joint Committee and the non-governmental experts is not clear. Their functions and tasks should be more precisely defined. Regarding the Committee, it is suggested that its members include both</p>	<p>The term ‘inventory’ should be preferred to ‘list’. Article 11, para. 2: suggests ‘on the basis of the inventories submitted by State Parties in accordance with para. 1, the ICH Committee shall establish, keep up to date and publish, under the title of the ICH list, a list of items which are</p>	

⁹ Amendements only on article 1.

	<p>knowledge and practices about nature; and e) traditional craftsmanship.</p> <p>Article 2, new para.: ‘revitalization’ means reactivating social practices and representations which are falling in disuse and includes encouragement and support of a local community in the reactivation of such practices and representations.</p> <p>Annex: proposes a point 5 re. traditional craftsmanship such as...</p>	<p>representatives nominated by the State Parties and independent experts designated by the Director-General.</p>	<p>considered as having outstanding specific value under criteria established by the ICH Committee, <u>which should take into account their relevance in the social context where they occur.</u> An updated list shall be distributed at least every two years (to be updated with the definition of outstanding). The entire article 12 could be reworded as follows: ‘items of the ICH not included in either of the two inventories mentioned in paragraph 2 and 4 of article 11 may have an outstanding value for purposes other than those resulting in the inclusion in these inventories, and the State Party concerned is equally obliged to safeguard them’.</p>	
Japon ¹⁰	<p>Inclusion of languages might cause political tension. Their protection would be better accomplished under a framework other than a convention. Connect explicitly ‘cultural space’ with ICH. It is not necessary to limit the scope of application to endangered ICH. The aim of the convention is to raise awareness on the value of ICH and to promote its protection internationally. Knowledge itself does not constitute an ICH and is unsuitable for inclusion in the scope of protection under the convention. Annex: Re. ‘performing arts’, proposal to delete ‘in festive or ceremonial events of cultural communities’ because there are performing arts not necessarily related to festive or ceremonial events. ‘Religion’ does not appropriately lend itself to protection under this convention. Requests explanation from the Secretariat concerning the relationship between the Convention and the Proclamation. The definition of ‘cultural community’ must be broad and flexible enough to include a ‘nation’.</p>		<p>Article 11 should be maintained: both ‘the ICH list’ and ‘the list of ICH in need of urgent safeguarding’.</p>	
Koweït	---	En faveur d’un Comité + proposition sur article 8.	---	En faveur d’un Fonds + proposition sur article 15.

¹⁰ The Convention should not create any property right nor any legal title. Intellectual property law related issues concerning ICH should be dealt within the framework of another international instrument and in co-operation with relevant international organizations, in order to avoid any complication of the negotiation process.

Liban	Souligne des déficiences dans la définition: 1. Elle ne permet aucun progrès conceptuel car elle se comprend comme : « est PCI ce qu'on qualifie de PCI ». 2. Une confrontation entre les articles 2.1 et 3 pose un problème quant à l'autorité (communauté locale, Etat ou communauté internationale ?) censée définir les éléments du PCII et délimiter le champ. Se demande si la définition concerne le patrimoine culturel en général ou bien le patrimoine culturel qui devra être pris en charge par la convention. 3. Menace d'empiètement sur d'autres systèmes juridiques existants à l'OMPI ou ailleurs.	---	---	---
Lithuanie ¹¹	Proposes to include 'unique languages and dialects' into the annex.	---	---	---
Malawi	<i>General comments:</i> agrees with the content of the draft convention and is in agreement with all articles contained.			
Mali	Propose des amendements à la définition. Propose l'inclusion des langues.	En faveur des comités. Propose des amendements.	En faveur des listes. Propose des amendements.	En faveur du fonds. Propose des amendements.
Maroc	Importance d'approfondir la réflexion sur la notion de PCI, notamment dans ses liens avec la nature. Il conviendrait de définir des critères permettant d'apprécier, de reconnaître les éléments du PCI.	---	---	---
Mexique	Définition trop générale et trop ouverte d'où la nécessité de la restructurer et la clarifier. Nécessité d'établir une liste, bien qu'indicative des éléments pouvant faire partie du PCI.	Considère de grande importance la création de Comités. Cependant les dispositions de l'avant-projet sont quelque peu confuses ; il est donc recommandé de préciser les fonctions et la composition de chacun de ces organismes. Demande une analyse en profondeur de ces questions, une fois que les questions relatives à la définition et au champ d'application auront été résolues.	Considère de grande importance la création de listes du PCI. Cependant les dispositions de l'avant-projet sont quelque peu confuses ; il est donc recommandé de préciser les conditions d'élaboration et d'administration des listes. Demande une analyse en profondeur de ces questions, une fois que les questions relatives à la définition et au champ d'application auront été résolues.	
Niger ¹²	Préciser davantage ce qu'on entend par objets et artefacts.	---	---	En faveur du Fond.

¹¹ Supports the convention. Asks UNESCO to consider the possibility to organize a regional meeting of experts from Eastern and Central Europe on the preliminary draft convention.

¹² En faveur de l'élaboration d'une convention.

Nigéria	Add to 2 (d) 'processing of material products.'	---	In favour of the lists. Proposes some amendments.	In favour of the Fund.
Norvège ¹³	A precise scope and clear and accurate definitions have to be given. Languages should be included. Otherwise it would be reduce the value of the convention.	---	Sceptical to the usefulness of establishing different lists after a model of the World Heritage List. A list runs the risk of creating very unfortunate contests between different forms of ICH. Alternative proposed: to set up a catalogue of best practices.	---
Pays-Bas ¹⁴		Comments on the lists and committees : The text at hand is strongly imbued with that of the World Heritage Conference of 1972. While there is common ground between tangible and intangible heritage, both differ sufficiently to call for different schemes of protection. Experience with the Convention of 1972 learns that it is necessary to have a light and efficient institutional mechanism. We note that the situation surrounding the proposed and current lists in the draft text is unclear. The Netherlands proposes that existing and future lists should be co-ordinated, including nominations and assessment procedures. Placement of items on lists or in registers could be for a limited period.		
Philippines	Proposes to add 'cultural spaces' in article 2, para. 2 (c).	Proposes a rewriting of article 8 concerning the composition of the Committee.	---	---
République de Corée	---	Delete paragraph 4 since the Intangible Cultural Heritage Committee (IHC) can carry out the functions ascribed to « Joint Committee ». The draft convention provides for such committees as the IHC, Joint Committee and the Scientific Committee (Committee of Experts). It may become difficult to achieve consensus among the committees and some technical difficulties and delays may arise from the duplication of structures within the Convention. It is advisable to set up only one committee – the IHC – and let the committee seek advice and expertise from governmental organizations, NGOs or experts whenever necessary. Moreover, to render the committee more efficient in decision-making, it would be advisable to make it an odd numbered body.	To ensure equity among States, a limit on the number of items each State Party could have included on the Intangible Cultural Heritage list could be established.	

¹³ The best solution would have been to revise and strengthen the 1972 Convention. Stresses the importance to avoid overlap with other international conventions and agreements. Suggests a clear delimitation towards intellectual property rights which are primarily handled by WIPO. UNESCO should not rush the process.

¹⁴ Dilemmas: The important issues to be tackled in relation to the safeguarding of ICH (definition, the important issue of the dynamics of ICH, the way in which ICH could be documented etc.), could lead to the conclusion that other instruments could be more appropriate and more effective in the actual safeguarding of ICH. One other point is that the draft text is strongly imbued with that of the World Heritage Convention of 1972. The procedures of the 1972 convention are complicated and result in bureaucratic ineffectiveness. Also, ICH needs to be prevented to become static and frozen. However, these dilemmas are not seen as an obstacle to constructive cooperation and elaboration of a draft convention.

Is of the opinion that: (i) the current development in the field of cultural heritage law and in international law in general should be taken into account in drafting this convention; (ii) the convention should give clear cut obligations and rights to state parties, and; (iii) the convention should contain an efficient and effective institutional mechanism.

Sainte-Lucie ¹⁵	The definition needs further clarification. The 'intangible' nature of the cultural heritage is not adequately defined. The identification of ICH to be safeguarded needs to be based on clearly defined criteria with full respect for human rights. Recommends an examination of the meaning and scope of the term 'traditional cultural expressions' articulated by WIPO. A complete separation of the tangible results of intangible heritage would be unacceptable. Further work is needed on the annex.	Only one Committee made up of governmental experts is acceptable. No necessity for any other joint or scientific committees. Makes proposals concerning the functioning of the Committee. The mandate of the Committee will depend on the definition adopted for the list: whether it is a 'selective list' of items which are considered as having outstanding specific value or an 'inventory'.	Doubtful as to the effectiveness of the list-based approach and questions its relevance and effective application in the context of intangible heritage, as it would create an inappropriate hierarchy and a fossilization of living cultures. In favour of the list of ICH in need of urgent safeguarding. See comments regarding the committee. Is in favour of an 'inventory'.	In favour of the Fund (mandatory contributions).
Suède ¹⁶	The use of the ICH concept should be kept as general as possible so that while there may be an urgent need to emphasize such matters as the difficult plight of indigenous peoples, ICH should not refer to this area alone.	---	Not in favour of a list inspired by the World Heritage List, because it would involve considerable risks: unfortunate consequences would be the ranking of cultural expressions, competition between cultures, etc. Proposes as an alternative to list successful strategies (<u>best practices</u>) for protecting ICH.	Not in favour of a Fund with binding rules as regards contributions from individual countries. Costs associated with the protection of ICH should be financed by UNESCO.
Suisse	Il est primordial de poursuivre les réflexions sur la définition du PCI qui doit être à la fois scientifiquement correcte et opérationnelle. La formulation en deux temps (formulation générale + énumération des domaines concernés) ne constitue pas le meilleur moyen de circonscrire le champ d'application de la convention. Avec l'inclusion des objets et artefacts une confusion est créée entre les champs d'application des instruments internationaux relatifs à la protection du patrimoine culturel matériel (conventions de 1970 et	Article 8 : Souhaite que les tâches du comité soit plus clairement définies et que le système institutionnel soit simplifié. Attire l'attention sur la multiplication d'institutions parallèles : comité du PCII (article 8), comité scientifique (article 10 bis) et les organisation gouvernementales (article 14 bis), en raison des procédures administratives complexes et des risques d'instrumentalisation politique du PCI.	L'approche basée sur un système de liste n'est pas appropriée, en raison du caractère particulier du PCI. L'établissement de listes peut avoir des effets indésirables et aller à l'encontre de la promotion et de la sensibilisation des communautés à la valeur et à la diversité de ce patrimoine. Par ailleurs, 'établissement d'une liste présenterait des risques majeurs de hiérarchisation, d'élitisme et enfin d'exclusivisme. Cependant, ne remet pas en doute l'utilité d'inventaires nationaux du PCI.	---

¹⁵ Is in favour of a convention to safeguard the ICH as a whole and not just outstanding items. It is not adequate to use the 1972 convention model.

¹⁶The process should be rushed. Close co-operation should be established between organizations.

	1972). Proposition d'amendements à l'article 2.			
Tunisie	Propose d'ajouter les jeux récréatifs de société qui sont des pratiques sociales, mais ne constituent pas des rituels et événements festifs.	---	---	---
Turquie	<p>The definition has to be clear, simple and acceptable.</p> <p>Proposes a new definition: 'for the purposes of this Convention, 'intangible cultural heritage' means a set of living and constantly recreated conceptions, representations and practices enabling individuals and communities (groups), at all levels, to express their way of seeing the world through systems of moral standards which should be consistent with knowledge, the universal principles of human rights, human dignity, equity, sustainability and respect for all human beings possessing any cultural identity. Thus 'intangible cultural heritage' provides communities with a sense of continuity and identity, and promotes respect for cultural diversity and human creativity'.</p> <p>Languages should be dealt in a comprehensive manner in the convention. The term 'oral expressions' is more relevant.</p>	<p><i>General comment:</i> The criteria 'outstanding specific value' for the selection of certain items of intangible cultural heritage should be clearly formulated, because qualification or any implication of some kind of ranking among elements could lead to uncertainty.</p>		
Vanuatu	<p>Agrees with the definition and scope for the convention.</p> <p>It is important to leave the definition open.</p> <p>The phrase "including languages" should be added to the end of article 2(a), before the semi-colon.</p>		<p>If a list of universally-outstanding expressions of ICH is to be included in the convention, the procedure and criteria used to select 'masterpieces' in the proclamation programme should be used as a model from which the implementation of this aspect of the convention can be developed. This procedure and these criteria are preferable to the model of the 1972 Convention.</p>	

OBSERVATEURS OIG / ONG				
Etats-Unis ¹⁷	The issue of the definition of ICH must be addressed and resolved before there is any further discussion of the nature of the instrument that should be adopted.	Is heartened by the emphasis on the consultation and involvement of the cultural community in the process of preserving and protecting their cultural heritage. Such is a hallmark of the democratic process.	Other aspects of the strategy envisioned in the preliminary draft for safeguarding ICH , such as the usefulness of lists or inventories, need more discussion, and are also dependent upon questions of purpose, definition and scope.	A simpler, quicker route than a convention might be for the international body to serve the role of acknowledging national recommendations and of coordinating appropriate action plans and projects related to safeguarding ICH.
Traditions pour demain	Article 2, para. 1.(a) : s'interroge sur l'opportunité d'ajouter les <u>langues</u> . Propose un nouveau para. 4 : « Une définition du terme « communauté culturelle concernée » permettrait de préciser et de circonscrire le cadre d'application de la Convention. Elle devrait, de ce fait, inclure, spécifiquement et explicitement, <u>les peuples autochtones et les minorités ethniques</u> , afin que leur mention n'ait pas besoin d'être reprise ailleurs tout au long des dispositions de la Convention »	Article 8, para. 3 : Propose d'ajouter que « un ou plusieurs représentants des peuples autochtones nommés spécialement par l'Instance permanente des Nations Unies sur les questions autochtones » puissent assister aux réunions du Comité du patrimoine culturel immatériel, avec voix consultative. Propose d'ajouter à l'article 10 bis : ... à titre professionnel ou autre, pour représenter les intérêts des communautés culturelles, « au nombre desquels au moins X seront des représentants des peuples autochtones nommés spécialement par l'Instance permanente des Nations Unies sur les questions autochtones », et se réunit	---	---

¹⁷ Questions whether a new convention is the appropriate vehicle by which to accomplish the goal of preservation and protection of the world's ICH. The debate of the September 2002 session demonstrates that there is no agreement yet on the essential purpose, definition, scope and strategy of an instrument relating to ICH. In the absence of such agreement, any discussion of a binding treaty on the subject is clearly premature.