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Diversity of
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INTERGOVERNMENTAL COMMITTEE
FOR THE PROTECTION AND PROMOTION OF THE DIVERSITY
OF CULTURAL EXPRESSIONS

Eighth Ordinary Session
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Item 11 of the provisional agenda: Preferential treatment and International consultation and coordination: Report on the implementation and impact of Articles 16 and 21 of the Convention

At its fourth ordinary session (June 2013), the Conference of Parties requested that the Committee debate and analyse information on the implementation of Article 21 and to report on its impact to the fifth ordinary session (Resolution 4.CP 11). At its seventh ordinary session (December 2013), the Committee decided to expand this work to include Article 16 (Decision 7.IGC 12). The first comprehensive report on the implementation and impact of Articles 16 and 21 of the Convention over the period 2005-2014 is presented in Annex III. .

Decision required: Paragraph 8

1. At its third ordinary session, in 2011, the Conference of Parties to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as "the Convention") invited the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as "the Committee") to begin its work to collect and analyse information on the implementation of Article 21 on international consultation and coordination, and considered it premature to pursue work on operational guidelines (Resolution 3.CP 11). As a result, the Committee debated these issues at its fifth, sixth, and seventh ordinary sessions (2011, 2012, and 2013) and at the fourth ordinary session of the Conference of Parties in 2013[1]. At its seventh ordinary session, in December 2013, the Committee decided to expand this work to include Article 16 on preferential treatment for developing countries.

2. In accordance with the mandate given by the governing bodies of the Convention, the Secretariat produced four reports on the implementation of Article 21[2]. Conclusions can be drawn from these reports from different perspectives:

On the content of the reports:

- Measuring the implementation and impact of Article 21 is complex given that the Convention is relatively new (almost ten years old), and its implementation even more recent (just seven years).
- The implementation of Article 21 has repercussions for various intersecting and sensitive areas that intertwine but which have different objectives for example, in fields of international trade, the digital sector, and matters of national security.
- It is still too early to assess the overall impact of Article 21, as it depends on long-term effects inducing major changes at the institutional and governance level.
- While Parties have adopted their own approaches to implement Article 21, there are three areas where common trends can be identified: trade, international cooperation, and culture and development, digital issues being a cross-cutting theme.
- There are two main challenges to measuring the impact of Article 21:
  - the lack of evidence required to monitor the impact of this Article and the sensitive political issues that arise from its implementation;
  - determining the best approach to evaluate the impact of initiatives taken by the Parties to implement Article 21.

On the approach of Secretariat:

- For the collection of information:
  - three consultations[3] were launched with Parties, international organisations, and civil society through a questionnaire[4] in order to collect information;

[1] See Decisions 5.IGC 8, 6.IGC 11 and 7.IGC 12 and Resolution 4.CP 13.

[2] The results and the analysis of these consultations were presented to the Committee at its fifth, sixth, and seventh ordinary sessions in December 2011, 2012, and 2013 (Document CE/11/5.IGC/213/8REV2, Document CE/12/6.IGC/11, Document CE/13/7.IGC/12) and at the fourth ordinary session of the Conference of Parties held in June 2013 (Document CE/13/4.CP/11).

[3] In accordance with Resolutions 3.CP 11 and 4.CP 11 of the Conference of Parties and Decision 5.IGC 8 of the Committee, the Secretariat held consultations with the Parties to the Convention in 2011, 2012, and 2014 on the implementation of Articles 16 and 21. As a result, in the last three years (29 July 2011, 12 April 2012, and 12 March 2014) the Secretariat has sent the Parties a letter inviting them to supply information on the measures they have adopted to implement Article 21 and, in 2014, Article 16. They were also invited to supply the Secretariat with information via the online platform in Article 21 in 2013 and 2014.

[4] The first questionnaire was prepared in 2011, then revised in 2014, with regard to Article 21 (see Annex I to Document CE/12/6.IGC/11 and Annex II to this document for the revised questionnaire). The first questionnaire on the application of Article 16 was conducted in 2014 (see Annex I to this document).

- analysis of the quadriennial periodic reports (71 reports) submitted by the Parties since 2012, which can be used to complement information provided through the consultations;
- research and analyses conducted by the Secretariat that provided additional information.

- For information- and knowledge-sharing:
  - the Secretariat created an online platform[5] in November 2012 with documents[6] directly related to the implementation of Article 21: as of October 2014, the platform listed 99 references, 83 documents, and 26 events;
  - the regular updating and management of the platform in 2013 and 2014;
  - four reports to the governing bodies of the Convention (one each in 2011 and 2012, and two in 2013).

On the participation of stakeholders in the exercise (statistics)

- Participation and involvement of the Parties in the three consultation exercises: 54 Parties[7] completed the questionnaires and returned them to the Secretariat, i.e. 40% of the Parties, of which 16 became Parties in 2014.
- One international organisation and three civil society organisations participated in the consultation exercise for the first time in 2014[8].

3. The presentation of these four reports by the Secretariat to each session of the Conference of Parties and of the Committee since 2011 has prompted **intense and constructive debate within the governing bodies** and produced the first lessons to be learned from this information collection exercise as outlined below.

4. The debates that occurred during the fifth and sixth ordinary sessions of the Committee[9] in 2011 and 2012 observed that Parties adopted a very broad definition of the notion of' "international forums" and that they use and cite the Convention to, for example:

- intervene in international forums, whether or not they advance cultural objectives;
- strongly affirm the objectives and principles of the Convention in cultural and trade agreements (whether they be bilateral, regional, or multilateral);
- consult other Parties when signing new bilateral agreements that address the objectives and principles of the Convention;
- engage in dialogue with States not party to the Convention to encourage ratification;
- pursue advocacy activities arguing for the inclusion of culture in development agendas.

[5] The platform is hosted on the Convention website (http://en.unesco.org/creativity/mr/article-21). It provides information on how the Parties consult each other in other international forums to promote the Convention, providing examples on the actual implementation of Article 21. Two online questionnaires are available, and can be completed by the Parties, representatives of civil society, and international organisations at any time.

[6] Most of these documents can be downloaded in French, English, and Spanish. The documents are classified as international agreements, statements/resolutions, speeches/addresses, and academic literature/research/studies. Events are classified as ministerial meetings, international/regional/national meetings, and seminars/conferences.

[7] Argentina, Armenia, Australia, Azerbaijan, Bangladesh, Bosnia-Herzegovina, Brazil, Burkina Faso, Cameroon, Canada, China, Congo, Costa Rica, Cuba, Democratic Republic of Congo, Egypt, El Salvador, Ecuador, Guatemala, Honduras, Iraq, Jordan, Kenya, Madagascar, Malawi, Mauritius, Mexico, Namibia, Nigeria, New Zealand, Oman, the Republic of Moldova, Serbia, Viet Nam, and the European Union and its following Member States: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungry, Italy, Latvia, Netherlands, Portugal, Romania, United Kingdom of Great Britain and Northern Ireland, Slovakia, and Slovenia.

[8] The Islamic Educational, Scientific and Cultural Organization (ISESCO) for IGOs and the Canadian Coalition for Cultural Diversity, Traditions pour demain, and the Latin Union of the Political Economy of Information, Communication and Culture (ULEPICC) for civil society organisations.

[9] See detailed records of the fifth ordinary session of the Committee, Document CE/12/6.IGC/3, para. 137 to 157; detailed record of the sixth ordinary session of the Committee, Document CE/13/7.IGC/3, para. 239 to 249.

5. At its seventh ordinary session in 2013, the debate[10] of the Committee emphasised the importance of including Article 16 in this monitoring exercise. The Committee also requested the Secretariat to use a results based approach in its analysis i.e. to examine whether the results obtained have led to the expected outcome of the implementation of Article 21 and, if not, to examine the reasons why such outcomes have not been achieved. Finally, the debate emphasised the difficulties faced by Parties in this exercise given the confidential nature of the information exchanged during bilateral negotiations.

6. At its fourth ordinary session, the Conference of Parties was reminded of the importance of Article 21 and of the need to monitor its implementation, in particular in the context of the proliferation of bilateral trade agreements. During this session, Parties also focused on new issues linked to the implementation of Article 21 in the digital age. The Conference of Parties congratulated the Secretariat for its work within the framework of Article 21, in particular the creation of the platform that compiles cases that cite and use the Convention in other international forums. It also called for the Committee to debate and analyse information on the implementation of Article 21, and to report on the impact of this implementation to its fifth ordinary session (Resolution 4.CP 11).

7. A first report providing preliminary observations on the implementation and impact of Articles 16 and 21 is presented in Annex III to this document. Annexes I and II present the questionnaires used to collect evidence from Parties on the implementation of Articles 16 and 21 in 2014. The Committee is invited at this session to examine, debate, and analyse information provided in this report. This substantive work of the Committee will be presented to the fifth ordinary session of the Conference of Parties in June 2015, and shall propose a provisional work plan for future activities (2015-2017).

8. The Committee may wish to adopt the following decision:

DRAFT DECISION 8.IGC 11

The Committee,

1. *Having examined Document CE/14/8.IGC/11 and its Annexes;*

2. *Recalling Resolutions 3.CP 11 and 4.CP 11 of the Conference of Parties and their Decisions 5.IGC 8, 6.IGC 11 and 7.IGC 12;*

3. *Takes note of information provided on the implementation and impact of Articles 16 and 21 of the Convention as presented in Annex III;*

4. *Requests the Secretariat to update the report in Annex III, taking into account the debate that occurred during this session, and report to the fifth ordinary session of the Conference of Parties;*

5. *Also requests the Secretariat to actively consult Parties, international organsiations and civil society on a biennial basis in order to collect and analyse information on the implementation and impact of Articles 16 and 21, and to continue to develop the online platform and database by adding Article 16;*

6. *Calls on the Parties to support the work of the Secretariat, including the online platform, by providing extrabudgetary resources.*

[10] See the detailed draft record of the seventh ordinary session of the Committee, Document CE/14/8.IGC/3, para. 247 to 282.

ANNEX I
2014 Survey Form sent to the Parties

SURVEY ON ARTICLE 16 BASED ON THE OPERATIONAL GUIDELINES ON THE FRAMEWORK FOR QUADRENNIAL PERIODIC REPORT AND ON ARTICLE 16

Policies and Measures to Implement Article 16 - Preferential Treatment for Developing Countries

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

Parties are invited to send to the Secretariat information on measures aimed at facilitating preferential treatment to artists and cultural professionals, as well as cultural goods and services from developing countries.

Please reply by **20 May 2014** at the latest by e-mail at: convention2005@unesco.org.

Measures are understood as legal, institutional and financial frameworks, policy and programme activities that foster preferential treatment for developing countries at different levels, for example:

- Individual level (human resource development) - including programmes to facilitate the mobility and exchange of artists and cultural professionals by, for example, simplifying procedures for visas or lowering visa costs

- Institutional level – including measures to improve market access for cultural goods and services of developing countries through specific support schemes such as co-distribution agreements

- Industry level – including bilateral, regional, multilateral trade agreements

Parties from **developing countries** are to provide information on actions they have taken to enhance their benefits from preferential treatment including:

- an assessment of their needs, priorities and interests

- introduction of measures to foster an enabling environment for the emergence of cultural industries

- production of knowledge and expertise to facilitate the distribution of cultural goods and services at the regional and/or international level

All Parties are invited to provide responses to the following key questions when describing a particular measure they have adopted:

(a) What are the main objective(s) of the policy or measure? When was it introduced?

(b) How has it been implemented, which public agency(ies) is (are) responsible for its implementation and what resources have been allocated to ensure implementation?

(c) What challenges have been identified in the implementation of this measure?

(d) What has been the impact of the policy or measure? Which indicators were used to lead to this conclusion?

For more information on the types of measures to be reported on, please refer to operational guidelines adopted on Article 16 available at:
http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Conv2005_DO_Art_16_EN.pdf

Thank you for your valuable cooperation.

ANNEX II
Revised 2014 Survey Form sent to the Parties

SURVEY ON THE IMPLEMENTATION AND IMPACT OF ARTICLE 21

CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS (2005)

The purpose of this survey is to collect information on the implementation and impact of Article 21 and will be used to compile examples/case studies as requested by the seventh ordinary session of the Intergovernmental Committee for the 2005 Convention.

This survey is part of the Secretariat's global effort to collect and disseminate information on the ways in which Parties have integrated the Convention's provisions into relevant policies and legislation. The results will inform monitoring activities designed to capture evolving trends and challenges in the effective implementation of the Convention.

Please reply by **20 May 2014** at the latest by e-mail at: convention2005@unesco.org.

1. **Since ratification of the Convention, has your government entered into new agreement(s) in which the principles and objectives of the Convention were promoted?**

   Yes ☐ No ☐

- If yes:

   a. Which forum (e.g. United Nations, World Trade Organization (WTO), World Intellectual Property Organization (WIPO), Association of South-East Asian Nations (ASEAN), European Union (EU), Mercosur, Organization of American States (OAS), etc.)?

   b. What type of agreement(s) was/were contracted (e.g. treaty, resolution, declaration, etc.)?

   c. How were the principles and objectives of the Convention promoted? Please describe (e.g. mention of the Convention in the Preamble, an article and/or a specific provision of the agreement, etc.).

   d. What were the results/outputs (e.g. adoption of a declaration to raise awareness of the Convention, signing a new cultural or trade agreement whether bilateral, regional or multilateral, etc.)?

   e. What were the consequences/outcomes (e.g. an increase or new investments through the establishment of a fund or programme, a change in institutional policies, etc.)?

- If no, why were the principles and objectives of the Convention not promoted? Please describe.

2. **During the negotiation of culture and/or trade related agreement(s), did your government negotiators raise the principles and objectives of the Convention?**

Yes ☐ No ☐

- If yes :

a. In what forum did they raise the principles and objectives of the Convention (e.g. bilateral or multilateral consultations)?

b. Which principles and objectives of the Convention were raised? Please describe.

c. What was the impact? How is impact measured?

- If no, why were the principles and objectives of the Convention not raised (e.g. low political priority given to culture)? Please describe.

Thank you for your cooperation.

ANNEX III

Report on the implementation and impact of Articles 16 and 21 of the Convention (2005-2014)

Through its main objective – the protection and promotion of the diversity of cultural expressions – the purpose of the Convention is to create a favourable environment that allows the diversity of cultural expressions to manifest itself, renew itself, and benefit all societies. To this end, the Convention recognises the specific nature of cultural goods and services as the embodiment of identity, value, and meaning, and sets out new arrangements for international cooperation. To do this, the Convention reaffirms the sovereign right of States to retain, adopt, and implement policies and measures they consider appropriate in order to have access to diverse cultural expressions from within their territories as well as from other countries around the world.

The objective of this report is to present an overview of how the Parties have implemented Articles 16 and 21 of the Convention and the impact generated. To recall, Article 16 stipulates that Parties from developed countries must provide preferential treatment for artists and cultural goods and services from developing countries, while Article 21 calls on Parties to promote the objectives and principles of the Convention in other international forums. These two articles are essential for the implementation of the Convention, calling for a new approach to international cooperation involving cultural, trade, and environmental policies as well as to ensure coordination of public policies to strengthen the cultural industries, promote a balanced flow of cultural goods and services, and mobility of artists, as well as improved systems of governance for culture.

Since 2011, the Parties to the Convention, the Committee, civil society, and the Secretariat, have engaged in consultation and collected information that inform this analysis. Various activities have been undertaken, in particular: consultations and surveys of the Parties; discussions at the Conference of Parties and during the Committee sessions; civil society advocacy on these two articles; research and analyses commissioned and conducted by the Secretariat and those from civil society; analysis of the periodic reports submitted by the Parties; information collected through the online platform of Article 21; and the report published by the Internal Oversight Service (IOS) regarding the Convention and its impact on national legislation (hereinafter referred to as "the IOS report")[1].

The result of these consultations and information collection activities can now be used to present a first comprehensive report on the application of these two articles by the Parties over the period 2005-2014, and to question the short- and medium-term results ("outputs" and "outcomes")[2] obtained to date. To do this, three questions were raised:

- Has the Convention had an influence in changing a public policy, in the sense that there has been a review of a policy or the adoption of a new policy?
- How has the Convention influenced political and/or policy debate and discussion?
- Has the Convention played a role during debate and discussion in the sense that it has been at the centre of said debate and discussion?

[1] "Evaluation of UNESCO's Standard-setting Work of the Culture Sector. Part IV – 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions", Jordi Baltà, Interarts Foundation, Barcelona, with inputs from the Internal Oversight Service, Evaluation Section, April 2014. Available at: http://unesdoc.unesco.org/images/0022/002269/226932e.pdf.

[2] These results are understood as follows: 1) Short-term ("outputs"), which are the results of activities undertaken by the Parties, such as the adoption of a statement that raises awareness of the Convention or calls for its ratification; 2) Medium-term ("outcomes"), which are the expected effects of short-term results ("outputs") and which involve, for example, a decision being made, a change in behaviour, growth in investments, or even the institutional policies of the Parties.

With the responses to these three questions, one can determine the extent to which implementation has generated short- and medium-term results and ask whether or not the original objectives were achieved and/or met expectations.

In this analytical report, a first part underline the *raison d'être* of Articles 16 and 21 in the Convention, i.e. the objective of Member States when they negotiated these provisions, in order to understand the origins of these provisions.

A second part shall present these two articles and their interpretation by the Parties. The results obtained to date on the implementation of Articles 16 and 21 will be discussed in part three, in order to confirm what happened and how circumstances evolved, especially in the area of international trade, in particular bilateral agreements, international cooperation, and the results obtained in the context of the debate on the Millennium Development Goals. The issues raised by the digital sector on these themes will be addressed.

In light of these results, a fourth part will assess the implementation and impact of preferential treatment and international consultation and coordination and draw first conclusions. The final part will consider the next steps to be taken by all stakeholders of the Convention to ensure an effective implementation of Articles 16 and 21.

1. The origins of Articles 16 and 21 of the Convention

Article 16

The principle of cooperation and international solidarity has been defended since the first meeting of independent experts that prepared the preliminary draft of the Convention in December 2003. One of the means put forward to implement this principle was to give preferential treatment to developing countries, their cultural goods and services. The final provision of the chapter on rights and obligations drafted at the third and final meeting of experts (May 2004) defines preferential treatment as the facilitation of cultural exchanges by developed countries with developing countries so that creators, professionals, and artists, as well as cultural goods and services from these countries, benefit from the most favourable treatment possible.

Following the first two intergovernmental meetings (September 2004 and February 2005) and the work of the Drafting Committee (December 2004), the wording on preferential treatment in the preliminary draft consolidated by the Chairperson of the intergovernmental meeting (April 2005) was altered slightly to stipulate, among other things, that it must take place "via the appropriate institutional frameworks".

At the third and final intergovernmental meeting (June 2005), the issue of preferential treatment gave rise to intense debate between certain delegations, due in particular to the potential impact of this article on Member States' national immigration policies. Although a group of delegations agreed on a consensual formula accepted by the Plenary, Australia, New Zealand, and Canada drafted a statement recalling that the wording of this article has sufficient flexibility in the application of national legislation, including immigration law[3].

Article 21

At the first meeting of independent experts on the preliminary draft of the Convention in December 2003, some experts emphasised the importance of the fact that the future international instrument could encourage States Parties to promote and defend the diversity of cultural expressions in all international forums, whether they be cultural, trade, or environmental. Other experts emphasised the idea of making such promotion compulsory. It was during the second meeting of experts (April 2004) that this idea to promote and defend the Convention took the form of a provision on international coordination and the promotion of the principles and objectives of the Convention in other international forums.

[3] Preliminary report of the Director-General on the possible scope of this regulation, accompanied by a preliminary draft of the Convention on the Protection of Cultural Contents and Artistic Expressions, 33 C/23, 4 August 2005, para. 62.

In the preliminary draft of the Convention (July 2004) sent for comment to Member States, international organisations (WTO, WIPO, and UNCTAD), and non-governmental organizations, International consultation and coordination was object of a provision specific to article 13 in section III.2 (Rights and obligations relating to international cooperation). The provision refers to the need for Member States to bear in mind the objectives of this Convention when making any international commitments, and to promote its principles and objectives in other international forums. For these purposes, States parties shall consult each other within UNESCO in order to develop common approaches.

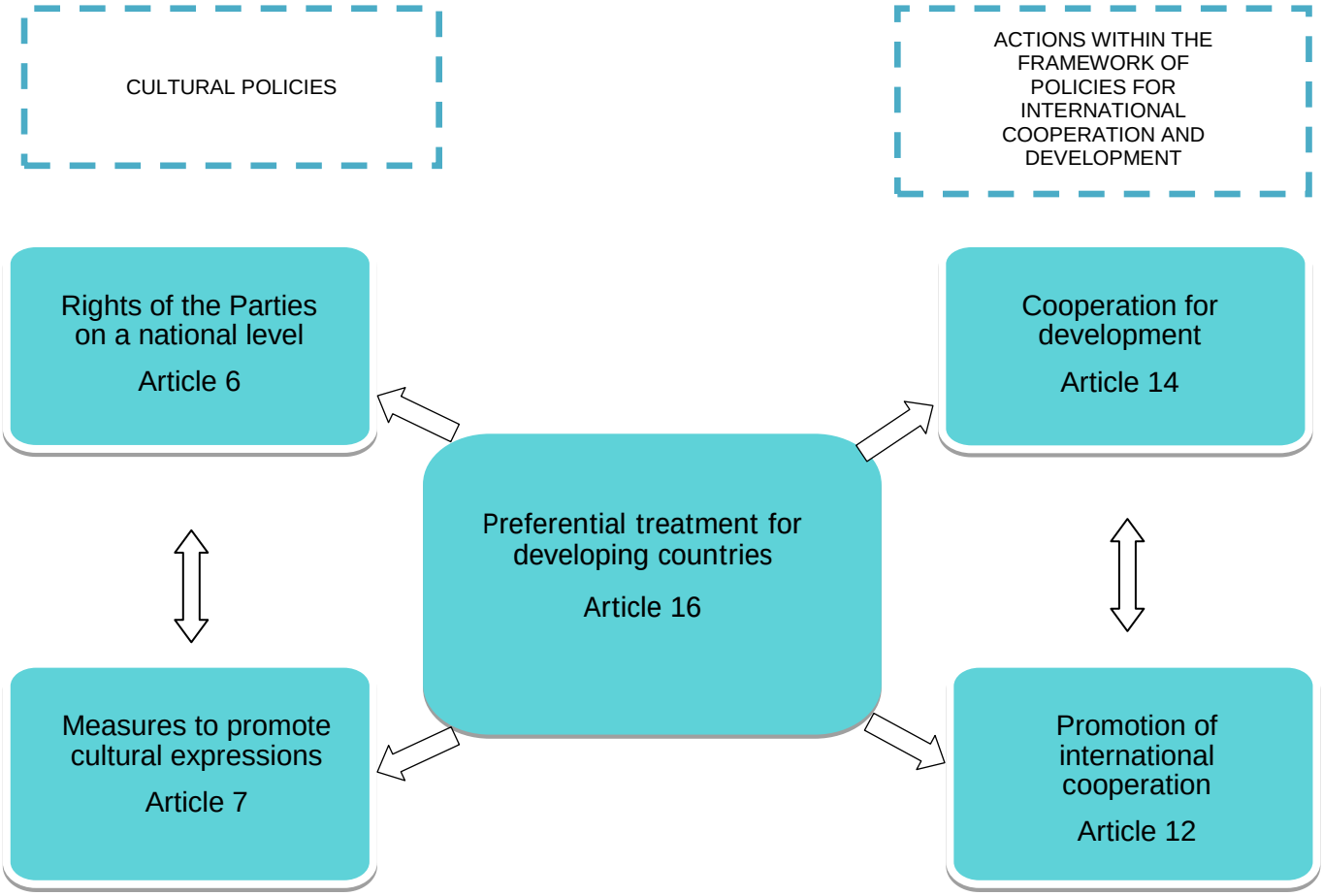
This consultation and dialogue between the Parties were seen as a crucial element by the delegations at the first intergovernmental meeting (September 2004) and considered essential in order to associate the Convention with other international treaties. It was at the second session of the intergovernmental meeting (February 2005), which examined the work of the Drafting Committee, that the article on international consultation and coordination was twinned with Article 20 on relations with other instruments in view of their complementary nature. Above all, discussions on the wording of the article on international consultation and coordination revealed the desire among delegations that cooperation not be limited to just one forum (UNESCO), but that it be present at other international forums in order to assume its full meaning.

2. Presentation of Articles 16 and 21 and interpretation of the Parties

The adopted **Article 16** calls for a new form of international cooperation by providing preferential treatment to developing countries, the aim of which is to ensure a more balanced exchange of cultural goods and services and greater mobility for artists, cultural professionals and practitioners from these countries. This is to be achieved through the introduction of appropriate legal and institutional frameworks both by receiving and beneficiary countries. Relatively little change in the draft and adopted article can be noted.

To facilitate the implementation of this complex article, operational guidelines were prepared by the Secretariat and approved by the Conference of Parties in 2009. The guidelines indicate that the application of Article 16 is connected to the implementation of other provisions of the Convention, in particular Articles 6, 7, 12, and 14, as noted in Diagram 1 below.

Diagram 1 – Article 16 and its interaction with other provisions of the Convention



The guidelines adopted define the application of preferential treatment within the fields of:

- Culture;
- Trade; and
- Culture and trade.

The guidelines also provide the Parties with an indicative list of measures that developed countries (receiving countries) could adopt to ensure the implementation of this article and calls on developing countries (beneficiary countries) to create an environment that is favourable to receiving preferential treatment. Such measures would be those that:

- Facilitate the mobility of artists and cultural professionals from developing countries, such as the simplification of procedures for obtaining visas for entry, stay, and temporary travel, as well as a reduction in their cost;
- Build capacities through training, exchanges, and orientation activities;
- Introduce specific tax advantages for artists and cultural professionals from developing countries;
- Introduce funding arrangements and resource-sharing schemes.

It should also be mentioned that the operational guidelines take into account the challenges posed by digitisation. For example, they encourage the Parties to put in place legal and institutional frameworks, including bilateral, regional, and multilateral agreements and programmes that provide technical assistance, in particular the acquisition of equipment and the transfer of technologies and expertise in order to facilitate the movement of cultural goods and services from developing countries to markets in developed countries[4]. Finally, the guidelines encourage developing countries to offer preferential treatment to other developing countries in the framework of South-South cooperation.

Article 21 on international consultation and coordination requires Parties to assume responsibility for promoting the objectives and principles of the Convention in other international forums. To this end, alongside their own individual actions and initiatives, the Parties may, if necessary, undertake consultations on this issue in the interests of the Convention.

Alongside Article 21, Article 23.6 (e) also provides for the establishment of a consultation process to promote the objectives and principles of the Convention in other international forums. Given that this article is within the context of functions entrusted by the Convention to the Committee, the latter may, if it so wishes, put procedures and other consultation mechanisms in place to promote its objectives and principles in other international forums.

As is evident in the responses to the questionnaire distributed by the Secretariat, the Parties have a broad conception of international forums under Article 21 (see Box 1 below). Thus, this provision is implemented worldwide in multilateral and regional forum administered by international governmental and non-governmental organizations, both within and outside the cultural sphere[5].

BOX 1 – Main fora in which the Parties have applied Article 21

- **International organisations** (the UN, the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO));

- **Regional economic organisations** (the Association of Southeast Asian Nations (ASEAN), the European Union and its institutions, Mercosur, the Andean Community, the Black Sea Economic Cooperation Organization);

- **Regional intergovernmental organisations** (the Asia-Europe Meeting (ASEM), the Commonwealth of Independent States, the Council of Europe, the Organisation for Economic Cooperation and Development (OECD), the Organization of American States (OAS), the Organization of Ibero-American States for Education, Science, and Culture, the Organisation internationale de la Francophonie (OIF), the Union of South American Nations (UNASUR), the Alliance of Bolivarian States for the Peoples of Our America (ALBA), the Southern African Development Community);

- **Government institutes and networks that operate on an international or regional level** (the Educational and Cultural Council of Central America, the International Network on Cultural Policy (INCP), the Regional Centre for Book Development in Latin America and the Caribbean);

- **International non-governmental organizations** (the International Council of Museums, the International Federation of Coalitions for Cultural Diversity (IFCCD), the International Federation of Musicians (IFM), the International Network for Cultural Diversity (INCD), the International Federation of Arts Councils and Culture Agencies (IFACCA), the International Publishers' Association, the Anna Lindh Foundation).

[4] For more information, see in particular: X. Troussard, V. Panis-Cendrowicz, J. Guerrier, "Article 16: Preferential Treatment for Developing Countries", *in* S. von Schorlemer, P-T Stoll (ed.), *The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Explanatory Notes,* Springer, 2012, pp. 405-455.

[5] For more information, see in particular: I. Bernier, *Les relations entre la Convention de l'UNESCO sur la protection et la promotion de la diversité des expressions culturelles et les autres instruments internationaux: l'émergence d'un nouvel équilibre dans l'interface entre le commerce et la culture*, August 2009, pp. 17-23. Available at: http://www.diversite-culturelle.qc.ca/fileadmin/documents/pdf/FR_Relations_entre_Convention_Unesco_instruments_internationaux.pdf; P.T. Stoll, "Article 21: International Consultation and Coordination", *in* S. von Schorlemer, P-T Stoll (ed.), *The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Explanatory Notes,* Springer, 2012, pp. 545-551.

Application of Articles 16 and 21

Special emphasis is placed on the binding force of Articles 16 and 21. Through the Convention and operational guidelines, Parties are to assume their responsibility to pursue new forms of international cooperation and coordination among Parties in other international forums.

To conclude on the presentation of these two articles and the Parties' interpretation thereof to date, Diagram 2 below helps illustrate the environment that affects the application of Articles 16 and 21 in the context of a public policy regarding cultural goods and services and the mobility of artists. Indeed, these articles have three dimensions (cultural, trade, and cultural and trade) and three areas of activity (international cooperation agreements, cultural agreements, and trade agreements on all levels), and on three levels (individual, industrial, and institutional). Thus, the diagram highlights the various transversal elements that are common to these two provisions and demonstrates the complex environment in which they are to be implemented.

Diagram 2 – Application of Articles 16 and 21: A complex environment

STATUS OF THE ARTIST

DIGITAL

Dimensions	Areas of activity	Levels of intervention of the Parties	Examples of international organisations affected and others	Examples of frameworks concerned
Cultural	International cultural cooperation to promote the diversity of cultural expressions	*Individual:* Building of expertise and mobility of artists and cultural professionals	UNESCO	Convention on the Diversity of Cultural Expressions 1980 Recommendation on the Status of the Artist
Trade	Bilateral, regional, and multilateral cultural and trade agreements	*Industrial:* Capacity-building among micro, small and medium cultural enterprises and organisations in the promotion of the economic and commercial dimension of the sector	WTO Bilateral and regional trade agreements	GATT and GATS, TRIPS Agreement on subsidies
Cultural and trade	Integration of culture in sustainable development policies and programmes	*Institutional:* The creation of broader systemic relations via trade agreements, cultural policy frameworks, and other frameworks	WIPO UNDP	Treaties on copyright, related rights, and other treaties Post 2015 sbjectives for sustainable development

3. Implementing Articles 16 and 21 of the Convention: Key results

The implementation of Articles 16 and 21 involves the adoption of policies and measures by the Parties that go beyond cultural policies. One way to present the results is to pose the following questions: since 2005, how has the Convention – through the implementation of Articles 16 and 21 – influenced a public policy regarding cultural goods and services and/or conditions for artists? Has the Convention served as the basis for political discussion, and how has it changed the course of this discussion? Has the Convention been at the heart of discussion and debates? In other words, the results will indicate whether or not, after almost ten years, whether the Parties have:

- amended or adopted such public policies;
- used Articles 16 and 21 to influence political discussion;
- placed Articles 16 and 21 at the centre of debate and reflexions.

To demonstrate these short- and medium-term results, the Secretariat presents evidence below in three areas of action that have emerged from its previous analysis as common to all Parties and their implementation activities:

- international cultural cooperation;
- international trade agreements; and
- the link between culture and development.

The initiatives adopted by the other stakeholders in the Convention – international organisations and civil society – will also be presented.

3.1 International cultural cooperation

In the domain of international cultural cooperation, **Article 16** operates in its cultural dimension as set out in the operational guidelines and on two levels: an individual level (i.e. among artists and cultural professionals) and an institutional level, in the context of cultural goods and services. The combination of the two levels can be considered an innovative approach to preferential treatment that, until a decade ago, only operated within an essentially commercial framework.

In order to determine impact, the Secretariat collected information in different ways: through a questionnaire sent to the Parties, international organisations, and civil society in 2014, through an analysis of information contained in the periodic reports of the Parties on their application of preferential treatment[6], and the results of the report published by the IOS on the Convention. From this exercise, several examples of public policies that have been amended or are in the process of being amended by the Parties can be presented that promote the mobility of artists and the flow of cultural goods and services.

On the ***individual level***, support for the mobility of artists is a typical case of the application of Article 16 with consequences for entry into a country, and which requires compliance with a certain number of formalities with regards to visas that may involve changes to policy fields related to employment, social security, immigration, and national security. A great deal of evidence is emerging[7] demonstrating how Parties have taken steps to amend their national legislation (while others are in the process of doing so) in order to allow a relaxation of procedures for obtaining visas by artists from developing countries who wish to perform overseas. Examples can be found in Box 2 below.

[6] See, in this regard: The strategic and action-oriented analytical summary of the quadrennial periodic reports, Document CE/12/6.IGC/4, para. 38 to 48; and Quadrennial periodic reports: New reports and analytical summary, Document CE/13/7.IGC/5 para. 21 and 22.

[7] See, for example: Mobility Matters, Programmes and Schemes to Support the Mobility of Artists and Cultural Professionals, ERICarts, Final Report, October 2008. Available at: http://www.mobility-matters.eu/web/files/14/en/Final_Report_-_Mobility_Matters___ERICarts.pdf

BOX 2 – Visas and the mobility of artists from the global South

Simplified process for obtaining a visa for artists ("performers") and their troupes performing at festivals in New Zealand (2012)
New Zealand has made changes to its immigration policy to allow foreign artists and their troupes, in particular those from developing countries, performing at festivals on its territory to obtain a visa more easily. Artists no longer require a work visa but a visitor visa, for which the formalities are much simpler and less expensive and require fewer steps. Twenty-five major festivals have been approved by the Ministry of Immigration to benefit from this new policy.

Current review of policies for obtaining a visa within the European Union (2013-2014)
The purpose of this review is to provide greater flexibility with the creation of a new travel visa that will allow individuals, including artists from third countries (in particular developing countries), to travel within the Schengen Area for a longer period. The new measures are to be approved by the Council of the European Union and by the European Parliament in 2015.

The creation of an interdepartmental working group on visas in France
To anticipate and resolve any problems artists and cultural professionals from developing countries may encounter in obtaining a visa, an interdepartmental working group on visas that brings together public officials from the Ministries of Foreign Affairs, Culture, and Employment and from the Institut français meets twice a year to exchange views on current procedures and to organise events.

Information portal for on touring artists in Germany (2013)
Germany has set up an online information portal for travelling artists to centralise information on obtaining visas, transport and customs, taxes, social security, insurance, and intellectual property (http://touring-artists.info/home.html?&L=1).

The IOS report also notes that Austria, Canada, the Republic of Korea, and Slovakia, have developed processes that promote the mobility of artists from developing countries (para. 70). Other applications of preferential treatment for artists and cultural professionals can be seen in the context of policies for South-South and North-South-South cooperation via capacity-building through training and exchanges, as in the case of Argentina and its subsidy and support programmes and the artist exchange programme between Burkina Faso and Belgium (Wallonia-Brussels). Preferential treatment is also granted via specific fiscal measures aimed at cultural professionals. The report published by the IOS gives the example of the EU, which has adopted special fiscal measures for cultural enterprises from developing countries in the form of tax credits and agreements for the non-application of double taxation (para. 57).

On an ***institutional level*** (regarding the flow of cultural goods and services), co-production and co-distribution agreements are specific examples of the application of preferential treatment. Preferential treatment is shown by the fact, for example, that these agreements confer domestic status to official co-productions, thereby providing them with access to distribution and broadcasting outlets and funding measures in the countries concerned. In this sense, these co-production agreements amend the rules of the national public policies concerned by expanding their scope to the cultural goods and services of stakeholders in the agreement. This is the case with the audiovisual co-production agreement between Canada and India (2014), cinematographic co-production agreements signed by New Zealand with India (2011) and China (2010), and the agreement for the co-production of films between Australia and South Africa (2011). The next logical question would be to ask whether these agreements have in fact resulted in an increase in the production of films between these countries? Unfortunately, information is not currently available to provide an answer to this question.

More generally, numerous countries have signed cultural cooperation agreements to promote the exchange of cultural goods and services with developing countries (Estonia, the Wallonia-Brussels Federation, Kenya, the Republic of Moldova, and Serbia). Between 2008 and 2011, for example, Slovakia concluded a number of agreements and memoranda of understanding with Parties to the Convention (such as Ukraine, Armenia, the Syrian Arab Republic, Georgia, India, and the Former Yugoslav Republic of Macedonia). The main objective of these agreements is to create the legal frameworks needed to promote the mobility of artists and cultural professionals overseas and to render the market more accessible to the distribution of cultural goods and services, which has contributed to the organisation of international music and theatre festivals, literary seminars, and exhibitions.

In accordance with the operational guidelines of Article 16, developing countries should facilitate the implementation of preferential treatment by putting legal frameworks in place in order to create an environment that is favourable to the application of this provision. Some examples emerge: Kenya has put in place measures to facilitate the application of preferential treatment, introducing measures to foster an environment that is favourable to the emergence of cultural industries. The IOS report also mentions Tunisia, which has negotiated provisions regarding preferential treatment for cultural goods in cooperation agreements with the EU (para. 78).

With regard to **Article 21,** the four reports prepared by the Secretariat and presented to the governing bodies highlight specific cases of the application of this provision in international cultural cooperation, helping enhance said cooperation. The main results obtained indicate that the Parties have used Article 21 during high-level multilateral political debates, influencing and guiding the direction of discussions (see Boxes 3 to 6).

BOX 3 – Brussels Resolution (2012) – The heads of state and governments of the Asia-Caribbean-Pacific Group (ACP):

- Reaffirm commitments undertaken by the Parties under the terms of the Convention and call on Member States who have not done so to ratify the Convention;

- Commit to improved information-sharing, the mobility of cultural professionals, and the exchange of cultural goods and services from ACP countries in regional and international markets.

- Medium-term result ("Outcome"): Growth in investment, with a contribution of 30 million euros financed by the EU within the framework of the 10th European Development Fund (EDF). Objective: To foster the creation and production of cultural goods and services from ACP states, support enhanced access to local, regional, intra-ACP, European, and international markets for cultural goods and services from ACP states, and build the capacities of professionals in the culture sector in ACP states.

BOX 4 – Example of the Organisation internationale de la Francophonie

The Montreux Declaration (2010)

- Calls for the ratification and implementation of the Convention
- Calls for the OIF and operators to enhance the assistance given to francophone countries in the South to develop their national culture policies and in the emergence of cultural industries in these countries.
- The OIF has put in place various projects and programmes that are considered as producing medium-term results ("outcomes"), such as growth in investments and the creation of institutional policies, in particular in Burkina Faso, Côte d'Ivoire, and Niger.

The Kinshasa Declaration (2012)

- Article 52 reiterates the determination of heads of state and of governments that use French as a common language "to persist with the development of [their] cultural policies and industries in the spirit of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and to incorporate culture into [their] development policies in order to create conditions that are conducive to sustainable development".

The Parties also referred to the Convention and Article 21 during international debates of global consequence, allowing a reference to the Convention in cultural agreements and memoranda as well as various instruments such as declarations, partnerships, and the implementation of programmes (see Boxes 3 to 6). The fact that it has influenced debates when it has been at the centre of discussions is evidence of the implementation of Article 21 of the Convention.

BOX 5 – *The Quebec Declaration* (2011) adopted by the Parliamentary Assembly of the Francophonie

- Heads of state and government are called upon to "bring the full weight of the Convention to bear in trade negotiations, in order to assert their rights to put in place or maintain policies and measures to support cultural expressions".

- Short-term result: Action plan adopted by the Education, Communication, and Cultural Affairs Commission of the Parliamentary Assembly of the Francophonie (CECAC) to turn commitments undertaken into real action, in particular, the promotion and concrete application of the Convention in francophone countries, the formulation of training seminars aimed at parliamentarians in French-speaking countries. Resolution on follow-up of the Quebec Declaration, Kinshasa (Democratic Republic of Congo), 5-8 July 2011.

- Medium-term result following from the action plan: Two information seminars held (one in Gabon in 2012, the other in Burkina Faso in 2013) to build the capacities of parliamentarians so that they can initiate and develop new public policies and strategies for the development of cultural industries. Moreover, other articles of the Convention were implemented under Article 21 (in this case. Article 14).

BOX 6 –*The Dhaka Ministerial Declaration* (2012)

- Recommends that States in the Asia-Pacific region that have not yet ratified the Convention do so as soon as possible.

- Issues an invitation to "facilitate dialogue between States on cultural policies to promote and protect the diversity of cultural expressions"; and "encourage co-production and co-distribution agreements between States, and to facilitate access to the market for co-productions".

- Expected short-term result ("Output"): awareness and promotion of the Convention with a view to increasing the number of ratifications in the Asia-Pacific region. Again, a transversal example of the implementation of Articles 16 and 21.

Article 21 has also been implemented on a regional and bilateral level, where it has been used by the Parties to influence discussions in order to secure the signing of various cultural agreements and memoranda, declarations, partnerships, and programmes. These discussions have resulted in the inclusion of references to the Convention in these instruments. Examples of these references can be seen in Boxes 7 and 8 below.

BOX 7 – *Declarations of the European Commission*

- Joint declarations by the ***European Commission (EC)*** and ***China*** (2007 and 2012) that promote existing instruments in the area of culture, in particular the Convention.
- Short-term result: The organisation of a high-level cultural forum between the officials from the EC and China in Brussels (October 2010), an unprecedented platform that allowed an exchange between influential Chinese and European researchers.
- Medium-term result: Ten European Union-China projects were financed as part of the special action of the "Culture" programme.

For more details, visit: http://ec.europa.eu/culture/eu-china/index_fr.htm

- Joint declaration with ***Mexico*** (2009) – The two partners sought to put in place a sectorial policy in the area of culture, with cultural diversity and the implementation of the Convention as its main focus.
- Short-term result: The official launch of the EU-Mexico Cultural Fund, with a total budget of 6.8 million euros financed in equal measure by the EU and the Mexican government.

BOX 8 - Creation of the *Eastern Partnership* (EaP) between Member States of the EU and the States of Eastern Europe and the Caucuses (2009)

- Short-term result: In 2012-2013, the objective of Parties to the EaP was to draw attention to the importance of cultural investment to economic and social development and to encourage the ratification of the Convention.

- Medium-term results: All partner countries ratified the Convention and the creation of the 12 million-euro Eastern Partnership Culture Programme (2011-2015). The main objectives of this programme are to help partner countries in their efforts to reform their public culture policies, help build capacities, and improve the professionalism of cultural operations in the region as a whole.

NB: EaP comprises the 27 Member States of the European Union plus Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, and Ukraine, and serves as a forum for discussion in the areas of education, research, youth, culture, media, and information. For more information, visit http://www.euroeastculture.eu.

3.2 International trade agreements

Given the significance of trade law on the ability of Parties to implement or adopt public policies regarding cultural goods and services, in view of the debates of the Committee at its last session in 2013, and in view of the numerous references to this issue in international current events, the Secretariat has taken steps to produce evidence on trends on the bilateral trade scene since the Convention was adopted[8]. The first results of this research are presented below that take into account the results obtained to date and presented in the previous reports of the Secretariat on the implementation of Article 21 and the 2014 consultation on preferential treatment. These results also take into account observations made in the IOS report and are accompanied by factual information collected to date. Evidence is provided in boxes, in particular on existing jurisprudence in trade forums.

Presentation of results of research on bilateral trade agreements

The focus of the research was on the examination of 38 bilateral and regional agreements concluded between Parties representing all regions of the world since the Convention was adopted. Of a total of 97 States party to the 38 agreements examined, plus the European Union, 81 are Parties to the Convention[9]. The research identified 15 practical cases (see Table 1 below) and provided the information for 38 technical worksheets on each of these agreements, which are in the process of being analysed for presentation at the fifth ordinary session of the Conference of Parties (see the list attached as Annex A to this report). The first practical case is provided in Annex B to this report, and is based on the analysis of three free trade agreements arising from a cultural cooperation protocol concluded by the EU since the Convention was adopted in October 2005, i.e. 1) the Economic Partnership Agreement with the Cariforum States; 2) the free trade agreement with the Republic of Korea; and 3) the agreement establishing an association with Central America. As the developments below shall demonstrate, the choice of this practical case is not neutral.

Table 1 - List of the 15 practical cases (see Annex A for the list of countries concerned)

Practical case	Groups of agreements Sub-groups of agreements	Number of agreements examined
Agreements concluded by the European Union and its Member States		
1	Agreements accompanied by a cultural cooperation protocol	3
2	Agreements not accompanied by a cultural cooperation protocol	6
3	**Agreements concluded by Canada**	6
4	**Agreements concluded by the United States of America**	5
Agreements concluded by states in Asia		
5	Agreements concluded by China	7
6	Agreements concluded by the Republic of Korea	2
7	Agreements concluded by ASEAN	2
8	**Agreements concluded by New Zealand**	2
Agreements concluded by states in Latin America		
9	Agreements concluded by Chile	6
10	Agreements concluded by Colombia	4
11	Agreements concluded by Costa Rica	3
12	Agreements concluded by Panama	3
13	Agreements concluded by Peru	7
14	**Agreements concluded by states in Africa**	7
15	**Agreements concluded by Arab states**	3

[8] Research conducted in 2014 and commissioned by the Secretariat was on the application of Articles 16 and 21 in bilateral trade agreements, conducted by V. Guèvremont, Professor of the Faculty of Law at the Université Laval, with the assistance of I. Otasevic, a doctoral student with the Faculty of Law at the Université Laval.

[9] A limited number of agreements concluded by Parties to the Convention with States not party have been examined, in particular agreements concluded by the United States of America, taking into account the free trade agreement template in the presence of certain agreements concluded by groups of States whose members are not Parties to the Convention. One example is the agreement concluded by the Association of Southeast Asian Nations ("ASEAN"): of the ten Member States of this association, four are Parties to the Convention.

The purpose of this research was to examine the impact of the Convention on the content of bilateral and regional agreements, with the evaluation of the implementation of Articles 16 and 21 as its main objective. To achieve this objective, the methodology chosen for research consisted of determining whether or not these agreements contained:

1) References to the Convention;
2) A treatment of cultural goods and services;
3) Clauses on preferential treatment for cultural goods and services;
4) A status for e-commerce; and
5) Other provisions relating to culture.

*The **main results** of the research for the 38 agreements examined can be broken down as follows:*

1) Three agreements concluded by the European Union (with the Republic of Korea, the CARIFORUM States, and Central America) incorporate **explicit references to the Convention**, while another ten contain in their respective Forewords notions related to the objectives pursued by Parties to this Convention, with no explicit mention of the Convention.

2) There are five approaches to the **treatment of cultural goods and services** in bilateral trade agreements. These approaches can be combined, and range from that in which agreements contain provisions that offer the greatest recognition of the specificity of cultural goods and services, to those that do not recognise such specificity:

a) Agreements that contain a *cultural cooperation protocol*: Three concluded by the European Union (with the Republic of Korea, the CARIFORUM States, and Central America), to which a cultural protocol has been annexed. These three agreements, which contain explicit references to the Convention, expressly recognise the specificity of cultural goods and services. Another of their special features is that they contain provisions aimed specifically at the implementation of Article 16. The three agreements exclude audiovisual services from the scope of the chapter on services (for more information, see Annex B).

b) Agreements that contain a *cultural exemption*: Twelve agreements contain a cultural exemption; however, the scope of this exemption varies according to its content, allowing certain cultural goods and/or services to be excluded from the scope of agreements. This exclusion means that States preserve their margin for manoeuvre to draft public policies regarding cultural goods and services, but that this margin varies considerably according to the protection provided. The unique characteristic of this approach is that it is ongoing: once incorporated into the agreement such a clause is rarely called into question. The Parties that use this approach are Canada, New Zealand, and the European Union.

c) Agreements that offer the Parties the option to *liberalise cultural services using a positive list of specific commitments*: This approach provides States with great flexibility when modulating their commitments, whether they relate to audiovisual services or to other cultural services. It allows them to select the cultural services they wish to expose to the forces of supply and demand and those they would prefer to protect, by not entering into any commitments. This approach is used in 11 agreements in total, including those concluded by the European Union with certain states or groups of states (the Republic of Korea, the CARIFORUM States, states in Central America, Peru, and Colombia), by China with its trading partners (Chile, Costa Rica, New Zealand, Peru, and Switzerland), and by members of ASEAN in their agreements concluded with China and New Zealand.

d) Agreements that offer the Parties the option to *liberalise cultural goods and services using a negative list of commitments*: This approach allows a rapid liberalisation of services and involves the use of reservations to exclude cultural services from the agreement. Thus, it implies that all policies and measures regarding cultural goods and services that could affect trade in the same must be mentioned in a list of reservations, hence the risk of forgetting

these reservations. This approach has been adopted in 14 of the 38 bilateral and regional agreements. Essentially, it is used by Canada, the United States of America, several countries in Latin America, and Australia.

e) Agreements that *do not confer any particular status* on cultural goods and services: This approach implies that States party to these agreements have not retained their right to adopt policies and measures in relation to cultural goods and services. It is adopted in 11 bilateral and regional agreements and is present in agreements involving countries in Africa, as well as Cuba, Egypt, El Salvador, and India.

3) The almost non-existence of clause(s) incorporated into bilateral agreements in order to accord **preferential treatment** to cultural goods and services from developing countries: Three agreements concluded by the EU (with the Republic of Korea, the CARIFORUM States, and states in Central America), to which a cultural protocol that states that the Parties accord each other preferential treatment for their cultural goods and services is annexed. The other 35 agreements examined do not contain any clause for the implementation of this provision.

4) Eighteen agreements contain one or more provisions in relation to **e-commerce**, the content and binding force of which vary considerably from one agreement to another. There are three levels of commitment: 1) Several agreements contain non-binding provisions designed mainly to foster cooperation between the Parties on issues associated with e-commerce; 2) A smaller number of agreements also contain provisions relating to the non-imposition of customs duties on products delivered electronically; 3) Some agreements also contain provisions related to the application of domestic treatment or most favoured nation treatment to these products.

5) Some agreements deal with **other aspects relating to culture**: A number of agreements contain one or more provisions relating to intellectual property; close to half of the 38 bilateral and regional agreements examined as part of this research contain references to persons who belong to minorities and indigenous peoples. Often, these references are in the form of reservations and with the aim of protecting the right of the Parties to adopt measures in favour of these groups. Such references are generally found in the agreements concluded by Canada, the United States of America, certain countries in Latin America (Chile, Colombia, Costa Rica, Honduras, Panama, and Peru), China, and Australia.

The preliminary conclusions *of the research are as follows:*

Only the approach developed by the European Union, in which a cultural cooperation protocol is annexed to trade agreements, constitutes a joint implementation of Articles 16 and 21. This approach is found in three of the 38 agreements examined, and concern 49 Parties to the Convention: the European Union and its 27 Member States, the 15 CARIFORUM states,[10] and the six states of Central America concerned[11]. These three agreements are the only agreements that contain explicit references to the Convention, to reserve a particular status for certain cultural services, to conduct a liberalisation using a positive list of commitments, and make provision for a specific preferential treatment for cultural goods and services, artists, and cultural professionals of the Parties.

The cultural exemption (which in general appears in the wording of the agreement and not in the annex), which is used in slightly less than one-third of the agreements examined (12), remains a technique used to preserve the margin for manoeuvre and the power of States to intervene in matters relating to culture. However, the scope of the cultural exemption can vary: the smaller this scope, the more limited States' margin for manoeuvre will be. Indeed, an exemption for traditional and digital cultural goods and services will have great scope, as opposed to an exemption solely for tradition cultural goods and services or an exemption only for audiovisual services. For

[10] Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.
[11] Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

example, the cultural exemption contained in agreements concluded by New Zealand covers not only traditional cultural goods and services, but digital products as well. Moreover, the cultural exemption on its own does not allow preferential treatment to be given to cultural goods and services, or to artists and cultural professionals from developing countries.

In short, it is more difficult to assess the impact of the Convention on the formulation of commitments (using positive or negative lists) in cultural sectors. The research reveals that when an agreement contains a cultural exemption, liberalisation commitments regarding cultural goods and services are more limited and, apart from in a few exceptional cases, naturally relate to cultural goods and/or services not covered by the exemption. In addition, when no provision is made for such an exemption, several situations are possible. The Parties can choose to ignore all considerations in relation to culture and liberalise the trade in cultural goods and services; this is the option chosen in several of the agreements examined, in particular agreements concluded by African countries, Arab countries, and India. On the other hand, certain States have tended to considerably limit their commitments in terms of culture. This is apparent in particular in agreements concluded by several states in Latin America.

This research is but the start of a study that will allow a better evaluation of the application of these articles in order to understand the reasons for the results obtained to date. As highlighted in the report published by the IOS on the Convention, “there is some evidence to suggest that the diversity of cultural expressions has entered the international trade agenda and been taken into account in the negotiation of a number of bilateral or regional trade agreements (p. IV)”. The report also highlights that “The ability of cultural aspects to influence trade negotiations remains indeed one of the touchstones on which the 2005 Convention’s ultimate effectiveness is to be judged. Recent years have witnessed, on the one hand, how some countries have succeeded in integrating the principles of cultural diversity in the international trade agenda; (para. 65) yet, on the other, recent bilateral and multilateral negotiations, including the ongoing negotiations of the Trans-Pacific Partnership (TPP) and the EU-US Transatlantic Trade and Investment Partnership (TTIP) raise some doubts about the solidness of commitments towards the diversity of cultural expressions and the potential implications of multilateral and regional agreements on national policies and strategies (para. 66)”.

The contribution of jurisprudence in the area of trade

Alongside the legal frameworks of trade agreements, court decisions handed down to date are of equal importance in that they provide an overview of the interpretation of the Convention in judicial bodies. In 2009, two cases heard respectively within the framework of the law of the WTO and that of EU law attested to the dual nature of cultural goods and services (see Boxes 9 and 10). These cases bear witness to how the Convention could influence political debate on the legal status of cultural goods and services in trade law (in this case, on a multilateral and EU level).

BOX 9 – WTO, China - Measures that affect marketing rights and distribution services for certain publications and certain audiovisual entertainment products (2009)

During prior consultations, China cited the Convention to justify one of its measures affecting audiovisual services (WT/DS363/R, para. 4,108). However, no mention was made of the Convention within the framework of the legal analysis conducted by the special group and the appeal body. Nevertheless, the special group did recognise the unique nature of cultural goods: "(…) finished reading material, electronic publications, and audiovisual products constitute "cultural goods" and are "products of a unique type (…)" (WT/DS363/R, para. 7,751).

This case warrants two observations: 1) One step has been taken since the last case concerning cultural goods and services (the periodicals case between Canada and the United States of America), in which the judicial bodies of the WTO were committed only to the commercial value of the cultural goods and services; and 2) it is the first time in WTO law since the adoption of the Convention that the WTO court has emphasised the non-commercial value of audiovisual services.

Sources: World Trade Organization (WTO) - Measures that affect marketing rights and distribution services for certain publications and certain audiovisual entertainment products, WT/DS363/R, 12 August 2009 and WT/DS363/AB/R, 21 December 2009. WTO - Certain measures regarding periodicals, WT/DS31/R, 14 March 1997 and WT/DS31/AB/R, 30 June 1997.

BOX 10 – Court of Justice of the European Union, UTECA ruling (2009)

For the European court, the objective for a Member State to promote a language is in itself enough and there is no need to add other cultural criteria in order to justify a restriction on one of the fundamental freedoms of the treaty (C-222/07, para. 33). To support their reasoning, the position of the European court is based on the intrinsic link between language and culture, with reference to the Convention, which in its foreword emphasises that "linguistic diversity is a fundamental element of cultural diversity".

This ruling attests to the implementation of the Convention: 1) The fact that the EU and its Member States are Parties to the Convention conveys their commitment to take this Convention into consideration within the framework of the interpretation and application of other treaties, in particular the European treaty; 2) the consideration of the Convention shows the commitments undertaken and now implies for the European court that cultural aspects should be taken into account when measures of Member States violate one of the fundamental freedoms guaranteed by the treaty.

Source: Court of Justice of the European Union - Association of Spanish Commercial Television Stations (UTECA) case, C-222/07, 5 March 2009.
NB: Article 167 (4) TFEU states that "The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to promote the diversity of its cultures".

The quadrennial periodic reports submitted by the Parties in 2012 and 2013 also indicate *legal cases* in which the Convention has been used to support the legality of measures regarding cultural goods and services in the area of competition. These cases relate to government assistance for Member States of the EU granted by the latter for their cultural goods and services. Here, the Convention has been influential in bringing about a change in public policies regarding cultural goods and services. Indeed, the legal cases presented in Box 11 indicate how a public policy specifically for film, publishing, video games, and music, has been amended or adopted.

BOX 11 – Legal cases that have resulted in the adoption of public policies regarding film, publishing, video games, and music

- Austria has adopted a national measure, the "Austrian Film Support Scheme" (2010-2012), whose main objective is to provide support for the production of feature-length films and documentaries with Austrian and European cultural content. Citing EU law and the Convention, the European Commission validated the measure. *Case N96/2010 – Austria, Austrian Film Support Scheme.*

- Italy's "Lazio Regional Film Support Scheme", whose objective is to provide support for the production of cinematographic and audiovisual works that could make a significant contribution to the development of cultural resources and, in particular, to the regional identity of the Lazio region. The Commission has indicated that the promotion of culture and of the diversity of cultural expressions are recognised in the Treaty and in the Convention, and concluded that the measure was compatible with the Treaty. *Case SA.34030 (2012/N) – Italy, Lazio Regional Film Support Scheme, para. 28.*

- Lithuania has adopted a fiscal measure called the "Lithuanian Film Tax Incentive" (2013-2018), the objective of which is to create conditions that are favourable to film production in Lithuania and to attract film producers to the country. Again, the Commission cited EU law and the Convention to declare the measure compliant. *Case SA.35227 (2012/N) – Lithuania, Lithuanian Film Tax Incentive, para. 40.*

- Spain has introduced "Publishing Aid for Literature in the Basque Country", whose main objective is to provide an incentive for the production of literary publications in Basque (Euskera) and Spanish (Castilian) and to support the creation, translation, and adaptation of novels, poems, games, and books for children. *Case SA.34168 (2012/N) – Spain, Publishing Aid for Literature in the Basque Country – Amendment, para. 28.*

- Spain has also provided notification of state aid to the dance, music, and poetry sectors that has been validated by the Commission under the Treaty and the Convention. *Case SA.32144 (N 2011) – Spain, State Aid to Dance, Music and Poetry.*

- France, for its part, has adopted a new measure, "Assistance for Projects for New Media" (2011-2016), whose main objectives are to promote French and European cultural creation for new networks and digital formats to disseminate and promote cultural diversity in these media. *Case C 47/2006 (ex N 648/2005) – France, Crédit d'impôt pour la création de jeux vidéo.*

3.3 Culture and development

In recent years, the field of culture and development has been the subject of extensive analysis worldwide. In this context, the Parties promote the objectives and principles of the Convention in legal instruments of the UN in relation to culture and development, as indicated in Box 12.

BOX 12 – UN thematic debate on culture and development (2010-2013)

Three resolutions of the United Nations General Assembly in 2010, 2011, and 2013 on culture and development that move the analysis of the potential of culture on a national and regional level forward.

Paragraph 3 d) of Resolution 66/208 ("Culture and development") (2011) in particular calls on States to "actively support the emergence of local markets for cultural goods and services and to facilitate the effective and licit access of such goods and services to international markets, taking into account the expanding range of cultural production and consumption and, for States parties to it, the provisions of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions". *See also article 2(d) of Resolution 65/166 of the United Nations General Assembly ("Culture and development") (2010).*

Short-term results: 1) During the high-level debate on the issue of culture and sustainable development at the United Nations General Assembly in June 2013, at which representatives of intergovernmental organisations and representatives of the States represented at a ministerial level, referred to the Convention in their discussions, emphasising in particular their importance to economic development and the strength of the cultural and creative industries in this process. *See http://csonet.org/?page=view&nr=191&type=13&menu=14.*

2) The Convention was also highlighted at the ministerial meeting of the United Nations Economic and Social Council (ECOSOC) entitled "Science, technology, and innovation and the potential of culture to promote sustainable development and achieve the Millennium Development Goals", held in Geneva in July 2013.

Sources: United Nations General Assembly, Culture and Development, Res. 65/166, 69th Plenary Session, 20 December 2010; United Nations General Assembly, Culture and Development, Res. 66/208, 66th Plenary Session, 22 December 2011; United Nations General Assembly, Culture and Development, Res. 68/223, 69th Plenary Session, December 2013; Economic and Social Council, Report of the Secretary-General on "Science, technology and innovation, and potential of culture, for promoting sustainable development and achieving the Millennium Development Goals" for the 2013 Annual Ministerial Review, Geneva, 1-26 July 2013.

During the debates that resulted in the adoption of these resolutions, the Convention influenced political debate and was referred to time and again in debates that occurred on this theme in 2014. This was the case in the second stage of global consultations on "Culture and development" which took place in 2014 and which were led by the United Nations Development Group, or within the framework of the second high-level debate on the theme "Culture and sustainable development in the programme for development beyond 2015" organised by the Chairperson of the General Assembly, in partnership with UNESCO, in May 2014.

Thus, the Convention is seen as an important resource that can lead to the adoption of innovative public policies that allow culture to be incorporated into sustainable development policies and programmes at all levels. Certain Parties are already taking action and have drafted public policies that ensure that the conditions necessary for this integration exist. The report sent by the Secretary-General to the 2014 session of the United Nations General Assembly explicitly mentions the Convention and provides examples of new policies adopted by the Parties. For example, "Bulgaria, Canada (the government of the province of Quebec), Congo, Ecuador, France, Hungary, the Czech Republic, and the United Republic of Tanzania have incorporated culture into their

development policies and strategies, given specifically the relationship between culture and sustainable development"[12]. The information provided in periodic reports by the Parties also show how the Convention has influenced certain policies, led to the adoption of measures, or been at the centre of debates on culture and development[13].

All of these initiatives taken by the Parties in recent years have fuelled debate to more accurately determine and understand the contribution of culture to sustainable development, in which the recognition of the dual nature of cultural goods and services has played a part in ensuring a clear place for cultural and creative industries. 2014 is a pivotal and crucial year, crucial for the Convention, as it will be portrayed as an important advocacy tool due to the importance of cultural and creative industries in the process.

BOX 13 – The contribution of civil society in the application of Articles 16 and 21 (2008-2013)

Resolutions adopted by the Annual General Assembly of the International Federation of Coalitions for Cultural Diversity held in, Bahia, Brazil, from 5 to 8 November 2008, "urge the Intergovernmental Committee to address the issue of the promotion of the principles and objectives of the Convention in other international forums, in order to establish procedures and other consultation mechanisms and specified in its mandate in Article 23.6 (e)".

Cultural organizations from 10 Caribbean member states of the Commonwealth gathered in Port of Spain, 2008 and called for "coherence in their actions, to not only ratify the convention, but to uphold and observe its principles and objectives in other international forums—notably by refraining from liberalization commitments in trade negotiations that would constrain their right to apply cultural policies and other measures in support of their domestic cultural sector".

The Quebec Declaration resulting from the third meeting of coalitions and professional culture organisations in member countries of the Francophonie, delegates of national coalitions for cultural diversity, and professional culture organisations from 16 member countries of the Francophonie, Quebec, 11 to 13 October 2008 is a statement that contains very explicit references to Articles 16 and 21.

Proposals put forward at the U40 Americas meeting in Montréal on 19 and 21 May 2010, that emphasise "the importance of promoting the principles and objectives of the 2005 Convention in other international forums for their effective implementation, and not to renounce the sovereign right of States to implement cultural policies".

"Cultural diversity – For sustainable development", organised by the Swiss Coalition for Cultural Diversity held in Zurich in August 2011 held debates on Article 16 of the Convention (on preferential treatment for developing countries) emphasised that "urgent measures must be taken with Swiss representations overseas and with immigration and employment authorities in Switzerland".

Jointly organised by Cercle Europe (Faculty of Law – Graduate Institute for International Studies (HEI)), the Network of Lawyers for the Diversity of Cultural Expressions (RIJDEC) and others, Université Laval, 11-12 October 2012 the roundtable was specially dedicated to "relationships with other international legal instruments".

[12] Note from the Secretary-General, General Assembly, the United Nations, A/69/216, July 2014, para. 17.

[13] See, in this regard: The strategic and action-oriented analytical summary of the quadrennial periodic reports, Document CE/12/6.IGC/4, para. 53 to 71, and Quadrennial periodic reports: New reports and analytical summary, Document CE/13/7.IGC/5 para. 23 to 38.

4. The implementation and impact of Articles 16 and 21: Seven years later, the first lessons

Coordination among Parties in other international forums is essential to the implementation of the Convention and for regional consultations held by the Parties. This implementation is associated with public policies and measures regarding preferential treatment. This first report on Articles 16 and 21 provides some observations and preliminary findings on the implementation and impact of these two provisions almost ten years after their adoption.

Indeed, the Convention has influenced public policies regarding cultural goods and services, whether via the revision or adoption of public policies, the Parties have used the Convention (in this case, Articles 16 and 21) to implement these provisions on a national level. Has this influence had the desired outcome?

- In the field of international cooperation, nascent change on the issue of visas and the mobility of artists from developing countries, together the growing number of cinematographic and audiovisual co-production agreements, would suggest that this short-term result is a first step, the foundations of which will have a real impact in the future.

- In trade, three culture-trade agreements took into account Articles 16 and 21 in the form of a new tool (cultural protocol). The Parties also use in their bilateral trade relations legal means that existed at the time (cultural clause and reservations, commitments according to positive and negative lists). Jurisprudence, for its part, is still in its infancy. These results bear witness to the difficulty of implementing these two articles in trade forums. Therefore, one must question why the expected outcomes have not yet been achieved.

- With regards to culture and development, the Parties have amended or adopted new policies that draw on the Convention, placing it at the centre of the process designed to include culture on the UN agenda for sustainable development beyond 2015. These short-term results show that the application of Article 21 in the area of development creates less controversy and allows the expected outcome to be achieved.

Other lessons can be drawn relating more specifically to the challenges regarding the application of Articles 16 and 21, in particular:

- The recent adoption of the Convention and the new application of the provisions limit the assessment and impact of Articles 16 and 21, which are based on a slow process whose impact it will only be possible to confirm in the long-term and which will involve major changes to institutions and governance systems.

- The proliferation of bilateral trade agreements in recent years and complex negotiations in process between major economic powers could provide the Parties with an opportunity to use the Convention as a counterweight to influence their trade and cultural policies, in order to harmonise them.

- Examine new ways of accessing culture in the digital age and the major impact on production and broadcasting channels, and reconsider the approach to be used for digital cultural goods and services in national public policies and during trade negotiations.

- The challenge faced by the Parties to collect national data, since such an exercise requires complex interdepartmental management due to the issues raised by the application of Articles 16 and 21 regarding cultural policies, trade policies, and immigration and employment policies.

- The absence of coordination on a national level between different ministries for the purposes of periodic reporting. One solution could be to create a group or Interministerial Committee comprised of public officials attached to the ministries concerned, with the point of contact of the Convention as coordinator.

5. Next steps

Since 2011, analysis on the application and impact of Articles 21 has called for further steps to be taken, drawing on lessons from the exercise that has been in process now for three years. The new assessment of the application and impact of the two articles demonstrates that this is a complex exercise[14] that requires time to determine impact. A provisional work schedule for the next two years could include the following activities for all stakeholders, based in particular on recommendations 1, 2, 3, and 8 of the IOS report[15]:

The *Parties* could:

- create interdepartmental groups (including the ministries of culture, trade, employment, immigration, etc.) and envisage the best way to involve the point of contact of the Convention in this process;
- continue their involvement in consultations undertaken by the Secretariat and provide relevant information;

The *governing bodies*:

- the Conference of Parties could hold a constructive debate at its next session and provide clear guidance to the work of the Committee and of the Secretariat in order to be able to approve a work schedule for 2015-2017 that is consistent and achievable;
- the Committee is called upon to determine the role it will play in this exercise, in accordance with Article 23.6 (e), as one of the functions conferred upon it under the Convention.

Civil society could:

- continue their efforts to raise awareness of Articles 16 and 21 by organising events and the publication of studies;
- have a louder voice and be more involved in the process, since it can draw attention to cases where the Parties have or have not met their obligations.

The *Secretariat shall:*

- continue its research activities on the application of Articles 16 and 21 and their impact, in particular in bilateral and regional trade forums:
- produce a revised global report containing practical cases to illustrate the application of Articles 16 and 21 in the area of trade, in particular on a bilateral and regional level, to be sent to the Conference of Parties in 2015;

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[14] At the fifth ordinary session of the Committee (5-9 December 2011), several Parties emphasised that at present, it was difficult to assess the real impact of activities undertaken under Article 21 and that it was important to monitor the evolution of the situation in this regard, in view of the fact that the implementation of the 2005 Convention was still in its early stages (CE/11/5.IGC/213/8REV2, p. 3).

[15] Recommendation "1. Facilitate and encourage Parties and all stakeholders of the Convention, including intergovernmental organizations and civil society organizations, to share good practices in key areas (e.g. design and implementation of cultural policies and legislation; integration of culture in sustainable development strategies; strengthening of the cultural dimension in international development policies; international agreements in the field of trade), by systematising and disseminating information available in quadrennial periodic reports and from other sources. (Intergovernmental Committee / Secretariat)"

Recommendation "2. Continue discussions on the impact of Articles 16 (Preferential treatment for developing countries) and 21 (International consultation and coordination), particularly as regards the international trade agenda. (Intergovernmental Committee)"

Recommendation "3. Encourage Parties to consider the implications of the 2005 Convention as regards cultural governance (coordination within national governments, relationships between different tiers of government, public-private dialogue, participation of civil society, etc.) in their respective areas of influence and to foster the exchange of good practices and the provision of technical assistance focusing on this area. (Intergovernmental Committee / Secretariat)"

Recommendation "8. Encourage Parties to pay particular attention to the conditions of cultural industries and to the role of civil society actors in their countries, and consider the adoption of long-term strategies to address needs identified. (Intergovernmental Committee / Secretariat)"

- organise a session for exchange with high-level experts prior to the Conference of Parties on Articles 16 and 21 in June 2015;
- consult the Parties on these articles in 2016;
- continue to update and manage the online platform on Article 21, to which data collected on Article 16 will be added.

The participation of all Parties and of civil society in the follow-up on Articles 16 and 21 is essential in order for the assessment of their application and impact to provide conclusive results. Financial and human resources are required so as to ensure the sustainability and quality of this exercise, in particular through information-sharing and the identification of good practices. Such resources are mandatory if the impact of actions taken is to be assessed in the appropriate manner.

ANNEX A

List of the 38 bilateral and regional agreements concluded after the adoption of the Convention referred to in the research

Agreements listed in chronological order of date signed

	Name of the Agreement	Parties	Date signed	Date of entry into force
1	Free Trade Agreement between the Government of the People's Rep. of China and the Government of the Rep. of Chile	China Chili	18-11-2005	01-10-2006
2	The United States-Oman Free Trade Agreement	The United States of America Oman	19-01-2006	01-01-2009
3	Preferential Trade Agreement between the Republic of India and the Republic of Chile	Chile India	08-03-2006	17-08-2007
4	The United States of America -Peru Trade Promotion Agreement	The United States of America Peru	12-04-2006	01-02-2009
5	Free Trade Agreement between the EFTA States and the SACU States	Iceland Liechtenstein Norway Switzerland Botswana Lesotho Namibia South Africa Swaziland	26-06-2006	01-05-2008
6	Free Trade Agreement between the Government of the Republic of Chile and the Government of the Republic of Peru	Peru Chile	22-08-2006	01-03-2009
7	The United States of America -Colombia Trade Agreement	The United States of America Colombia	22-11-2006	15-05-2012
8	Free Trade Agreement between Chile and Colombia, which constitutes an additional protocol to ACE 24	Colombia Chile	27-11-2006	08-05-2009
9	Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Co-operation between China and ASEAN	China ASEAN: Brunei Darussalam Cambodia Indonesia Lao People's Democratic Republic Malaysia Myanmar Philippines Singapore Thailand Viet Nam	14-01-2007	01-07-2007
10	EFTA-Egypt Free Trade Agreement	Iceland Liechtenstein Norway Switzerland Egypt	27-01-2007	01-08-2007
11	The United States of America -Panama Trade Promotion Agreement	The United States of America Panama	28-06-2007	31-10-2012
12	The United States of America -Korea Trade Agreement	The United States of America Republic of Korea	30-06-2007	15-03-2012

13	Canada-EFTA Free Trade Agreement	Canada Iceland Liechtenstein Norway Switzerland	26-01-2008	01-07-2009
14	Free Trade Agreement between the Government of the People's Republic of China and the Government of New Zealand	China New Zealand	07-04-2008	01-10-2008
15	Agreement on Trade in Services of the Free Trade Agreement between China and Chile	China Chile	13-04-2008	01-08-2010
16	Canada-Peru Free Trade Agreement	Canada Peru	28-05-2008	01-08-2009
17	Stepping Stone Economic Partnership Agreement between Ghana, on the one hand, and the European Community and its Member States, on the other	EC Ghana	10-07-2008	---
18	Australia-Chile Free Trade Agreement	Chile Australia	30-07-2008	06-03-2009
19	Economic Partnership Agreement between the CARIFORUM States on the one hand and the European Community and its Member States on the other	EC Cariforum: Antigua and Barbuda Bahamas Barbados Belize, The Dominican Republic Grenada Guyana Haiti Jamaica Saint Kitts and Nevis, Saint Lucia Saint Vincent and the Grenadines Suriname Trinidad and Tobago	15-10-2008	01-11-2008
20	Canada-Colombia Free trade Agreement	Canada Colombia	21-11-2008	15-11-2011
21	Stepping Stone Economic Partnership Agreement between Côte d'Ivoire on the one hand and the European Community and its Member States on the other	EC Côte d'Ivoire	26-11-2008	01-01-2009
22	Preferential Trade Agreement between the Common Market of the South (MERCOSUR) and the Southern African Customs Union (SACU)	Argentina Brazil Paraguay Uruguay Botswana Lesotho Namibia South Africa Swaziland	15-12-2008	---
23	Stepping Stone agreement with a view to an Economic Partnership Agreement between the European Community and its Member States on the one hand and central Africa on the other	EC Cameroon	15-01-2009	01-10-2009
24	Agreement establishing the ASEAN-Australia New Zealand Free Trade Area (AANZFTA)	ASEAN Australia New Zealand	27-02-2009	01-01-2010
25	Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Peru	China Peru	28-04-2009	01-03-2010
26	Stepping Stone Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, on the one hand, and the SADC EPA States, on the other	EC Botswana Lesotho Mozambique	06-2009	---

		Namibia Swaziland		
27	Canada-Jordan Free Trade Agreement	Canada Jordan	28-06-2009	01-10-2012
28	Stepping Stone Agreement with a view to an Economic Partnership Agreement between the states of eastern and southern Africa on the one hand and the European Community and its Member States on the other	EC Comoros Madagascar Mauritius Seychelles Zambia Zimbabwe	29-08-2009	14-05-2012
29	Free Trade Agreement between the Government of the Republic of Costa Rica and the Government of the People's Rep. of China	China Costa Rica	08-04-2010	01-08-2011
30	Free Trade Agreement between Canada and the Republic of Panama	Canada Panama	14-05-2010	01-04-2013
31	Free Trade Agreement between the European Union and its Member States on the one hand and the Republic of Korea on the other	EC Republic of Korea	06-10-2010	01-07-2011
32	Peru-Mexico Trade Integration Agreement	Peru Mexico	06-04-2011	01-02-2012
33	Free Trade Treaty between the Republic of Peru and the Republic of Costa Rica	Costa Rica Peru	26-05-2011	01-06-2013
34	Partial Scope Agreement between the Republic of El Salvador and the Republic of Cuba	El Salvador Cuba	19-09-2011	01-08-2012
35	Trade Agreement between the European Union and its Member States, on the one hand, and Colombia and Peru, on the other	EC Colombia Peru	26-06-2012	01-03-2013
36	Agreement establishing an association between the European Union and its Member States, on the one hand, and Central America on the other	EU Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama	29-06-2012	01-08-2013
37	Free Trade Agreement between the Swiss Confederation and the People's Republic of China	China Switzerland	06-07-2013	01-07-2014
38	Free Trade Agreement between Canada and Honduras	Canada Honduras	05-11-2013	---

ANNEX B
Case Study[1]

Agreements concluded by the European Union accompanied by a cultural cooperation protocol

This case study is based on the analysis of three free trade agreements accompanied by a cultural cooperation protocol (hereinafter referred to as a "CCP") concluded by the European Union (hereinafter referred to as the "EU") since the adoption of the Convention in October 2005:

1) The *Economic Partnership Agreement between the CARIFORUM States on the one hand and the European Community and its Member States on the other*[2], hereinafter referred to as the "APE-Cariforum";
2) the *Free Trade Agreement between the European Union and its Member States on the one hand and the Republic of Korea on the other*[3], hereinafter referred to as the "FTA-Korea";
3) the *agreement establishing an association between the European Union and its Member States, on the one hand, and Central America on the other*[4], hereinafter referred to as the "AA-CA".

These agreements relate to the liberalisation of the trade in goods and services and to investment and certain aspects of e-commerce. Provisions relating to the trade in goods refer to all goods produced by the Parties, except where excluded. With regards to services and investment, the Parties use positive lists to record their commitments (thus adopting the same approach as the General Agreement on Trade in Services, or GATS). Finally, CCPs contain provisions aimed specifically at cooperation in the area of culture.

1. Reference to the Convention

What makes agreements with CCPs unique is that they contain one or more explicit references to the Convention. The three CCPs examined contain a reference to the act of ratification of the Convention by the Parties (or, in the case of the CCP annexed to the EPA-Cariforum, to the intention of the Parties to ratify it). CCPs also refer to the desire of the Parties to implement the Convention and to cooperate within the framework of this implementation, basing themselves on its principles and in a manner consistent with its provisions ("drawing inspiration from the principles of the Convention and by acting in the spirit of its provisions" for the CCP annexed to the Korea FTA). The Foreword of the CCP annexed to the AA-CA also contains an explicit reference to Articles 14, 15, and 16 of the Convention, while article 1 §3 (*Scope, Objectives and Definitions*) specifies that the Convention constitutes the point of reference for all definitions and concepts used by this CCP.

With regard to the wording of agreements, some contain references to cultural diversity (AA-CA), cultural cooperation (APE-Cariforum), cultural development (APE-Cariforum), and to the "cultural […] interests [of] future population[s] […] and generations" (AA-CA). Finally, an explicit reference to the Convention can be found in Article 74 on cultural and audiovisual cooperation of the AA-CA.

[1] This case study was prepared on the basis of research regarding the application of Articles 16 and 21 in bilateral trade agreements conducted by V. Guèvremont, professor at the Faculty of Law of Université Laval, with the assistance of I. Otasevic, a doctoral student with the Faculty of Law at the Université Laval.
[2] Signed on 15-10-2008; entry into force on 01-11-2008. The Cariforum states are: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.
[3] Signed on 06-10-2010; entry into force on 01-07-2011.
[4] Signed on 29-06-2012; entry into force on 01-08-2013. The states of Central America are: Costa Rica, Salvador, Guatemala, Honduras, Nicaragua, and Panama.

2. Treatment of cultural goods and services (main agreement)

The three agreements exclude audiovisual services from the scope of their section(s) or chapter(s) on the provision of cross-border services and the establishment of a commercial presence. The notion of "audiovisual services", however, has not been defined. The Korea FTA states that this exclusion is without prejudice to the rights and obligations resulting from the CCP. The Korea FTA also excludes subsidies from the scope of the chapter on the *trade in services, establishment, and e-commerce*. In addition, a provision of the EPA-Cariforum specific to commercial presence states that the Parties "shall ensure that they do not encourage foreign direct investment by watering down national environmental, employment, or workplace health and safety legislation and standards or by relaxing basic employment laws or laws designed to protect and promote cultural diversity".

Finally, the three agreements call on the Parties to draw up lists of specific commitments via the inscription of sectors, sub-sectors, and even activities that are the object of a degree of liberalisation (commitments to provide access to the market and the application of national treatment), but for which limitations remain in place. The Parties have used these lists to inscribe certain cultural sectors other than the audiovisual sector (this sector is excluded from the scope of the agreement) and to limit the scope of their commitments. *Lists of commitments relating to commercial presence* and *Lists of commitments relating to the provision of cross-border services,* therefore, contain commitments relating to *entertainment services*, *services provided by libraries, archives, museums, and other cultural services,* and *the services of information and press agencies*. Given the diversity of the engagements in place, a synthesis is difficult to achieve.

However, it is possible to cite a number of examples: In the case of the first list, certain Member States of the EU and certain CARIFORUM States have undertaken commitments relating to *entertainment services*. In addition, all members of the EU refrained from undertaking commitments relating to the *services of libraries, archives, and museums,* whereas some CARIFORUM States have completely liberalised this sector. Finally, almost all CARIFORUM States have undertaken commitments relating to *press agency services*. In the case of the second list, almost all States in the EU refrained from undertaking commitments in the sector that provides *entertainment services* and *services provided by libraries, archives, and museums*.

3. Clauses on preferential treatment relating to culture (CCP)

CCPs pursue a number of objectives, in particular capacity-building to strengthen the cultural industries of the Parties, the promotion of regional and local cultural content, and the recognition, protection, and promotion of cultural diversity. CCPs also take various factors into account, such as the extent of the development of cultural industries, as well as the level and structural imbalances of cultural exchanges.

In all cases, and without prejudice to other provisions in the main agreements (APE-Cariforum, FTA-Korea, AA-CA), CCPs define a framework with a view to facilitating the exchange of cultural activities, goods, and services, in particular in the audiovisual sector. The Parties shall endeavour to cooperate while at the same time preserving and developing their capacities to prepare and implement their cultural policies in order to protect and to promote cultural diversity, in order to improve conditions governing their exchanges of cultural activities, goods, and services, and to correct structural imbalances and asymmetries that could exist in these exchanges.

CCPs attached to the APE-Cariforum and AA-CA as annexes contain clauses relating to technical assistance designed to contribute to the development of the cultural industries of the Parties, the formulation of their cultural policies and measures, and to the exchange of cultural goods and services. In addition, the three CCPs provide for preferential treatment for each of the Parties. This preferential treatment comprises a first section on the temporary entry and stay of artists and other

cultural professionals. A second section aims to negotiate new co-production agreements and the implementation existing agreements between one or more Parties to the agreements. Finally, the CCPs annexed to the Korea FTA and to the EPA-Cariforum comprises a third section on preferential trade access for audiovisual works. Under this third section, co-productions can access the regime provided for by the EU Party to promote regional or local cultural content by obtaining the status of "European works" under article 1, point n) i), Directive 89/552/CEE. Conversely, audiovisual co-productions can access regimes of the other Party (Republic of Korea, CARIFORUM States) regarding the promotion of regional or local cultural content. In the case of the CCP annexed to the Korea FTA, cooperation in the audiovisual sector between the Parties is also encouraged by the organisation of festivals, seminars, and similar initiatives, and by cooperation in broadcasting. CCPs also contain additional provisions for cooperation in the audiovisual sector, for example, for the temporary importation of hardware and equipment for shooting audiovisual productions.

In addition, the cultural cooperation activities promoted through the CCPs are also aimed at sectors other than the audiovisual sector, in particular the live performing arts, publications, and the protection of cultural heritage sites and historical monuments.

Finally, the CCP annexed to the Korea FTA establishes a "cultural cooperation" committee that will monitor the application of the Protocol and settle disputes. Moreover, the CCP provides for the creation of several internal consultative groups on cultural cooperation made up of representatives from the cultural and audiovisual sectors, who can be consulted on issues relating to the implementation of this agreement. The two other CCPs do not contain an equivalent mechanism. However, in the case of the CCP annexed to the AA-CA, the Premble indicates that the Cooperation Sub-Committee put in place by the agreement could include functionaries with competence in the area of culture to address any issues relating to the implementation of this Protocol. Moreover, no element of this CCP can be subject to the dispute resolution mechanism put in place by the AA-CA.

4. The status of e-commerce

The three agreements with CCPs annexed contain provisions that relate specifically to e-commerce. In general, the Parties agree to encourage the development of e-commerce amongst themselves, in particular through cooperation on issues linked to this type of commerce. The EPA-Cariforum and the Korea FTA go further, binding the Parties not to impose customs duties on electronic transmissions. Considering that the Parties to these agreements excluded audiovisual services from the scope of rules relating to the provision of cross-border services they will therefore not be affected by the commitments resulting from these provisions on e-commerce. The notion of "electronic transmissions", however, is not defined. For this reason, there are doubts as to whether the term "transmission" refers solely to services that could be described as "conventional", in which case audiovisual services would be excluded, or if the transmission of digital cultural products, which may not come under the exclusion of "audiovisual services", could be affected by the commitment to the non-application of customs duties on electronic transmissions.

5. Other provisions relating to culture

There are no other provisions relating to culture to report.