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**Réponses des Parties et de la société civile au
questionnaire relatif à l'article 16 de la Convention**

**Replies of the Parties and civil society to the
questionnaire concerning
Article 16 of the Convention**

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ALBANIE / ALBANIA

QUESTIONNAIRE

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.

CONTENT OF ARTICLE 16

- Article 16

The debate underlined that preferential treatment under Article 16 of the Convention is to be understood as having both a trade and a cultural cooperation dimension and that Article 16 must be put in relation to other articles of the Convention.

1. **Please list the articles that seem to you particularly relevant to Article 16 and explain briefly the overall rationale.**

Art. 1 – (i)

“Strengthen international cooperation with a view to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.

Art. 2 – (4)

“International cooperation should be aimed at enabling especially developing countries, to create and strengthen their means of cultural expression...”

Art. 7

“Parties shall endeavor to create in their territory an environment which encourages individuals and social groups to have access to diverse cultural expressions from within their territory as well as from other countries of the world.

Art. 14

“Parties shall endeavor to support cooperation for sustainable development in relation to the specific needs of developing countries...”

Art. 17

“Parties shall cooperate in providing assistance to each other and, in particular to developing countries...”

- Role of Parties

The debate underlined that Article 16 is binding on developed countries.

2. Should developing countries have a proactive role as beneficiaries? If yes, please provide examples.

Developing countries should specifically envisage cultural policies in their development programmes, on the national level, as well as in the framework of international cooperation. Appropriate indicators must, to that regard, refer to artists and other cultural professionals and practitioners, as catalysers of development, placing creativity and all related cultural sphere into harmonised markets and activities.

The Albanian Government has substantially integrated cultural policies in its Strategy for Development and Integration, especially through ONE UN Programme “Heritage for Social and Economic Development” that is being implemented underway by UNDP, UNESCO and financed by the Government of Spain.

This joint-Programme, aiming to categorize cultural policies and industries in service of development and good management of the diversity of cultural expressions, is expected to produce the following results:

1. A transparent and accountable government, developing and implementing effective national policies on culture and culture related issues;
2. An enabling environment in place to ensure people’s access to cultural heritage and participation in cultural heritage decision-making at the local, regional and national levels;
3. Increased capacities to manage, preserve and present cultural heritage and cultural industries in an efficient, transparent, accountable and equitable manner;
4. An increased role of cultural heritage in social and economic opportunities and in engaging community participation in regional and local development strategies;
5. A contribution to the National Strategy of the Alliance of Civilisations and an increased awareness of Albania’s heritage internationally as a means to promote cultural understanding and religious tolerance.

IMPLEMENTATION OF ARTICLE 16

- Frameworks

Preferential treatment should be granted *“through appropriate legal and institutional frameworks”*.

3. Please provide examples of the main legal and institutional frameworks to be used by taking into account the following dimensions:

a) trade

Bilateral, regional or multilateral agreements facilitating trade exchanges must be used, whenever they refer specifically to the promotion of cultural industries and to the creation of favourite zones for the circulation of cultural goods and products.

b) cultural cooperation

Preferential treatment and the promotion of the diversity of cultural expressions might be envisaged in the framework of the mechanisms of cultural cooperation existing within the United Nations Systems and other international or regional organizations that enjoy a mandate in the cultural sector.

Developing countries should also make use of bilateral agreements focusing onto cultural cooperation with developed countries, already in place or in process.

Albania is a potential candidate to EU. To that regard, EU may establish a subsection in the programme "CULTURE 2007-2013" for financing cooperation with 'neighbouring countries" in the view of promoting cultural expression.

c) a combination of the trade dimension and the cultural cooperation dimension

Strengthening new partnerships in order to enhance North-South and South-South cooperation and reduce all existent asymmetries in the framework of the commercial exchanges of the cultural goods.

The International Coalition of Federations for Cultural Diversity constitutes a very sound network mobilizing institutions, enterprises, associations and civil society in favour of establishing new and open markets to local cultural goods, produced in the developing countries. The same mechanism would also contribute towards investments within the cultural industries of these countries, as well as towards professional transfer of know-how and technology.

Florence Agreement and its related Nairobi Protocol apply equally in terms of creating new partnerships for strengthening capacities and further access to artists, goods, services and cultural operators.

- Categories

In accordance with Article 16 developed countries grant a preferential treatment to:

- a) "*artists and other cultural professionals and practitioners*" from developing countries
- b) "*cultural goods and services*" from developing countries

4. Please provide examples of priority measures relevant to each of these categories.¹

- a) Visa facilitation arrangements; financing performances of Albanian iso-polyphonic interpreters in developed countries, etc...
- b) Elaboration of policies related measures for local producers and goods of the handicraft sector.

- Criteria

In the trade environment, preferential treatment involves criteria such as: eligibility, rules of origin, graduation, reciprocity and conditionality.

5. Are all or some of these criteria relevant for preferential treatment under Article 16? Please explain briefly why.

The main aim of the Convention subscribes to the recognition of the mere definition of cultural exchanges that, to a great extent, translate the specific and particular status of cultural goods, products and activities. Therefore, the above-mentioned criteria shall be only partially considered under the clause of preferential treatment. On the other hand, their applicability becomes compatible with the establishment of the mechanisms of cultural cooperation, which, in turn, are very much related to the cultural development in the middle of a cultural dynamic, both local and international. In conclusion, they should very much refrain from a sound commercial or trade dimension.

- Measures at national level

The debate underlined the role of national measures and policies in increasing the supply of cultural goods and services in developing countries. Coordination of different national institutions is therefore of the utmost importance.

6. In your country, is there an existing coordination mechanism between the ministry responsible for culture and the ministry responsible for trade? Or other mechanisms?

NO.

The National Commission for UNESCO in cooperation with the Ministry of Tourism, Culture, Youth and Sports is undertaking concrete action for establishing a national mechanism (National Coalition) in support of cultural diversity and future involvement into the International Federation of Coalitions for CD.

- Civil society

7. What role should civil society play with regard to preferential treatment under Article 16?

Civil society could contribute through identifying the techniques to be applied to maximize cooperation in the view of promoting cultural expression.

¹ Please refer to the document attached 'Overview'.

In Albania, civil society is very much involved into spreading and putting into practice the provisions of Florence Convention and its Nairobi Protocol. A project has been elaborated, to that regard, aiming to circulate books in South-Eastern Europe by word and image.

MONITORING AND MEASURING

In order to monitor and measure the processes of implementation and the impact of Article 16, the mechanisms foreseen in articles 9 and 19 of the Convention (periodical reporting, information sharing and best practices) could be invoked.

- 8. Are these mechanisms sufficient?
Should other mechanisms (e.g. research, a specially created body, other) be considered?**

Research should be commissioned in Albania and in all State parties to the Convention, but as stated above a specially created body would constitute a good basis for measuring the cultural offer at a large scale, be it on national or on international level, and, also monitoring the opportunities given to the artists and creators from developing countries with regard to the extent their creation and goods are produced and commercialised.

- 9. Would you have any other comment to add?**

Article 16 is a crucial tool for a true and real implementation of the 2005 Convention in itself. Its content and field of action will have an important impact in the cultural management of diversity, its recognition worldwide, but also the development of cultural policies, in the light of international dialogue, cooperation and growth.

BÉNIN / BENIN
QUESTIONNAIRE

Article 16 – Traitement préférentiel pour les pays en développement

Les pays développés facilitent les échanges culturels avec les pays en développement en accordant, au moyen de cadres institutionnels et juridiques appropriés, un traitement préférentiel à leurs artistes et autres professionnels et praticiens de la culture, ainsi qu'à leurs biens et services culturels.

CONTENU DE L'ARTICLE 16

- Article 16

Le débat a souligné que le traitement préférentiel au sens de l'Article 16 de la Convention doit être compris comme ayant une dimension à la fois commerciale et de coopération culturelle, et que cet Article 16 doit être mis en relation avec d'autres articles de la Convention.

- 1. Veuillez énumérer les articles qui vous apparaissent particulièrement pertinents pour l'Article 16 et en expliquer brièvement les raisons.**

Réponse :

- Art. 14 concerne la coopération pour le développement :
 - Il s'agit d'un partenariat et de coopération entre les pays de :
 - intégrer les mécanismes de coopération culturelle
 - distinguer les pays en développement selon leurs étapes mettrait la convention en question par rapport aux objectifs
 - D'autres pensent qu'il faut plutôt des critères de classement basés sur les indicateurs économiques
 - Réciprocité non obligatoire
- Art.2 rendre conditionnel le traitement préférentiel :
 - Principes du respect des droits de l'homme et des libertés fondamentales
 - Principe de souveraineté
 - Principe de l'égalité et du respect de toutes les cultures
 - Principes de solidarité et de coopération internationale
 - Principe de la complémentarité des aspects économiques et culturels du développement
 - Principe de développement durable
 - Principe d'ouverture et d'équilibre

- Tenir compte du cas par cas la gradation
 - Règles d'origine non adéquates pour traitement préférentiel
 - Utilisation d'instruments commerciaux et non commerciaux
 - Cohérence entre Traitement Préférentiel et d'autres instruments de coopération pour le développement
 - Création d'institutions appropriées de gestion et d'évaluation des mécanismes de Traitement Préférentiel nécessaire
- Art 3 : Champ d'application : le Traitement Préférentiel devra concerner les Etats parties à la convention de 2005
 - Art 5 : Règle générale concernant les droits et obligation
 - Art.8 Mesures destinées à protéger les expressions culturelles, le Traitement Préférentiel n'exclura pas la protection des expressions culturelles
 - Art. 11 Participation de la société civile (impliquer la société civile aux programmes)
 - Art. 12 Promotion de la coopération internationale
 - Art. 15 Modalités de collaboration
 - Art. 17 Coopération internationale dans les situations de menace grave contre les expressions culturelles.
 - Art. 20 : relations avec les autres instruments : soutien mutuel, complémentarité et non subordination.
- Rôle des Parties

Le débat a souligné que l'Article 16 de la Convention crée une obligation pour les pays développés.

2. Les pays en développement devraient-ils jouer un rôle proactif en tant que bénéficiaires ? Si oui, veuillez fournir des exemples.

Réponse : oui

- Améliorer la réglementation interne dans leurs pays dans ce domaine
- Volonté politique
- Effort national de production accrue des industries culturelles, services et biens culturels
- Nécessité de signer les accords bilatéraux

MISE EN ŒUVRE DE L'ARTICLE 16

- Cadres

Un traitement préférentiel devrait être accordé « *au moyen de cadres institutionnels et juridiques appropriés* ».

3. Veuillez fournir des exemples des principaux cadres juridiques et institutionnels pouvant être utilisés, en tenant compte des dimensions suivantes :

- a) commerciale
- b) coopération culturelle
- c) combinaison des dimensions commerciale et coopération culturelle

Réponse :

Un exemple de cadre juridique institutionnel peut être la création à travers les Etats parties à la convention d'un Marché de production, de distribution, de diffusion des biens et services des arts et de la culture. (MAC).

- Catégories

Selon l'Article 16, les pays développés accordent un traitement préférentiel aux :

- a) « *artistes et autres professionnels et praticiens de la culture* » des pays en développement
- b) « *biens et services culturels* » des pays en développement

4. Veuillez fournir des exemples de mesures prioritaires pertinentes pour chacune de ces catégories¹.

Réponse :

Exemples de Mesures prioritaires pertinentes :

- Pour les « *artistes et autres professionnels et praticiens de la culture* » des pays en développement :*

- Education et formation
- Renforcement des capacités techniques et transfert de technologie
- Dispositions concernant la facilitation de visa
- Partage de ressources et échanges de bonnes pratiques

- Pour les « *biens et services culturels* » des pays en développement :

- Accords financiers et dispositions d'échanges
- Coproduction et diffusion d'expressions culturelles
- Investissements conjoints
- Bénéfices fiscaux spécifiques

- Critères

¹ Veuillez vous référer au document ci-joint « Vue d'ensemble ».

Dans le domaine commercial, un traitement préférentiel implique des critères tels que : éligibilité, règles d'origine, gradation, réciprocité et conditionnalité.

5. Certains ou tous ces critères sont-ils pertinents pour l'Article 16 ? Veuillez expliquer brièvement pourquoi.

Réponse : oui

Tous ces critères sont pertinents pour l'article 16. Mais, il est important de souligner que tous les produits culturels ne sont pas nécessairement commercialisables, ni générant des profits.

- Mesures au niveau national

Le débat a souligné le rôle des mesures et politiques nationales dans l'augmentation de l'offre des biens et des services culturels dans les pays en développement. La coordination des différentes institutions nationales est par conséquent de la plus haute importance.

6. Dans votre pays, existe-t-il un mécanisme de coordination entre le ministère responsable de la culture et le ministère responsable du commerce ? Ou d'autres mécanismes ?

Réponse : oui

Un mécanisme de coordination existe entre le Ministère responsable de la culture et celui responsable du commerce au Bénin. Il s'agit de la Commission inter-institutionnelle chargée du suivi et de la mise en application des Accords de l'organisation Mondiale du Commerce. Cette Commission est créée par décret N° 99-022 du 22 janvier 1999.

Elle compte 4 groupes de travail qui s'occupent respectivement et de façon spécifique des questions liées aux :

- marchandises
- aspect des droits de propriété intellectuelle qui touchent au commerce
- services
- facilitation des échanges.

Le ministère chargé de la culture ainsi que la société civile sont représentés dans cette commission qui regroupe toutes les administrations publiques et le secteur privé qui interviennent dans le commerce multilatéral.

- Société civile

7. Quel rôle la société civile devrait-elle jouer eu égard au traitement préférentiel au sens de l'Article 16 ?

Réponse :

Pour exploiter efficacement les dispositions du traitement préférentiel au sens de l'article 16 et en tirer profit, la société civile doit jouer un rôle de lobbying. Ainsi, elle pourrait influencer positivement toutes les décisions des pouvoirs publics dans le domaine de la culture et constituer une force de propositions.

ASSURER LE SUIVI ET MESURER

Afin de suivre et de mesurer les processus de mise en œuvre et l'impact de l'Article 16, on pourrait invoquer les mécanismes prévus aux articles 9 et 19 de la Convention (rapports périodiques, partage de l'information et meilleures pratiques).

**8. Ces mécanismes sont-ils suffisants ?
Faut-il considérer d'autres mécanismes (par exemple : recherche, création d'un organisme spécialisé, autres) ?**

Réponse :

Ces mécanismes ne sont pas suffisants.

Il faut effectivement considérer d'autres mécanismes telles la création d'un organisme spécialisé chargé du suivi et d'évaluation du processus permettant d'apprécier et de servir de veille à l'efficacité de l'exécution des mesures et dispositions retenues.

9. Auriez-vous d'autres commentaires à ajouter ?

Réponse :

La mise en œuvre effective des dispositions de l'article 16 va révolutionner les rapports tant culturels que commerciaux existant entre pays développés et ceux en développement.

C'est pourquoi, il est souhaitable que l'esprit de la convention, ainsi que le consensus obtenu jusque-là soient préservés.

Il importe également de souligner la grande responsabilité des pays en développement de devoir agir pour promouvoir le secteur de la culture, à travers l'amélioration des produits et services culturels, à travers une meilleure réglementation interne pouvant faciliter l'atteinte des objectifs. Rien ne saurait être gagné sans efforts et l'acte des pays développés ne saurait signifier un acte de générosité, mais par contre, il doit être considéré comme une contribution de nature à susciter les efforts propres des pays en développement.

BRÉSIL/BRAZIL**QUESTIONNAIRE****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.

CONTENT OF ARTICLE 16**1. Please list the articles that seem to you particularly relevant to Article 16 and explain briefly the overall rationale.**

- Articles 1:f, 2:5 and 13 provide that there is a close inter-relation between culture and development. In this sense, article 14:a:ii points out the importance of market access measures to boost cultural industries in developing countries. On the other hand, articles Art.1:i, 2:4, 12:e, 14 e 15 stress the importance of international cooperation in order to create conditions conducive to the promotion of the diversity of cultural expressions particularly in developing countries. Article 14 (cooperation for development), in particular, introduces the cultural dimension in the concept of sustainable development. Notwithstanding, according to articles 1:h, 2:2, 5 and 6, the principle of sovereignty shall govern the definition of public policies in terms of protection and promotion of the diversity of cultural expressions.
- In order to preserve the spirit of the Convention, in general, and of the article 16, in particular, it is within the above framework that it should be understood.
- To sum up, when interpreting article 16, the link between culture and development should be taken into account, whilst the forms to provide preferential treatment should include both cooperation and trade initiatives.

2. Should developing countries have a proactive role as beneficiaries? If yes, please provide examples.

- Firstly, developing countries as beneficiaries of article 16 should have an active role in the debate on how to implement it as they have more elements to identify measures that could be more effective in reaching their objectives. Secondly, once the legal framework to regulate article 16 is in place and in order to comply with article 16, developing countries should have a proactive role in designing national policies and programs, co-production initiatives and cooperation agreements with a view to encourage developed countries to participate in those projects.

IMPLEMENTATION OF ARTICLE 16

3. Please provide examples of the main legal and institutional frameworks to be used by taking into account the following dimensions:

a) trade

b) cultural cooperation

c) a combination of the trade dimension and the cultural cooperation dimension

- It seems to be appropriate to build a legal and institutional framework coherent with other multilateral agreements, especially the ones in the trade area, in order to: (i) preserve the objective of the Convention, and particularly of article 16, seeing as the trade dimension may have an effective role in providing preferential treatment for developing countries; (ii) reaffirm the integrity of the multilateral system; (iii) avoid a surge in international conflicts in the cultural services sector.

- Regional preferential agreements under GATS article V might be a mechanism to implement preferential treatment for developing countries.

- Technical cooperation agreements, in a bilateral or regional basis, including exchange programs, capacity building initiatives and technology transfer could also play a part.

- Even though GATS article IV does not embody the concept of preferences in services, it provides that the increasing participation of developing countries in international trade in services shall be facilitated, inter alia, through the liberalisation of market access in sectors and modes of supply of export interests of developing countries. In that regard and for the purposes of article 16, developed countries commitments in mode 4 could be expanded in order to address developing countries interests in the cultural sector.

- For those countries which have listed the audiovisual sector as a MFN exemption in their schedules of commitments under the GATS, co-production agreements are another mechanism, even though they constitute a discriminatory instrument.

- Under the Doha Round negotiations in services there is a discussion to implement a non-discriminatory waiver to LDCs in order to provide special treatment to those countries. However, with the current terms it would not embrace the entire group of developing countries

4. Please provide examples of priority measures relevant to each of these categories; and

5. Are all or some of these criteria relevant for preferential treatment under Article 16? Please explain briefly why.

- With a view to properly implementing the essence of article 16, it seems inappropriate to apply all criteria usually involved in the concession of preferential treatment (eligibility, rules of origin, graduation, reciprocity and conditionality).

- The use of flexible criteria in terms of eligibility, accordingly with the WTO procedure of self-declaration, might be the best way to approach this matter. As in the trade arena, the differentiation of LDCs might be preserved.

- All other criteria should be assessed carefully to avoid undermining article 16. Due to the difficulty in determining a target to determine whether a particular country has achieved a certain level of development in the cultural sector and

should no longer be beneficiary of preferential treatment, graduation would not be a suitable criterion to use. Preferential treatment could be conditional to respecting the guiding principles of the Convention (Article 2). Non-reciprocity is congruent with the Convention objectives and is the essence of article 16 as drafted. Article 16 does not foresee any kind of reciprocity for the granting of preferential treatment by developed countries to developing countries. Finally, the use of rules of origin in the cultural sector (i.e. in the audiovisual industry) may be important to ensure effective benefits to preference receiving countries, but is difficult to define and require further discussion.

6. In your country, is there an existing coordination mechanism between the ministry responsible for culture and the ministry responsible for trade? Or other mechanisms?

- There are many programs and initiatives conducted under joint coordination of the Brazilian Ministry of Culture and the Ministry of Foreign Relations. Within Itamaraty there is a Cultural Department comprised of seven Divisions which coordinate those efforts. Besides that, the Department of International Relations of the Ministry of Culture is often led by a diplomat, contributing to a better understanding between the two institutions. Moreover, the creation of a permanent forum to lead international cultural initiatives is under discussion.

- In the regional sphere, there are some important initiatives as well: (i) Special Meetings on Culture of MERCOSUL, created in 1992, to promote the diffusion of cultures of the parties, to stimulate the common knowledge of values and traditions, and to promote cultural activities and events (GMC/RES. No. 34/92). In this context, in 1995 the Ministerial Meetings on Culture were created to promote the diffusion and the knowledge of cultural values and knowledge of the parties and to present to the Common Market Council proposals for cooperation and coordination in the cultural area (CMC/DEC No. 2/95); (ii) Protocol on Cultural Integration, created in 1996, is the most important mechanism related to culture (CMC/DEC. No. 11/96). MERCOSUL parties agreed to promote cooperation and exchanges among their cultural institutions and agents with the objective of enriching and disseminating programs of cultural and artistic expression in MERCOSUL, through joint programs and projects, including the creation of cultural spaces and promotion of cultural events with priority in co-production. (iii) Special Meeting of Cinematographic and Video Authorities, created in 2003, is composed of special meetings with film and audio authorities RECAM. Its aim is the establishment of a forum to promote and exchange mechanisms for the production of goods, services and artistic and technical personnel from the film and audio sectors in MERCOSUL; (iv) Selo MERCOSUL Cultural (GMC/RES. No. 122/96) was created in 1996, aiming at facilitating trade procedures and requirements for the exchange of cultural goods which are part of cultural projects within MERCOSUL.

7. What role should civil society play with regard to preferential treatment under Article 16?

- Brazil acknowledges the fundamental role of civil society in protecting and promoting cultural diversity.
- Civil society will benefit from preferential treatment under article 16, especially through the promotion of cultural industries and other initiatives.
- Civil society can also play a key role in the decision-making process. Regular consultations with civil society will be important to define the needs, demands as well as sensitivities of the cultural sector.

MONITORING AND MEASURING

8. Are these mechanisms sufficient? Should other mechanisms (e.g. research, a specially created body, other) be considered?

- The mechanisms provided by articles 9 and 19 should play an important role in monitoring the implementation of article 16. The UNESCO Secretariat should be well equipped to prepare periodical reporting and to carry out information sharing events.
- Strengthening communication between national delegations to UNESCO and to WTO could contribute to promote mutual understanding and to elaborate national positions on the matter.
- Parties of UNESCO which are also Members of the WTO could raise the issue of the implementation of article 16 in the WTO Committee on Trade and Development in order to further examine it in the light of WTO disciplines.”

CANADA
QUESTIONNAIRE

Article 16 – Traitement préférentiel pour les pays en développement

Les pays développés facilitent les échanges culturels avec les pays en développement en accordant, au moyen de cadres institutionnels et juridiques appropriés, un traitement préférentiel à leurs artistes et autres professionnels et praticiens de la culture, ainsi qu'à leurs biens et services culturels.

CONTENU DE L'ARTICLE 16

- Article 16

Le débat a souligné que le traitement préférentiel au sens de l'Article 16 de la Convention doit être compris comme ayant une dimension à la fois commerciale et de coopération culturelle, et que cet Article 16 doit être mis en relation avec d'autres articles de la Convention.

1. **Veillez énumérer les articles qui vous apparaissent particulièrement pertinents pour l'Article 16 et en expliquer brièvement les raisons.**

En vue de la mise en œuvre de l'article 16, trois articles nous apparaissent particulièrement pertinents :

- **Article 12 - Promotion de la coopération internationale**

Par l'entremise de l'article 12 (e), la Convention encourage la conclusion d'accords de coproduction et de codistribution, des outils qui peuvent mettre en application une forme de traitement préférentiel.

- **Article 14 - Coopération pour le développement**

Le concept de traitement préférentiel au sens de l'article 16 ne doit pas être conçu en simples termes commerciaux mais en termes de partenariat et de coopération. Or, l'article 14 de la Convention confère une place centrale à l'idée de coopération et suggère déjà aux Parties plusieurs moyens de soutenir la coopération pour le développement dans le domaine culturel. La mise en œuvre de ces moyens peut être effectuée par l'application du traitement préférentiel tant en ce qui concerne la circulation des biens et services qu'en ce qui concerne la mobilité des artistes.

En fait, les directives opérationnelles qui ont été adoptées par le Comité intergouvernemental aux fins de l'article 14 (Coopération pour le développement), font explicitement mention des liens entre les articles 14, 16 et 18.

- **Article 20 - Relations avec les autres instruments : soutien mutuel, complémentarité et non-subordination**

Cet article est également pertinent pour l'article 16. Selon cet article, les Parties ne peuvent subordonner la Convention aux autres traités internationaux auxquels elles sont parties.

L'article 20 rappelle également aux Parties de prendre en compte les dispositions pertinentes de la Convention (dans ce cas-ci, l'article 16) lorsqu'elles interprètent et appliquent les autres traités auxquels elles sont parties ou lorsqu'elles s'engagent à d'autres obligations internationales. De plus, l'article 20.2 souligne que « rien dans la présente Convention ne peut être interprété comme modifiant les droits et obligations des Parties au titre d'autres traités auxquels elles sont parties ».

De plus, les articles suivants devront également être pris en compte :

- **Article 2.4 - Principe de solidarité et de coopération internationales**

Le principe de solidarité et de coopération rappelle l'importance de favoriser un dialogue et une collaboration entre les pays développés et les pays en développement.

- **Article 2.8 - Principe d'ouverture et d'équilibre**

Le principe d'ouverture et d'équilibre insiste pour que les Parties fassent la promotion de l'ouverture aux autres cultures du monde. Ceci semble être un objectif prioritaire de l'article 16 qui prévoit l'octroi d'un traitement préférentiel aux expressions culturelles des pays en développement.

- **Article 5 - Règle générale concernant les droits et obligations**
- **Article 6 - Droits des parties au niveau national**
- **Article 7 - Mesures destinées à promouvoir les expressions culturelles**
- **Article 8 - Mesures destinées à protéger les expressions culturelles**

À divers degrés et de différentes façons, ces articles prévoient la mise en place de politiques culturelles concrètes afin de réaliser les objectifs de la Convention, y compris les objectifs relatifs à la coopération pour le développement. Par exemple, l'article 5.1 réaffirme le droit souverain des Parties de formuler et de mettre en œuvre leurs politiques culturelles et d'adopter des mesures pour protéger et promouvoir la diversité des expressions culturelles ainsi que pour renforcer la coopération internationale. L'application de l'article 16 de la Convention s'avère un des outils permettant la poursuite des objectifs de la Convention.

- **Article 11 - Participation de la société civile**

L'article 11 reconnaît le rôle de la société civile dans l'atteinte des objectifs de la Convention. Lors des débats du Comité intergouvernemental sur l'article 16, il a fréquemment été fait état du rôle de la société civile relativement à l'application de l'article 16. Il a été noté que concernant la mobilité des artistes et autres professionnels et praticiens de la culture, les représentants de la société civile ont un rôle nécessaire à jouer dans l'identification des problèmes qu'ils rencontrent. Les directives opérationnelles de **l'article 11** (Participation de la société civile) précisent cette contribution de la société civile à la mise en œuvre des dispositions de la Convention.

- **Article 15 - Modalités de collaboration**

Les partenariats prévus à l'article 15 de la Convention peuvent être considérés comme un véhicule de mise œuvre du traitement préférentiel prévu à l'article 16 de la Convention. Dans les directives opérationnelles de l'article 14 (paragraphe 3), on établit d'ailleurs un lien entre les articles 15 et 16 de la Convention.

- **Article 21 - Concertation et coordination internationales**

Comme la mise en œuvre de l'article 16 implique des actions au moyen de différents cadres juridiques et institutionnels, il pourrait être nécessaire de faire, de manière concertée, la promotion de cet article et de ses objectifs dans d'autres enceintes internationales.

- Rôle des Parties

Le débat a souligné que l'Article 16 de la Convention crée une obligation pour les pays développés.

2. Les pays en développement devraient-ils jouer un rôle proactif en tant que bénéficiaires ? Si oui, veuillez fournir des exemples.

Oui, les pays en développement devraient être proactifs et identifier leurs priorités, besoins et intérêts spécifiques en matière de traitement préférentiel en plus de réfléchir aux mécanismes, moyens et cadres juridiques et institutionnels qu'ils jugent appropriés. Les pays en développement seront aussi appelés à démontrer qu'ils s'efforcent de créer sur leur territoire un environnement propice à la diversité des expressions culturelles. Finalement, les pays en développement devraient entretenir un dialogue avec les pays développés mais aussi avec d'autres pays en développement en vue de faciliter les échanges culturels sud-nord et sud-sud au moyen de cadres institutionnels et juridiques appropriés.

MISE EN ŒUVRE DE L'ARTICLE 16

- Cadres

Un traitement préférentiel devrait être accordé « *au moyen de cadres institutionnels et juridiques appropriés* ».

3. Veuillez fournir des exemples des principaux cadres juridiques et institutionnels pouvant être utilisés, en tenant compte des dimensions suivantes :

Puisque la question 3 diffère dans la version anglaise et française du questionnaire, nous tenons à souligner que la réponse qui suit répond à la question telle qu'elle a été formulée **dans la version française**. Elle fournit une liste non-prescriptive d'exemples des principaux cadres juridiques et institutionnels « pouvant être utilisés », et non de ceux qui *seront utilisés* (« to be used »).

a) commerciale

- Accords commerciaux bilatéraux et régionaux
 - o Il est possible de donner un traitement plus favorable à un partenaire commercial lorsqu'un accord commercial bilatéral ou régional a été conclu selon les conditions stipulées dans les articles XXIV de l'Accord général sur les Tarifs douaniers (GATT) et V de l'Accord général sur le commerce des services (AGCS).

- Organisation mondiale du commerce (OMC)
 - o Traitement spécial et différencié (Système de préférences généralisées): Les accords de l'OMC contiennent des dispositions qui permettent aux biens en provenance des pays en développement de bénéficier d'un traitement plus favorable que les autres membres de l'OMC sur des bases non-réciproques.
 - o Les membres de l'OMC peuvent octroyer un traitement préférentiel dans les secteurs pour lesquels ils ont prévu des exemptions au principe de la nation la plus favorisée dans l'AGCS. Plusieurs membres, dont le Canada, ont accordé une exemption pour les coproductions audiovisuelles.

b) coopération culturelle

Considérant que la portée du traitement préférentiel est plus large au sens de l'article 16 de la Convention que dans le domaine commercial, il est possible de mettre en œuvre l'article 16 dans le cadre d'accords de coopération culturelle. Les pays peuvent ainsi conclure des ententes dans le domaine culturel de la même façon qu'ils le font dans d'autres secteurs.

- o Initiatives bilatérales
- o Ententes entre un pays et une région ou un regroupement de plusieurs pays
- o Ententes entre deux regroupements de pays ou régions
- o En tant que membre d'une organisation regroupant plusieurs pays sur une base linguistique, géographique ou autre (ex. : OIF, UNESCO, Conseil de l'Europe, OEA, etc.) à l'intérieur desquelles il peut exister des ententes de coopération culturelle

c) combinaison des dimensions commerciale et coopération culturelle

Les accords de coproduction constituent un bon exemple de cadre qui combine des dimensions commerciales et de coopération culturelle. Ces ententes de coproduction permettent aux producteurs des pays signataires de regrouper leurs ressources financières, créatives et techniques; de coopérer à l'échelle internationale et de rejoindre de nouveaux publics ; de conférer un statut national aux productions cinématographiques et télévisuelles reconnues à titre de coproductions officielles dans les pays partenaires, permettant ainsi à chacun des producteurs de profiter des mêmes avantages que ceux qui leur sont offerts pour une production domestique.

Les accords de partenariat économiques qui comportent des dispositions concernant le commerce des biens et services culturels ainsi que des dispositions concernant la coopération culturelle constituent un autre exemple de cadre combinant des dimensions commerciale et culturelle.

• Catégories

Selon l'Article 16, les pays développés accordent un traitement préférentiel aux :

- a) « *artistes et autres professionnels et praticiens de la culture* » des pays en développement
- b) « *biens et services culturels* » des pays en développement

4. Veuillez fournir des exemples de mesures prioritaires pertinentes pour chacune de ces catégories¹.

a) Pour les « artistes et autres professionnels et praticiens de la culture » des pays en développement :

Les exemples de mesures pourraient inclure :

- Échange d'information et d'expertise
- Formation et activités de renforcement des capacités (« capacity-building »)
- Assistance technique
- Facilitation de la mobilité des artistes
- Assistance financière et soutien à l'accès aux ressources culturelles des pays développés
- Éducation et sensibilisation
- Ou autres mesures

b) Pour les « biens et services culturels » des pays en développement :

Les exemples de mesures pourraient inclure :

- Assistance technique
- Éducation et sensibilisation
- Réduction des barrières à l'échange des biens et des services, accès au marché (ex : système généralisé de préférences de l'OMC pour les biens culturels qui se qualifient)
- Accords de coproduction et codistribution
- Aide financière
- Ou autres mesures

- Critères

Dans le domaine commercial, un traitement préférentiel implique des critères tels que : éligibilité, règles d'origine, gradation, réciprocité et conditionnalité.

5. Certains ou tous ces critères sont-ils pertinents pour l'Article 16 ? Veuillez expliquer brièvement pourquoi.

Ces critères ne doivent pas faire l'objet des directives opérationnelles relatives à l'article 16 bien que certains d'entre eux puissent être jugés pertinents par les Parties à l'égard des moyens utilisés pour accorder un traitement préférentiel. En effet, tenter de définir une application commune du traitement préférentiel sur la base de ces critères pourrait entraîner un processus lourd et complexe et ainsi enlever la souplesse requise pour l'application de cet article. Il doit revenir aux Parties concernées de déterminer eux-mêmes l'application de ces critères.

- Mesures au niveau national

Le débat a souligné le rôle des mesures et politiques nationales dans l'augmentation de l'offre des biens et des services culturels dans les pays en développement. La coordination des différentes institutions nationales est par conséquent de la plus haute importance.

6. Dans votre pays, existe-t-il un mécanisme de coordination entre le ministère responsable de la culture et le ministère responsable du commerce ? Ou d'autres mécanismes ?

Oui, et à plusieurs niveaux.

Chaque ministère ou agence a des responsabilités et des mandats spécifiques mais certains ministères responsables des questions culturelles sont dotés de secteurs possédant une expertise spécifique en matière commerciale. De la même façon, les ministères responsables du commerce sont dotés de directions axées sur les enjeux culturels. Lorsque des sujets ou des enjeux communs émergent, des mécanismes de discussions, de consultation et de coordination sont instaurés au Canada entre les différents ministères et gouvernements compétents.

- Société civile

7. Quel rôle la société civile devrait-elle jouer eu égard au traitement préférentiel au sens de l'Article 16 ?

D'une part, la société civile peut jouer un rôle fondamental au niveau national dans la mise en œuvre du traitement préférentiel pour les pays en développement. D'autre part, la société civile pourra soumettre des contributions écrites au Comité intergouvernemental et participer aux réunions des organes de suivi de la Convention pour exprimer ses vues.

Dans les deux cas, la société civile pourra partager avec les Parties les difficultés et les enjeux auxquels elle fait face; ses points de vue à l'égard du traitement préférentiel et de la mobilité des artistes; ainsi que des propositions de solutions, de mécanismes, de moyens et de cadres juridiques et institutionnels qu'elle juge appropriés.

ASSURER LE SUIVI ET MESURER

Afin de suivre et de mesurer les processus de mise en œuvre et l'impact de l'Article 16, on pourrait invoquer les mécanismes prévus aux articles 9 et 19 de la Convention (rapports périodiques, partage de l'information et meilleures pratiques).

8. Ces mécanismes sont-ils suffisants ?

Nous croyons qu'il conviendrait d'assurer la mise en œuvre effective des mécanismes prévus aux articles 9 et 19 de la Convention avant de déterminer si ces derniers sont suffisants ou non.

De plus, et avant de songer à d'autres mécanismes, il y a lieu de rappeler le rôle de la Conférence des Parties et du Comité intergouvernemental dans le traitement des données relatives à la mise en œuvre des dispositions de la Convention et aux suivis des rapports envisagés à l'article 9. Parmi ces dispositions de la Convention, on devra inclure les informations relatives à l'article 16 et au traitement préférentiel.

Faut-il considérer d'autres mécanismes (par exemple : recherche, création d'un organisme spécialisé, autres)

Pour des fins de recherche, certains mécanismes pourraient être considérés tels le Secrétariat de l'UNESCO, l'Institut de statistique de l'UNESCO, le Réseau des chaires de l'UNESCO et autres partenaires (universités, centres de recherche, réseau d'experts, etc.). Il est important d'éviter des mécanismes complexes et spécialisés, et plutôt privilégier des mécanismes souples et surtout peu coûteux.

En ce qui a trait à la création d'organisme, nous croyons qu'il faille éviter d'en créer de nouveaux qui soient additionnels à ceux déjà prévus par la Convention.

9. Auriez-vous d'autres commentaires à ajouter ?

Les directives opérationnelles qui seront développées aux fins de l'article 16 et du traitement préférentiel devraient offrir aux Parties une solution modulable leur permettant une approche flexible et différenciée. Elles devraient donc illustrer, de manière non-prescriptive, une vaste gamme de mesures possibles permettant d'accorder un traitement préférentiel. Les directives opérationnelles doivent être flexibles dans leur forme et créatives dans les moyens proposés afin d'offrir aux Parties une panoplie de mesures à partir desquels ils pourront puiser.

Ces exemples de mesures devront répondre aux besoins des pays en développement, tout en respectant le champ d'application de la Convention. Les directives opérationnelles de l'article 16 devront aussi prendre en compte les directives opérationnelles qui ont été, ou qui seront développées, dans le cadre d'autres articles pertinents de la Convention.

CHILI**QUESTIONNAIRE**

**Conseil National de la Culture et des Arts
30 janvier 2009**

Article 16 – Traitement préférentiel pour les pays en développement

Les pays développés facilitent les échanges culturels avec les pays en développement en accordant, au moyen de cadres institutionnels et juridiques appropriés, un traitement préférentiel à leurs artistes et autres professionnels et praticiens de la culture, ainsi qu'à leurs biens et services culturels.

Contenu de l'Article 16

1.- L'article N°16 constitue une obligation des pays développés envers les pays en développement, en accordant, au moyen de mesures institutionnelles et juridiques appropriés, un traitement préférentiel aux artistes et aux biens et services culturels. L'interprétation antérieure de l'article 16 est renforcée par les dispositions des articles 1 f et i, article 2-4., article 12, article 14 a, et article 15, où la culture est comprise comme un élément stratégique pour les politiques de développement des peuples. Reconnu, en effet, dans le préambule de la même Convention. Les pays développés devront créer les instances ou les structures légales respectives qui s'occupent de promouvoir la libre circulation des artistes et des biens et services culturels.

2.- Les pays en développement, devront jouer un rôle proactif pour obtenir une mise en place adéquate de ces politiques administratives ou juridiques. Par exemple, à travers l'échange et la diffusion de l'information, à laquelle les articles 9 et 19 font référence, pour que l'UNESCO et les pays signataires aient une information, actualisée et qui soit en vigueur, sur les situations et les empêchements des pays en développement en matière de promotion de la diversité culturelle.

Mise en œuvre de l'article 16

3.- Les instruments juridiques pour une mise en œuvre effective de l'engagement des pays développés seront, entre autres, les accords internationaux de coopération, bilatérale et multilatérale, dont parle l'article 12. L'idée est que dans les accords de coopération la législation interne des pays développés, liée à la maintenance de la souveraineté dans la fixation de ses politiques publiques culturelles, soit respectée. À ce sujet, et à titre d'exemple, le Chili promeut la Réserve Culturelle dans les négociations commerciales internationales. La réserve culturelle lui permet d'adopter ou de maintenir n'importe quelle mesure qui ne sont pas d'accord avec l'obligation de traitement de nation plus favorisée, qui lui permet de donner un traitement préférentiel à d'autres pays à travers des accords bilatéraux ou multilatéraux, existants ou futurs, tels que les accords de coopération audiovisuelle. De la même manière, la réserve réitère que les programmes d'appui gouvernemental et autres subventions à l'industrie culturelle soient en dehors des limitations et des obligations du Chapitre. Cette réserve s'applique au commerce transfrontalier des services ainsi qu'aux investissements. Le Chili protège, à travers les réserves respectives, toutes les mesures qui vont à l'encontre des obligations des chapitres de Services et d'Investissements et qui font

référence aux industries du secteur culturel. Entre autres, celles liées à l'exigence de nationalité chilienne pour le personnel supérieur et les représentants légaux de médias sociaux, les limitations aux concessions pour les radios quand le capital étranger excède de dix pour cent du capital ainsi que le « quota d'écran » qui exige un 40 % de contenu national dans la programmation de la télévision ouverte. Néanmoins, nous sommes conscients que pour les plates-formes de la société civile les efforts doivent être de plus en plus dirigés vers un traitement différencié dans les accords commerciaux internationaux.

3.2- Après consultation avec la société civile, nous pouvons dire que la catégorie de bénéficiaires devrait être dirigée aussi bien aux artistes qu'aux biens et services culturels et ceci conformément aux réalités de chaque pays en développement et selon les définitions des politiques publiques en matière de culture, et dérivées du travail conjoint avec les plates-formes représentant les industries culturelles.

4. a) Démocratisation dans l'accès à la production des industries culturelles et facilité de travail pour les artistes.

4. b) Promotion et renforcement de la création et la production de l'industrie culturelle locale pour assurer sa présence et son impact dans les pays développés, par exemple, à travers une diffusion du propre dans des grands médias des pays développés tels que les Radios, les Bibliothèques, le Cinéma, la Musique, le Théâtre.

5.- Il est important de protéger l'identité locale de nos industries culturelles en promouvant au niveau national les subventions pour la culture. Par exemple, à travers un système de concours de Fonds pour la culture et les arts.

6.- En ce qui concerne le Conseil National de la Culture et des Arts, il travaille autour de la promotion et de la mise en œuvre de cette Convention à travers une action conjointe avec le Conseiller Juridique du Cabinet de la Ministre, l'Unité de Affaires Internationales, la Coalition Chilienne pour la Diversité Culturelle, et la Direction Économique du Ministère des Affaires Étrangères. Le but est de bien faire comprendre l'importance de respecter les articles de la Convention dans les négociations commerciales internationales actuelles et futures. Nous savons que nous devons continuer à travailler en commun dans des critères de diffusion et de promotion pour que les implications de la Convention ratifiée par le Chili soient projetées dans les diverses instances liées à la coopération, telles que l'économie et le secteur Commercial.

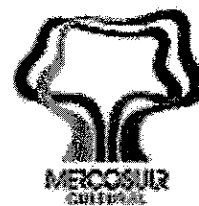
7.- Pour avancer dans l'application de l'article 16, les pays en développement doivent aller à partir de l'État vers le travail conjoint avec les Institutions Culturelles et les plates-formes de la société civile, organisées à travers des Coalitions et/ou de la Fédération Internationale de Coalitions,

Assurer le suivi et mesurer

8.- Nous suggérons que le Comité Intergouvernemental qui travaille la Convention continue à établir des mécanismes de consultation et d'observance liés à la société civile.

9.- Autres commentaires

Nous demandons de prendre en compte le travail commun qui a été effectué autour de la Convention (actes et forums), par une représentation politique de nos gouvernements. Ci-joint l'Acte du MERCOSUR, souscrite par les Ministres du bloc, le 5 décembre 2008 à Río de Janeiro,



MERCOSUL/RMC/ATA Nº 02/08

XXVII REUNIÃO DE MINISTROS DA CULTURA DO MERCOSUL

Realizou-se, na cidade do Rio de Janeiro, Brasil, no dia 05 de dezembro de 2008, a **XXVII Reunião de Ministros da Cultura do MERCOSUL**, com a participação dos seguintes países: República Argentina, República Federativa do Brasil, República do Paraguai, República Oriental do Uruguai, República da Bolívia, República do Chile, República do Equador e República Bolivariana da Venezuela.

A reunião iniciou-se com as palavras de boas-vindas do Ministro da Cultura do Brasil, Sr. Juca Ferreira, que fez um chamado aos demais países no sentido de fazerem um esforço de diversificação das parcerias na região, transformando a atual crise financeira mundial em uma oportunidade, unindo esforços em torno da intensificação dos intercâmbios de cooperação.

Em suas intervenções, os Ministros ressaltaram a importância do fortalecimento das instituições nacionais de cultura e do aumento gradual dos orçamentos destinados ao setor, enfatizando o papel mais dinâmico da cultura na economia e no atual processo de consolidação de novas democracias na região.

Felicitaram a República da Bolívia pelo alcance da meta de eliminação do analfabetismo, incluída nos Objetivos de Desenvolvimento do Milênio 2015. Neste sentido, reconheceram a relevância da experiência boliviana como exemplo para os países da América Latina. A Bolívia convidou os países do MERCOSUL a participarem do ato oficial de anúncio previsto para o dia 20 de dezembro de 2008, na cidade de Cochabamba.

Conscientes do papel fundamental da cultura na construção das identidades nacionais e regionais e no desenvolvimento sustentável, os Ministros da Cultura do MERCOSUL, reunidos no Rio de Janeiro, acordaram:

1. Solicitar ao Foro de Consulta e Concertação Política (FCCP) que eleve à consideração do Conselho Mercado Comum (CMC) o Projeto de Decisão CMC nº 01/08, que consta como anexo, sobre a arte e as especificações de impressão do **Selo MERCOSUL Cultural**;
2. Acolher o pedido do Chile, solicitando ao FCCP que os Estados Associados sejam formalmente convidados a participar das **Reuniões Técnicas de Aduanas do MERCOSUL (CT-2)**.

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3. Instalar a **Secretaria do MERCOSUL Cultural** no Edifício Sede do MERCOSUL (Montevideu), a partir de janeiro de 2010, encomendando à próxima Secretaria *Pro Tempore*, com o apoio do Grupo de Trabalho estabelecido pela XXVI CCR, que realize as gestões nesse sentido. Durante o ano de 2009, acordaram acolher a oferta argentina para a instalação, em caráter provisório, de uma Coordenação Administrativa do MERCOSUL Cultural na cidade de Buenos Aires, que atuará em apoio às atividades da Secretaria *Pro Tempore*, e cujos custos operativos ficarão a cargo da Secretaria de Cultura da Nação Argentina.

4. Aprovar a proposta de criação do **Sistema de Informações Culturais do MERCOSUL - SICSUR**, que consta como anexo, enfatizando a relevância da consolidação de contas-satélites de cultura.

5. Acolher o oferecimento do Uruguai de apresentar, na próxima reunião do CCRI, uma proposta inicial para a criação do **Observatório de Políticas Culturais no âmbito do MERCOSUL**, assim como de sediá-lo na cidade de Montevideu. Neste sentido, o Chile manifestou seu interesse em contribuir para a elaboração da proposta.

6. Solicitar ao FCCP a inclusão dos seguintes parágrafos relativos à cultura no **Comunicado Conjunto de Presidentes dos Estados Parte do MERCOSUL e Associados**, que será assinado por ocasião da Cúpula que se realizará no dia 16 de dezembro de 2008, na cidade de Salvador:

Destacam a importância do impacto simbólico e econômico da cultura e enfatizam a necessidade da ampliação dos orçamentos destinados ao setor, de modo a assegurar o êxito dos programas de inclusão social voltados a um acesso participativo aos bens e serviços culturais e ao fortalecimento e democratização da produção cultural de nossos povos, especialmente no contexto da atual crise financeira mundial.

Reafirmam, igualmente, a disposição de efetivar ações concretas de integração cultural no âmbito do MERCOSUL, entre as quais: a implementação do Selo MERCOSUL Cultural; o projeto de valorização dos itinerários culturais da região e dos corredores das artes e indústrias do audiovisual; o aumento da circulação de informações e interlocução com a sociedade; a promoção da integração das cadeias produtivas de bens e serviços culturais, e a participação concertada dos países da região em foros internacionais de cultura, com ênfase para o tema da diversidade cultural, e especialmente a diversidade lingüística, no marco das Convenções da UNESCO no campo da cultura.

Enfatizam a importância de preservar a memória e herança cultural da região como um instrumento de afirmação das identidades de nossos povos e, nesse sentido, felicitam a iniciativa brasileira de instalar um Centro de Formação e Observatório para a Gestão do Patrimônio, na cidade do Rio de Janeiro, voltado para os países da América do Sul e CPLP.

CCRI

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Recebem com satisfação a aprovação do projeto "Sistemas de Informação Cultural do MERCOSUL - SICSUR" e enfatizam a relevância da consolidação de contas-satélites de cultura e de um Observatório de Políticas Culturais no âmbito do MERCOSUL.

7. Acatar a sugestão brasileira de realizar um seminário para a reflexão e debate sobre **políticas comuns anti-cíclicas no âmbito cultural**, diante da atual crise financeira mundial. Aceitar a oferta argentina para que tal seminário se realize durante o primeiro semestre de 2009, em Villa Ocampo, Buenos Aires, Sede do MERCOSUL Cultural. Os resultados deste encontro servirão como insumos para o Plano de Ação do MERCOSUL Cultural 2009-2012.

8. Definir posições comuns a respeito dos temas que serão tratados no âmbito do **Comitê Intergovernamental da Convenção da UNESCO para a Proteção e a Promoção da Diversidade das Expressões Culturais**, a serem apresentadas pelo Brasil, na qualidade de membro do Comitê. Neste sentido, acordaram acatar a sugestão chilena de se constituir um Comitê Técnico para aprofundar o tema da diversidade, com vistas à construção de um posicionamento consolidado para futuras reuniões do referido Comitê.

9. Aprovar o projeto apresentado pelo Chile, intitulado "**Corredor Cultural das Artes e da Indústria Audiovisual do MERCOSUL**", a ser executado em 2009, com a colaboração dos demais países do Bloco. Acolher a oferta de apoio do Escritório Regional da UNESCO em Montevidéu ao projeto e solicitar o apoio da RECAM para sua difusão e implementação.

10. Acatar a sugestão do Chile, apoiada por Bolívia e Equador, de informar à Comissão de Cooperação Técnica do MERCOSUL (CCT) da PPT brasileira, por meio da RECAM, o interesse do MERCOSUL Cultural em que os Estados Associados tenham acesso aos benefícios do **Programa MERCOSUL Audiovisual**, aprovado pelo Grupo Mercado Comum em 28 de novembro último e a ser executado por meio de Convênio com a **União Européia** no período 2009-2011, especialmente no que se refere às cotas de tela.

11. Felicitar o Brasil pelos avanços na criação do **Centro de Formação e Observatório para a Gestão do Patrimônio**, voltado, preferencialmente, para os países da América do Sul e CPLP, a ser instalado na cidade do Rio de Janeiro com o apoio da UNESCO. Acolher a solicitação do Brasil no sentido de apoiar a constituição da Biblioteca de Referência do Centro, mediante o envio de documentação técnica sobre a gestão do patrimônio cultural, bem como a participação na próxima reunião da Comissão de Patrimônio do MERCOSUL, a realizar-se em Salvador, Bahia, de 26 a 28 de janeiro de 2009. Neste sentido, a Bolívia ofereceu sua experiência nas áreas de identidade, culturas originárias e línguas indígenas.

12. Reiterar o apoio à proposta do Brasil no sentido de implementar o **Comitê das Artes do MERCOSUL (ARTESUL)**, a partir de 2009, como uma

instância do MERCOSUL Cultural para promoção da cooperação, do intercâmbio e da circulação permanente das diversas manifestações artísticas na região.

13. Felicitar a Venezuela e o Brasil pela realização do **II Encontro Sul-Americano das Culturas Populares**, realizado em Caracas, de 26 a 29 de novembro de 2008. O Brasil destacou a necessidade de dar continuidade a esta iniciativa, sugerindo a realização do III Encontro em outro país do MERCOSUL e oferecendo apoio brasileiro para sua efetivação. A "Carta Sul-Americana das Culturas Populares" consta como anexo.

14. Manifestar seu contentamento com a próxima realização do **Encontro Sul-Americano de Cultura dos Povos Guaranis**, previsto o período de 06 a 11 de abril de 2009, na cidade de Dourados, Mato Grosso do Sul, Brasil.

15. Felicitar a Venezuela pela conclusão do **Projeto Museu Virtual**, em cumprimento ao compromisso assumido durante a XXV Reunião de Ministros da Cultura do MERCOSUL (Montevideu, novembro de 2007), e agradecer a oferta venezuelana de enviar equipes técnicas para auxiliar os países que desejem integrar-se ao projeto.

16. Receber com satisfação a decisão da Argentina de criar o **Conselho Federal de Cultura**, como marco estratégico para a proposta, análise e discussão de políticas públicas federais e inclusivas no âmbito da cultura.

17. Tomar nota do informe do **Paraguai** sobre a intenção de abordar quatro eixos temáticos durante a próxima **Presidência Pro Tempore**, a saber: política cultural regional do MERCOSUL; legislação cultural comparada; bicentenário das independências nacionais; e a questão da diversidade lingüística da região.

Procedeu-se à entrega simbólica da Secretaria *Pro Tempore* ao Paraguai.

As delegações agradecem à Secretaria *Pro Tempore* brasileira pela organização do evento e aos convidados pela sua participação.

Anexo I - Lista de participantes;

Anexo II - Agenda aprovada;

Anexo III - Ata da XXVII CCR;

Anexo IV - Projeto de Decisão CMC nº 01/08, sobre o Selo MERCOSUL Cultural;

Anexo V - Proposta de criação do "Sistema de Informações Culturais do MERCOSUL - SICSUR";

Anexo VI - "Carta das Culturas Populares - Caracas"

Anexo VII - Projeto "Corredor Cultural 2009 das Artes e da Indústria Audiovisual do MERCOSUL"



PABLO WISZNIA
Sub-Secretário de Cultura
da Nação Argentina
ARGENTINA



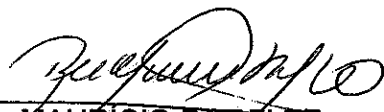
JUCA FERREIRA
Ministro da Cultura
BRASIL



LUIS MANUEL ESCOBAR ARGAÑA
Ministro da Cultura
PARAGUAI



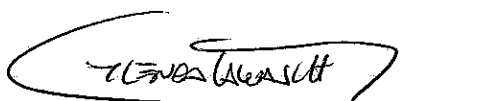
MARIA SIMON
Ministra da Educação e Cultura
URUGUAI



MAURICIO DORFLER
Embaixador da Bolívia no Brasil
BOLÍVIA



EUGENIO LLONA MOUAT
Chefe da Unidade de Assuntos
Internacionais - Conselho Nacional
da Cultura e das Artes
CHILE



GLENDA CALVAS CHAVEZ
Subsecretária Técnica
Ministério da Cultura
EQUADOR



EMMA ELINOR CESIN CENTENO
Vice-Ministra de Fomento da
Economia Cultural
Ministério do Poder Popular para a
Cultura
VENEZUELA

ANEXO I - LISTA DE PARTICIPANTES

REPÚBLICA DA ARGENTINA

PABLO WISZNIA

SUBSECRETÁRIO DE CULTURA DA NAÇÃO ARGENTINA
SECRETARIA DE CULTURA DA NAÇÃO ARGENTINA

ALI MUSTAFÁ

DIRETOR NACIONAL DE POLÍTICA CULTURAL E COOPERAÇÃO
INTERNACIONAL

FABIAN BLANCO

COORDENADOR GERAL DA DIREÇÃO NACIONAL DE POLÍTICA CULTURAL E
COOPERAÇÃO INTERNACIONAL.
DIRETOR NACIONAL DE POLÍTICA CULTURAL E COOPERAÇÃO
INTERNACIONAL

REPUBLICA FEDERATIVA DO BRASIL

JUCA FERREIRA

MINISTRO DA CULTURA

LUIZ FERNANDO DE ALMEIDA

PRESIDENTE DO INSTITUTO DO PATRIMÔNIO HISTÓRICO E ARTÍSTICO
NACIONAL
MINISTÉRIO DA CULTURA

SERGIO MAMBERTI

PRESIDENTE DA FUNDAÇÃO NACIONAL DE ARTE
MINISTÉRIO DA CULTURA

SILVIO DA-RIN

SECRETÁRIO DO AUDIOVISUAL
MINISTÉRIO DA CULTURA

CÉLIO TURINO

SECRETÁRIO DE PROGRAMAS E PROJETOS CULTURAIS
MINISTÉRIO DA CULTURA

AMÉRICO CÓRDULA

SECRETÁRIO DE DIVERSIDADE CULTURAL
MINISTÉRIO DA CULTURA

MARCELO DANTAS

DIRETOR DE RELAÇÕES INTERNACIONAIS
MINISTÉRIO DA CULTURA

THAYS PESSOTTO

GERENTE DE INTEGRAÇÃO E ASSUNTOS MULTILATERAIS
MINISTÉRIO DA CULTURA

MARCELO BRITO

ASSESSOR DE RELAÇÕES INTERNACIONAIS- IPHAN

MINISTÉRIO DA CULTURA

BRUNO MELO

GERENTE DE COOPERAÇÃO DE ASSUNTOS BILATERAIS
MINISTÉRIO DA CULTURA

DANIEL MERLI

ASSESSOR ESPECIAL DO MINISTRO- ASCOM
MINISTÉRIO DA CULTURA

NEY BOMFIM

ASSESSOR DE IMPRENSA
MINISTÉRIO DA CULTURA

PEDRO ROSA

ASSESSOR INTERNACIONAL- SAV
MINISTÉRIO DA CULTURA

ROBERTA FERNANDA DOS ANJOS

SUBGERENTE DE INTEGRAÇÃO E ASSUNTOS MULTILATERAIS
MINISTÉRIO DA CULTURA

ELIZABETH SILVA

ASSESSORA TÉCNICA- DRI
MINISTÉRIO DA CULTURA

INGRID STEIN

OFICIAL DE CHANCELARIA
MINISTÉRIO DAS RELAÇÕES EXTERIORES

REPÚBLICA DA BOLÍVIA

MAURICIO DORFLER

EMBAIXADOR DA BOLÍVIA NO BRASIL

RONALD JESÚS BARRANCOS

RESPONSÁVEL DE COOPERAÇÃO BILATERAL LATINO-AMERICANA
MINISTÉRIO DA EDUCAÇÃO E CULTURAS DA BOLÍVIA

REPÚBLICA DO CHILE

EUGENIO LLONA MOUAT

CHEFE DA UNIDADE DE ASSUNTOS INTERNACIONAIS
CONSELHO NACIONAL DA CULTURA E DAS ARTES

PILAR ENTRALA

ENCARREGADA DE ASSUNTOS INTERNACIONAIS
CONSELHO NACIONAL DE CULTURA E DAS ARTES

REPÚBLICA DO EQUADOR

GLENDAL CALVAS

SUBSECRETARIA TÉCNICA
MINISTÉRIO DA CULTURA DO EQUADOR

REPÚBLICA DO PARAGUAI

LUIS MANUEL ESCOBAR ARGÑA
MINISTRO DA CULTURA
SECRETARIA NACIONAL DE CULTURA

ROCIO ORTEGA
DIRETORA GERAL DE GABINETE
SECRETARIA NACIONAL DE CULTURA

GRACIELA BRITOS
DIRETOR DE COMUNICAÇÃO
SECRETARIA NACIONAL DE CULTURA

REPÚBLICA ORIENTAL DO URUGUAI

MARIA SIMON
MINISTRA DA EDUCAÇÃO E CULTURA DO URUGUAI

REPÚBLICA BOLIVARIANA DA VENEZUELA

EMMA ELINOR CESIN CENTENO
VICE- MINISTRA DE FOMENTO DA ECONOMIA CULTURAL
MINISTÉRIO DO PODER POPULAR PARA A CULTURA

CARMEN TERESA SANCHIS SIMOZA
DIRETORA DE FOMENTO DA ECONOMIA CULTURAL
MINISTÉRIO DO PODER POPULAR PARA A CULTURA

VIVIAN RIVAS GINGERICH
DIRETORA DO INSTITUTO NACIONAL DAS ARTES DA IMAGEM E ESPAÇO
MINISTÉRIO DO PODER POPULAR PARA A CULTURA

CHINE / CHINA
QUESTIONNAIRE

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.

CONTENT OF ARTICLE 16

- Article 16

The debate underlined that preferential treatment under Article 16 of the Convention is to be understood as having both a trade and a cultural cooperation dimension and that Article 16 must be put in relation to other articles of the Convention.

- 1. Please list the articles that seem to you particularly relevant to Article 16 and explain briefly the overall rationale.**

The imbalance existing in the international development and the fact that the developing countries have their special needs have both been mentioned in the Convention. Further on, Article 14 states a series of measures or guidelines that are relevant to the implementation of “preferential treatment”.

- Role of Parties

The debate underlined that Article 16 is binding on developed countries.

- 2. Should developing countries have a proactive role as beneficiaries? If yes, please provide examples.**

Yes, because any effective cooperation needs the interactions between cooperation parties. In order to achieve the anticipated results, the governments of the developing countries should provide public cultural services such as corresponding financial support, information communication, etc..

IMPLEMENTATION OF ARTICLE 16

- Frameworks

Preferential treatment should be granted “*through appropriate legal and institutional frameworks*”.

3. Please provide examples of the main legal and institutional frameworks to be used by taking into account the following dimensions:

Besides the 2005 Convention itself,

a) Trade : We could use the existing law like: Article 4 of “Increasing participation of developing countries” in the WTO General Agreement on Trade in Services, and the “Enabling Clause” in the WTO General Agreement on Tariffs and Trade: developing countries could unilaterally accord differential and more favorable treatment to developing countries, without according such treatment to other contracting parties.

b) Cultural cooperation: We could use the existing bilateral cultural cooperation mechanisms, for example, China France Cultural Accord, China Canada Cultural Agreement and the implementing programs under each frame; Regional or multi-lateral mechanism, such as Asia-Europe Foundation, Asean+3.

c) A combination of the trade dimension and the cultural cooperation dimension: We could use the existing bilateral and regional cooperation mechanisms, for example, the regularly-held International Cultural Industries Fair

- Categories

In accordance with Article 16 developed countries grant a preferential treatment to:

- a) “*artists and other cultural professionals and practitioners*” from developing countries
- b) “*cultural goods and services*” from developing countries

4. Please provide examples of priority measures relevant to each of these categories.¹

Priority measures could be:

a) Providing, for the artists and other cultural professionals and practitioners from developing countries, assistance such as long-term and short-term entry visa, green channel, legal aid, etc..

b) Organizing personal work exhibitions for the artists from developing countries in the developed countries and permit to sell (some) exhibits.

c) Organizing trade fairs for the developing countries

d) Provide favorable conditions for the developing countries to participate in different kinds of cultural fairs in the developed countries, such as free booth.

e) Facilitating the cultural enterprises from the developing countries to invest or do business in the developed countries, such as reduction or elimination of tariffs, offices renting with more favorable rates, information services, legal consultation and etc..

f) Helping developing countries to enhance competences in providing domestic public cultural services by such measures as: devising concerned training programs for governmental and non-governmental cultural actors in developing countries in management, technology, etc. which are mostly need.

¹ Please refer to the document attached ‘Overview’.

g) Supporting cultural goods and services from developing countries to enter developed countries by taking such measures as according favorable treatment in market information promotion, reduction or elimination of tariffs, etc..

- Criteria

In the trade environment, preferential treatment involves criteria such as: eligibility, rules of origin, graduation, reciprocity and conditionality.

5. Are all or some of these criteria relevant for preferential treatment under Article 16? Please explain briefly why.

The criteria of *eligibility* and *rules of origin* are relevant for preferential treatment under Article 16, because both “the precise identification of the origin of the cultural goods and services” and “the location of the beneficiaries” are prerequisite to guarantee the impartial implementation of the Convention.

- Measures at national level

The debate underlined the role of national measures and policies in increasing the supply of cultural goods and services in developing countries. Coordination of different national institutions is therefore of the utmost importance.

6. In your country, is there an existing coordination mechanism between the ministry responsible for culture and the ministry responsible for trade? Or other mechanisms?

Yes, there are such coordination mechanism existing, for example, the mechanism between the Chinese Ministry of Culture and the Ministry of Trade, and the mechanism between the Chinese Ministry of Culture and the Ministry of Finance, etc..

- Civil society

7. What role should civil society play with regard to preferential treatment under Article 16?

The civil society should help the government to clarify different development needs and play an important role in supervision and consultation.

MONITORING AND MEASURING

In order to monitor and measure the processes of implementation and the impact of Article 16, the mechanisms foreseen in articles 9 and 19 of the Convention (periodical reporting, information sharing and best practices) could be invoked.

8. Are these mechanisms sufficient?

Should other mechanisms (e.g. research, a specially created body, other) be considered?

The existing mechanisms are very important and necessary. Comprehensive implementation are sincerely anticipated. To be more precise, the State Parties are expected to state, in their reports to UNESCO every four years, the concrete measures and actions they have taken in accordance with Article 16.

No other mechanisms are suggested to be established for now.

9. Would you have any other comment to add?

No.

CUBA**QUESTIONNAIRE**

These are the answers of the Ministry of Culture, Republic of Cuba

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.

Question 1- Preferential treatment to developing countries, ruled by the Article 16 of the Convention, will undoubtedly help to achieve the purposes contained in other sections, such as:

- Article 1, referred to the rector goals and principles. Developed countries have much better conditions and resources, so it would be easier for them to reach these goals than for developing countries, and that is why preferential treatment plays such an important role here.
- Article 2, section 4, referred to the principle of international solidarity and cooperation. Of course, even though solidarity and cooperation must be mutual, not all countries can cooperate to the same extent and in this case, developing countries must be supported by developed countries.
- Article 2, section 7, referred to the principle of equal access. Obviously, it is more difficult for developing countries to have access to the culture of developed countries and it should be facilitated.
- Article 2, section 8, referred to the principle of opening and balance. Promotion of culture can be expensive in some cases, so the cultural promotion of developing countries should be facilitated.
- Article 4, section 6, referred to the concept of cultural politics and measures. We think Article 16 can be regarded as one of these measures, which reflects a sort of cultural politics.
- Article 12, referred to the promotion of international cooperation. Preferential treatment to developing countries can also be considered as an example of international cooperation, upon the base of which it should rise.
- Article 14, referred to the cooperation for development. We think preferential treatment to developing countries is fair enough so as to contribute to the achievement of all of the purposes contained in this Article.
- Article 15, referred to the kinds of collaboration. Preferential treatment can perfectly be one of these kinds.

Question 2- We think they should. It could be achieved by increasing promotional activities and by the initiation of different kind of cultural programs.

Question 3- All kind of international legal texts and measures should be taken into account in order to achieve this.

Cuba, as a member of the Trade World Organization, is beneficiary of the Most Favoured Nation treatment, which is granted by this organization to those countries that it involves and those involved by the Preferences General System, granted by the European Union to developing countries, including Cuba.

In the case of exportations of our products to Latin America, the Agreements of ALADI, which also offer preferential tariffs to cultural products, should be taken into account.

Question 4- We will provide two examples of priority measures, one for each category:

1. In the case of artists and other cultural professionals and practitioners from developing countries- We think developed countries should increase the granting of free scholarships to these people, or in other case, help them finance them.
2. In the case of cultural goods and services from developing countries- We think preferential tariffs should be established.

Question 5- They are all relevant.

Question 6- There exist such coordination between our Ministry of Culture and our Ministry of International Trade, and other cuban institutions involved.

Question 7- Civil Society should play a relevant role, especially concerning the supporting in promotion of artists and cultural goods and services, and interceding before the government authorities, if needed, in order to achieve these purposes.

Question 8- We think these mechanisms are sufficient.

ETHIOPIE / ETHIOPIA

QUESTIONNAIRE

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.

Q. No. 1 Cross-reference to Articles 12 and 15 is useful. Art. 12 highlights situations under threat, a crucial area of activity. Art. 15 indicates various partners in promoting, among others, “exchange of cultural activities, goods and services”.

Q. No. 3 Main legal frameworks: Ministries of Culture, Tourism, Industry, Finance and Trade; regional economic communities or regional economic development agencies

Q. No. 4

- a) ‘Artists, and other professionals and practitioners’: List, description, competencies/qualifications, number
- b) Cultural goods and services’: List, types

Q. No.5

Reciprocity should not be included because it is inconsistent with the justification for preferential treatment

Q. No. 6

There is a working relation among the Ministry of Trade and Industry, the Ministry of Culture and Tourism and the Ministry of Finance and Economic Development, but it could need strengthening.

Q. No 7

They can provide technical advice, and assist in training and evaluation.

Q. No. 8

The evaluation and reporting is generally fine. However, the frequency of the periodic reporting should be clarified or specified.

INDE / INDIA

QUESTIONNAIRE

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.

CONTENT OF ARTICLE 16

• Article 16

The debate underlined that preferential treatment under Article 16 of the Convention is to be understood as having both a trade and a cultural cooperation dimension and that Article 16 must be put in relation to other articles of the Convention.

1. Please list the articles that seem to you particularly relevant to Article 16 and explain briefly the overall rationale.

The position is as follows:

Sr.	Article	Text of the relevant portion	Explanation
1.	Preamble	<i>Emphasizing</i> the need to incorporate culture as a strategic element in national and international development policies, as well as in international development cooperation, taking into account also the United Nations Millennium Declaration (2000) with its special emphasis on poverty eradication,...	Mention of the link that Culture has in national and international development policies and the need for international development cooperation, establishes the relevance of cooperation as the approach to be followed in the implementation of the provisions of the Convention, including Article 16.
2.	Preamble	<i>Being</i> aware that cultural diversity is strengthened by the free flow of ideas, and that it is nurtured by constant exchanges and interaction between cultures,...	Establishes the link between exchanges and the strengthening of cultural diversity – the object of the Convention. Facilitation of the cultural exchanges becomes an imperative of the Convention and therefore the role of preferential treatment to the extent it facilitates such exchanges is established as the central feature of the Convention.
3.	Preamble	<i>Being convinced</i> that cultural activities, goods and services have both an economic and a cultural nature, because they	Provides the underlying justification to look at cultural exchanges achieved through cultural goods and services

Sr.	Article	Text of the relevant portion	Explanation
		convey identities, values and meanings, and must therefore not be treated as solely having commercial value,...	outside the pure trade perspective.
4.	Preamble	<i>Noting</i> that while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, they also represent a challenge for cultural diversity, namely in view of risks of imbalances between rich and poor countries,...	The risk of imbalances between rich and poor countries is recognised as a possibility under globalisation. Thus the onus being placed on developed country parties to the Convention to facilitate cultural exchanges can be viewed as an attempt to mitigate such risks.
5.	1 (f) Objectives	to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of the true value of this link;	This objective establishes the link between culture and development and forms the basis for the international action envisaged under Article 16 <i>re</i> preferential treatment
6.	1 (g) Objectives	to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning	Role of cultural goods and services as not just items of trade in the commercial sense as stated in the Preamble is restated as an objective. Thus, the need for preferential treatment being extended to cultural goods and services under Article 16 is established under this objective.
7.	1 (i) Objectives	to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.	That cooperation and not competition is the objective of the Convention is clearly stated. In doing so the philosophical basis for the need to look beyond trade perspective in effectuating the Article is also established
8.	2. 4. Guiding Principles	<u>Principle of international solidarity and cooperation</u> International cooperation and solidarity should be aimed at enabling countries, especially developing countries, to create and strengthen their means of cultural expression, including their	This Principle provides the logic for Art. 1 (i)

Sr.	Article	Text of the relevant portion	Explanation
		cultural industries, whether nascent or established, at the local, national and international levels.	
9.	2.5. Guiding Principles	<p><u>Principle of the complementarity of economic and cultural aspects of development</u></p> <p>Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy.</p>	This Principle provides the logic for Art. 1 (f)
10.	2.7. Guiding Principles	<p><u>Principle of equitable access</u></p> <p>Equitable access to a rich and diversified range of cultural expressions from all over the world and access of cultures to the means of expressions and dissemination constitute important elements for enhancing cultural diversity and encouraging mutual understanding.</p>	All parties to the Convention are enjoined to ensure equitable access to cultural expressions from across the world under an open and balanced regime for their own citizens. If preferential treatment by developed countries as envisaged under Art. 16 is of assistance in doing so, then the principles are adhered to in this respect.
11.	2.8. Guiding Principles	<p><u>Principle of openness and balance</u></p> <p>When States adopt measures to support the diversity of cultural expressions, they should seek to promote, in an appropriate manner, openness to other cultures of the world and to ensure that these measures are geared to the objectives pursued under the present Convention.</p>	
12.	4. 4. Definitions	<p><u>Cultural activities, goods and services</u></p> <p>“Cultural activities, goods and services” refers to those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services.</p>	The definition provides for a possibility of non-commercial nature for cultural goods and services. This means that the framework of trade for preferential treatment is rendered insufficient in understanding the working of the Article.
13.	7.1.(b) Measures to promote cultural expressions	Parties shall endeavour to create in their territory an environment which encourages individuals and social groups:	An affirmation of the Principles of equitable access and openness and balance. Thus, establishes

Sr.	Article	Text of the relevant portion	Explanation
		...to have access to diverse cultural expressions from within their territory as well as from other countries of the world.	the role preferential treatment can play in making diverse cultural expressions accessible to citizens of the parties to the Convention.
14.	7.2. Measures to promote cultural expressions	Parties shall also endeavour to recognize the important contribution of artists, others involved in the creative process, cultural communities, and organizations that support their work, and their central role in nurturing the diversity of cultural expressions.	Artists, cultural practitioners and professionals (ACPP) are recognised as important vehicles of cultural diversity. Thus, the scope of preferential treatment necessarily has to focus on them as well as on cultural goods and services.
15.	12. Promotion of international cooperation	Parties shall endeavour to strengthen their bilateral, regional and <u>international cooperation</u> for the creation of conditions conducive to the promotion of the diversity of cultural expressions, taking particular account of the situations referred to in Articles 8 and 17, notably in order to: (a) facilitate dialogue among Parties on cultural policy; <u>(b) enhance public sector strategic and management capacities in cultural public sector institutions, through professional and international cultural exchanges and sharing of best practices;</u> (c) reinforce partnerships with and among civil society, non-governmental organizations and the private sector in fostering and promoting the diversity of cultural expression; (d) promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions; <u>(e) encourage the conclusion of co-production and co-distribution agreements.</u>	Some of the possible contours of international cooperation have been delineated here as underlined. Sharing of best practices also complements information sharing envisaged in Article 9. This type of sharing constitutes a cultural service which can be rendered by developed countries on non-reciprocal non-commercial basis to developing countries as part of the preferential treatment of Article 16.

Sr.	Article	Text of the relevant portion	Explanation
16.	14. Cooperation for development	Parties shall endeavour to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector by, inter alia, the following means:	The link between the developmental aspirations of developing countries and the manner in which these can be met under the provisions of the Convention is clarified here. Further, that cultural industries are strengthened in developing countries through specific measures to build and sustain capacities by granting access to cultural products and actors from such countries into developed country markets is clearly stated. Further, technology transfer, experience and expertise sharing and training form part of the strategy are also stated here. All this lends direct relevance to the application of the principle of preferential treatment that is stated in Article 16.
17.	(a)(i), (ii), (iv), (v)	(a) the strengthening of the cultural industries in developing countries through: (i) creating and strengthening cultural production and distribution capacities in developing countries; (ii) facilitating wider access to the global market and international distribution networks for their cultural activities, goods and services; ... (iv) adopting, where possible, appropriate measures in developed countries with a view to facilitating access to their territory for the cultural activities, goods and services of developing countries; (v) providing support for creative work and facilitating the mobility, to the extent possible, of artists from the developing world; ...	
18.	14. (b)	capacity-building through the exchange of information, experience and expertise, as well as the training of human resources in developing countries, in the public and private sector relating to, inter alia, strategic and management capacities, policy development and implementation, promotion and distribution of cultural expressions, small-, medium- and micro-enterprise development, the use of technology, and skills development and transfer;	

Sr.	Article	Text of the relevant portion	Explanation
19.	14.(c)	technology transfer through the introduction of appropriate incentive measures for the transfer of technology and know-how, especially in the areas of cultural industries and enterprises;	
20.	20. Relationship to other treaties: mutual supportiveness, complementarity and non-subordination	<p>1. Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly, without subordinating this Convention to any other treaty,</p> <p>(a) they shall foster mutual supportiveness between this Convention and the other treaties to which they are parties; and</p> <p>(b) when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention.</p> <p>2. Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.</p>	This Article clarifies the non-conflict approach of the Convention to other treaties. Thus, the Convention does not seek to have any confrontation with the provisions of various agreements under the Marrakesh Agreement, 1994. In fact, to the extent the parties to the Convention seek to implement Article 16, they would do so under the 'Enabling Clause' as well as the various exemptions under the WTO Agreements available in the trade context. The various non-trade contexts in any case are independent of any WTO obligations. Thus, the principles governing the operation of trade preferences under the 'Enabling Clause' would be rendered inapplicable under some of the features of the operation of Article 16 herein

• Role of Parties

The debate underlined that Article 16 is binding on developed countries.

2. Should developing countries have a proactive role as beneficiaries? If yes, please provide examples.

It would be asymmetrical to expect all obligations to apply only to developed countries in the operationalisation of this Article. There could be many facets of beneficiary obligations also. A brief non-exhaustive list is placed below:

- Effective quality control on the cultural goods and services being provided to prevent short-changing of the consumers in the developed countries.
- Actively seeking knowledge, experience and expertise sharing opportunities with developed countries in areas of conservation and protection of cultural heritage, especially such opportunities are being made available on non-commercial considerations.

- Prepare depositories for endangered and vulnerable cultural expressions so as to allow for the countries giving preferential treatment to take informed decisions in applying the principle.
- Actively seek redress in the case of intellectual property violations.

IMPLEMENTATION OF ARTICLE 16

- Frameworks

Preferential treatment should be granted *"through appropriate legal and institutional frameworks"*.
- 3. Please provide examples of the main legal and institutional frameworks to be used by taking into account the following dimensions:
 - a) trade
 - b) cultural cooperation
 - c) a combination of the trade dimension and the cultural cooperation dimension
- Categories

In accordance with Article 16 developed countries grant a preferential treatment to:

 - a) "artists and other cultural professionals and practitioners" from developing countries
 - b) "cultural goods and services" from developing countries
- 4. Please provide examples of priority measures relevant to each of these categories.
 - For trade
 - It would be relevant to make use of the 'Enabling Clause' to institute GSPs. Since, by definition, GSPs are on voluntary basis and are not supposed to seek reciprocity, it would be necessary to delink the same from non-trade conditionalities that have often been seen in the past.
 - With the possibility of instituting duty-free quota-free regimes in favour of least developed countries as made possible by the Hong Kong Ministerial Declaration of the WTO.¹
 - Zero tariff lines might also be made applicable to non-competing cultural goods from developing countries.
 - Mode 4 restrictions under GATS can be made easier for cultural services
 - For cultural cooperation the possible features of operation of the Article could be the following:
 - Instituting special artist visas
 - Double taxation avoidance treaties with developing countries
 - Specialised institutions to render subsidised specialised legal services to developing country parties against intellectual property rights violations.
 - Recognition of traditional knowledge and traditional cultural expressions as candidates for legal protection against misappropriation and non-benefit sharing exploitation.
 - Setting up national level institutions and programmes on knowledge, experience and expertise sharing in promotion, preservation and conservation of cultural

¹ See Annex 14 for the decision given in Annex F of the Ministerial Declaration.

expressions especially endangered ones, and providing subsidised access to the same for developing country parties – both state and non-state.

- Special training for officials handling cultural goods at the borders
- Instituting Cultural exchange programmes and entering into cultural agreements on non-commercial and equitable considerations.

• **Criteria**

In the trade environment, preferential treatment involves criteria such as: eligibility, rules of origin, graduation, reciprocity and conditionality.

5. Are all or some of these criteria relevant for preferential treatment under Article 16? Please explain briefly why.

- Trade preference is essentially based on non-reciprocity.
- There exist no objectively determined criteria to establish eligibility, effective rules of origin and graduation. Efforts to create such standards are more likely to create an ineffective oversight mechanism and disputes than render any great service to operation of the Article 16. In fact, the likelihood of costs of operating such a mechanism being the greater than the losses incurred by non-prevention of misuse is very high.
- As regard conditionalities for grant of preferential treatment, it would be a much better mechanism to encourage the beneficiaries to volunteer to abide certain standards as stated in answer to Question 2 above.

• **Measures at national level**

The debate underlined the role of national measures and policies in increasing the supply of cultural goods and services in developing countries. Coordination of different national institutions is therefore of the utmost importance.

6. In your country, is there an existing coordination mechanism between the ministry responsible for culture and the ministry responsible for trade? Or other mechanisms?

- The Ministry of Commerce and the Ministry of Culture have a coordination mechanism which allows them to adopt consistent policies and approaches.
- In addition, the Ministry of External Affairs often seeks the cooperation of Ministry of Culture for its efforts in cultural diplomacy.

• **Civil society**

7. What role should civil society play with regard to preferential treatment under Article 16?

- The Civil Society in developed countries
 - could act as a watchdog for the Government to prevent misuse of Article 16 by the beneficiaries;
 - actively participate in the knowledge, experience and expertise sharing efforts of their respective countries;

- assist in capacity building and identifying markets for cultural goods and services from developing countries
 - In developing countries, the civil society
 - could build networks with civil society groups in developed countries;
 - assist in developing standards for equitable remuneration for cultural actors;
 - assist in developing effective marketing strategies and pricing for cultural goods and services;
 - render advice on protection against misappropriation of traditional knowledge and traditional cultural expressions and violation of intellectual property rights
-

MONITORING AND MEASURING

In order to monitor and measure the processes of implementation and the impact of Article 16, the mechanisms foreseen in articles 9 and 19 of the Convention (periodical reporting, information sharing and best practices) could be invoked.

8. **Are these mechanisms sufficient? Should other mechanisms (e.g. research, a specially created body, other) be considered?**
9. **Would you have any other comment to add?**

- In the interim these mechanisms appear sufficient, except that the period of reporting envisaged as four years appears long by itself. A mid-term review after two years might yield some insights which would be useful for course correction if any is needed.
- The term 'preferential treatment' used in the Article is likely to lead to trade context dominating the working of the Article. However, a careful contextual reading of the Article with the relevant provisions stated in response to Question 1 above would clearly reveal that the Article seeks positive discrimination in favour of developing countries in the spirit of development cooperation and not of trade competition.

JAMAÏQUE - SAINTE-LUCIE / JAMAICA – SAINT LUCIA

QUESTIONNAIRE

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.

CONTENT OF ARTICLE 16

- Article 16

The debate underlined that preferential treatment under Article 16 of the Convention is to be understood as having both a trade and a cultural cooperation dimension and that Article 16 must be put in relation to other articles of the Convention.

1. **Please list the articles that seem to you particularly relevant to Article 16 and explain briefly the overall rationale.**

Response

Articles 12, 14 and 18 are particularly relevant to the implementation of Article 16.

Article 12

In the case of Article 12, the Article is relevant as it speaks to the use of bilateral arrangements such as international cultural exchanges, co-production and co-distribution for the development of cultural industries and the promotion of cultural diversity.

Article 16 clearly promotes the use of cultural exchanges as one of the principal modes for the granting of 'preferential treatment' by developed countries to artists and other cultural practitioners and professionals as well as cultural goods and services from developing countries. As such, any arrangements between developed and developing countries to implement Article 16 must be based on bilateral and international arrangements and the kinds of activities (exchanges, co-production, etc.) outlined in Article 12.

Article 14

Article 14 speaks to the importance of promoting sustainable development in the establishment of a dynamic culture sector by using various modes. Among the modes cited are:

- *wider access to the global market and international distribution networks*
- *adoption of measures by developed countries to facilitate access to their territories by artists, cultural practitioners and professionals, cultural goods and services from developing countries*
- *encouragement of collaboration between developed and developing countries, especially in pursuance of enhanced development of music and film*
- *provision of official development or technical assistance to developing countries.*

All the above point to enhanced development of the culture sector of developing countries through cooperation arrangements with developed countries, linking therefore directly into 'preferential treatment' as included in Article 16.

Article 18

While Article 18 does not make specific reference to actions and activities that could be directly linked to Article 16, it must be stated that since the International Fund for Cultural Diversity has as its principal intention the development of a sustainable and dynamic culture sector, then the guidelines and actions related to the disbursement of funds as well as to the methodologies and philosophies employed in deliberations on priorities should be linked into the principles, guidelines and constructs established under Article 16.

This would cause developed countries to link their contribution to the Fund as one element of actions they would promote to assure preferential treatment to developing countries for the promotion of market access and developmental support.

- Role of Parties

The debate underlined that Article 16 is binding on developed countries.

2. Should developing countries have a proactive role as beneficiaries? If yes, please provide examples.

Response

While Article 16 of the Convention puts the onus on developed countries to carry out the obligations under this Article, developing countries must play an intensely proactive role in its implementation. They must not be passive recipients of or mere spectators to any benefits outlined in the Convention. Instead, they must be actively involved in the making of all decisions and the development of all mechanisms, guidelines and procedures related to their development.

In this regard, all Parties are expected to play their part in establishing mechanisms, procedures and guidelines for the implementation of Article 16. By this discourse, States Parties of developed countries are expected to work closely with States Parties of developing countries to find ways and means to carry out the terms and conditions outlined in the Convention, especially as they relate to Article 16, which must be seen as the principal 'modus' of the Convention.

Developing countries, as beneficiaries of preferential treatment, should participate in all processes to define or elaborate the elements/actions that should be included in the implementation of Article 16.

The following are some of the examples of this proactive approach:

- *Developing countries should be represented on all UNESCO Committees on 'Preferential Treatment', in the elaboration of frameworks*
- *Developing countries should work on a Special Committee with developed countries to elaborate procedures and guidelines within "legal and institutional frameworks" for the promotion of 'preferential treatment'. These may include immigration policy recommendations, registration of sector, sector organization, creation of model legislation, examination of best practices in institutional development and operations.*
- *Developing countries should collaborate with developed countries in the establishment of 'watchdog' institutions to assess continuously the implementation of Article 16.*

IMPLEMENTATION OF ARTICLE 16

- Frameworks

Preferential treatment should be granted "through appropriate legal and institutional frameworks".

3. **Please provide examples of the main legal and institutional frameworks to be used by taking into account the following dimensions:**

- a) **trade**
- b) **cultural cooperation**
- c) **a combination of the trade dimension and the cultural cooperation dimension**

Response

Main legal and institutional frameworks

Trade

- *Bilateral and multilateral agreements*
- *Negotiation/establishment of special trade regimes, perhaps aligned to existing historical or cultural blocs such as the European Partnership Agreement between CARIFORUM and the European Union, for trade in cultural goods and services*
- *Use of the recently concluded European Partnership Agreement between CARIFORUM and the European Union as a model legal and institutional framework for the establishment of the 'modus' for the operationalization of Article 16*
- *Special bi-lateral arrangements/agreements between individual or groupings of developing countries and individual or groupings of developed countries to create legal and institutional mechanisms for the implementation of Article 16, for example Jamaica Canada; CARICOM Canada; Pacific Countries Australia; MERCOSUR Spain, etc.*
- *Special bi-lateral agreements/arrangements and trade regimes among developing countries, based on model agreement/regime to be created, thereby enhancing South South cooperation for sustainable development, eg. CARICOM India (perhaps on Film); CARICOM China; South Africa Brazil; Senegal Japan; etc.*
- *Creation of development/technical assistance packages and funding as part of all special agreements/regimes cited earlier to promote capacity building for innovation, product/talent enhancement and distribution for the culture sector in developing countries*
- *Establishment of legal and institutional frameworks by way of special cooperation mechanisms for the creation and enhancement of domestic content and industries in developing countries, such as the recognition of the products of co-production efforts between developed and developing countries as domestic production in both areas, such as is the case in the CARIFORUM European Union Agreement cited earlier*
- *Inclusion of waiver or reduction of duties, tariffs and charges on inputs to cultural industries as part of trade regimes negotiated for the sector as well as special arrangements for the cross border transfer of such inputs and equipments for the delivery of said services*
- *Establishment of mechanisms for royalty collection regarding the use of cultural products by developed countries consumers*
- *Creation of mechanisms for the stimulation of investments*

Cultural Cooperation

- *Promotion of targeted cultural exchanges for development, for example among film makers*
- *Creation of a Protocol on Cultural Cooperation within the framework of trade dialogue to ensure development of the sector, especially with regard to professionals such as public sector culture officials, cultural administrators, and the not-for-profit sector as is the case of the CARIFORUM European Union Protocol on Cultural Cooperation*
- *Creation of network of associations between strategic organizations in developed and developing countries, such collections societies, artists unions, etc.*
- *Establishment of legal framework for public private sector i.e. civil society engagement as part of the way forward for the implementation of Article 16*

- *Creation of institutional mechanism for targeted funding of strategic projects directed at strengthening developed country-developing country civil society partnerships for development*
- *Creation of mechanisms (financing, events planning, etc.), to facilitate the presentation of the products of co-production arrangements in both areas*

Combination of trade dimension and the cultural cooperation dimension

- *Establishment of special official/institutional framework between Developed Countries through their embassies and Developing Countries through Ministries of Culture for the granting of visas to facilitate artists, culture practitioners and professionals to access the markets/territories of developed countries for enhanced product and industry development, including but not limited to registration of artists, professionals and practitioners; development of mechanisms for identification/accreditation of artists, professionals and practitioners such as letters of cognizance; recognition through membership of industry associations; creation of identification card for industry members; creation of Developed Country (eg. EU) Certificate for Enhanced Movement of Artists, Culture Practitioners and Professionals to include procedure for acquisition of same; etc.*
- *Establishment of mutually recognized, official (therefore legal) Developed Country/Developing Country Working Group for the promotion of activities for industry advancement such as trade fairs, co-production, festivals, seminars, residences, internships, etc. related to development assistance for the industry and as basis for visa regime determination and support*
- *Establishment of mechanism or creation of legislation for the expatriation of revenue earned by industry practitioner from developing country in conditions of contractual supply of services for commercial purposes as it relates to wealth creation and income generation for industry consolidation*

- Categories

In accordance with Article 16 developed countries grant a preferential treatment to:

- a) *“artists and other cultural professionals and practitioners”* from developing countries
- b) *“cultural goods and services”* from developing countries

4. Please provide examples of priority measures relevant to each of these categories.¹

Response

Priority measures for “artists and other cultural professionals...”

Since this pertains to the movement of natural persons across borders, the following measures to remove barriers to the movement of artists, culture professionals and practitioners are of great significance:

- *Visa facilitation arrangements that will allow these persons to access the facilities, markets, etc. in developed countries as well as to facilitate the provision of their services, given especially that for most of the providers in developing countries this is the principal mode of supply*
- *Special arrangements for contractual suppliers to return to developing countries with accrued revenue*
- *Facilitation of partnerships and networks for developmental assistance and events promotion*
- *Creation of schemes for joint productions, promotions and investments*
- *Stimulus funding support*

Priority measures for “cultural goods and services”

- *Removal or reduction of duties, tariffs and other charges related to the movement of goods across borders*
- *Creation or enhancement of mechanisms for royalty collections, intellectual property protection, branding, etc. related to display/presentation of goods and properties*
- *Inclusion in services contracts mechanisms to deal with fees, revenue, standards and regulations to ensure that suppliers from developing countries are not marginalized in the process*
- *Creation of measures to encourage investment/joint investment in targeted events between service providers of developed and developing countries*
- *Enactment of legislation to encourage content balance in audiovisual strategies and policies as well as for the employment of professionals from developing countries in a concept of fair or balanced trade*

¹ Please refer to the document attached ‘Overview’.

- Criteria

In the trade environment, preferential treatment involves criteria such as: eligibility, rules of origin, graduation, reciprocity and conditionality.

5. Are all or some of these criteria relevant for preferential treatment under Article 16? Please explain briefly why.

Response

Most of the criteria listed above may not be relevant to the discourse on preferential treatment as set out in Article 16 of the Convention.

For the purpose of the implementation of 'preferential treatment', the important criteria should be based on the following conditions, related therefore to the principle of conditionality::

- *The beneficiary is a developing country*
- *The beneficiary is compliant with the terms and conditions of the Convention both in terms of measures at the national and international levels*
- *The beneficiary will be granted preferential treatment as long as they are so designated. In other words, it should not be related to any concept of improvement as this will require a detailing of criteria for that denomination*

The following statements are valid:

- *Granting of whatever benefits under 'preferential agreement' should have nothing to do with reciprocity. Developing countries should not be expected to reciprocate for receiving preferential treatment. Preferential treatment is about levelling the playing field or fair trade and should not therefore be encumbered with reciprocal arrangements.*
- *Graduation should not be used in this scenario. It will be difficult at any rate to establish the mechanisms to prove that a developing country is no longer in need of preferential treatment.*
- *In terms of rules of origin, this should be used in cases where there is need to establish the origin of the service or good. In other words, as long as there is proof of origin, i.e. a developing country, the need for this principle may not apply.*

- Measures at national level

The debate underlined the role of national measures and policies in increasing the supply of cultural goods and services in developing countries. Coordination of different national institutions is therefore of the utmost importance.

6. In your country, is there an existing coordination mechanism between the ministry responsible for culture and the ministry responsible for trade? Or other mechanisms?

Response

The Ministry of Foreign Trade has a series of mechanisms that facilitate on a regular basis on-going consultation with the Ministry of Culture on all trade matters. The following are some of the mechanisms used by Foreign Trade:

- *Monthly meetings of the Jamaica Trade Adjustment Team (JTAT) on which the Ministry of Culture is represented. JTAT is the body of representatives of the various sectors relevant to trade discourse and interest both from the public and private sectors. JTAT regularly discusses Jamaica's approach to trade negotiations and provide updates on WTO negotiations as well as any other negotiations in which the country is involved.*
- *The Ministry of Foreign Trade also invites the Ministry of Culture to consultations/discussions on specific programmes and projects such as Jamaica Cuba agreement or Jamaica Colombia or CARICOM Japan. In these scenarios, the Ministry of Culture is expected to put forward the elements of cooperation agreements with these countries.*
- *The Ministry of Culture holds regular stakeholder discussions on matters related to trade in cultural goods and services and will invite the Ministry of Trade to participate. For example, this was done when we were consulting on the UNESCO Convention.*
- *Trade and Culture officials of CARICOM have, in recent times, been meeting in regional discourse on trade matters such as incentives for cultural industries.*
- *Both trade and culture officials engage the Caribbean Regional Negotiating Machinery on all matters related to negotiation of regional trade agreements.*

In conclusion, the Ministry of Culture assumes the role of coordinating cultural cooperation in trade situations even as the Ministry of Foreign Trade holds overall responsibility for coordination of all trade matters.

- Civil society

7. What role should civil society play with regard to preferential treatment under Article 16?

Response

Civil society needs to be deeply involved in deliberations concerning preferential treatment. As the ultimate beneficiaries of preferential treatment, they need to be consulted on all matters.

In this regard, civil society needs to be organized to ensure that they can provide the necessary information related to the way forward for cultural industries. The following are some roles of civil society:

- *Organization of the sector/sub-sector to ensure that opinions are canvassed and adequately reported and inserted in the national programme*
- *Representation of the views and opinions of the sector on national and international committees on the subject*
- *Joint positions with government to ensure that the sector's interests are sustained*
- *Elaboration of norms and standards for the regulation of the industry*
- *Provision of feedback on the implementation of preferential treatment arrangements*
- *Membership of a 'watchdog' committee/organization to lobby for the interests of the sector as well as to engage the public sector in the work that has to be done*

MONITORING AND MEASURING

In order to monitor and measure the processes of implementation and the impact of Article 16, the mechanisms foreseen in articles 9 and 19 of the Convention (periodical reporting, information sharing and best practices) could be invoked.

- 8. Are these mechanisms sufficient? Should other mechanisms (e.g. research, a specially created body, other) be considered?**

Response

The mechanisms cited are not adequate. There is need for mechanisms that provide feedback regarding impact and that assess the sufficiency of the actions taken.

There is therefore need for international and national committees led by civil society to make the assessment and do the reporting using a format to be determined by the IGC that would provide real and relevant information concerning the operations of this important Article.

For example, we would need mechanisms that allow us to know how many artists, culture professional or practitioners have been able in any one year to access the territories of developed countries by way of the modes outlined. Or, we would like to know from developed country partners how many activities were pursued in the year that promoted the goods and services of developing countries. Or, again, we need mechanisms that help us to determine how the modes are operating.

In the case of CARIFORUM EU arrangements under the EPA, service providers whether as contractual service suppliers or as not-for-profit-services are able to visit any of several countries of the EU and spend up to ninety days in some instances or six months in others. The large question is: will we witness/experience an increase in the number of providers who are able to supply services in the EU or are they negatively affected by immigration practices?

There is also the need for a Committee to be established by/within UNESCO (Committee for the Monitoring and Evaluation of the Impact of Preferential Treatment arrangements between developed and developing country members of the Convention). The role of

this Committee will be to receive and analyse periodic/annual reports from countries or conduct random surveys on the implementation of Article 16 and its impact on the sustainable development of cultural activities within and among States Parties.

9. Would you have any other comment to add?

CLARIFICATION

There is just one matter in the Response to the Questionnaire sent from Jamaica and St. Lucia that may need clarification. This is based on discussions with CARICOM Secretariat.

Use of the Economic Partnership Agreement (EPA) as model

The idea here is not that the EPA between the European Union and CARIFORUM should be seen as an ideal legislation. The term 'model' does not mean that the legislation is ideal. This would be far from the truth as there still are some lingering concerns in the region regarding the EPA.

What I mean is that in our deliberations, we should use the EPA as the basis for analysis and discussions. After all, this is one case of the Convention being given bilateral teeth and as such bears consideration and analysis. Hence the term 'Model' as used in the Response is about using the EPA as a document for analysis in an effort to examine what is possible.

The following are some possible questions:

Does the EPA go far enough?

Is it a good demonstration of the granting of preferential treatment?

Are there any gaps and if so what are they?

Are there enough concrete benefits to developing countries in the EPA?

Can it be used a sort of template for developed countries, intent on negotiating preferential treatment or is it insufficient for what it must seek to attain?

Is the format OK i.e. treating with trade and cooperation in separate areas of the agreement?

In other words it would help to make the deliberations more concrete.

MAURICE / MAURITIUS**QUESTIONNAIRE*****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.

- 1. Please list the articles that seem to you particularly relevant to Article 16 and explain briefly the overall rationale.**

Most of the articles of the Convention are relevant to Article 16, however, the following ones relate directly to preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries, namely, Articles 2, 3, 5, 6, 7, 8, 12, 15, 17 and 20.

The overall rationale behind the provision of these articles is to:

- encourage exchanges of artists as well cultural goods and services to enable capacity building;
- promote cultural development and preservation within respective countries party to the Convention; and
- facilitate international cultural cooperation.

- 2. Should developing countries have a proactive role as beneficiaries? If yes, please provide examples.**

Yes developing countries need to have a proactive role as beneficiaries. They should enter into new agreements with other countries, for trade and exchange of cultural goods and services. There should be provision for preferential treatment and free movement of cultural goods and services in future cultural agreements.

- 3. Please provide examples of the main legal and institutional frameworks to be used by taking into account the following dimensions:**

- (a) trade
- (b) cultural cooperation
- (c) a combination of the trade dimension and the cultural cooperation dimension

Amendments would have to be brought to existing legislations and provision would have to be made in future legal and institutional instruments for the above dimensions.

- 4. Please provide examples of priority measures relevant to each of these categories.**

Measures should be taken to cater for free movement of artists within the State Parties to the Convention. These measures would include, amongst others:

- (a) facilitating the completion of visa formalities;
- (b) the removal of levies and other barriers;

- (c) sharing of experiences and expertise;
- (d) provision of financial assistance schemes;
- (e) provision of other incentives to enable the smooth transfer of cultural goods and services; and
- (f) preventing the misappropriation of cultural goods from developing countries.

5. Are all or some of these criteria relevant for preferential treatment under Article 16? Please explain briefly why.

The Ministry of Education, Culture and Human Resources, the Mauritius Society of Authors and the National Heritage Fund work in consultation to support the movement of artists and other cultural professionals and practitioners as well as cultural goods and services. Indeed, these institutions recommend the artists for visa formalities. Besides, financial assistance is also provided to enable the movement of cultural professionals. These institutions also liaise with the foreign countries to help those artists in their missions abroad .

6. In your country, is there an existing coordinating mechanism between the Ministry responsible for culture and the Ministry responsible for trade? Or other mechanisms?

Yes, there is an existing coordinating mechanism with the International Trade Division of the Ministry of Foreign, Regional Integration and International Trade. Regular meetings and consultations are held with the said Division to look into Intellectual Property matters, including copyright aspects to protect the rights of artists and to encourage the creation of cultural goods and services.

Regular contacts are also kept with the Civil Society in terms of collaboration on the development of cultural policy and the implementation of Government programme in the field of arts and culture.

7. What role should civil society play with regard to preferential treatment under Article 16?

The Civil Society should cooperate, amongst others, with art practitioners, artists and art groups on one hand and the Ministry responsible for culture on the other hand, for the implementation of Article 16 of the Convention. The Civil Society should also be called upon to play a more important role and it could use its international network to promote the interests of artists in States party to the Convention and facilitate the development of the cultural industry.

8. Are these mechanisms sufficient? Should other mechanisms (e.g research, a specially created body, other) be considered?

It is proposed that research be conducted by UNESCO to ensure the implementation of the articles of the Convention. A Special Unit would have to be created at the Ministry responsible for culture in each of the State party to the Convention, to help in monitoring the implementation of preferential treatment. Regular reports would have to be submitted as part of the monitoring process.

9. Would you have any other comment to add?

No.

MEXIQUE / MEXICO

QUESTIONNAIRE

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.

CONTENT OF ARTICLE 16

- Article 16

The debate underlined that preferential treatment under Article 16 of the Convention is to be understood as having both a trade and a cultural cooperation dimension and that Article 16 must be put in relation to other articles of the Convention.

1. Please list the articles that seem to you particularly relevant to Article 16 and explain briefly the overall rationale.

There are several Articles of the Convention related to Article 16.

Article 1, Objectives, is related to Article 16 in its paragraphs c), d), e) h) and i):

c) to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace;

(d) to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples;

(e) to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels;

(f) to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of the true value of this link;

(g) to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;

(h) to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;

(i) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.

This Article stresses the strengthening of international cooperation and solidarity by establishing the protection of cultural diversity, by means of a balanced dialogue among cultures, in the pursuit of the reinforcement of developing countries' capacities so as to protect and promote the diversity of cultural expressions.

Article 2 regarding Guiding principles, particularly in its points 3, 4, 7, 8 states the following:

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

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

4. Principle of international solidarity and cooperation

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

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

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

6. Principle of sustainable development

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

7. Principle of equitable access

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

8. Principle of openness and balance

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

This Article ratifies the right to sovereignty, by expressing that nations shall respect international law principles, and states, in their nature of sovereign and independent entities, are capable of adopting the necessary measures to in order to protect and promote the diversity of cultural expressions and equitable access to them. In addition, this Article describes the principles of international cooperation and solidarity, which must be aimed to facilitate to all nations, mainly the developing nations, the creation of cultural expression means, including their cultural industries, at the local, national and international level.

Article 4 proposes *Definitions* and in its point 6 discusses Cultural policies and measures:

6. Cultural policies and measures

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

These measures refer to the cultural expressions of groups or individuals in the cultural dissemination and creative areas, in the international field, by setting rules in order to allow Parties to design their own legislation regarding cultural policies.

Article 5 regarding rights and obligations:

Article 5 – General rule regarding rights and obligations

1. The Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention.

2. When a Party implements policies and takes measures to protect and promote the diversity of cultural expressions within its territory, its policies and measures shall be consistent with the provisions of this Convention.

It proposes the reinforcement of international collaboration in favor of the objectives of the Convention. Likewise, it states that all legal policies of cultural diversification protection should be in line with the Convention.

Article 9 regarding to Information and Transparency:

Article 9 – Information sharing and transparency

Parties shall:

(a) provide appropriate information in their reports to UNESCO every four years on measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level;

(b) designate a point of contact responsible for information sharing in relation to this Convention.

This Article makes reference to all measures adopted by the Parties in order to protect their cultural diversity at the international level, as well as to the implementation of mechanisms that allow the sharing and exchange of information regarding the Convention.

Article 10 regarding Education and public awareness:

Article 10 – Education and public awareness
Parties shall:

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

(b) cooperate with other Parties and international and regional organizations in achieving the purpose of this article;

It is expected that societies of developing countries understand the scope and extent of cultural goods and services and other nation's cultural diversities.

Article 12 related to International Cooperation Promotion in its paragraphs a), b), d) and e) mentions:

Article 12 – Promotion of international cooperation

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

(a) facilitate dialogue among Parties on cultural policy;

(b) enhance public sector strategic and management capacities in cultural public sector institutions, through professional and international cultural exchanges and sharing of best practices;

(d) promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions;

(e) encourage the conclusion of co-production and co-distribution agreements

It stresses that Parties shall seek the strengthening of their regional, international and bilateral cooperation in order to create appropriate conditions that encourages the promotion of the cultural diversity expressions, considering especial attention to developing countries, as provided in Articles 16 and 17.

Article 14, linked to Cooperation for development:

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

(a) the strengthening of the cultural industries in developing countries through:

(i) creating and strengthening cultural production and distribution capacities in developing countries;

(ii) facilitating wider access to the global market and international distribution networks for their cultural activities, goods and services;

(iii) enabling the emergence of viable local and regional markets;

(v) providing support for creative work and facilitating the mobility, to the extent possible, of artists from the developing world;

(vi) encouraging appropriate collaboration between developed and developing countries in the areas, inter alia, of music and film;

(b) capacity-building through the exchange of information, experience and expertise, as well as the training of human resources in developing countries, in the public and private sector relating to, inter alia, strategic and management capacities, policy development and implementation, promotion and distribution of cultural expressions, small-, medium- and micro-enterprise development, the use of technology, and skills development and transfer;

(d) financial support through:

(i) the establishment of an International Fund for Cultural Diversity as provided in Article 18;

It emphasizes the promotion of the strengthening and development of the cultural field, as a immediate resource for poverty reduction, by considering as well the mobility of artists among the countries.

Article 15 – Collaborative arrangements

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

This Article emphasizes the importance of creating partnerships among the private and the public sectors with non-profit organizations in order to cooperate with developing countries in the strengthening of their capacities to protect and promote the diversity of cultural expressions. This Article suggests that the development of infrastructure, human resources and policies, as well as the exchange of cultural activities, goods and services be encouraged in accordance with the practical needs of developing countries. In addition, it notes that the Parties will make an effort to support the cooperation for sustainable development and poverty reduction, particularly in developing countries, in order to favor the emergency of a dynamic cultural sector by different means.

Article 18, regarding the International Fund for Cultural Diversity:

Article 18 – International Fund for Cultural Diversity

1. An International Fund for Cultural Diversity, hereinafter referred to as “the Fund”, is hereby established.
2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.
3. The resources of the Fund shall consist of:

(a) voluntary contributions made by Parties;

(b) funds appropriated for this purpose by the General Conference of UNESCO;

(c) contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organizations; and public or private bodies or individuals;

- (d) any interest due on resources of the Fund;
- (e) funds raised through collections and receipts from events organized for the benefit of the Fund;
- (f) any other resources authorized by the Fund's regulations.

4. The use of resources of the Fund shall be decided by the Intergovernmental Committee on the basis of guidelines determined by the Conference of Parties referred to in Article 22.

5. The Intergovernmental Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by it.

6. No political, economic or other conditions that are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.

7. Parties shall endeavour to provide voluntary contributions on a regular basis towards the implementation of this Convention.

According to the draft guidelines on the use of the resources of the International Fund for Cultural Diversity, the purpose of the Special Account is to finance activities decided by the Committee on the basis of guidelines determined by the Conferences of Parties. Such financing is intended to support cooperation for sustainable development and poverty reduction , especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector, in accordance with Article 14 of the Convention.

- Role of Parties

The debate underlined that Article 16 is binding on developed countries.

2. Should developing countries have a proactive role as beneficiaries? If yes, please provide examples.

Developing countries as beneficiaries should play a proactive role due to the fact that their involvement in the diagnosis, design, development and assessment of the measures or chosen method to favour artist and other culture professionals, as well as cultural goods and services will allow measures to be taken and responsibilities to be assumed. The proactive involvement of beneficiary countries will enrich cultural exchanges.

IMPLEMENTATION OF ARTICLE 16

- Frameworks

Preferential treatment should be granted "*through appropriate legal and institutional frameworks*".

3. Please provide examples of the main legal and institutional frameworks to be used by taking into account the following dimensions:

- a) **trade**
- b) **cultural cooperation**
- c) **a combination of the trade dimension and the cultural cooperation dimension**

Cultural policies in the State Parties to the Convention should include projects and programs contributing to provide developing countries with a preferential treatment that allows their artists and other culture professionals as well as their cultural goods and services facilitate the international cultural exchanges, in such a way that nations are linked with several expressions of the cultures around the globe and in order that nations value their own culture.

From the institutional field, preferential treatment to developing countries from developed countries may include, for example, sharing of experiences related to the protection of copyright. In this way, specialized institutions in this field will encourage artists, creators and cultural professionals to have copyright certificates of their work. Regarding collective artistic works or cultural expressions, the National Council for the Culture and the Arts, in coordination with the involved institutions, and by means of inventories or calendars (of festivals and holidays) would set up an “ official database” which would aim to certify the collective property of those cultural collective works or expressions.

a) **TRADE**

The main appropriate legal and institutional frame works regarding trade must be developed within the main legal protection frameworks such as free trade agreements and cultural exchange treaties. Moreover, minimum standards for the protection of cultural cooperation, specifying dimensions and expected prerogatives and scopes based on corresponding legal instruments, shall be included in these documents.

It is also preferable that laws generated in developing countries should be executed in accordance with this Convention and considering the principles provided in Article 2.

Likewise, in addition to the abovementioned legal documents, special programs of cultural dissemination or cultural projects beneficial to society and integrating cultural exchange plans for artists and cultural goods and services and other documents promoting internal and external cultural expressions in the country must be created.

- **Categories**

In accordance with Article 16 developed countries grant a preferential treatment to:

- a) *“artists and other cultural professionals and practitioners”* from developing countries
- b) *“cultural goods and services”* from developing countries

4. Please provide examples of priority measures relevant to each of these categories.¹

Developed countries may give preferential treatment to artists and other culture professionals from developing countries by means of financial funds, based upon specific invitations. Developed countries also can offer appropriate forums to the exhibitions and expressions of those artists, according to the preferential treatment criteria in the commercial field.

With regard to cultural goods and services, developed countries could create circuits, corridors or cultural exhibits that foster the social, cultural and economic development in different fields as well as the exchange and information, respecting the nature of the Convention.

We must stress that preferential treatment to artists, and other culture professionals from developing countries shall include as well the general public. Tax exemption for cultural exchange or for services in other country may be seen as another important measure, as long as the artists or cultural professional comes from a developing countries and their performance has a non-profit nature.

It is worth mentioning that we are suggesting a reciprocal treatment among the Parties and dealing with measures beneficial for all countries.

- Criteria

In the trade environment, preferential treatment involves criteria such as: eligibility, rules of origin, graduation, reciprocity and conditionality.

5. Are all or some of these criteria relevant for preferential treatment under Article 16? Please explain briefly why.

These are only some outstanding criteria from the commercial field, nevertheless it is important to take into account that each country has their own particularities and that the implementation of Article 16 of the Convention, as well as the Convention as a whole, would entail a work process in continuous assessment.

There are other criteria which may contribute to awarding a preferential treatment: for example, preferential treatment towards civil society and to which governmental agencies can join in order to enrich the cultural exchange between developed and developing countries.

The principle of tax equity among the parties could be included in the reciprocity principle because it encloses all kinds of cultural exchange regarding cultural goods, services, professionals, products and artists. This measure could also be considered within the framework of another international convention.

Immediacy and simplicity criterion, according to which State Parties shall remove legal mechanisms that represent real obstacles for the exchange of cultural expressions in terms of time.

The criterion of legal certainty, according to which countries exchanging cultural goods and services shall always rely upon t a protection legal instrument.

¹ Please refer to the document attached 'Overview'.

- Measures at national level

The debate underlined the role of national measures and policies in increasing the supply of cultural goods and services in developing countries. Coordination of different national institutions is therefore of the utmost importance.

6. In your country, is there an existing coordination mechanism between the ministry responsible for culture and the ministry responsible for trade? Or other mechanisms?

The responsible for linking the Ministers of Culture and Trade in México is the National Coordination Office for Cultural Heritage and Tourism, an office belonging to the National Council for Culture and the Arts.

- Civil society

7. What role should civil society play with regard to preferential treatment under Article 16?

The involvement of civil society is essential in the definition of measures and methods in order to achieve that preferential treatment becomes a reality in developing countries, according to Article 16.

It is important to emphasize that the involvement of the representatives of several social groups will contribute to the enrichment of problem identification processes, creation and implementation of policies and measures in order to favour cultural exchanges between developed and developing countries.

It is important to make the civil society join and encourage it, even the private sector, to the preferential treatment of “artists and other culture professionals and participants” of developing countries, given that in these fields there are several actions that can be added, and that State Parties cannot cover from their institutions.

In addition, information and awareness processes regarding the acknowledgement and appraisal of cultural diversity must be considered in order to encourage the involvement of civil society and, if appropriate, the private sector, as well as legal incentives, aiming to increase awareness on the importance of the cultural dimension in the social, economic political development of the countries.

MONITORING AND MEASURING

In order to monitor and measure the processes of implementation and the impact of Article 16, the mechanisms foreseen in articles 9 and 19 of the Convention (periodical reporting, information sharing and best practices) could be invoked.

8. Are these mechanisms sufficient?

Should other mechanisms (e.g. research, a specially created body, other) be considered?

We suggest that assessment instruments be designed for each stage of the planning process and of the development of selected measures and methods with governmental, private sector and civil society involvement. We also suggest comparative studies about the impact of applied measures and methods be made.

9. Would you have any other comment to add?

MONACO

QUESTIONNAIRE

Article 16 – Traitement préférentiel pour les pays en développement

Les pays développés facilitent les échanges culturels avec les pays en développement en accordant, au moyen de cadres institutionnels et juridiques appropriés, un traitement préférentiel à leurs artistes et autres professionnels et praticiens de la culture, ainsi qu'à leurs biens et services culturels.

1)- Articles de la dite convention qui paraissent pertinents pour l'article 16

Les articles 6, 7, 12, 14, 15 de la Convention sur la protection et la promotion de la diversité des expressions culturelles sont pertinents pour l'application du traitement préférentiel.

Tous les partenaires doivent pouvoir contribuer à l'objectif de cette Convention dans le cadre de mesures de protection et de promotion nationales appropriées, elles mêmes inscrites dans une coopération internationale. Les pays dits développés sont bien entendu concernés par les divers accords à mettre en oeuvre entre eux-mêmes et les pays en développement.

Il est à noter que la coopération entre pays développés est aussi essentielle pour le respect de leur propre diversité culturelle, en favorisant ainsi un environnement propice à des coopérations avec les pays en développement.

2)- Rôle proactif des pays en développement en tant que bénéficiaires

Les pays en développement ont un rôle actif à jouer : développement de politiques culturelles, mise en place d'un environnement adéquat à leurs expressions, protection des artistes et de leurs œuvres, incitation à des mesures de coopération régionale...

3)- Cadres juridiques et institutionnels pouvant être utilisés pour l'application du traitement préférentiel

Le traitement préférentiel, pour être efficace, doit être élaboré en étroite concertation avec les pays développés, dans des cadres institutionnels et juridiques appropriés : la libéralisation du commerce des secteurs culturels ne favorise pas la promotion de la diversité culturelle car elle ne permet pas un accès réel des artistes, des biens et services culturels des pays en développement sur le marché international.

Les services gouvernementaux en charge traditionnellement de la coopération internationale peuvent répondre aux besoins d'une véritable coopération culturelle entre pays développés et en développement. Ces dispositions sont à mettre en parallèle avec une approche commerciale précisant les mesures déployées dans le cadre d'un traitement préférentiel, notamment en matière de suivi.

4)- Mesures prioritaires pertinentes

Ces mesures sont intimement liées aux besoins réels des pays en développement et ne peuvent être décidées qu'au cas par cas. Les capacités des pays en développement à mettre en œuvre des politiques culturelles de coopération trouvent notamment leurs origines dans les relations historique, économique ou autres, d'ores et déjà en vigueur avec d'autres pays. Les priorités doivent donc être déterminées conjointement par les intéressés en vue d'un échange productif réel : visas des artistes et participation à des festivals, événements littéraires organisés dans les pays développés ; distribution et coproduction d'expressions culturelles au sein d'accords préférentiels ; transfert des technologies etc...

Les différents critères donnés (gradation, réciprocité...) ne peuvent donc être retenus comme des lignes directrices pertinentes pour la mise en œuvre de la Convention.

5)- Mesures nationales

La coordination des services gouvernementaux entre ceux relevant de la culture, du commerce et de la coopération internationale est primordiale pour la mise en œuvre du traitement préférentiel. L'adaptation, au cas par cas, est là encore nécessaire pour un développement efficace des biens et services culturels dans les pays en développement.

6 et 7)- La société civile, mécanisme de coordination entre les ministères de la culture et du commerce dans le traitement préférentiel au sens de l'article 16

La société civile a un rôle déterminant pour l'application effective du traitement préférentiel dans le cadre de partenariats à développer concrètement sur le terrain. Sa connaissance dans ce domaine permet de cibler davantage les programmes en fonction des demandes. Les mécanismes de coordination mis en œuvre en Principauté de Monaco s'appuient sur les analyses produites par la société civile en matière de coopération culturelle internationale.

8)- Suivi de l'impact de l'article 16

Les dispositions de la Convention prévoient l'établissement d'un rapport à soumettre tous les quatre ans au Secrétariat de la Convention en vue d'illustrer les mesures prises au titre de l'article 16. Ces résultats permettront d'évaluer les mécanismes mis en place avant de se prononcer sur d'autres processus.

9)- Commentaires

Etablir une liste non exhaustive à titre informatif des mesures prises en matière de traitement préférentiel et de coopération interministérielle.

MONGOLIE / MONGOLIA

QUESTIONNAIRE

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.

CONTENT OF ARTICLE 16

- Article 16

The debate underlined that preferential treatment under Article 16 of the Convention is to be understood as having both a trade and a cultural cooperation dimension and that Article 16 must be put in relation to other articles of the Convention.

- 1. Please list the articles that seem to you particularly relevant to Article 16 and explain briefly the overall rationale.**
 - ✓ **Article 2, reference 4.** This reference is the Principle of International solidarity and Cooperation, which is definitely the must-follow principle for implementing the Article 16.
 - ✓ **Article 7.** Measures to Promote Cultural Expressions are reflected on this Article, which is concerned to Article 16.
 - ✓ **Article 8.** Similar to above, the Measure to Protect Cultural Expressions are determined on Article 8 and it is relevant to Article 16.
 - ✓ **Article 10.** It is the article purposes for Education and Public awareness and the **section b** of this article particularly reflects the international and regional cooperation, which is relevant to Article 16.
 - ✓ **Article 12.** This Article generally outlines the activities related to Promotion of International Cooperation, which is concerned to Article 16.
 - ✓ **Article 14.** It is the Article describes the Cooperation for Development and outlines the cooperative activities precisely, which is certainly relevant to Article 16.
 - ✓ **Article 15.** Sequent to the Article 14, Article 15 determines the Collaborative Arrangements, for this reason it is relevant to Article 16.
 - ✓ **Article 17.** This Article reflects the International Cooperation in situations of serious threat to cultural expressions and emphasizes the assistance to the developing countries in situations referred to under Article 8.
 - ✓ **Article 18.** Article 18 is on the International Fund for Cultural Diversity, which is one of the means to implement the Article 16, furthermore the overall Convention.

- Role of Parties

The debate underlined that Article 16 is binding on developed countries.

2. Should developing countries have a proactive role as beneficiaries? If yes, please provide examples.

Despite the various capacity of contribution which depends on the political, social and economical development, developing countries should have a proactive role as beneficiaries on protecting and promoting the diversity of cultural expressions.

The means and methods shall be vary, and for instance, as under the Article 18 - International fund for Cultural Diversity, developing countries shall contribute the Fund with any gifts, bequests, contributions by regional organizations, public or private bodies or individuals. In other words, developing countries should be actively engaged to the framework of the Convention implementation.

IMPLEMENTATION OF ARTICLE 16

- Frameworks

Preferential treatment should be granted “through appropriate legal and institutional frameworks”.

3. Please provide examples of the main legal and institutional frameworks to be used by taking into account the following dimensions:

- a) Trade.** Certain relative concepts of Free trade zone or Free Economic zones could be used as legal and institutional framework.
- b) Cultural cooperation.**
- c) A combination of the trade dimension and the cultural cooperation dimension.** Relevant cultural and trade standard-setting instruments.

- Categories

In accordance with Article 16 developed countries grant a preferential treatment to:

- a) “artist and other professionals and practitioners” from developing countries
- b) “cultural goods and services” from developing countries

4. Please provide examples of priority measures relevant to each of these categories.

Under the aim to facilitate cultural exchanges among developing, least developing and developed countries, the below mentioned measures should be taken:

- a) For the “artist and other professionals and practitioners from developing countries” organize international and regional programmes, projects, trainings, workshops, scholarships, and other likely measures with preferential treatments,

such as various fiscal incentives, visa facilitation agreements, funding agreements, exchange arguments and so on.

- b) For the “cultural goods and services from developing countries” , make joint investment on certain goods and services or activities, conduct technical capacity building and transfer of technology, execute joint production and diffusion of cultural expressions and other such measures.

- Criteria

In the trade environment, preferential treatment involves criteria such as: eligibility, rules of origin, graduation, reciprocity and conditionality.

5. Are all or some of these criteria relevant for preferential treatment under Article 16? Please explain briefly why.

Eligibility, rules of origin, graduation and conditionality could be relevant for the Article 16. However, the issue of reciprocity is arguable, due to the unclarification of the essential meaning.

- Measures at national level

The debate underlined the role of national measures and policies in increasing the supply of cultural goods and services in developing countries. Coordination of different national institutions is thereof of the utmost importance.

- Civil society

6. What role should civil society play with regard to preferential treatment under Article 16?

Civil society has a significant role on preferential treatment under Article 16. Obviously, there should be a cooperation on capacity-building and awareness-raising amongst the civil society, government and international, regional organizations on promoting the preferential treatment for developing countries.

PÉROU / PERU**QUESTIONNAIRE**

Le Secrétariat a demandé au Pérou, le 3 février 2009, de bien vouloir traduire sa contribution en français ou en anglais
The translation of Peru's contribution in English or French has been requested by the Secretariat on 3 february 2009

Article 16 – Traitement préférentiel pour les pays en développement

Les pays développés facilitent les échanges culturels avec les pays en développement en accordant, au moyen de cadres institutionnels et juridiques appropriés, un traitement préférentiel à leurs artistes et autres professionnels et praticiens de la culture, ainsi qu'à leurs biens et services culturels.

CONTENU DE L'ARTICLE 16

- Article 16

Le débat a souligné que le traitement préférentiel au sens de l'Article 16 de la Convention doit être compris comme ayant une dimension à la fois commerciale et de coopération culturelle, et que cet Article 16 doit être mis en relation avec d'autres articles de la Convention.

1. Veuillez énumérer les articles qui vous apparaissent particulièrement pertinents pour l'Article 16 et en expliquer brièvement les raisons.

Los artículos de la Convención sobre la protección, promoción y la diversidad de las expresiones culturales 2005 de UNESCO, que a nuestro juicio tienen relación con el artículo 16 son los artículos 14, 17 Y 18. El artículo 14 es importante por cuanto pone énfasis en la superación de la pobreza y la consecución del desarrollo sostenible como objetivos de la cooperación internacional, y reconoce que los países que estén más alejados de estos objetivos deben ser ayudados por los países que los tengan resueltos en mayor medida. El artículo 17 es importante por cuanto señala la asistencia mutua y enfatiza una especial atención a los países en desarrollo, cuyas expresiones culturales pudieran estar en situación de peligro. Finalmente el artículo 18 es importante porque trata de la creación de un fondo internacional para la diversidad cultural en conformidad con el reglamento financiero de la UNESCO y contempla todos los mecanismos económicos que eventualmente puedan beneficiar la acción de los países desarrollados en aquellos que están en vías de desarrollo.

2. Les pays en développement devraient-ils jouer un rôle proactif en tant que bénéficiaires ? Si oui, veuillez fournir des exemples.

Sí. La participación de los países beneficiarios debe consistir en generar condiciones adecuadas para la recepción y la canalización eficiente de la ayuda internacional, y su consiguiente fiscalización. La generación de estas condiciones pasa por la creación de marcos legales e institucionales que favorezcan la recepción y el adecuado uso de la ayuda internacional, así como por la generación de una base social susceptible de recibir esta ayuda y utilizar estos mecanismos; esta última se

forja a partir de la integración real del sector cultural a las políticas de Estado y a partir de la experiencia de trabajo con cooperación internacional a lo largo del tiempo.

Por ejemplo, pueden crearse mecanismos más eficientes para recibir donaciones del exterior de distintos tipos, reduciendo la burocracia y los costos que implica para el país donante el realizar esta donación. Asimismo pueden firmarse acuerdos internacionales para reducir impuestos a los distintos tipos de ayuda e intercambio internacionales. Finalmente, una integración del sector cultura con el estado y una amplia experiencia en cooperación internacional proporcionan experiencia en el manejo de ayuda internacional, aún en el caso de no mediar acuerdos a largo plazo entre las partes.

El rol proactivo de los estados beneficiarios también debe manifestarse a través de la generación de proyectos y de los mecanismos de supervisión en la ejecución de los mismos. Si bien es cierto las agencias de cooperación internacional tienen sus propios mecanismos de vigilancia, el rol del Estado beneficiario no debe de ser pasivo, sino más bien el de establecer estándares de calidad que excedan lo doméstico al momento de la elaboración de proyectos. Para esto se debe de trabajar con formatos ya establecidos, por ejemplo con el de la National Science Foundation (NSF) o Wernnen Green Foundation (WNF) solamente por citar algunos. La calificación de la viabilidad de los proyectos debe de pasar por un filtro interno, compuesto por un equipo de trabajo cuyos miembros hayan sido recipientes de financiamientos internacionales y que hayan concluido proyectos de investigación con éxito. El matiz deberá orientarse hacia lo académico (a fin de generar conocimientos recuperados en proyectos de alta calidad). Del mismo modo la supervisión del desarrollo de estos proyectos deberá ser realizada por este equipo de trabajo. Finalmente, se debe de evitar el caso de supervisores con credenciales académicas inferiores en relación a aquellos que ejecutan los proyectos.

MISE EN OEUVRE DE L' ARTICLE 16

- Cadres

Un traitement préférentiel devrait être accordé "au moyen de cadres institutionnels et juridiques appropriés"

3. Veuillez fournir des exemples des principaux cadres juridiques et institutionnels pouvant être utilisés, en tenant compte des dimensions suivantes :

- a) commerciale
- b) coopération culturelle
- c) combinaison des dimensions commerciale et coopération culturelle

En el ámbito de la cultura el Instituto Nacional de Cultura es el organismo estatal del cual derivan todas las acciones referidas al patrimonio y se distribuyen todos aquellos recursos destinados a la salvaguarda del mismo y de su diversidad, y por lo tanto incorpora el principal marco legal e institucional para la implementación del artículo 16.

En cuanto a comercio, existen los siguientes marcos legales e institucionales:

Exoneración del Impuesto a la Renta para las importaciones de bienes a cargo de las Asociaciones Culturales del Perú
Exoneración del Impuesto a la Renta para los espectáculos públicos internacionales a realizarse en el Perú.

En cuanto a cooperación cultural, existen los siguientes marcos legales e institucionales:

El Centro Regional para la Salvaguardia del Patrimonio Cultural Inmaterial de América Latina (CRESPIAL), organismo internacional latinoamericano, creado por iniciativa del gobierno del Perú y de UNESCO, para promover y apoyar acciones de salvaguardia y protección del patrimonio inmaterial de la región. Tiene como uno de sus principales objetivos contribuir con la formulación de políticas públicas en los países de la región, a partir de la identificación, la valoración y la difusión de su cultura viva, acciones que redundarán en el enriquecimiento de la diversidad cultural de América Latina. Forman parte de CRESPIAL los estados de Argentina, Brasil, Bolivia, Colombia, Chile, Ecuador, Perú y Uruguay.

Los Encuentros para la Promoción y difusión del Patrimonio Inmaterial de Países Iberoamericanos: espacios privilegiados para el estudio y análisis de la riqueza y las potencialidades que subyacen en las diversas formas de dicho patrimonio y son consecuencia de un trabajo de reflexión e investigación. Organizados por la ONG colombiana "Corporación para la Promoción y Difusión de la Cultura", es un encuentro que congrega a investigadores de la cultura, gestores culturales, funcionarios estatales y pueblos portadores de las expresiones culturales en cuestión. Con una gran convocatoria a nivel mundial, y sobre todo a nivel latinoamericano, su edición del año 2009 tendrá lugar en Perú.

El Fondo IBERESCENA, que se encarga de promover la creación de un espacio de integración de las Artes Escénicas Iberoamericanas, por medio de ayudas financieras. Los recursos económicos del Fondo provienen de las contribuciones de los 8 Estados miembros del Fondo (Argentina, Colombia, Chile, España, México, República Dominicana, Venezuela y Perú) y del aporte económico que le brinda la Agencia Española de Cooperación Internacional (AECID).

El Proyecto Perú, Cultura y Desarrollo, llevado a cabo gracias a la cooperación de la Agencia Española de Cooperación Internacional (AECID). Comprende tres líneas de acción: La organización de un Congreso Nacional de Políticas Culturales, realizado en diciembre de 2008, la reconstrucción del museo de sitio de Paracas y la ejecución de experiencias piloto para el desarrollo integral de proyectos culturales en tres regiones del país.

Convenios binacionales e institucionales firmados con Italia, España y Estados Unidos, que brindan la oportunidad a nuestros artistas y profesionales de la cultura de perfeccionamiento, reciclaje y formación

En cuanto a una combinación entre comercio y cooperación cultural, existen los siguientes marcos legales e institucionales:

El Memorándum de Entendimiento entre los gobiernos del Perú y de Estados Unidos, relativo a la imposición de restricciones de importación sobre material arqueológico de las culturas prehispánicas y cierto material etnológico del periodo colonial del Perú. En el marco de las actividades propuestas en este convenio se realizaron diversas actividades. En primer lugar los maestros voluntarios del Programa "Defensores del Patrimonio Cultural" participaron en talleres dictados en exclusiva para ellos con la especialista en educación en museos del Instituto Smithsonian, señora María del Carmen Cossu, cuya visita al Perú fue posible gracias a la Embajada de Estados Unidos. Asimismo se realizó el Primer Taller de Capacitación dirigido a jueces y fiscales. Finalmente se desarrolló en el Museo Nacional de Arqueología, Antropología e Historia del Perú un curso intensivo sobre seguridad en museos y sitios patrimoniales, dictados por expertos estadounidenses en el tema, cuya estancia en nuestro país fue financiada por la Embajada de Estados Unidos.

La Convención OEA sobre Defensa del Patrimonio Arqueológico, Histórico y Artístico de las Naciones Americanas

La Decisión 588 sobre la Protección y Recuperación de Bienes del Patrimonio Cultural de los Países Miembros de la Comunidad Andina.

Se han firmado convenios bilaterales específicos (con Argentina, Bolivia, Brasil, Chile, China, Colombia, Costa Rica, Ecuador, Egipto, El Salvador, Estados Unidos, Guatemala, Honduras, México, Nicaragua, Panamá, Paraguay, República Dominicana, Sudáfrica, Turquía y Uruguay) que, entre otros, establecen la exoneración de derechos aduaneros para el internamiento en los países parte de los bienes repatriados.

Asimismo hay mucho trabajo de cooperación que no se da bajo la forma de marcos institucionales existen relaciones de trabajo con estados de países en desarrollo, y con instituciones públicas y privadas de dichos estados. Estas relaciones de trabajo, a pesar de no mediar acuerdos o marcos legales, están consolidadas a partir de una colaboración constante a lo largo de varios años y por los resultados positivos obtenidos. A continuación cito algunas de las referidas experiencias:

Intercambio de especialistas en identificación de patrimonio cultural peruano y boliviano a través del "Primer Taller Internacional para la prevención y lucha contra el tráfico ilícito de bienes culturales", organizado por el Ministerio de Educación y Culturas de Bolivia en la ciudad de La Paz, del 25 al 28 de marzo del 2008.

Visita en Lima, Perú de David Aruquipa, Director General de Patrimonio Cultural del Ministerio de Educación y Culturas de Bolivia, en febrero del 2008 para abordar casos puntuales de tráfico ilícito y coordinar acciones a futuro.

Curso de Capacitación sobre la Lucha contra el Tráfico Ilícito de Bienes Culturales en la ciudad de Lima, organizado por nuestra institución, que contará con la participación de expertos internacionales de la Secretaría General de INTERPOL, Oficina Subregional de INTERPOL de Buenos Aires (Argentina) y de las Oficinas Centrales Nacionales de INTERPOL de Chile, Ecuador, Bolivia y Colombia. Este curso se realizará el presente año.

Proceso de Elaboración de la Lista Roja del Perú, conjuntamente con el Consejo Internacional de Museos (ICOM), y el auspicio del Departamento de Estado del gobierno de Estados Unidos. Publicación de un compendio de todas las normas internacionales de protección ("Documentos fundamentales para el patrimonio cultural") y elaboración de dos guías para el reconocimiento de bienes culturales arqueológicos e históricos respectivamente). Ambos materiales fueron producidos en coordinación con la Comunidad Andina de Naciones.

Simposio Internacional y Exposición en torno a Actividades para celebrar los 80 años de la publicación de los "7 ensayos de interpretación de la realidad peruana", de José Carlos Mariátegui, auspiciado por la Organización de Estados Iberoamericanos.

Proyecto "Maletines Educativos", auspiciado por el Banco Interamericano de Desarrollo, cuyo objetivo es Conservar, investigar y difundir el patrimonio arqueológico, antropológico e histórico del Perú, entre niños de 6 a 11 años, menos favorecidos de la ciudad de Lima. Acciones ejecutadas por la Asociación Cultural Peruano Británica en el campo de la protección de los bienes culturales mediante convenios con terceros, en las que el INC actuó como órgano técnico y supervisor de bienes muebles que al ser reconstituidos en su estructura física han permitido la

continuidad de la tradición cultural de sus lugares de origen.

El reciente convenio con Italia sobre la creación de un Centro nacional de conservación y restauración de bienes culturales.

Proyecto de seguridad para el Museo Regional de Ica, financiado por el gobierno de los Estados Unidos de América

Proyecto de Restauración de la Fachada del Templo "Nuestra Señora del Carmen" (El Carmen, Chincha, Ica), con financiamiento del Programa de Respuesta a Emergencias de la Fundación Holandesa Príncipe Claus para la Cultura y el Desarrollo.

Programa de Voluntariado "Defensores del Patrimonio Cultural", [financiado por UNESCO, y el cual consiste en la creación de una red de voluntariado para la defensa del patrimonio cultural, dirigido a la población en general con énfasis en los jóvenes de 21 distritos de Lima Metropolitana.

Kit educativo "Nuestro patrimonio cultural", financiado por la Organización de Estados Iberoamericanos, que busca la sensibilización de la población escolar para la defensa del patrimonio cultural en las aulas, a través de la publicación de un kit educativos sobre patrimonio cultural inmueble arqueológico e histórico del Perú, distribuido a colegios a nivel nacional.

En Chavín de Huántar se han realizado las siguientes actividades con financiamiento internacional:

- Construcción del Museo Nacional Chavín (MNCH), 2007-2008, \$6 000 000, Gobierno Japonés.
- Investigaciones Arqueológicas y Conservación en el Monumento Arqueológico Chavín de Huántar (MACH), 2008, \$60 0000, Universidad de Stanford, World Global Heritage.
- Investigaciones Arqueológicas y Conservación en el Monumento Arqueológico Chavín de Huántar (MACH), 2006, \$60 0000, Universidad de Stanford, World Global Heritage.
- Investigaciones Arqueológicas y Conservación en el Monumento Arqueológico Chavín de Huántar (MACH), 2005 \$100 0000, Universidad de Stanford, World Global Heritage, National Science Foundation.
- Investigaciones Arqueológicas y Conservación en el Monumento Arqueológico Chavín de Huántar (MACH), 2004, \$50 0000, Universidad de Stanford, World Global Heritage, National Geographic.
- Investigaciones Arqueológicas y Conservación en el Monumento Arqueológico Chavín de Huántar (MACH), 2003, \$50 0000, Universidad de Stanford, World Global Heritage.
- Investigaciones Arqueológicas en el Monumento Arqueológico Chavín de Huántar (MACH), 2002, \$50 0000, Universidad de Stanford.
- Investigaciones Arqueológicas en el Monumento Arqueológico Chavín de Huántar (MACH), 2001, \$50 0000, Universidad de Stanford.
- Investigaciones Arqueológicas en el Monumento Arqueológico Chavín de Huántar (MACH), 2000, \$50 0000, Universidad de Stanford.
- Investigaciones Arqueológicas en el Monumento Arqueológico Chavín de Huántar (MACH), 1998, \$50 0000, Universidad de Stanford, National Science Foundation, National Geographic.
- Investigaciones Arqueológicas en el Monumento Arqueológico Chavín de Huántar (MACH), 1996, \$20 0000, Universidad de Stanford.
- Investigaciones Arqueológicas en el Monumento Arqueológico Chavín de Huántar (MACH), 1995, \$10 0000, Universidad de Stanford.

Se ha previsto para el año 2009:

- Construcción del Centro Internacional de Investigación, Conservación y Restauración (segunda etapa del Museo Nacional Chavín), \$1 000000, Gobierno Japonés.
- Investigaciones Arqueológicas y Conservación en el Monumento Arqueológico Chavín de Huántar (MACH), \$200 0000, Universidad de Stanford, World Global Heritage, ICOMOS.

- Catégories

Selon l' Article 16, les pays développés accordant un traitement préférentiel aux:

- a) "*artistes et autres professionnels et praticiens de la culture*" des pays en développement
- b) "*biens et services culturels*" des pays en développement

4. Veuillez fournir des exemples de mesures prioritaires pertinentes pour chacune de ces catégories¹.

En cuanto a los profesionales de la cultura, es necesario tomar medidas diferentes para los artistas y profesionales urbanos y rurales, debido a sus distintos campos de acción y a su distinto acceso a las tecnologías y a los medios de difusión.

En cuanto a los bienes y servicios, es necesario tomar medidas diferentes para los bienes producidos de forma artesanal y los producidos de forma industrial, por su distinto modo y capacidad de producción, así como por su carga valorativa (por el trabajo que requiere y por la característica de ser pieza única).

En el caso de los *bienes y servicios culturales*, la cooperación internacional que se ha materializado en Chavín de Huántar en los últimos 10 años procede fundamentalmente de Estados Unidos y Japón. Habría que hacer el deslinde entre cooperación gubernamental y cooperación privada. En el caso de Japón, esta cooperación es en un 100% gubernamental, a través de agencias estatales como el Fondo General Contravalor Perú Japón y la agencia JICA (Japanese International Cooperation Agency), las cuales han intervenido en la edificación del Museo Nacional Chavín. En el caso de los Estados Unidos, la cooperación se ha dado principalmente a través de entidades educativas privadas (Universidad de Stanford) y Organizaciones No Gubernamentales (World Heritage Fund); en menor dimensión ha existido cooperación gubernamental norteamericana a través de la National Science Foundation (NSF) quienes han financiado proyectos de investigación en el MACH.

- Critères

Dans le domaine commercial, un traitement préférentiel implique des critères tels que: éligibilité, règles du origine, gradation, réciprocité et conditionnalité.

5. Certains ou tous ces critères sont-ils pertinents pour l'Article 16 ? Veuillez expliquer brièvement pourquoi.

Sí. Sin embargo el criterio de Reglas de Origen puede ser problemático, ya que hay expresiones que pertenecen a áreas culturales compartidas entre países. Una opción es que la denominación de origen sea también compartida entre los países en virtud de esta área cultural común.

¹ Veuillez vous référer au document ci-joint « Vue d'ensemble ».

- Mesures au niveau national

Le débat a souligné le rôle des mesures et politiques nationales dans l'augmentation de l'offre des biens et des services culturels dans les pays en développement. La coordination des différentes institutions nationales est par conséquent de la plus haute importance.

6. Dans votre pays, existe-t-il un mécanisme de coordination entre le ministère responsable de la culture et le ministère responsable du commerce ? Ou d'autres mécanismes ?

El Instituto Nacional de Cultura y el Ministerio de Comercio Exterior y Turismo mantienen una vía de contacto a través de la producción artesanal, fundamentalmente a través de dos leyes. La primera de ellas es la ley del Patrimonio Cultural de la Nación, ley n° 28296, que impide la exportación de piezas del patrimonio nacional; las obras artesanales que contempla el Ministerio de Comercio deben reunir ciertas características para no ser tratadas como bienes patrimoniales con las consecuencias negativas que ello traería. La segunda es la Ley del artesano y del desarrollo de la actividad artesanal, ley n° 29073, creada en conjunto por el Instituto Nacional de Cultura y el Ministerio de Comercio Exterior y Turismo., y en la cual ambos organismos forman parte del Consejo Nacional de Fomento Artesanal, junto con el Ministerio de la Producción y el Ministerio de Educación.

Otro mecanismo de coordinación entre el Instituto Nacional de Cultura y otras instituciones estatales es la que se mantiene con el Ministerio de Relaciones Exteriores. Este ministerio cumple un papel fundamental en los procesos de repatriación de bienes culturales, dado que se constituye en un enlace para canalizar las gestiones en el extranjero, especialmente a través de nuestras misiones diplomáticas en el exterior. La relación de trabajo que nuestra institución mantiene con esta dependencia ha contribuido a fortalecer la dinámica interna a nivel de país para la recuperación de valiosas piezas del patrimonio nacional, la misma que se viene perfeccionando con los numerosos casos que se atienden.

Otra línea de trabajo entre el Instituto Nacional de Cultura y otras instituciones estatales es la capacitación a través de módulos, talleres y jornadas dirigidos al personal de las instituciones involucradas en la defensa y protección del patrimonio cultural, y en especial de aquellas con competencia en la prevención y control de los delitos contra el patrimonio cultural como SUNAT -Aduanas, Policía Nacional del Perú, Fuerzas Armadas, Poder Judicial, Ministerio Público, seguridad aeroportuaria, servicio postal y otros.

- Société civile

7. Quel rôle la société civile devrait-elle jouer eu égard au traitement préférentiel au sens de l'Article 16 ?

La sociedad civil debe tener un rol proactivo, manteniéndose informada sobre las acciones que los países desarrollados llevan a cabo en el ámbito nacional y construyendo relaciones de trabajo constante con el Estado a través de la colaboración en proyectos y actividades culturales, generando así la base social necesaria para la adecuada implementación del artículo 16. Asimismo, aquellos profesionales de la cultura que se benefician de un programa de formación en el exterior deben aplicar la acción de su trabajo en beneficio de sus conciudadanos al volver a su país de origen.

Al respecto, hay una serie de experiencias positivas constantes de trabajo con sociedad civil.

El trabajo respecto a las declaratorias de Patrimonio Cultural Inmaterial de la Nación es un trabajo que involucra directamente a la sociedad civil. Son los propios sujetos y colectividades quienes presentan a las expresiones como susceptibles de convertirse en patrimonio y quienes recavan la información y documentación respectiva.

Organización de diversas actividades tales como talleres, seminarios, recitales, etc. En conjunto con diversas instituciones de la sociedad civil, entre las que se cuentan gobiernos regionales y locales, universidades, asociaciones de artistas, etc.

Convenio de Cooperación entre el diario El Comercio (Diario de mayor prestigio en el país) y el Instituto Nacional de Cultura, en el cual se busca el Intercambio de servicios para fomentar la producción de material educativo y las actividades educativas de ambas instituciones. Impresión de materiales educativos del INC y espacios para el desarrollo de actividades de los corresponsales escolares.

Identificación de ciudadanos comprometidos con la defensa del patrimonio cultural de sus comunidades que nos sirven de enlace en las diversas actividades de sensibilización y educación ciudadana que realizamos en forma permanente. Un logro importante en este rubro son las alertas ciudadanas que llegan a nuestra institución ya sea a través del correo electrónico, llamadas telefónicas o solicitudes formales.

En lo referido a formación magisterial, se ha venido brindando asesoría pedagógica permanente a una serie de Instituciones Educativas; dichos colegios están ubicados en zonas aledañas a sitios arqueológicos que son emblemáticos en su comunidad. Asimismo, con la Sede Regional de Cultura de Huanuco se inició en el 2008 un ciclo de talleres de capacitación docente en la Región, en el marco de la implementación de la Directiva N° 0023-GR-HUANUCODRE/DGP/EE-II sobre "Orientaciones para el desarrollo del Programa de Promoción, Defensa y Conservación del Patrimonio Cultural en la Región Huanuco", que establece como compromiso de nuestra institución brindar capacitación a los maestros.

Jornadas de sensibilización y limpieza en los sitios arqueológicos ubicados en el distrito de AteVitarte, debido a la situación de vulnerabilidad social en que se encuentran.

Programa intensivo de capacitación en materia de patrimonio cultural en la Región Tumbes, donde se capacitaron 212 pobladores que viven en el entorno de zonas arqueológicas. Estas actividades se realizaron en coordinación con la Sede Regional de Cultura de Tumbes y el Programa Qhapaq Ñan, en un esfuerzo institucional que logró involucrar a las instituciones locales y convocar a la población en un programa de sensibilización de carácter regional con participación activa de representantes de organizaciones locales, autoridades.

La Dirección de Defensa del Patrimonio Histórico brindó en forma permanente asesoría y capacitación sobre los programas de defensa del patrimonio cultural en el interior del país: en los complejos arqueológicos Huánuco Pampa (Huánuco) y Cabeza de Vaca (Tumbes) y en Lima en Huaycán de Cieneguilla; en el marco del Programa Qhapaq Ñan. Se realizó por primera vez en la ciudad de Lima, una mesa de trabajo con los equipos de sensibilización y educación ciudadana de los citados proyectos donde se intercambiaron experiencias entre los profesionales a cargo y se elaboraron

propuestas para mejorar la labor en campo, sobre la base de la dinámica social de cada población intervenida. Estos equipos trabajan directamente con las comunidades que viven en el entorno de los sitios arqueológicos en mención.

ASSURER LE SUIVI ET MESURER

Afin de suivre et de mesurer les processus de mise en œuvre et l'impact de l'Article 16, on pourrait invoquer les mécanismes prévus aux articles 9 et 19 de la Convention (rapports périodiques, partage de l'information et meilleures pratiques).

8. Ces mécanismes sont-ils suffisants ?

Faut-il considérer d'autres mécanismes (par exemple : recherche, création d'un organisme spécialisé, autres) ?

Los contenidos de los artículos 9 y 19 parecen ser suficientes para los propósitos de monitorear y medir los procesos de implementación y el impacto que el artículo 16 puede ejercer. Otro mecanismo determinante para la aplicación de programas y protección de la diversidad cultural podría ser una investigación sobre las necesidades reales previa la aplicación general de cualquier programa cultural en un entorno social.

9. Auriez-vous d'autres commentaires à ajouter ?

SÉNÉGAL / SENEGAL

QUESTIONNAIRE

Article 16 – Traitement préférentiel pour les pays en développement

Les pays développés facilitent les échanges culturels avec les pays en développement en accordant, au moyen de cadres institutionnels et juridiques appropriés, un traitement préférentiel à leurs artistes et autres professionnels et praticiens de la culture, ainsi qu'à leurs biens et services culturels.

CONTENU DE L'ARTICLE 16

- Article 16

Le débat a souligné que le traitement préférentiel au sens de l'Article 16 de la Convention doit être compris comme ayant une dimension à la fois commerciale et de coopération culturelle, et que cet Article 16 doit être mis en relation avec d'autres articles de la Convention.

1. Veuillez énumérer les articles qui vous apparaissent particulièrement pertinents pour l'Article 16 et en expliquer brièvement les raisons.

Article Premier, alinéas g, h, i, (g et h sont des préalables- nationaux et dans le cadre des relations internationales quel qu'en soit le domaine, pour une véritable coopération et solidarité internationales dans l'esprit de h)

Article 2 : Les principes 2 e 4 de cet article sont pertinents car se situant dans l'esprit des remarques qui précèdent.

Articles 14, 15 et 17 ; Ces dispositions ouvrent la porte à une véritable saisie de l'esprit de l'Article 16, c'est-à-dire à la mise en place de mécanismes de solidarité permettant aux pays développés de contribuer au renforcement des capacités des PVD en matière de développement des industries culturelles, de consolidation des marchés intérieurs et de pénétration des marchés extérieurs.

:

- Rôle des Parties

Le débat a souligné que l'Article 16 de la Convention crée une obligation pour les pays développés.

2. Les pays en développement devraient-ils jouer un rôle proactif en tant que bénéficiaires ? Si oui, veuillez fournir des exemples.

L'évidence s'impose aujourd'hui que les pays en développement devraient définir des stratégies de mise en valeur de leur patrimoine culturel par les industries culturelles.

Il s'agit de définir des objectifs clairs et d'évaluer les moyens institutionnels, financiers et autres, à mettre en œuvre de façon à proposer à leurs partenaires des approches claires et différenciés en matière, par exemple, de coproduction culturelle ou de circulation des professionnels,

biens et services culturels. Ceci pourrait aider à dissiper les malentendus liés aux interprétations disparates de l'article 16. Notons des concertations sous-régionales et régionales pourraient servir à dégager des approches harmonisées.

NB : Le Sénégal s'est engagé dans cette voie, avec l'organisation récente d'un séminaire sous-régional sur « La mise en valeur du patrimoine culturel immatériel par les industries culturelles »

MISE EN ŒUVRE DE L'ARTICLE 16

- Cadres

Un traitement préférentiel devrait être accordé « *au moyen de cadres institutionnels et juridiques appropriés* ».

- 3. Veuillez fournir des exemples des principaux cadres juridiques et institutionnels pouvant être utilisés, en tenant compte des dimensions suivantes :**

- a) commerciale
- b) coopération culturelle
- c) combinaison des dimensions commerciale et coopération culturelle

**Conventions de 2003 et 2005 et lecture des accords des agences comme la CNUCED, le PNUD, l'OMC, l'OMPI, à la lumière de ces instruments
Accords bilatéraux de coopération et d'échanges culturels ; Accords Internationaux de partenariat (p.ex. UE/ACP)**

- Catégories

Selon l'Article 16, les pays développés accordent un traitement préférentiel aux :

- a) « *artistes et autres professionnels et praticiens de la culture* » des pays en développement
- b) « *biens et services culturels* » des pays en développement

L'important est de définir les obligations des parties en vue de parvenir à la meilleure circulation possible tant des artistes et autres professionnels de la culture que de biens et services culturels. Ceci en appliquant les mesures pertinentes soulignées ci-dessus.

- 4. Veuillez fournir des exemples de mesures prioritaires pertinentes pour chacune de ces catégories¹.**

- Critères

Dans le domaine commercial, un traitement préférentiel implique des critères tels que : **éligibilité, règles d'origine, gradation, réciprocité et conditionnalité.**

¹ Veuillez vous référer au document ci-joint « Vue d'ensemble ».

5. Certains ou tous ces critères sont-ils pertinents pour l'Article 16 ? Veuillez expliquer brièvement pourquoi.

- Mesures au niveau national

Le débat a souligné le rôle des mesures et politiques nationales dans l'augmentation de l'offre des biens et des services culturels dans les pays en développement. La coordination des différentes institutions nationales est par conséquent de la plus haute importance.

6. Dans votre pays, existe-t-il un mécanisme de coordination entre le ministère responsable de la culture et le ministère responsable du commerce ? Ou d'autres mécanismes ?

OUI. A travers le Comité national su l'ADPIC, les deux Ministères développent des concertations et harmonisent leurs positions.

- Société civile

7. Quel rôle la société civile devrait-elle jouer eu égard au traitement préférentiel au sens de l'Article 16 ?

L'option pour la transparence devrait conduire a associer la société civile à tout le processus décisionnel

ASSURER LE SUIVI ET MESURER

Afin de suivre et de mesurer les processus de mise en œuvre et l'impact de l'Article 16, on pourrait invoquer les mécanismes prévus aux articles 9 et 19 de la Convention (rapports périodiques, partage de l'information et meilleures pratiques).

8. Ces mécanismes sont-ils suffisants ? Non

Faut-il considérer d'autres mécanismes (par exemple : recherche, création d'un organisme spécialisé, autres) ? Cet organisme pourrait coordonner les mécanismes prévus par les articles 9 et 19

9. Auriez-vous d'autres commentaires à ajouter ?

1- Rôle proactif des pays en développement

Si la mise en application de l'**article 16** reste une interaction entre pays développés et pays en développement, ces derniers doivent cependant s'engager en tout premier lieu à prendre des dispositions nationales en faveur du secteur de la culture.

Ces mesures de niveau national doivent consister, pour l'essentiel, à favoriser un cadre législatif, fiscal et politique qui inscrive le patrimoine oral et immatériel, les expressions culturelles locales, la musique, les chants, la danse etc. et le patrimoine tangible dans un cadre susceptible de créer de la plus-value économique et commerciale en faveur des créateurs.

Tout ce potentiel doit faire l'objet de mesures nationales portant sur les droits de propriété intellectuelle, la production, la diffusion et l'expansion de ces activités pour la consommation nationale et l'exportation.

En matière d'exportation, il y aura lieu d'assister les créateurs pour qu'ils adoptent des standards internationaux.

2-Traitement préférentiel accordé par les pays développés

« aux artistes et autres professionnels et praticiens de la culture et aux biens et services culturels des pays en développement »

Les mesures et dispositifs existants ou à créer représentent une gamme très variée qu'il n'est pas possible de dresser de manière exhaustive et détaillée à ce stade des directives opérationnelles.

Aussi une idée consisterait dans le cadre même du Comité Intergouvernemental d'adopter un « **AGENDA 16** » par référence à l'**article 16** précisément.

Cet Agenda permettrait au Comité d'examiner les différentes mesures ou dispositions à envisager pour la mise en œuvre de l'**article 16**.

Ainsi, les points suivants devraient figurer à l'ordre du jour de cet **Agenda 16** :

- Mesure en faveur d'un développement de l'offre en biens et services culturels ;
- Mesure de soutien aux industries culturelles existantes et de mise aux normes internationales.
- Mesures de protection de la propriété intellectuelle et mécanismes supplémentaires relatifs au patrimoine oral communautaire.
- Mesures en faveur de partenariats au niveau national entre secteur public et secteur privé ;

- Mesures de coopération internationale notamment au plan commercial en faveur de l'accès des biens et services culturels des pays en développement sur les marchés des pays développés.
- Mesures de mise en œuvre concrète du principe de réciprocité ;
- Fixation des critères d'éligibilité et de conditionnalité.
- Mesures d'orientation scolaire et professionnelle vers les métiers de la création : cadre national à soutenir par la coopération internationale Sud-Sud et Nord-Sud/Sud.
- Mesures de formation continue en faveur des artistes et créateurs des pays en développement dans le cadre des coopérations bilatérales.
- Examen de futurs mécanismes régulateurs visant à un rééquilibrage des échanges notamment sur les contenus et non pas sur les seuls volumes en matière culturelle.

Cet Agenda pourrait faire l'objet d'un cycle de négociation distinct au sein du Comité en y associant le moment venu des experts de l'Ompi, de l'Omc et de la Cnuced.

**COMMUNAUTE EUROPEENNE ET SES ETATS MEMBRES
PARTIES A LA CONVENTION
EUROPEAN COMMUNITY AND ITS MEMBER STATES
PARTIES TO THE CONVENTION**

QUESTIONNAIRE

Communication from the European Community and its Member States Parties to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions¹ to the UNESCO Secretariat on the questionnaire on preferential treatment (Article 16 of the Convention)

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.

CONTENT OF ARTICLE 16

• *Article 16*

The debate underlined that preferential treatment under Article 16 of the Convention is to be understood as having both a trade and a cultural cooperation dimension and that Article 16 must be put in relation to other articles of the Convention.

1. Please list the articles that seem to you particularly relevant to Article 16 and explain briefly the overall rationale.

Article 16 is to be interpreted in relation to the Convention as a whole, both its principles - in particular the principle of ensuring "*wider and balanced exchanges*"², enshrined in Article 1.c. – as well as its specific provisions aimed at protecting and promoting the diversity of cultural expressions, in particular those related to capacity building, both by domestic policies and international cooperation, and in particular development cooperation.

Article 16 complements other provisions of the Convention, in particular those related to measures undertaken by Developed countries in the framework of development cooperation (Articles 14 and 15), and by Developing countries within the framework of domestic policies (Articles 6 and 7), as well as measures related to international cooperation, and notably regional South-South cooperation (Article 12). It also complements Article 13 on the integration of culture in sustainable development.

¹ The EU Member States Parties to the Convention are: Austria, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. Belgium, the Czech Republic and the Netherlands are in the process of ratifying.

² It can be noted that the principle of fostering wider and more balanced exchanges concerns Developed countries as well as Developing ones, as cultural exchanges allow the enrichment of the cultural diversity of Developed countries' cultures through increased diversity of cultural expressions available to their citizens.

Preferential Treatment implies to seek complementarities and synergies between these various frameworks of action.

Preferential Treatment in the meaning of the Convention implies that all partners are able to maintain and further develop their capacity to elaborate and implement their cultural policies – and therefore their capacity to implement the objectives of the Convention to protect and promote the diversity of cultural expressions. In this respect, the relationships between domestic policies, international cooperation and Preferential Treatment are quite close. It is indeed worth noting that some of the domestic policy measures undertaken by Developed Parties serve also as the basis for granting Preferential Treatment to Developing countries, such as the EC Directive on Audiovisual Media Services (2007/65/EC), which is also the instrument allowing Preferential Treatment of Euro-Caribbean audiovisual co-productions on the EU territory under the EU-Cariforum Protocol on Cultural Cooperation.

http://ec.europa.eu/avpolicy/reg/avms/index_en.htm

- *Role of Parties*

The debate underlined that Article 16 is binding on developed countries.

2. *Should developing countries have a proactive role as beneficiaries? If yes, please provide examples.*

As highlighted during the debate at the IGC in December, Developing countries have an active role to play in the context of preferential treatment.

Firstly, they are entrusted with putting in place an enabling environment for the protection and promotion of the diversity of cultural expressions – notably through measures related to the "creation, production, dissemination, distribution and enjoyment of domestic cultural activities, goods and services" (Article 6.2.b) as well as "measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions" (Article 6.2.g) - through domestic policies as well as regional cooperation which extend opportunities and markets for such local cultural activities, goods and services.

Secondly, Developing countries have to engage in international cooperation with Developed countries, in order to ensure that Preferential Treatment schemes are suited to their situation, their needs and their relation with the Developed country at the origin of these measures.

Preferential Treatment must be governed by a spirit of partnership between Developing and Developed countries.

IMPLEMENTATION OF ARTICLE 16

- *Frameworks*

Preferential treatment should be granted "through appropriate legal and institutional frameworks".

3. Please provide examples of the main legal and institutional frameworks to be used by taking into account the following dimensions:

- a) trade
- b) cultural cooperation
- c) a combination of the trade dimension and the cultural cooperation dimension

The terms “*through appropriate legal and institutional frameworks*” contemplated in Article 16 refer to the specific framework under which Developed countries grant Preferential Treatment to specific Developing countries.

- Concerning point a) referring to the trade dimension exclusively, EC's consistent position has been to refrain from engaging in trade liberalisation in cultural sectors both at multilateral and bilateral level, as a result of the negotiating mandate given by the EU Council of Ministers in 1999³.

Preferential Treatment should aim at effectiveness, i.e. granting effective access to artists and other cultural professionals and practitioners as well as cultural goods and services from Developing countries, in order to have an influence on cultural exchanges between Developed and Developing countries. Trade liberalisation in cultural sectors has not been able to ensure balanced cultural exchanges. In addition, trade liberalisation should be handled cautiously in the cultural field since it can call into question the possibility of partners to preserve their capacity to develop and implement cultural policies aimed at protecting and preserving the diversity of cultural expressions, and therefore can jeopardize the attainment of the objectives of the Convention. In this respect, the role of specific trade liberalisation measures in cultural sectors, as potential complements to preferential treatment measures, needs to be carefully assessed on a case by case basis.

- Concerning point b), on cultural cooperation, amongst the variety of instruments of development cooperation, some specific measures focusing on improving access of cultural goods and services can be singled out, such as existing co-production and co-distribution agreements in the field of audio-visual services, publishing or linked to other types of creation.

- Concerning point c), one example of such legal and institutional framework for Preferential Treatment is the Protocol III on Cultural Cooperation concluded between the EU and the Cariforum States (appended to the Economic Partnership Agreement), which contains specific provisions – consisting of a combination of cooperation and trade approaches - detailing the specific measures for Preferential Treatment as well as the follow-up mechanisms (notably the CARIFORUM-EC Trade and Development Committee established under the EPA, as well as any other Committee specific to the implementation of the Protocol to be created by the signatories).

http://ec.europa.eu/culture/our-policy-development/doc/cultural_cooperation_protocol.pdf

³ *"The Union will ensure, as in the Uruguay Round, that the Community and its Member States maintain the possibility to preserve and develop their capacity to define and implement their cultural and audiovisual policies for the purpose of preserving their cultural diversity".*

- *Categories*

In accordance with Article 16 developed countries grant a preferential treatment to:

- a) *“artists and other cultural professionals and practitioners” from developing countries*
- b) *“cultural goods and services” from developing countries*

4. Please provide examples of priority measures relevant to each of these categories.

The following is a non-exhaustive and indicative list of possible measures of Preferential Treatment which could be granted by Developed countries and effectively improving access of persons, goods and services.

As the effectiveness of such measures relies on their capacity to be targeted to the special needs of Developing countries and the specificity of their relations with Developed countries partners, the level of priority for the implementation of such measures is to be determined by the partners, on a case by case basis, as they are likely to differ from one country to another.

a) “artists and other cultural professionals and practitioners” from Developing countries

- circulation, entry and temporary stay of artists and other cultural professionals and practitioners from Developing countries in Developed countries (e.g. for the purposes of shooting cinematographic films or television programmes, or recording music, contributing an active part to cultural events such as literary fairs, festivals etc.);
- residencies for cultural professionals from Developing countries, including training seminars in order to help them integrate the professional networks of Developed countries.

b) “cultural goods and services” from developing countries

- access of cultural services from Developing countries to distribution and exploitation markets in Developed countries territory, notably through access to preferential mechanisms: content promotion measures, co-production/co-distribution agreements (including existing Funds in EU Member States which provide privileged access of Developing countries audio-visual works financed by them to distribution networks in these Member States) etc;
- access of cultural goods from Developing countries to Developed countries markets: temporary importation of the technical material and equipment necessary to carry out the shooting of cinematographic films and television programmes by cultural professionals and practitioners.

- *Criteria*

In the trade environment, preferential treatment involves criteria such as: eligibility, rules of origin, graduation, reciprocity and conditionality.

5. Are all or some of these criteria relevant for preferential treatment under Article 16? Please explain briefly why.

The EC and the EU Member States Parties to the Convention are of the opinion that while criteria such as the ones mentioned above might be considered for Preferential Treatment at the level of the specific measures granting Preferential Treatment which are undertaken by Developed countries, they are not relevant for operational guidelines for the implementation of Article 16.

Indeed, such criteria, such as rules of origin, are linked in an intrinsic manner to the specifics of the preference granted. They cannot be defined across the board in a one-size-fits-all manner, as they will depend on the special needs of the Developing countries beneficiaries

and their relation with their Developed countries partners. Criteria are therefore likely to vary both from one framework of Preferential Treatment to another – depending on the beneficiaries - but also from one measure to another, depending notably on the cultural segment/sector concerned, within a given framework. Such differentiation stems from the need to take into account the special needs of each partner, and in particular elements such as the patterns of existing cultural exchanges, the level of development of cultural goods and services of the partner etc.

It is therefore the responsibility of the partners to define such rules – although not all of the ones existing in the trade environment might be fitted for Preferential Treatment in the meaning of the Convention – when developing the legal and institutional frameworks for granting Preferential Treatment.

- *Measures at national level*

The debate underlined the role of national measures and policies in increasing the supply of cultural goods and services in developing countries. Coordination of different national institutions is therefore of the utmost importance.

6. *In your country, is there an existing coordination mechanism between the ministry responsible for culture and the ministry responsible for trade? Or other mechanisms?*

Inter-ministerial / inter-service coordination between ministries/departments exists across the board within the EU. Room for improvement of such mechanisms does exist however in specific cases. The coordination between culture, trade and development cooperation ministries/departments is particularly relevant when developing and implementing Preferential Treatment schemes.

- *Civil society*

7. *What role should civil society play with regard to preferential treatment under Article 16?*

Civil society has an important role to play on both sides of Preferential Treatment partnerships. Its implication and input should occur upstream, at an early stage, in order to analyse the needs of Developing Countries beneficiaries and assess the possibilities of Developed countries, and adapt the measures accordingly.

MONITORING AND MEASURING

In order to monitor and measure the processes of implementation and the impact of Article 16, the mechanisms foreseen in articles 9 and 19 of the Convention (periodical reporting, information sharing and best practices) could be invoked.

**8. *Are these mechanisms sufficient?
Should other mechanisms (e.g. research, a specially created body, other) be considered?***

The monitoring of the implementation of Article 16 is ensured by the provisions of the Convention related to the general monitoring of all obligations enshrined in the Convention, and in particular through the reporting obligations of Article 9. When reporting on the implementation of the Convention every 4 years, as foreseen under Article 9, as well as in the context of Article 19, Developed parties will have to illustrate how they have implemented the obligation enshrined in Article 16. This will allow the monitoring of the implementation of Article 16 in a "holistic manner", as it will also include the monitoring of the implementation of other relevant Articles for Preferential Treatment, notably Articles 14 and 15.

UNESCO, through its Institute for Statistics, may also contribute to the monitoring of the implementation of Article 16.

The existing mechanism is sufficient at this stage to allow for a proper monitoring of the implementation of Article 16. The EC and the EU Member States Parties to the Convention are of the opinion that such mechanism should be tested prior to any discussion on the possible creation of additional monitoring mechanisms.

9. *Would you have any other comment to add?*

The EC and the EU Member States Parties to the Convention consider that operational guidelines on Article 16 could usefully contain the following elements:

- A definition of Preferential Treatment in light of the Convention, including the reference to other relevant provisions of the Convention;
- An illustrative and non-binding list of possible measures implementing Article 16;
- Recommendations on process, including civil society involvement and internal coordination.

SOCIETE CIVILE / CIVIL SOCIETY

FEDERATION INTERNATIONALE DES COALITIONS POUR LA DIVERSITE CULTURELLE (FICDC), RESEAU INTERNATIONAL POUR LA DIVERSITE CULTURELLE (RIDC) ET TRADITIONS POUR DEMAIN / INTERNATIONAL FEDERATION OF COALITIONS FOR CULTURAL DIVERSITY (IFCCD), THE INTERNATIONAL NETWORK FOR CULTURAL DIVERSITY (INCD), AND TRADITIONS FOR TOMORROW.

QUESTIONNAIRE

The International Federation of Coalitions for Cultural Diversity (IFCCD) brings together 42 national coalitions for Cultural Diversity composed of more than 600 cultural professional organizations representing creators, performing and visual artists, technicians, independent producers and publishers, distributors and broadcasters in the books, motion picture, television, music, performing arts and visual arts fields.

www.ifccd.com

The International Network for Cultural Diversity (INCD) is a world wide network of artists and cultural groups dedicated to countering the homogenizing effects of globalization on culture. The INCD represents individual artists and cultural activists, cultural organizations and creative industries. They come from all continents, sectors and disciplines of the cultural community, ranging from new media artists to traditional artisans. Organizations from more than fifty countries belong to the network.

www.incd.net

Traditions for Tomorrow accompanies since 1986 initiatives of cultural assertion of indigenous people and minorities, amounting to hundreds of small-scale projects throughout Central and South America. Traditions for Tomorrow is also involved with national and international government bodies, such as UNESCO, WIPO and the UN, to work on international norms and national policies on such issues as cultural rights of indigenous people, safeguarding of intangible cultural heritage, protection and promotion of cultural diversity. This network is a member of the NGO-UNESCO Liaison Committee.

www.tradi.info

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.

CONTENT OF ARTICLE 16

- Article 16

The debate underlined that preferential treatment under Article 16 of the Convention is to be understood as having both a trade and a cultural cooperation dimension and that Article 16 must be put in relation to other articles of the Convention.

- 1. Please list the articles that seem to you particularly relevant to Article 16 and explain briefly the overall rationale.**

IFCCD, INCD, and Traditions for Tomorrow:

The International Federation of Coalitions for Cultural Diversity (IFCCD), the International Network for Cultural Diversity (INCD), and Traditions for Tomorrow jointly consider articles 6, 7, 8/17, 10, 11, 12, 13, 14, 15, 18, 20 and 21 to be relevant to Article 16.

Articles 6 and 7 relate to measures undertaken by all Parties - and in the context of Article 16 especially Developing countries - within the framework of domestic policies for Cultural Diversity.

Articles 8 and 17 address emergency situations where cultural expressions are at risk of extinction, with 17 providing for States to request the advice and assistance of Intergovernmental Committee members in resolving these situations.

Article 10 establishes an obligation on developed countries (in fact, all Parties) to raise public awareness of the importance of cultural diversity; this should include raising awareness of the rich diversity of artists and cultural works from developing country parties to the Convention. This is both an appropriate social objective, with the practical benefit of helping to foster a more receptive audience for culture coming from developing countries.

Article 11 is relevant in that civil society has an active role to play in realizing the objectives associated with Article 16.

Articles 12, 13, 14, 15 and 18 are related to 16 through their overlapping emphasis on international cooperation and on integrating culture into sustainable development strategies, which is to be interpreted in relation to the Convention as a whole. The principles of the Convention, especially the principle of ensuring "wider and balanced exchanges" (article 1.c) underlie these more specific provisions.

Articles 20 and 21 address the relationship of the Convention to other international instruments, with 21 providing for States to work in a coordinated fashion to promote the principles of the Convention in other international forums. Institutional frameworks developed for implementing Article 16 will need to be conceived with careful reference to these two articles.

- Role of Parties

The debate underlined that Article 16 is binding on developed countries.

2. Should developing countries have a proactive role as beneficiaries? If yes, please provide examples.

The International Federation of Coalitions for Cultural Diversity (IFCCD):

Actions to accord preferential treatment will be most effective in those cases where developing countries actively take the initiative—first by recognizing the importance and potential of their domestic cultural sectors, and then, within the constraint of their resources, by providing strategic support to their domestic cultural sectors through the development and application of national cultural policies, and by specific sector policies and programs to nurture the emergence of their cultural sectors.

Developing countries can also facilitate cultural cooperation by significantly reducing or eliminating customs duties on materials/equipment needed for cultural activities—musical instruments and equipment, film/television equipment, as well as by facilitating the temporary importation of equipment and other materials used in the creation, production, distribution and exhibition of books/film/television/music/performing arts/visual arts/new media. These are issues frequently raised by cultural professionals from the developing world as significant impediments to the development of their cultural sectors.

Finally, developing countries (and organisations from civil society in developing countries) should take the initiative by identifying their own needs/objectives in terms of cultural cooperation and preferential treatment, and based on these, make specific proposals to developed countries for action consistent with their commitment under Article 16. Developing countries will also want to monitor the impact of the preferential treatment measures they secure with a view to proposing adjustments to enhance their effectiveness.

The International Network for Cultural Diversity (INCD):

Yes. They should work together within the Convention bodies to ensure that the commitment in Article 16 is implemented effectively. They should seek to ensure that developed country parties report on the measures they take to provide preferential access as part of their responsibility to submit appropriate information to UNESCO.

Developing countries should also look to incorporate a preferential access component into their bilateral trade, economic and cultural cooperation agreements by seeking specific and concrete measures. The leading contemporary example of this is the CARIFORUM – EU Economic Partnership Agreement which has taken the first steps in this regard.

We note two things about that Agreement.

- While Article 3 establishes detailed mechanisms for facilitating the movement of artists and other cultural professionals and practitioners, it does this on a reciprocal basis. However, Article 16 is seeking to improve the one-way flow of people, from developing to developed countries. It is not a mechanism to increase the opportunities from northern artists to tour in the south.*
- The Agreement fails to ensure preferential access for the cultural goods from the CARIFORUM countries to the EU. The only relevant measure in the Agreement is a commitment to improve co-production arrangements in the audiovisual sector. While this opportunity in theory could assist in developing a production infrastructure, the chances of organizing a co-production in the real world are remote. This is the case because the requirement for a minimum financial contribution from the partner country (20% of the film's budget) will be prohibitive. It's unlikely that a producer from a CARIFORUM country would have access to the minimum funding of €200,000 needed to participate in a low budget film.*

Traditions for Tomorrow:

Minorities, and even more indigenous people, live for the better part in developing countries. Therefore these countries should have a permanent concern for granting these groups the benefits of preferential treatment. Those measures should concern trade, international cooperation and also national cultural policies.

Preferential measures must in this respect compensate precarious situations such as those that minorities and indigenous people suffer from in creating, producing and disseminating cultural goods and services, both from a quantitative and qualitative perspective. It is especially important to avoid the risk of distorting the traditional significance of a cultural expression through the implementation of development policies, when an increase of the offer of such goods and services could have such consequence.

IMPLEMENTATION OF ARTICLE 16

- Frameworks

Preferential treatment should be granted “*through appropriate legal and institutional frameworks*”.

3. Please provide examples of the main legal and institutional frameworks to be used by taking into account the following dimensions:

- a) trade
- b) cultural cooperation
- c) a combination of the trade dimension and the cultural cooperation dimension

The International Federation of Coalitions for Cultural Diversity (IFCCD):

The IFCCD remains strongly of the view that cultural goods and services should be systematically excluded from trade agreements. In the context of bilateral and regional trade agreements, we emphasize the importance of States integrating an explicit exemption of cultural goods and services. The wording of this exemption could further strengthen the UNESCO Convention by explicitly referencing the Convention in the rationale for the exclusion.

The IFCCD does not favor attaching cultural cooperation protocols to trade agreements for the following reasons:

- a) *we question whether such protocols will in fact be distinct from the trade agreement to which they are attached; if not, the consequence of this would be that in the event of a dispute between the parties, the protocol might be referred to a trade-based dispute settlement process. The net effect would be to subordinate culture to trade-based perspectives.*
- b) *there is the distinct risk that in a negotiation the boundaries between the main agreement and the protocol could become blurred, and that in practice the offer of a cultural cooperation protocol becomes a bargaining chip to secure gains in other economic sectors.*
- c) *trade negotiators are not the appropriate specialists to be elaborating cultural cooperation protocols. Such protocols, along with other preferential treatment measures, should be initiated, drafted, implemented and evaluated by officials with a cultural orientation and expertise, in coordination with international cooperation officials where appropriate.*

For these reasons, the IFCCD strongly prefers legally-distinct cultural cooperation protocols and preferential treatment arrangements in general, as stand-alone agreements. These should be worked out between North-South partners by culture officials, in coordination with international cooperation officials as appropriate, and in close consultation with cultural organizations from civil society.

The International Network for Cultural Diversity (INCD):

This question should be seen from the perspective of developed countries, which have the positive obligation under Article 16 to provide preferential access. Thus, the first observation is that the question itself has ignored the foremost “legal and institutional frameworks” that should be used to provide such access – the national cultural policies implemented by developed countries.

Examples of Appropriate Frameworks – National Cultural Policies

Developed countries should provide funding support. For example, through existing programs, they could make funds available to domestic producers/ publishers who wish to translate books, to sub-title movies or television programs, or to mount a visual arts exhibit or live performing arts presentation. In this way, these works from developing country parties can be distributed in markets of the developed countries.

A very powerful mechanism to provide preferential access would be for developed countries to provide targeted National Treatment. For example, it could extend a benefit which is currently available only to residents, or provided only on a reciprocal basis. An example is audiovisual co-production treaties where a movie or television program produced collaboratively in the two countries enjoys full status as a domestic work.

More robust measures are also possible if you look at how TV-5 (the French-language broadcasters’ consortium) already provides access for some works from developing countries, and many commercial radio stations in developed countries currently program “world music,” including productions originating from developing countries. This leads to the possibility of qualifying a sound recording or audiovisual production from a developing country as domestic for purposes of content rules, even if it is not co-produced.

Examples of Appropriate Frameworks – Trade

Cultural products from developing countries imported into developed countries should be free from tariffs and duties, as well as any registration requirements or rules that impede the importation of these works. There should be no export controls applied to the technologies and equipment exported to developing countries when this is essential for creating contemporary cultural products, particularly in music/sound recording and film/television production.

Immigration departments of developed countries will need to implement the appropriate rules and mechanisms to facilitate the movement of people. At national level, a developed country could implement a special visa which would be easily available for artists and other cultural professionals and practitioners from developing countries.

Examples of Appropriate Frameworks – Cultural Cooperation

There are many examples of programs which support artists and cultural practitioners, as well as cultural industries, in developing countries, facilitate the exchange of information and knowledge among artists and cultural producers, transfer technologies, and otherwise supporting capacity building projects and cultural development. Two issues would seem to require some specific attention:

- Programs must be developed to ensure that there is direct funding to support cultural production activities in the developing countries as contemplated by Article 14.

- *Developed countries should ensure that their development agencies are fully integrated into the strategy and focus effort on promoting cultural development. They could do this by allocating specific and targeted funds for these purposes*

Traditions for Tomorrow:

International cooperation policies of some countries in the North have developed specific strategies towards indigenous people, such as training, exchanges, development projects, etc. It would be crucial to generalize these types of measures, and to include a special strategy to increase the offer of cultural goods and services in developing countries, and simultaneously the demand for such goods and services in those countries and in developed countries.

Both an intellectual and commercial promotion of cultural expressions would be welcomed, of course with the concern for protection of intellectual property rights. Example could be taken on the existing promotion of traditional pharmacopoeia.

Priority should be given to capacity building for cultural actors from minorities and indigenous people, both in production and in dissemination, and also for the improvement of their capacities in promotion and commercialisation.

It is important to keep in mind two important elements, when dealing with these groups:

- *the usual collective dimension of cultural know-how and expressions,*
- *the traditional role and meaning of these expressions which shows how much their cultural character is predominant over their commercial dimension.*

- Categories

In accordance with Article 16 developed countries grant a preferential treatment to:

- a) “artists and other cultural professionals and practitioners” from developing countries
- b) “cultural goods and services” from developing countries

4. Please provide examples of priority measures relevant to each of these categories.¹

The International Federation of Coalitions for Cultural Diversity (IFCCD):

Article 16 constitutes a binding commitment by developed countries to take meaningful action to accord preferential treatment to improve the circulation of artists/cultural professionals and cultural goods and services from developing countries. At the same time, the IFCCD considers it important that the operational guidelines for Article 16 avoid imposing a rigid one-size-fits-all set of measures. Instead, a range of approaches should be set out, so that developed and developing countries, in dialogue, can agree on the specific actions best suited to their particular circumstances.

With respect to 16 a) the priority issue to be addressed is the current difficulty that many artists and other cultural professionals from developing countries face - this is true even for well-known, highly successful artists - when they seek a visa to enter a developed country on activity related to their work (touring, accompanying their film to festivals, etc.).

Impediments include the high cost of visas; inflexible and extremely detailed requests for information by applicants; lengthy review times (in some cases up to three months!); difficulty

¹ Please refer to the document attached ‘Overview’.

of access to visa offices (visas are often processed at embassies in countries several hundred kilometres away, increasing processing time and hindering communications);

While a number of countries, currently have in place 'cultural' or 'special activities' visas, these tend to be quite restrictive in scope (the United Kingdom's, for example, is limited to writers and therefore excludes performing artists) or impose other conditions (e.g. no payment can be received while in the country granting the visa).

The IFCCD recognizes that for security and other considerations it will remain essential that governments apply screening criteria in evaluating visa requests. In this context, with respect to determining whether an applicant for a cultural visa is in fact a working cultural practitioner, local guilds, unions and other associations representing cultural professionals can assist in articulating criteria and could be consulted with respect to such requests.

With respect to 16 b) cultural goods and services, the IFCCD believes that developed countries can pursue a variety of approaches to improving the circulation of cultural goods and services from developing countries. These can include, but would not be confined to:

- Cultural cooperation agreements such as film/television co-production treaties, and distribution agreements*
- Support programs for the distribution and circulation of cultural expressions from developing countries*
- Technical assistance to support the development of cultural industries, development and implementation of cultural policies, and the production and exchange of cultural goods and services*
- Approval of specialty broadcasting services dedicated to making available programming from different parts of the developing world*
- Meetings, exchanges and spotlight events (e.g. festivals) in each of the different creative sectors—cinema, music, performing arts, visual arts—that place the focus on cultural expressions from the developing world*
- Artist-in-residence programs, financial support to increase the presence of artists and independent producers from developing countries at festivals and other events spotlighting cultural expressions from the South*
- Training programs for artists and technicians in the performing arts*
- Assistance to acquire technical equipment used in the creation/production/distribution of cultural expressions*
- Assistance to translate/sub-title cultural expressions from developing countries*
- Incentive measures to encourage private sector investment in the cultural industries of developing countries*
- Exchanges, joint ventures and development of common standards in the performing arts*
- Increased funding for public library from the developing world*

- *Funding for the development of local publishing, exchanges and joint ventures in publishing, notably through support for co-publishing and streamlined rights-clearing arrangements*
- *Increased support for existing training programs tailored to the needs of publishers and booksellers*

A number of developed countries already have programs in place that can be considered to constitute preferential treatment - such as France's Fonds Sud which supports the production of African cinema, or the Berlinale World Cinema Funds which supports co-production and co-dissemination from Southern and Eastern countries. A cataloguing of existing programs could be helpful in terms of providing States with models that they might adopt - and also by identifying gaps where new models need to be considered. Cataloguing these diverse schemes and making this information available at a "one-stop-information point" would greatly benefit the artists and facilitate the access to those opportunities.

It must be emphasized, however, that action to improve the circulation of cultural goods and services will only have the desired result if accompanied by financial support from developed countries to support the creation and production of these cultural expressions. With respect to co-productions, for example, the reality is that while many are negotiated those that prove to be most active are those through which partner producers can pool significant resources (production funds, tax credits, distribution assistance, etc.) to make their creative project viable. In the absence of such support, such agreements risk being largely of symbolic value.

The International Network for Cultural Diversity (INCD):

See our previous answer – key measure include:

- *Funding*
- *Targeted National Treatment*
- *Immigration rules*
- *Strong cultural co-operation programs.*

- *Criteria*

In the trade environment, preferential treatment involves criteria such as: eligibility, rules of origin, graduation, reciprocity and conditionality.

5. Are all or some of these criteria relevant for preferential treatment under Article 16? Please explain briefly why.

IFCCD, INCD, and Traditions for Tomorrow:

The IFCCD, INCD, and Traditions for Tomorrow consider all of the criteria except that of reciprocity to be relevant to the application of preferential treatment under Article 16. While such criteria need not necessarily be detailed directly in the operational guidelines for the article, developed countries will want to identify and define such criteria when deciding what measures they will implement to translate their commitments under Article 16 into concrete action. We also believe the concepts of eligibility, rules of origin, graduation and conditionality will need to be defined using culturally-based criteria and not commercially-based ones. Parties should strive towards the use of consistent definitions and for the coherent application of these criteria; to this end, in addition to the information sharing and reporting mechanisms provided for in Articles 9/19, the bi-annual Conference of Parties could be used for exchanges regarding best practices in this regard.

Eligibility

With respect to eligibility, there is a need to define a developing country in cultural terms—that is, not on their overall economic output, but with specific respect to their levels of cultural production in such sectors as books, film, television, performing arts, recorded music and visual arts, and the overall situation of the cultural sector (e.g. cultural activities, participation of citizens, education and training opportunities). UNESCO has been developing indicators of this sort through its first two World Culture reports (1998 and 2000)

As has been the case with the Human Development Index, started in 1990, which has increasingly been coupled with GDP measurements and has been recognised as a vital benchmark for decision making, an eventual “Gross Cultural Index” or “Cultural Diversity Index” could emerge from such an exercise.

Rules of Origin

Rules of Origin need to be established to ensure that cultural expressions being accorded preferential treatment is legitimately from a developing country. In their own criteria for administering domestic support programs (film/tv/music funds, tax credits, co-production treaties, etc.) developed countries use a range of approaches to this question, including producer-control criteria, creative participation points systems, etc.

Graduation

Governments will want to evaluate the progress of their cultural cooperation agreements. It may be that in some cases, countries prove successful in transforming their cultural sectors into fully developed sectors, in which case preferential treatment arrangements may no longer be appropriate. However, as a general rule a long-term approach should be taken, particularly in the case of least-developed countries. Finally, benchmarks for graduation should be based also on cultural criteria rather than solely economic yardsticks.

Reciprocity

Reciprocity strikes us as an inappropriate concept in the context of Article 16 as the objective is to redress extremely imbalanced exchanges of cultural expressions. Asymmetry in the sense of redressing imbalanced exchanges is therefore to be considered the guiding principle in the context of preferential treatment arrangements between developed and developing countries.

Conditionality

To be eligible for preferential treatment under Article 16, a developing country should first be required to ratify the Convention. Adherence to the principles and objectives of the Convention should also be conditions. Developing countries that on, a scale permitted by their own resources, have implemented policies and measures to nurture the emergence of their own domestic cultural sectors will be best positioned to pro-actively make the case for preferential treatment arrangements with developed countries.

- Measures at national level

The debate underlined the role of national measures and policies in increasing the supply of cultural goods and services in developing countries. Coordination of different national institutions is therefore of the utmost importance.

6. In your country, is there an existing coordination mechanism between the ministry responsible for culture and the ministry responsible for trade? Or other mechanisms?

The International Federation of Coalitions for Cultural Diversity (IFCCD):

We consider such inter-ministerial coordination mechanisms desirable not only in terms of Article 16 but in terms of the broader objective of assuring coherence, and would urge that such mechanisms provide for systematic consultation with civil society organizations.

The International Network for Cultural Diversity (INCD):

INCD believes it is essential to the successful implementation of Article 16 for each country to ensure there is awareness among all relevant government departments and agencies about the rights and obligations which they have as Parties to the Convention. This includes not only the ministries responsible for culture and trade, but also those responsible for international development, immigration, taxation, finance and every other department which may be affected by the obligation to give preferential treatment.

- Civil society

7. What role should civil society play with regard to preferential treatment under Article 16?

The International Federation of Coalitions for Cultural Diversity (IFCCD):

Civil society can play an active role with respect to Article 16 in a number of ways.

First, cultural organizations at the international level are in fact already applying preferential treatment in a number of ways in their work. Many assume the travel costs for representatives of member organizations from developing countries to attend their meetings and other activities. Many organize skills exchanges, training programs and capacity-building projects in which representatives of member organizations from developed countries work with their colleagues from developed countries to strengthen the ability of their organizations to work on behalf of their members.

As stated above, with respect to the evaluation of visa requests, guilds, unions and other associations representing cultural professionals can assist governments by providing informed input with respect to individuals seeking such visas.

Fundamentally, while obvious it bears emphasizing that it is creators, performing artists, independent producers and other cultural professionals who will generate the cultural expressions that are the focus of any action taken by States in the context of Article 16. For this reason, it is essential that the civil society organizations that represent them are actively consulted in the needs assessment phase, the negotiation of preferential treatment arrangements, and the evaluation of all cultural cooperation agreements and preferential treatment measures enacted in this framework. Models for such consultations are already to be found in processes employed by governments in their periodic evaluations of cooperation agreements and programmes to which they are party—audiovisual treaty co-productions being just one example.

The International Network for Cultural Diversity (INCD):

Civil society is a critical player. In developed countries, it will most often be the private sector producers, presenters, broadcasters, distributors, entrepreneurs, impresarios, exhibitors and others, who will import the works, organize the performances and otherwise make available to their audiences the artistic expressions from developing countries. They should be encouraged in these efforts and will be if appropriate national policies are implemented.

Collectively, non-governmental organizations can also play an important role if given the opportunity. For example, they could assist in developing the criteria for determining the rules of national origin of cultural products. They could also develop criteria to certify the professionalism of artists and cultural practitioners from developing countries to facilitate the movement of people and give certainty to immigration authorities about the bona fides of applicants.

Traditions for Tomorrow:

Organisations representing or representative of minorities and indigenous people will need to be active in developing countries, on one hand, to encourage these groups to come closer to the culture market both at national and international level (especially in encouraging creation and developing production) and, on the other hand, so that this evolution shall not produce distortions which could be prejudicial to the meaning and the quality of traditional expressions : i.e. prevent a quality deterioration of techniques and of the expression itself as a result of an extensive or intensive commercialisation.

In developed countries, civil society organizations, mainly NGOs', will act as a sort of agent for their partners in developing countries by making sure that the concerned cultural expressions shall not be diverted from their fundamental significance, nor exploited without the appropriate regulations on intellectual property rights being complied with.

MONITORING AND MEASURING

In order to monitor and measure the processes of implementation and the impact of Article 16, the mechanisms foreseen in articles 9 and 19 of the Convention (periodical reporting, information sharing and best practices) could be invoked.

8. Are these mechanisms sufficient?

Should other mechanisms (e.g. research, a specially created body, other) be considered?

IFCCD, INCD, and Traditions for Tomorrow:

The IFCCD, INCD and Traditions for Tomorrow suggest that initially, the mechanisms provided for in 9 and 19 should be used and activated to monitor and assess the implementation and the impact of Article 16 for a trial period of two years, i.e., until the Third Conference of Parties in 2011. It is worth emphasising that civil society organizations and independent researchers could usefully contribute to this monitoring by being engaged in a systematic fashion. As some issues associated with preferential treatment are particularly complex, notably those relating to international trade agreements, States may consider it appropriate to have UNESCO undertake or commission dedicated research on such issues.

9. Would you have any other comment to add?

The International Network for Cultural Diversity (INCD):

There are two measures that the Convention Parties should explore collectively.

Fair Trade Principles

A key element in this equation is the importance of developing Fair Trade principles for imported works. It is essential that the rights of the artists and the producers of those works be treated fairly, including receiving compensation. Fair Trade principles are well understood and supported and the Convention parties should initiate and support their development for cultural goods and services. The Intergovernmental Committee should investigate how it can initiate and promote the development of such principles.

Cultural Passport

The Intergovernmental Committee should also consider how to encourage the development of a distinct cultural passport which would be granted to artists and other cultural professionals and practitioners from developing countries. Working with civil society, criteria for such a passport could be developed at the international level and implemented for parties to the Convention. A passport would facilitate access to developed countries and guarantee identical legal rights to local citizens when the holder is undertaking artistic work in that territory.

Traditions for Tomorrow:

The implementation of preferential treatment regarding minorities and indigenous people shall be taken into consideration both in a North-South relations perspective and within the developing countries themselves.

It is important too, that in a South-South perspective, the preoccupation to create favourable environments for cultural exchanges shall also be concerned with valuing and promoting these groups' contribution to the diversity of cultural expressions.

January 31, 2009

**INSTITUT INTERNATIONAL DU THÉÂTRE /
INTERNATIONAL THEATRE INSTITUTE**

QUESTIONNAIRE

**-Comité d'Identité et de Développement Culturel (CIDC)-
Groupe de travail sur la diversité culturelle
Dieter Welke, coordinateur**

Remarques préliminaires :

L'Institut International du Théâtre (IIT), organisation non gouvernementale en association formelle avec l'UNESCO, tient à remercier le Comité Intergouvernemental et l'UNESCO d'avoir soumis ce questionnaire aux organisations de la société civile engagées dans l'implémentation de la Convention 2005. A travers ses Centres Nationaux notre organisation est présente dans 98 pays de tous les continents, la majorité de ces pays se trouvent en voie de développement. Conformément à nos statuts et notre vocation fondamentale l'implémentation de la Convention dans le domaine du développement et de la coopération internationale constitue une de nos préoccupations essentielles. Nous formulons nos réponses dans un double souci :

-celui d'une responsabilité générale afin de contribuer à la mise en œuvre équilibrée et efficace de politiques de développement durable dans le domaine culturel,

-et celui de la responsabilité particulière dans la protection et dans la promotion de la diversité des arts du théâtre.

Notre approche est donc holistique tout en tenant compte des spécificités des arts que nous représentons.

CONTENU DE L'ARTICLE 16

- Article 16

Le débat a souligné que le traitement préférentiel au sens de l'Article 16 de la Convention doit être compris comme ayant une dimension à la fois commerciale et de coopération culturelle, et que cet Article 16 doit être mis en relation avec d'autres articles de la Convention.

1. Veuillez énumérer les articles qui vous apparaissent particulièrement pertinents pour l'Article 16 et en expliquer brièvement les raisons.

Réponse :

A : Articles 12, 13, 14, 17

Nous souhaitons que la coopération internationale se renforce non seulement entre pays développés et pays en voie de développement mais aussi entre les pays en voie de développement eux-mêmes, au niveau bilatéral comme au niveau régional. Ce dernier type de coopération permet de mieux définir les besoins, de fixer des buts et des stratégies communes, renforçant ainsi le poids de ces pays dans les négociations avec les pays développés en vue d'échanges culturels équitables. Un des buts de la coopération culturelle définie dans les articles mentionnés est d'établir d'une manière durable des conditions de production culturelle à la fois stables et dynamiques, susceptibles d'améliorer la

situation économique et sociale des travailleurs de la culture ; une des conséquences souhaitées de la coopération internationale doit être l'augmentation de l'offre de biens et services culturels de haute qualité. Les pays en voie de développement sont caractérisés par un dynamisme culturel extraordinaire; néanmoins leur énorme potentiel de créativité artistique est entravé par des conditions économiques et sociales désastreuses. Nous appelons les pays développés à faciliter d'une manière substantielle l'accès des biens et services culturels des pays en voie de développement à leur marché afin d'éliminer, à moyen et à long terme, l'inégalité des échanges. Malheureusement beaucoup d'artistes de ces pays n'ont pas la possibilité de faire connaître leur travail au-delà des frontières nationales. Le réseau mondial de l'IIT offre son savoir-faire afin de promouvoir dans le domaine du théâtre les œuvres et les productions de qualité créées dans les pays en voie de développement.

Notre propre domaine, celui des arts de la scène, est particulièrement vulnérable étant donné qu'un spectacle de théâtre est de nature éphémère et qu'une reproduction audiovisuelle tend à dénaturer son essence même. Au niveau économique il est bien plus difficile de rentabiliser un spectacle vivant qu'une production audiovisuelle : dans la plupart des cas les coûts de production excèdent les recettes. Le théâtre dépend donc en grande partie d'aides publiques et/ou du mécénat. Quand ces aides font défaut, il se trouve dans une situation précaire. En outre, de par leur nature les activités et les institutions théâtrales sont profondément ancrées dans la vie des communautés et des sociétés. Sans cet ancrage le théâtre risque de s'uniformiser et de perdre ainsi son universalité. Les spécificités des arts de la scène font donc appel à la responsabilité des pouvoirs publics nationaux tout comme à la coopération internationale. Une des tâches prioritaires sera de consolider et de développer les tissus des institutions et des activités théâtrales au moyen de politiques de coopération appropriées. C'est pour cela que l'implémentation de l'article 12 est à nos yeux une condition essentielle pour l'implémentation du traitement préférentiel prévu par l'article 16. Par ailleurs, l'IIT prend très au sérieux le partenariat stipulé dans l'article 12 (c). Bon nombre de ses projets actuels et futurs correspondent à ce type de coopération.

Quant à l'article 13 nous considérons que le développement durable est également une condition essentielle pour le traitement préférentiel dans la mesure où il implique la stabilisation et le renforcement des infrastructures de production tout en tenant compte d'une manière pondérée de l'ensemble des composantes du domaine culturel et de leur insertion dans la vie économique et sociale des pays en question. De même, la notion de développement durable implique des politiques culturelles équilibrées à moyen et à long terme et le strict respect de l'ensemble des principes stipulés par l'article 2 de la Convention.

Dans le cas spécifique du théâtre nous observons une marginalisation progressive des arts de la scène au profit des industries culturelles audiovisuelles. Nous considérons que le développement durable implique un rééquilibrage dans lequel les industries culturelles du théâtre (compagnies, institutions de théâtre) retrouvent la place qui convient à leur importance pour la vie et les valeurs culturelles des pays respectifs. Cette importance ne peut être déterminée uniquement à partir de critères économiques. Par ailleurs, nous sommes loin de considérer le secteur audiovisuel comme rival. Au contraire, dans le cadre de politiques culturelles et de projets de coopération équilibrés, le développement d'industries audiovisuelles de qualité peut contribuer à celui du théâtre dans la mesure où beaucoup de professionnels des arts de la scène vivant travaillent également dans le secteur audiovisuel.

En ce qui concerne l'implémentation de l'article 15 l'IIT considère que tous ses aspects sont d'une importance capitale pour la mise en œuvre du traitement préférentiel.

L'avenir du théâtre, tout comme celui des industries audiovisuelles, dépend en grande partie de la création et du renforcement des capacités de production et de distribution des pays en voie de développement. En plus, les arts du spectacle demandent une forte mobilité de leur personnel artistique et technique. Il nous paraît urgent que les pays développés en tiennent compte dans les accords de coopération en créant des conditions légales d'entrée et de séjour qui permettent aux artistes d'exercer leur métier. L'état actuel de ces conditions est loin d'être satisfaisant. Les dispositions de l'article 3 du Protocole sur la Coopération culturelle entre l'Union Européenne et le CARIFORUM constituent à nos yeux un premier pas dans la bonne direction. Nous souhaitons que les Etats de l'UE prennent ce sujet à cœur, que ces dispositions deviennent plus contraignantes et moins exhortatives qu'elles ne le sont aujourd'hui, et qu'elles soient étendues à d'autres pays en voie de développement ayant ratifié la Convention. De même, il nous semble évident que la coopération internationale demande également une amélioration des conditions d'entrée et de séjour dans les pays en voie de développement. Les entraves actuelles empêchent souvent la coopération internationale et des échanges artistiques extrêmement productifs et prometteurs. Nous appelons donc les gouvernements de ces pays à faire des efforts dans la mesure de leurs possibilités.

De toute manière nous avons la ferme intention d'orienter nos propres projets et stratégies en matière de développement des arts du théâtre en conformité avec les dispositions de l'article 15. Etant donné que l'IIT est une organisation sans but lucratif, nous aurons un vif besoin d'appui financier, soit de la part du Fonds pour la Diversité Culturelle, soit de la part des pays développés ou d'autres donateurs. Nous considérons que dans la lutte contre la pauvreté et l'injustice et pour la paix et la cohésion sociale le théâtre a son rôle à jouer.

Quant à l'article 17 l'IIT se déclare prêt à signaler aux Etats Parties et à l'UNESCO les formes d'expression théâtrale gravement menacées et fera, dans la mesure de ses compétences, des propositions concernant leur protection.

B : Articles 6, 7, 8, 9, 10, 11

La coopération internationale et le traitement préférentiel impliquent des politiques culturelles nationales cohérentes guidées par les droits et obligations stipulés dans les articles 6, 7, 8, 9, 10 et 11. Les dispositions de ces articles constituent la contrepartie nécessaire pour la mise en œuvre de la coopération internationale et le traitement préférentiel stipulé dans l'article 16. . Etant donné que l'article 16 contient une obligation forte, il serait souhaitable que les obligations des Etats Parties, au niveau national soient implémentées d'une manière qui corresponde à la force de l'obligation énoncée dans l'article 16. Une telle démarche devrait être valable pour tous les Etats Parties en conformité avec leurs capacités et possibilités d'action politique. Une telle approche permettrait une implémentation équilibrée et juste du traitement préférentiel. Par ailleurs, les dispositions de l'article 10 sont susceptibles d'améliorer les conditions de marché et de distribution des biens et services culturels dans les pays développés.

C : Articles 20 et 21

Nous rappelons que le but de la Convention est de créer une protection de la diversité culturelle face aux défis des accords internationaux de commerce. En ce sens l'implémentation devrait contrebalancer les conséquences négatives de la globalisation commerciale. Il est possible que certains Etats Parties prennent des engagements au niveau de leurs accords commerciaux susceptibles d'entrer

en conflit avec les dispositions de la Convention. Nous espérons que les articles 20 et 21 permettent d'éviter de tels conflits tout comme la flexibilité des dispositions et règlements inscrits dans les Accords de l'OMC. Jusqu'à preuve du contraire nous préférons garder notre optimisme.

- Rôle des Parties

Le débat a souligné que l'Article 16 de la Convention crée une obligation pour les pays développés.

2. Les pays en développement devraient-ils jouer un rôle proactif en tant que bénéficiaires ? Si oui, veuillez fournir des exemples.

Réponse :

Oui. A certains égards nous avons déjà fait référence à ce rôle dans notre réponse à la première question. Par ailleurs il nous paraît important que les pays en voie de développement s'efforcent à faire inclure l'accès préférentiel des biens et services culturels aux marchés des pays développés dans leurs accords bilatéraux de commerce et de coopération économique et culturelle. Il convient de noter que l'article 3 du Protocole sur la Coopération Culturelle entre l'UE et le CARIFORUM établit la réciprocité des engagements sur la mobilité des artistes alors que l'article 16 de la Convention ne la prévoit pas. Le traitement préférentiel inscrit dans l'article 16 implique plutôt la non-réciprocité en faveur des pays en voie de développement. La réciprocité des engagements sur la mobilité des artistes dans l'article 3 du Protocole ne peut donc se fonder sur l'article 16 de la Convention. Les États Parties devraient également prendre en compte l'article 16 et choisir des solutions concrètes les mieux adaptées pour mener à bien leurs politiques de coopérations internationales sans perdre de vue qu'une des finalités de la Convention est de combattre l'inégalité et les iniquités dans les échanges culturels.

Comme nous l'avons mentionné plus haut, nous accordons une grande importance à la coopération culturelle entre pays en voie de développement. Un exemple positif est la création des programmes IBERMEDIA et IBERESCENA. Ces programmes se fondent sur un accord entre un certain nombre de pays latino-américains tout en incluant l'Espagne par affinité culturelle et historique. Ces programmes de coopération dans les domaines des industries audiovisuelles et du théâtre ont eu un impact très bénéfique et demandent à être approfondis et élargis afin d'établir des accords culturels performants assortis de dispositions conformes aux normes de coopération internationale inscrites dans la Convention 2005. Une telle démarche exigerait que tous les Etats qui soutiennent les programmes IBERMEDIA et IBERESCENA, ratifient la Convention 2005. Malheureusement certains de ces Etats ne l'ont pas encore ratifiée et il serait donc important qu'ils entament le processus de ratification.

Quant à la mise en œuvre de l'article 16 les pays en voie de développement devraient coopérer activement avec les organes de la Convention et avec l'UNESCO afin de veiller à son implémentation effective. Cela implique que les pays développés informent les organes de la Convention et l'UNESCO sur leurs mesures concernant l'accès préférentiel des biens et services culturels en provenance de pays en voie de développement.

MISE EN ŒUVRE DE L'ARTICLE 16

- Cadres

Un traitement préférentiel devrait être accordé « *au moyen de cadres institutionnels et juridiques appropriés* ».

3. Veuillez fournir des exemples des principaux cadres juridiques et institutionnels pouvant être utilisés, en tenant compte des dimensions suivantes :

- a) **commerciale**
- b) **coopération culturelle**
- c) **combinaison des dimensions commerciale et coopération culturelle**

Réponse :

Conformément à la nature de l'obligation de l'article 16 la question concerne les cadres juridiques et institutionnels dans les pays développés. Or, il est évident que l'établissement de ces cadres implique une certaine réorientation de leurs politiques culturelles nationales.

Politiques culturelles nationales

Les politiques culturelles nationales devraient prévoir des fonds spéciaux afin de faciliter l'accès au marché des biens et services culturels en provenance de pays en voie de développement. Cela pourrait concerner p.ex. le financement de traductions, et l'appui financier des institutions culturelles qui se consacrent à la diffusion des productions.

Dans le domaine du théâtre on pourrait concevoir entre autres un appui financier pour la traduction et la publication d'œuvres dramatiques ou l'appui renforcé de festivals de théâtre existants qui se consacrent spécialement à faire connaître des productions en provenance des pays en voie de développement. Ceci est p.ex. le cas du Festival Ibéro-américain de Cadiz (Espagne) qui a réussi à s'établir comme lieu prééminent de diffusion du théâtre latino-américain. D'autres initiatives du même type concernant d'autres régions du monde pourraient être soutenues. Au-delà des festivals spécialisés, les gouvernements devraient adopter des mesures appropriées afin que plus généralement les festivals de théâtre incluent d'une manière accrue des représentations de ces productions dans leur programmation. Il en va de même pour les théâtres publics susceptibles d'accueillir des productions en tournée. Par ailleurs, dans ses propres activités festivières l'IIT poursuit depuis longtemps une telle orientation et dispose d'un savoir-faire considérable qui pourrait être bénéfique pour les décideurs politiques à tous les niveaux.

Tout comme dans le domaine audiovisuel, les coproductions peuvent constituer un mécanisme important pour un traitement préférentiel des productions de théâtre. Les normes juridiques de l'article 5 (a) du Protocole sur la Coopération Culturelle entre l'UE et le CARIFORUM pourraient servir de modèle pour d'autres accords. Les coproductions entre producteurs de l'UE et du CARIFORUM sont considérées comme productions du marché intérieur européen à certaines conditions. Ces conditions, -notamment celle d'une contribution financière minimale de 20% des coproducteurs du CARIFORUM-, stipulées dans l'article 5a, devraient être réexaminées à la lumière des spécificités de la production

théâtrale caractérisée par une situation financière et institutionnelle plus délicate. Il faudra veiller à ce que le conditionnement des garanties de l'article 5 ne devienne pas un obstacle infranchissable dans des domaines autres que l'audiovisuel. Nous proposons donc dans le cadre de la Convention l'extension de ce mécanisme tout en souhaitant un conditionnement circonspect qui se fonde non seulement sur de critères économiques mais aussi sur des critères culturels. La traduction d'une œuvre littéraire, la projection d'un film et la représentation d'un spectacle peuvent enrichir la culture du pays d'accueil et construire des ponts entre les cultures conformément aux objectifs de la Convention (Article 1 de la Convention 2005).

On pourrait même aller plus loin en décidant que telle ou telle catégorie de productions en raison de son importance pour le développement de la culture du pays d'origine ou en raison de ses qualités artistiques et de l'apport pour la culture du pays d'accueil et susceptible d'être considérée d'emblée comme production du marché intérieur. L'implémentation de ce type de traitement devrait obéir à des critères de sélection et de ciblage clairs, précis et transparents.

Dimension commerciale

Une des buts inhérents à l'implémentation de l'article 16 est le renforcement du flux des biens et services culturels vers les pays développés. Nous pensons que ces derniers devraient instaurer des règlements et des mécanismes institutionnels qui permettent un affranchissement des droits de douane et d'autres cotisations concernant l'importation des biens et services culturels en provenance de pays en voie de développement. Ces règlements devraient s'étendre aussi à l'importation temporaire d'équipements techniques nécessaires à la réalisation de spectacles ou de productions audiovisuelles. En contrepartie les pays en voie de développement devraient s'obliger à ne pas dresser des obstacles administratifs ou douaniers à l'exportation temporaire de ces biens. De même, ils devraient faire en sorte que les dons d'équipements techniques audiovisuels et scéniques effectués dans le cadre de l'aide au développement culturel ne soient pas entravés par des barrières douanières et administratives contreproductives.

De même les autorités compétentes en matière d'immigration devraient prévoir des règlements spécifiques qui facilitent la mobilité des personnes physiques (artistes, techniciens de l'audiovisuel et du spectacle, équipes de production etc.). Une des solutions pourrait être la création d'un visa spécial pour les artistes et autres professionnels et praticiens de la culture. Quant aux problèmes complexes de fiscalisation, les Etats devraient songer à créer des cadres juridiques et institutionnels appropriés permettant d'éviter la double imposition.

Nous venons de souligner plus haut l'importance cruciale de la mobilité des artistes, des professionnels et des praticiens pour les échanges internationaux dans le domaine du théâtre. Dans ce contexte spécifique il convient de noter que les groupes de théâtre de pays en développement se trouvent parfois confrontés à de sérieuses oppositions de la part de corporations ou de syndicats de techniciens et d'autres corporations à tel point que même des assistants-clés ne sont pas autorisés à travailler. Nous ne pouvons que confirmer les observations faites par le professeur Sinha dans son rapport d'expert; nous appuyons son analyse et ses suggestions pour remédier à de telles situations². L'IIT se déclare prêt à collaborer en fournissant un travail d'information et d'argumentation à des solutions convenables.

² Cf. Document CE/08/2.IGC/8 Annexe – M. Sinha p. 26 sq.

Coopération culturelle

Nous sommes en faveur de programmes de coopération culturelle forts afin de garantir une implémentation efficace de l'Article 14. Cela implique à nos yeux :

- a- que les fonds de coopération soient destinés directement au soutien des activités de production culturelle, soit au développement des infrastructures nécessaires pour la création artistique et pour la protection et la promotion des autres formes d'expression culturelle.
- b- que les pays développés doivent prendre les mesures institutionnelles et réglementaires nécessaires afin d'intégrer le développement culturel dans leurs politiques générales d'aide au développement. Cela implique une révision et, -au besoin-, une restructuration des activités ministérielles et administratives tout comme une réorientation des agences et des organisations de développement opérant sous tutelle de l'Etat. En outre, cette intégration demande l'allocation de fonds spécifiques et ciblés. Dans un certain nombre de pays la situation actuelle est encore loin d'être satisfaisante.

- Catégories

Selon l'Article 16, les pays développés accordent un traitement préférentiel aux :

- c) « *artistes et autres professionnels et praticiens de la culture* » des pays en développement
- d) « *biens et services culturels* » des pays en développement

4. Veuillez fournir des exemples de mesures prioritaires pertinentes pour chacune de ces catégories

Réponse :

Nous avons déjà répondu à cette question dans nos réponses antérieures concernant

ad a)

- Mobilité, réglementations concernant l'immigration (visa, conditions de séjour)

ad b)

- traitement préférentiel pour l'entrée des biens et services culturels aux marchés des pays développés
- programmes forts de coopération, mesures qui permettent d'intégrer les programmes de coopération dans la politique générale de développement des pays développés.

- Critères

Dans le domaine commercial, un traitement préférentiel implique des critères tels que : éligibilité, règles d'origine, gradation, réciprocité et conditionnalité.

**5. Certains ou tous ces critères sont-ils pertinents pour l'Article 16 ?
Veuillez expliquer brièvement pourquoi.**

Réponse :

Etant donné que les échanges de biens et services culturels entre pays en voie de développement et pays développés se concentrent pour le moment sur un nombre assez restreint de pays, il s'agit de déterminer comment élargir dans le cadre de la Convention 2005 le groupe de bénéficiaires en se fondant sur l'Article 16. Nous sommes proches du point de vue exprimé dans le rapport du Dr K. Nurse selon lequel « les mécanismes de gradation ou d'autres mesures discriminatoires ne résoudront pas le problème. La question clé est comment augmenter la production et le marché à l'exportation des biens de divers pays. »³ et comment créer une demande de biens et de services culturels dans les pays développés. Par ailleurs pour l'IIT la protection et la promotion de la diversité culturelle doivent servir d'abord la vie culturelle des pays en voie de développement mêmes. L'exportation des biens et services culturels doit être considérée comme un facteur d'appui aussi bien économique que culturel au sens des Articles 1 et 2 de la Convention. A nos yeux les critères existants de l'OMC et de la CNUCED ont une portée limitée et demandent une révision critique qui correspond aux objectifs et aux principes de la Convention prenant en compte la dimension culturelle des biens et des services concernés. En ce sens nous souhaitons des critères clairs et applicables qui tiennent compte d'une manière pondérée de la dimension économique tout comme de la dimension culturelle. Nous tenons à rappeler la position de principe de l'IIT exprimé dans la résolution de son XXXe Congrès Mondial tenu à Tampico (Mexique) en 2004 qui précise que « les œuvres de l'esprit ne peuvent se réduire à leur seule dimension commerciale. »

a) éligibilité

Le traitement préférentiel ne devrait être appliqué qu'aux Etats qui font partie de la Convention 2005, et non pas aux pays en voie de développement qui n'en font pas partie. Ceci pourrait inciter les Etats n'ayant pas encore approuvé ou ratifié la Convention de l'approuver ou de la ratifier.

Si l'élaboration d'un ensemble de critères s'avère nécessaire, il s'agit d'examiner d'une manière critique les critères utilisés dans les accords existants et de procéder à une révision, voire une refonte de ces critères à la lumière de la double dimension des expressions culturelles. Nous tenons à souligner que le développement culturel a des propriétés et des facteurs d'évolution qui ne se laissent pas mesurer avec des critères économiques, d'autant plus qu'un nombre considérable d'expressions et d'activités culturelles ont peu de vocation à entrer dans les marchés, ce qui ne diminue en rien leur importance pour l'identité culturelle, la cohésion sociale, la paix et le dialogue entre les cultures. L'établissement de critères devrait se fonder sur des analyses et des diagnostics précis. C'est pour cela que nous insistons sur l'amélioration et le renforcement des analyses concernant la situation des expressions culturelles dans les pays en voie de développement. L'état actuel d'information et d'analyse laisse encore à désirer. Il faudra que l'UNESCO et la CNUCED en coopération avec des institutions de recherche et des organisations spécialisées de la société civile tout comme les Etats Parties fassent des efforts dans ce domaine.

³ cf. Document CE/08/2.IGC/8 Annexe-K. Nurse p. 28

b) règles d'origine

Quant aux règles d'origine, nous limitons notre réponse aux aspects concernant les spécificités de notre domaine. Les productions théâtrales sont des œuvres collectives qui demandent la participation créative de toutes sortes d'artistes (acteurs, auteurs dramatiques, metteurs en scène, scénographes, dessinateurs de lumières, dessinateurs de costumes, musiciens etc.) L'origine peut donc être assez complexe. De toute manière on aura besoin de définitions internationalement reconnues. Néanmoins comme fil conducteur, nous pourrions suivre une règle assez simple : une production théâtrale pourrait être considérée comme production nationale d'un pays en voie de développement si la majorité des artistes qui participent à sa création possèdent la nationalité de ce pays.

c) gradation

La gradation présuppose l'établissement de standards qui permettent de mesurer le degré de développement. Or, l'établissement de tels standards dans le domaine de la culture nous semble problématique dans la mesure où le développement de la diversité culturelle est caractérisé par des propriétés spécifiques difficilement généralisables, voire quantifiables. En tout cas il faudra éviter le paradoxe de la standardisation de la diversité. En plus, il faudrait examiner l'utilité des critères de gradation dans l'implémentation de l'Article 16. De toute façon, comme il a été dit plus haut, on aura besoin de recherches et d'analyses approfondies pour discuter d'une manière adéquate l'utilité et la nature de ces critères.

d) réciprocité

Nous avons souligné plus haut la nécessité de la coopération entre pays en voie de développement (coopération Sud-Sud). Etant donné que les rapports économiques et les transactions culturelles tendent à être plutôt symétriques, le principe de réciprocité peut être un principe viable dans la conclusion d'accords. Il n'en va pas de même dans les rapports Nord-Sud où les transactions culturelles tendent à être asymétriques. Nous partageons le point de vue du Prof. Makhanya qui précise que « le déséquilibre des flux culturels justifie un traitement préférentiel ». ⁴ C'est ce qui constitue la raison d'être de l'Article 16. « L'application de la non-réciprocité dans les cas où l'équilibre n'existe pas est donc cohérente avec l'objectif de réaliser une plus grande parité dans les échanges culturels » ⁵

e) conditionnalité

Comme le suggère le rapport de M B. Aboudi les critères de conditionnalité peuvent être rattachés à certains principes directeurs de l'Article 2 de la Convention 2005, ⁶ à savoir les principes de l'Art. 2 .1 ; 2.3 ; 2.6.

⁴ cf. Document CE/08/2.IGC/8 Annexe – M. Makhanya p. 9

⁵ cf. ibid. p. 9

⁶ cf. Document CE/08/2.IGC/8 Annexe -B. Aboudi p. 15 sq.

- Mesures au niveau national

Le débat a souligné le rôle des mesures et politiques nationales dans l'augmentation de l'offre des biens et des services culturels dans les pays en développement. La coordination des différentes institutions nationales est, par conséquent, de la plus haute importance.

6. Dans votre pays, existe-t-il un mécanisme de coordination entre le ministère responsable de la culture et le ministère responsable du commerce ? Ou d'autres mécanismes ?

Réponse :

Etant donné que nous sommes une organisation internationale nous ne pouvons pas donner de réponse directe. Néanmoins nous notons que dans beaucoup de pays les mécanismes de coordination laissent à désirer. D'ailleurs il faut une coordination plus large incluant aussi les autorités compétentes pour le développement, l'immigration, la taxation et les impôts, et toute autre autorité concernée par le traitement préférentiel.

- Société civile

7. Quel rôle la société civile devrait-elle jouer eu égard au traitement préférentiel au sens de l'Article 16 ?

Réponse

Le rôle de la société civile dans l'implémentation de l'Article 16 est crucial. Elle y est impliquée dans la mesure où elle est engagée dans la distribution, la diffusion, la production, l'exportation, l'importation et la présentation des biens et services culturels ainsi que dans la coopération internationale en matière de développement.

Par ailleurs, les organisations non-gouvernementales spécialisées peuvent contribuer à fonder des analyses et recherches, à recueillir des informations pertinentes dans leur domaine de compétence, et à développer des critères pour le traitement préférentiel. En outre, ils peuvent élaborer des critères pour la certification des aptitudes professionnelles et artistiques des artistes et des travailleurs culturels afin de faciliter leur mobilité.

A travers ses Centres Nationaux et ses Comités Internationaux, l'IIT est fortement engagé dans des projets coopération internationale en matière de développement du théâtre, ainsi que dans la diffusion, l'importation et la présentation d'œuvres théâtrales en provenance des pays en voie de développement. En outre, il travaille activement à l'analyse de la situation du théâtre dans les pays en voie de développement afin de contribuer aux tâches d'information et de diagnostic nécessaire pour l'implémentation de la Convention. Malheureusement dans la mesure où la quantité de ces tâches augmente considérablement, notre organisation se heurte à des difficultés de financement. Nous espérons que l'UNESCO et d'autres organisations des Nations Unies, ainsi que les Etats Parties de la Convention et d'autres donateurs éventuels nous appuieront dans nos efforts. En ce qui concerne les buts et les principes de la Convention exprimés dans les Articles 1 et 2, l'IIT fait un travail considérable qui leur correspond. Il suffit de mentionner quelques-unes de ses activités : l'IIT appuie et développe des travaux de théâtre dans des zones de conflit avec

notamment la création d'un centre de théâtre en zone de conflit au Soudan, il s'occupe des expressions théâtrales dans les cultures autochtones, il participe activement au développement d'institutions de formation artistiques et au renforcement du tissu théâtral dans les pays en voie de développement, -ceci souvent dans des conditions très dures-, et organise des rencontres internationales de professionnels du théâtre.

ASSURER LE SUIVI ET MESURER

Afin de suivre et de mesurer les processus de mise en œuvre et l'impact de l'Article 16, on pourrait invoquer les mécanismes prévus aux articles 9 et 19 de la Convention (rapports périodiques, partage de l'information et meilleures pratiques).

8 Ces mécanismes sont-ils suffisants ?

Faut-il considérer d'autres mécanismes (par exemple : recherche, création d'un organisme spécialisé, autres) ?

Nous pensons que ces mécanismes ne sont pas encore suffisants. Il faudra renforcer le travail des observatoires, des instituts de statistiques culturelles, et lancer des enquêtes en coopération avec des institutions de recherche spécialisées. Dans son papier de position de juin 2007 sur l'implémentation de la Convention l'IIT a offert sa coopération dans le suivi des processus de mise en œuvre de la Convention dans le domaine du théâtre.

9. Auriez-vous d'autres commentaires à ajouter ?

Comme organisation mondiale du théâtre nous sommes strictement en faveur d'échanges culturels équitables.

Conformément à notre vocation nous insistons sur la dimension culturelle des échanges et nous plaidons d'une manière ferme pour une approche qui accorde à cette dimension une importance au moins égale à la dimension commerciale. Nous maintenons la position exprimée au début des négociations qui ont abouti à la naissance de la Convention 2005 : « De tout temps le théâtre fait partie de la sphère publique que ce soit au sein d'une communauté particulière, au sein d'une société ou d'une nation, et par delà au sein de la communauté internationale. Ses contenus sont intimement liés à l'Histoire humaine ; souvenons-nous, en Grèce il est né avec la démocratie. Son inspiration est profondément éthique. Il articule et exprime les interrogations de l'homme sur son destin, sa place dans l'univers, ses valeurs spirituelles, ses rites et coutumes, ses angoisses et ses joies, ses désirs et ses dégoûts, ses espoirs et ses désespoirs, sa bassesse et sa grandeur, ses amours et haines, ses luttes contre l'oppression, ses conflits sociaux et politiques, ses aspirations à la liberté... il essaie de tracer les limites de l'existence humaine tout comme il parle de ses possibilités... **Cette incroyable richesse, cet immense potentiel du passé, du présent et de l'avenir n'est pas mesurable en termes marchands. L'essence même du théâtre n'est pas une marchandise. »**