

DRAFT – JULY 29, 2003

**DRAFT INTERNATIONAL CONVENTION ON CULTURAL DIVERSITY
BY THE WORKING GROUP ON CULTURAL DIVERSITY AND
GLOBALIZATION¹**

**TO BE PRESENTED TO MINISTERS AT THE 6TH ANNUAL MINISTERIAL
MEETING OF THE INTERNATIONAL NETWORK ON CULTURAL
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¹ The Working Group on Cultural Diversity and Globalization, chaired by Canada, is a group of cultural policy experts who provide Network Ministers with advice and concrete proposals on how to advance their cultural policies regarding cultural diversity, at both the national and international level. All INCP members are invited to every meeting of the Working Group on Cultural Diversity and Globalization. The Working Group held three meetings in 2002-3, as well as a Ministerial-level meeting and two meetings of a drafting group. The following INCP member countries have participated in one or more of these meetings this year: Argentina, Brazil, Burkina Faso, Canada, China, Colombia, Croatia, Finland, France, Greece, Iceland, Italy, Jamaica, Morocco, Poland, Norway, Senegal, Slovakia, South Africa, Switzerland and Sweden.

² This document should be printed double-sided so that the explanatory Notes pages are on the left of the Articles. This is to allow readers to see each Article alongside its corresponding notes.

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Memorandum by the Chair of the Working Group on Cultural Diversity and Globalisation

This is the second version of the draft Convention on Cultural Diversity prepared within the framework of the International Network for Cultural Policy.

This draft convention is inspired by: the Communiqué of the Summit of the G-8 in Okinawa, Japan, July 2000; the Declaration on Cultural Diversity adopted by the Council of Europe in December 2000; the Declaration of the Summit of the Americas at Québec City in April 2001; the Cotonou Declaration on Cultural Diversity adopted by the cultural ministers of the International Organization of the Francophonie in June 2001 (confirmed by Heads of States and governments at Beirut, October 2002); the Declaration and Plan of Action of Cartagena de Indias adopted by ministers and highest authorities responsible for culture of the Organization of American States in July 2002; and the Dakar Declaration on the Promotion of African Caribbean Pacific Cultures and Cultural Industries in June 2003.

Following the instructions provided to the Working Group by INCP Ministers in the Cape Town Statement in 2002, the main objective of this second draft Convention is to better address specifically the rights and obligations of the Parties, the needs of developing countries, and culture and trade links. These instructions have been taken into account by condensing and crystallising the obligation abstraction, i.e. what the Parties agree to do or abstain from doing, what obligations and rights are agreed upon, and what kind of obligations the Parties take to each other. The purpose is to make the legal structure more coherent and transparent and thereby facilitate the political decision making by Ministers of Culture.

The preparation of this version began with work undertaken by a Drafting Group, for which the Ministry of Education and Culture of Finland agreed to serve as the rapporteur. The Chair would like to thank the rapporteur for the extensive work that was done.

This draft follows the submission by the Ministry of Education and Culture of Finland of an “Outline for Improving the Draft International Instrument on Cultural Diversity” to the Drafting Group of the Working Group on Cultural Diversity and Globalization. The basic orientation of that Outline was discussed and approved in a meeting that included members of the Drafting Group and the Contact Group on March 25-26, 2003, in Halifax. The draft took further shape at a meeting of the Drafting Group in London, April 28-9, 2003, and was later considered by the Working Group as a whole at meetings in Zagreb on May 29-30 and in Geneva, July 7, 2003.

All declaratory elements have been moved from the text to the Preamble. Furthermore, explanatory notes are offered for the articles that explain the provisions of the draft Convention. Following standard practices, if a draft was adopted as proposed, the notes would be transformed into authentic guidelines for interpretation. The formal role of the notes notwithstanding, they should be understood, in this process, as a necessary source of background information in order to build and ensure common understanding.

The structure of the substantive provisions in the current draft is relatively simple: as regards to the rights and obligations, there are four guiding principles, four general obligations and a specific article on obligations of Parties to each other. In addition, there are provisions on co-operation, on development co-operation, on dispute settlement, and on final and administrative issues.

As regards to the rights and obligations more specifically, this draft Convention relies on few but relatively strong provisions. In addition to clarifying the right of Parties to take measures to preserve and promote cultural diversity, the Convention lays down obligations for the Parties:

- to take the specificity of cultural goods and services into account when devising national or international policy measures;
- to respect the principles of balance and transparency as regards the promotion of domestic cultural expression and openness to cultural expression of other Parties;
- to develop, in accordance with the particular conditions and capabilities of different Parties, a cultural policy framework for the preservation and promotion of cultural diversity; and
- to co-operate in strengthening the resources and capacities of developing countries.

Furthermore, the Convention provides a strong and flexible framework to develop co-operation between the Parties on:

- technical assistance and capacity building for developing and least developed country Parties;
- facilitating the availability of cultural goods and services from other Parties in the territory of a Party;
- exchanges between cultural industries, groups of professionals and cultural institutions between different Parties;
- developing a structured system for the collection, processing and dissemination of information; and
- promoting the principles and objectives of this Convention in other international fora.

The substantive provisions form the core of this draft Convention. Administrative and institutional provisions are also offered but they should be seen as tentative proposals that are, and presumably must remain, relatively open-ended until all issues concerning the institutional setting of this Convention have been settled.

The references to UNESCO in this document (Articles 18-20) are not intended to impose responsibilities on this or any other organization. They are intended and should be considered as examples of possible ways of implementing these articles. UNESCO member states will consider the question of that organization's undertaking of the development of a convention on cultural diversity at the next General Conference in the fall of 2003.

PREAMBLE

The States parties to the present Convention:

Resolutely committed to applying the human rights and basic freedoms proclaimed by the Universal Declaration of Human Rights and by other universally recognized legal instruments, such as the 1966 international covenants on civil and political rights, and on economic, social and cultural rights;

Considering that the right of everyone to freely participate in the cultural life of the community is an inalienable human right conforming to the principle embodied in Article 27 of the Universal Declaration of Human Rights and in Article 15 of the United Nations International Covenant on Economic, Social and Cultural Rights;

Recalling the provisions of the UNESCO Declaration of the Principles of International Cultural Cooperation adopted in Paris in 1966, and particularly its Article 1 which states that “each culture has a dignity and value which must be respected and preserved”;

Having regard to the principles set out in the Universal Declaration on Cultural Diversity adopted by UNESCO on 2 November 2001;

Conscious, on the one hand, of the efforts needed to continue the process of cultural development and the preservation and promotion of cultural and linguistic expression at the national level; and conscious, on the other hand, of the need for receptivity to all cultures of the world;

Recalling that cultural diversity is one of the sources of creativity and one of the pillars of sustainable development and of economic and social development. Cultural diversity contributes to the dialogue among civilizations and to world peace;

Conscious in particular of the situation of developing and least developed countries, necessitating maximum flexibility in the domestic implementation of laws and regulations;

Recognizing the centrality of culture to identity formation and social cohesion;

Acknowledging the special needs to preserve and promote indigenous knowledge, traditional cultural expression, and intangible heritage;

Considering that the process of globalization, a potential source of mutual enrichment and exchanges between cultures, must be accompanied by measures designed to preserve and promote cultural diversity and to enhance international cooperation;

Recognizing the principles of freedom of expression and freedom of information and in particular that media pluralism is essential for democracy and for cultural diversity;

Convinced of the necessity of recognizing and respecting the right of States to develop and conduct policies to preserve and promote cultural diversity;

Determined to extend these policies by developing international rules and principles that provide a framework conducive to the development of exchanges and cooperation;

Agree to the following:

CHAPTER 1: DEFINITIONS, OBJECTIVES AND SCOPE

Notes on Definitions.

This Article provides the meanings of key terms and concepts as they are to be understood within the text of the draft Convention.

CHAPTER 1: DEFINITIONS, OBJECTIVES AND SCOPE

Article 1: Definitions

For the purpose of this Convention:

1. *Cultural diversity* refers to the plurality and interaction of cultural expressions that coexist in the world and thus enrich the common heritage of humanity.
2. *Cultural expression* refers to the creation, as well as the production, distribution, communication, exhibition and sale of cultural contents, in any medium or form, existing or to come.
3. *Cultural policies* refers to the framework of measures adopted by public authorities with respect to cultural expression and cultural diversity. Cultural policies may include, but are not limited to: creating conditions conducive to the diversity of cultural contents in particular by cultural industries with the resources to assert themselves nationally and globally; promoting public access to cultural life; promoting cultural diversity nationally and internationally; preserving cultural heritage; and, defending and promoting freedom of expression and media pluralism.
4. *Cultural content* refers to the creative output of individual creators and cultural industries which is typically protected by intellectual property rights and includes but may not be limited to: 1) the creative output of individuals in the performing arts, visual arts and crafts, architecture and design; 2) the sounds, images and texts of films, video, sound recordings, books, magazines, newspapers, broadcast programs and other forms of media including multimedia, whether now existing or to be invented, that are the creation of individuals or cultural industries; and 3) the collections and displays of museums, galleries, and libraries, including archives relating to the cultural heritage of a society.
5. *Cultural goods and services* are those goods and services that convey cultural content. They acquire their specificity because they convey values, meaning and identity, and therefore are not mere commodities.
6. *Cultural industries* refer to organizations, enterprises, and individuals that create, produce, publish, distribute, exhibit, provide or sell cultural contents.

Notes on Article 2.

The Objectives of this draft are drawn from the Objectives set out in the first draft. The development of this draft lead the Working Group to add an objective in this second draft, that of ensuring respect for the specificity of cultural goods and services.

Article 2: Objectives

The objectives of this Convention, as elaborated more specifically through its principles and rules, are to:

- ensure that cultural diversity is promoted and preserved in the face of the opportunities and challenges introduced by, inter alia, globalization, trade liberalization and technology.
- preserve the right of States to maintain or adopt the appropriate measures to the development of cultural expression and to the promotion of cultural diversity;
- serve as a frame of reference for all those States that consider the achievement and maintenance of cultural expressions and the preservation and promotion of cultural diversity itself as an essential component of globalization;
- reinforce international cooperation and solidarity aimed at enabling all countries, especially developing countries and least developed countries, to preserve and promote cultural diversity and to create and maintain cultural industries that project their cultural expressions on their national territory and throughout the world;
- ensure that the specificity of cultural goods and services is respected;
- provide a basis for the promotion of the principles of this Convention in other international fora, including international trade fora.

Notes on Article 3.

Under this definition of “Scope,” the provisions of this Convention would cover the cultural policies of the Parties to it. The definition of cultural policies is provided in Article 1.

The scope of the Convention is explicitly referred to in Article 13, which defines the mutual obligations of Parties under the Convention. In any determination of whether a Party is fulfilling its obligations to another Party, Article 13 states that one of the criteria that must be considered is explicitly whether the government measure in question falls within the scope of the Convention.

Article 3: Scope

This Convention applies to the cultural policies of the Parties.

CHAPTER II RELATION TO OTHER TREATIES

Notes on Article 4.

Article 4 contains a general non-prejudice clause.

Paragraph (1) follows the basic principles on the application of successive treaties relating to the same subject matter as enshrined in Article 30 of the Vienna Convention on the Law of Treaties. It should be noted, though, that this draft convention is not succeeding other conventions on the same subject matter, as there are no previous treaties on cultural diversity. There are, however, a number of existing treaties that relate to cultural diversity indirectly. As regards such rights or obligations of the Parties to each other that may have an impact on culture and cultural diversity, they have almost exclusively - and indirectly - been developed in the framework of the WTO, and especially in the GATS and TRIPS Agreements.

The question of relations with other Treaties and how it is articulated here will, to a significant degree, determine the position of many states and subsequently affect the chances of successful and prompt adoption of this Convention. According to this Article, this Convention cannot take precedence over any existing treaty or enable its Parties to derogate from their obligations to each other under other existing treaties. But following the same logic of international law, the Parties may not, as a general rule, derogate from their obligations to each other as agreed in this Convention in any future treaty or when developing or expanding any existing treaty.

As indicated previously, the proper articulation of the Convention and the international commitments to which Parties have subscribed otherwise is a central question. It is advisable to recognize the specific nature of cultural norms that carry a certain number of specific obligations, while at the same time ensure the proper articulation of this norm within existing law. The agreed formulation constitutes one of the possible solutions for this articulation of a future Convention with existing international agreements relating to commerce.

This particular topic is the subject of ongoing debate among experts; therefore the possible means by which to arrive at the proper articulation of the Convention and existing law, including trade law, must remain subject to discussion.

CHAPTER II: RELATION TO OTHER TREATIES

Article 4

Relation to Other Treaties

(1) Nothing in this Convention shall derogate from existing rights and obligations that Parties may have to each other under any other international Treaty.

CHAPTER III GUIDING PRINCIPLES

Notes on Article 5.

This principle relates to the political objective to ensure that cultural diversity is promoted and preserved in the face of the changes introduced, inter alia, by globalization, trade liberalization and technology.

The specificity of cultural goods and services is explained in the definitions in Article 1 by adding to the definition on cultural goods and services the role of cultural content in maintaining and recreating the cultural identity of peoples and communities.

Although it is obvious that cultural goods and services are often traded like other goods or services, thereby creating - especially from commercial perspective - a need for a predictable trading environment, it is just as obvious that trade policy rules and principles neither take, nor intend to take, into account specificities of any sector or service. The point of departure for this Convention is, however, that the preservation and promotion of cultural diversity necessitates that the specificity of cultural goods and services is not only acknowledged, but also actively taken into account when developing or implementing measures that may have an impact on cultural diversity. Consequently, Article 5 confers the Parties the general responsibility to take due account of that specificity.

Because of the very nature of the subject matter of this Convention, it is up to each Party to decide, on the basis of its specific conditions, how to take that specificity best into account.

The current Article is to be seen as incorporating cultural policy questions as horizontal concerns for other policies in the same vein as Article 151(4) of the Treaty Establishing the European Community. Insofar as development or implementation of other policies may have negative effects for the preservation or promotion of cultural diversity or for the capacity of a Party to develop or implement its policies for that purpose, this paragraph holds an important defensive/pre-emptive purpose.

CHAPTER III: GUIDING PRINCIPLES

Article 5

Specificity of Cultural Goods and Services

(1) When devising national or international policies or measures, the Parties shall take into account the specificity of cultural goods and services.

Notes on Article 6.

Article 6 relates to the objective to preserve the right of States to maintain or adopt the measures that they consider appropriate to the development of cultural expression and to the promotion and enhancement of cultural diversity.

When the Parties have an obligation to preserve and promote cultural diversity and the sovereign right to adopt appropriate measures for that purpose, there is no reason to include stipulations on any particular measure. For the sake of clarity it should be stated, however, that this Article covers expressly financial and fiscal, legal and regulatory, and support measures.

One of the purposes of Article 6 is to clarify what sometimes appears to be the obscure relationship between different policies by referring to the sovereign rights of States for their policies. Even though taking on obligations with respect to each other - and thereby voluntarily limiting one's flexibility - is part and parcel of international treaties, it is always the sovereign right of States to accede, or not, into any particular treaty containing such obligations. For example, processes to develop obligations or to extend their scope and coverage in one field in no way “pre-empts” the development of obligations in another. Ensuring the coherence of different obligations is key.

Together with the obligation in Article 9 to develop cultural policies for the preservation and promotion of cultural diversity, the first part of Article 6 establishes the frame to preserve and promote cultural diversity through cultural policy measures at national level. As regards the preservation and promotion of cultural diversity globally, the latter part of this Article lays down a general commitment for the Parties to that extent by stipulating that they have a shared responsibility to do so. Furthermore, this Convention not only allows for, but also obliges, the Parties to co-operate in developing common responses to policy challenges.

Article 6

Right and Responsibility of Parties to Preserve and Promote Cultural Diversity

(1) The Parties reaffirm, in accordance with the Charter of the United Nations and the principles of international law, their sovereign right to take measures to preserve and promote cultural diversity within their jurisdictions, and, in line with the provisions of this Convention, take on the shared responsibility to preserve and promote it globally.

Notes on Article 7

This Article relates to the objective to ensure that cultural diversity is promoted and preserved in the face of the changes introduced, inter alia, by globalization, trade liberalization and technology.

The principle of balance is a key provision in the Convention. It is necessary for the development of a rules-based approach and for preventing the creation of a *carte blanche* effect that could enable the application of protectionist measures that would be contrary to the objectives of this Convention.

The principle of balance puts an unprecedented emphasis on the availability of cultural goods and services from other Parties, in the territory of a Party, by obliging the Parties to take into account the impact on the availability of foreign cultural goods and services of domestic policies and measures they may be developing or implementing. Consequently, the principle of balance creates a guiding principle for the Parties when developing their domestic policies and measures and represents simultaneously an important element in the promotion of cultural diversity internationally.

Article 13 lays down more detailed rules as regards the impact of domestic cultural policy measures to other Parties, their cultural industries or goods and services.

Article 7

Balance

(1) Any measure taken by a Party to preserve or promote domestic cultural expression must respect balance between the promotion of domestic cultural expression and openness to cultural content from other Parties.

Notes on Article 8

The objective of the Convention is to not provide a *carte blanche* to States that would allow the implementation of any measures, including protectionist measures. The principle of balance (Article 7) foresees that when the Parties define their cultural policies they seek to attain a balance between the preservation and the promotion of cultural expression at the national level and openness to other cultures. However, this arrangement is only credible if Parties commit themselves to ensuring the transparency of their cultural policies.

Another objective of this draft Convention is to increase cooperation between Parties with respect to measures to preserve and promote cultural diversity, notably by facilitating the exchange of information and best practices (Article 14). This co-operation should be the object of a follow-up to which Parties commit themselves (Article 15). The objective of this proposed increased cooperation and follow-up of the Convention is based on the agreement of Parties to ensure the transparency of their cultural policies.

Increasing the transparency of cultural policies is a crosscutting objective that forms part of the general principles of this draft Convention.

Article 8

Transparency

(1) Parties shall ensure transparency in the development and implementation of their cultural policies.

CHAPTER IV GENERAL OBLIGATIONS

Notes on Article 9

This Article relates to the objective of ensuring the preservation and promotion of cultural diversity.

Article 6 sets out a “soft” obligation for the parties to develop cultural policies following the principles set out in this Convention. The Article accommodates for the special treatment of developing and least developed country Parties that may not have the necessary capacities to develop and implement fully-fledged cultural policies. However, if and when Parties develop the cultural policy framework referred to in Article 9, they are obliged to take into account the principles of this Convention. Subsequently, the Article has wide ranging effects in guiding the development of cultural policies of the Parties, as well as a critical function in the structure of the Convention.

CHAPTER IV: GENERAL OBLIGATIONS

Article 9

Development of Cultural Policies

(1) Each Party shall, in accordance with its particular conditions and capabilities, develop a cultural policy framework for the preservation and promotion of cultural diversity in line with the principles and objectives of this Convention.

Notes on Article 10

Article 10 relates to the objective of reinforcing international co-operation and solidarity, and lays down an obligation to work with developing and least developed parties.

Article 16 contains more specific modalities of such co-operation.

Article 10

Preservation and Promotion of Cultural Diversity in the Developing and Least Developed Country Parties

(1) The Parties shall co-operate for the development and strengthening of resources and capacities of developing and least developed country Parties in the preservation and promotion of cultural diversity in line with the principles and objectives of this Convention.

Notes on Article 11

This Article corresponds to both the objective of ensuring that cultural diversity is preserved and promoted and the objective of the Convention to serve as a frame of reference.

Article 11 lays down an obligation for the Parties to co-operate in order to genuinely increase the cross-border circulation of cultural goods and services. It is an active provision to promote cultural diversity among the Parties. As such, it represents a co-operative complement to Articles 7 and 13, which oblige the Parties to balance their measures supporting domestic cultural expression with openness to cultural goods and services from other Parties.

Article 14 contains more specific modalities for co-operation.

Article 11

Availability of Cultural Content

(1) The Parties shall consult among themselves so as to identify measures and best practices to facilitate the availability, in the territory of Parties, of cultural content from as many other Parties as possible.

Notes on Article 12

The Article puts forward obligations for the Parties to promote the principles and objectives of this Convention in other international fora and to consult each other for that purpose. These obligations give the Convention a dynamic dimension. In order to fulfil these obligations, the Parties regularly reflect on the situation of cultural diversity and exchange views on developments in other international fora that may have an impact on the principles and objectives of this Convention and/or on its implementation.

Due to increasing, as well as increasingly, binding multilateral co-operation in sectors such as trade and investment, traditional sector specific cultural policies are in a decisively disadvantageous position vis-à-vis such multilateral policies.

Therefore, developing structured exchange of views within this Convention is intended, as stipulated in Paragraph (2), to promote coherence between different policies. Article 12 complements national cultural policies by facilitating the development of a multilateral dimension to cultural policy.

The obligation to promote the principles and objectives of this Convention in other international fora may not be interpreted as representing an attempt to derogate from any existing obligations. To the contrary, this provision intends to help ensure coherence between different policies in an era marked by important transformations in the scope and coverage of different policies. This Article should prevent the development of, if not help to clarify, “grey areas” (i.e. situations where two or more policies, with their distinct or even contradictory approaches, claim to have competence over a particular sector).

If, in spite of the efforts to ensure coherence, a Party considers that full coherence has not been achieved, the “best endeavour” clause introduced in Paragraph (3) calls for that Party to make a good faith effort to interpret other Treaties in a manner that enables it to comply with the rights and obligations contained in this Convention

The agreed formulation invites Parties to assure the coherence of their international commitments. The means to attain this objective of coherence could be specified in future discussions.

Article 12

Promotion of Cultural Diversity Objectives and Coherence

- (1) The Parties shall consult so as to promote the principles and objectives of this Convention in other international fora.
- (2) When consulting according to the preceding Paragraph, the Parties shall seek to ensure coherence between their respective rights and obligations under this Convention and under any other Convention that may have an impact on cultural diversity.
- (3) The Parties make their best endeavour to interpret and apply existing treaties in a manner that does not prejudice the principles and objectives of this convention.

CHAPTER V: OBLIGATIONS OF PARTIES TO EACH OTHER

Notes on Article 13

Article 13 relates to the objective of preserving and promoting cultural diversity.

Article 13 complements the more general Article 7 and guarantees that domestic cultural policy measures cannot be used in a manner that would be inconsistent with the basic objective of promoting cultural diversity by way of facilitating the availability of cultural goods and services from other Parties in the territory of a Party.

This Article sets out the obligations of Parties to each other under this Convention. Consequently, Article 13 is the rules-based approach within this Convention and gives this text the legal structure of a convention.

Given the expansion of, or the attempts to expand, the scope and coverage of a number of other policies, such as trade and investment, the need for proactive development of a rules-based approach within cultural policy cannot be over-stressed. This Convention, and this Article in particular, are intended to be seen as cultural policy's response to such developments - a way to bring culture in from the margins and a way for cultural policy to take responsibility for its own relevance and place among the key policies in the globalizing world.

Only breaches of the obligations of Parties under this Article can become subject to dispute settlement. Other obligations contained in this Convention, while equally binding, relate to obligations that the Parties take with respect to themselves and to issues that do not affect other Parties or their cultural industries or content. No other offensive rights are created: the Parties are not granted the possibility to contest the appropriateness of policies or measures that the other Parties take or do not take with respect to themselves. (For example, Party X may not initiate dispute settlement against Party Y because it feels that Party Y has not developed a proper cultural policy framework according to Article 9.)

CHAPTER V: OBLIGATIONS OF PARTIES TO EACH OTHER

Article 13

Obligations of Parties to Each Other

(1) When taking a measure that may have an impact for other Parties, their cultural industries or cultural goods and services, the Party taking that measure shall ensure that the measure is consistent with the principles and objectives of this Convention.

(2) When determining whether a measure meets the requirements of Paragraph (1), and in accordance with the mechanisms provided for within Article 18, criteria such as the following shall be considered:

- (a) Does the measure fall within scope of this Convention;
- (b) Does the measure reflect the objectives of this Convention (e.g. specificity of cultural goods and services);
- (c) Does the measure respect the principle of balance, when the actual market situation and competitive conditions are taken into account;
- (d) Has the measure been implemented in a reasonable and transparent manner?

CHAPTER VI: COOPERATION

Notes on Article 14

This Article relates to the objectives of preserving and promoting cultural diversity and the use of the Convention as a frame of reference.

Paragraph (1) makes specific reference to different cultural co-operation agreements as possible means to enhance co-operation. The thrust is not to revert to the idea of government-led cultural exchange programmes, but rather to encourage more specific and dynamic co-operation arrangements and frameworks. Article 14 takes fully into account the realities of cultural and audiovisual sectors of the different Parties; especially the fact that the availability of cultural goods and services from other Parties, and subsequently cultural diversity, can be enhanced only by way of co-operation and positive policy measures.

The provision in sub-Paragraph 14(1)(b) should also be seen as encouraging both the creation and networking of cultural policy bodies (e.g. observatories) to improve the collection of information that may be used by the Parties to develop their cultural policy frameworks according to Article 9 and carry follow-up activities under Article 15. These efforts should be consistent with other multilateral statistical frameworks such as those of UNESCO.

Paragraph (2) enables the Assembly of Parties (See Article 19) to develop co-operation also on other issues consequently guaranteeing that the Convention provides a flexible framework of co-operation for the Parties.

CHAPTER VI: COOPERATION

Article 14

Co-operation Between Parties

(1) Parties shall facilitate co-operation, including the conclusion of appropriate bi-, pluri- or multilateral cultural co-operation agreements, in the following areas:

- (a) Co-operation and exchange between their respective cultural industries, professionals in the field of arts and culture and cultural institutions;
- (b) Development of a structured system for the collection, processing and dissemination of information, statistics, and best practices relevant for the preservation and promotion of cultural diversity, including the development of cultural diversity indicators.

(2) The Assembly of Parties may agree to develop co-operation on any other issue that it considers useful for the promotion of the objectives or for the implementation of this Convention.

Notes on Article 15

This Article introduces the obligation for the Parties to organize follow-up. Follow-up must be given an important role in the implementation of any effective Convention.

There is a clear deficiency, from cultural policy point of view, in trade policy agreements as they, according to their scope, concentrate only on policy measures that may have an impact on trade and pay no attention to the impact of measures on the markets. This Convention shall complement the application of its principles and disciplines with careful assessments of its actual impact.

Article 15

Follow-up

(1) The Parties shall organise follow-up so as to assess the effects of this Convention to the preservation and promotion of cultural diversity.

CHAPTER VII: DEVELOPMENT COOPERATION

Notes on Article 16

This Article relates to the objective of reinforcing international co-operation and solidarity.

It should be noted that the areas of Intellectual Property Rights, integration of Information Communications Technologies (ICTs) in the production of cultural goods and services, and partnerships to build capacity for cultural practitioners in policy development and implementation, enterprise development and cultural management are priorities for developing and least developed countries. The purpose of the capacity enhancement referred to in 2(c) is to maximize the ability of developing and least developed countries to effectively contribute to the cultural arena both domestically and internationally.

The current Article complements Article 10 by articulating that specific procedures shall be established, by singling out priority areas of co-operation, and by setting out provisions as to the type of co-operation.

The emphasis in this article is on the development of cultural policy frameworks of both developing and least developed country Parties, and on improving the capacity of their cultural industries. The underlying idea for both is to support the efforts by these countries to build foundations for their cultural creativity and thereby enable them to assert their cultural identity nationally and internationally. Insofar as these efforts are successful, they should contribute to the overall objective of promoting cultural diversity by increasing the cross-border circulation of cultural goods and services.

CHAPTER VII: DEVELOPMENT COOPERATION

Article 16

Technical Assistance and Capacity Building

(1) The Assembly of Parties shall establish procedures for technical assistance and capacity building for the preservation and promotion of cultural diversity in developing country and least developed country Parties.

(2) When implementing the activities referred to in the preceding Paragraph, Parties pay particular attention to the needs of developing and least developed country Parties to:

- (a) develop and implement their cultural policies;
- (b) preserve and promote their cultural expression;
- (c) enhance the capacity of their cultural industries, professionals in the field of arts and culture, and cultural institutions to participate in international cultural exchanges.

(3) Developed country Parties facilitate cultural exchanges with developing and least developed country Parties as well as the access of cultural content from developing and least developed country Parties to their territories by giving these Parties and their cultural industries, professionals in the field of arts and culture, and cultural institutions such beneficial treatment as may be possible, including, if appropriate, national treatment.

Notes on Article 17

In order to ensure concrete co-operation for technical assistance and capacity building, this Article establishes a Development Fund.

Detailed rules and procedures are not developed under Article 17. As is the case with other questions of administrative nature, they are mostly left for the Assembly of Parties to develop. The objective is nevertheless, to create a structure that will maximise the proportion of funds that will be allocated to the actual assistance and capacity building activities in developing and least developed countries. The potential of such a fund having tangible outcomes will be heavily reliant on financial commitments to the fund from developed country member states.

The Fund shall be financed mainly by the Parties, but contributions from non-Parties and other stakeholders, such as multilateral fora, may be accepted and should be sought.

The reference to UNESCO suggests (and does not intend to impose) UNESCO as the administrative home of the Development Fund.

Article 17

Development Fund

(1) A Fund shall be established to finance technical assistance and capacity building activities under this Convention.

(2) The Fund shall be financed by the Parties. Both obligatory and voluntary contributions by the Parties may be used to establish and operate the Fund.

(3) The preceding Paragraph notwithstanding, contributions from non-Parties and any other stakeholder may be accepted according to the rules and principles to be established by the Assembly of Parties.

(4) The Assembly of Parties shall establish the rules and procedures for the operation of the Fund.

[(5) The Director General of UNESCO shall assure the administrative duties of the Fund.]

CHAPTER VIII: DISPUTE SETTLEMENT

Notes on Article 18

Obligations that the Parties take with respect to each other give conventions their legal force. Dispute settlement does not, as such, add to the binding nature of a convention, but gives the Parties concrete means to ensure its enforcement.

There can only be a dispute settlement system in a convention where the Parties take obligations to each other such as set out in Article 13 of this draft. In the absence of such obligations the establishment of a dispute settlement system would imply the development of offensive rights for Parties to interfere with each other's internal policies. That, of course, is not intended.

Paragraph (3) outlines a standard sequence of events in the case of a dispute.

Paragraph (4) states that the Parties are to implement the results of dispute settlement in good faith.

CHAPTER VIII: DISPUTE SETTLEMENT

Article 18

Dispute Settlement

- (1) In the event of a dispute between Parties concerning their obligations to each other, the Parties that are party to the dispute shall consult among themselves.
- (2) In the event that the consultations referred to in the preceding Paragraph do not result in a satisfactory resolution of the dispute, either Party may submit the matter to the dispute settlement procedure.
- (3) The Assembly of Parties shall establish the rules and procedures for a dispute settlement mechanism that would include, firstly, consultations between the Parties to the dispute, secondly, the use of good offices of a third Party, and, finally, the setting up of a panel of cultural experts.
- (4) The Parties shall implement the results of the dispute settlement procedure in good faith.

CHAPTER IX: ADMINISTRATIVE AND FINAL PROVISIONS

Notes on Article 19

Article 19 establishes the Assembly of Parties. The Assembly shall be responsible for all aspects relating to the implementation of this Convention. Consequently, the Assembly and its functioning will be the key to the effective implementation of this Convention.

The approach taken here is one where a number of important issues are left for the Assembly to deal with. The reason is a pragmatic one: the will to facilitate the prompt preparation and adoption of this Convention without any undue delays. Furthermore, it would not necessarily be prudent to develop detailed administrative provisions at this stage. For the sake of transparency and equality that work is better left for the Parties themselves to do.

Follow-up to the Convention is ensured by a Conference of the Parties in which each Party is represented. This mechanism risks being relatively cumbersome. Paragraph (5) offers the possibility of setting up subordinate bodies to ensure effective implementation.

In light of its current consideration of its role in the elaboration a convention on cultural diversity, Paragraph (7) suggests (and does not intend to impose) UNESCO as the administrative home of this Convention.

CHAPTER IX: ADMINISTRATIVE AND FINAL PROVISIONS

Article 19

Assembly of Parties

(1) An Assembly of Parties shall be established. The Assembly shall be composed of all the Parties to this Convention.

(2) The Assembly of Parties shall be responsible for carrying out the tasks and duties given to it by this Convention, including:

(a) establishing the procedures and other modalities for consultation in order to facilitate the availability of cultural content from other Parties (Article 11);

(b) establishing the procedures and other modalities for consultation in order to promote the principles and objectives of this Convention in other international fora (Article 12);

(c) establishing the procedures and mechanisms to promote co-operation (Article 13);

(d) establishing the procedures and other modalities for technical assistance and capacity building for the preservation and promotion of cultural diversity in developing and least developed country Parties (Article 16);

(e) facilitating the conclusion of appropriate co-operation agreements (Article 14);

(f) organising the follow-up of this Convention.

(3) The Assembly of Parties may take on any additional tasks and duties so as to ensure effective implementation of this Convention;

(4) The Assembly of Parties shall establish its own rules of procedure;

(5) The Assembly of Parties may set up such subordinate bodies as may be useful for the effective implementation of this Convention

(6) The Assembly of Parties shall also establish the rules and procedures for the possible revision of the provisions of this Convention

[(7) The Director General of UNESCO shall perform the administrative tasks for this Convention.]

Notes on Article 20

Article 20 contains provisions on the membership and observers to this Convention.

In addition to the Member States of UNESCO, this Convention shall be open for accession by regional economic integration organizations, including the European Union. Openness for non-states is enabled because a number of decisions affecting cultural diversity are taken by states in a multi- or plurilateral context. If organizations where such decisions are made were to become Parties to this Convention, that should improve the coherence of different policies.

The status of Observer is provided for in Paragraph (2) for intergovernmental organizations or states interested in the promotion and preservation of cultural diversity.

Article 20

Membership and Observers

(1) This Convention shall be open for accession by the Member States of UNESCO, as well as regional economic integration organisations.

(2) The Assembly of Parties may grant the status of Observer to any other state or intergovernmental organisation that is interested in the preservation and promotion of cultural diversity. The Observers are not entitled to vote.