CONVENTION ON THE PROTECTION AND PROMOTION\(^1\) OF THE DIVERSITY OF CULTURAL CONTENTS AND ARTISTIC EXPRESSIONS

ARTICLE 1 - OBJECTIVES

The objectives of this Convention are:

The objective of this Convention is to create a framework that encourages cooperation and dialogue among States Parties to promote cultural diversity, in order to:

(a) to protect and promote the diversity of cultural contents and expressions and to foster intercultural respect;
(b) to give recognition to the distinctive nature of cultural goods and services as vehicles of identity, values and meaning;
(c) 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;
(d) to create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner;
(e) to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of a culture of peace;
(f) to foster respect for the diversity of cultural expressions and raise awareness of its value at the local, national and global levels;
(g) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to fostering the capacities of developing countries to protect and promote the diversity of cultural expressions;

\(^1\) INCD urges that the title incorporate the concept of “promotion” in addition to “protection” to conform to the substantive provisions contained in the Convention.
(h) 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 its true value.

(i) to foster interculturality in order to develop cultural interaction with the spirit of building bridges among peoples.

(Articles 1 (a)-(i) – As recommended by the Drafting Committee with the removal of all brackets)

ARTICLE 2 - PRINCIPLES

1. Principle of respect for human rights and fundamental freedoms

No one may invoke the provisions of this Convention in order to infringe human rights guaranteed by international law or to limit the scope thereof. Cultural diversity can be protected and promoted only if fundamental freedoms such as freedom of expression, information and communication as well as the ability of individuals to choose cultural expressions are guaranteed.

2. Principle of Access

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.

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

The protection and promotion of the diversity of cultural expressions presupposes 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 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.
5. Principle of international solidarity and cooperation

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

6. Principle of sustainability

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

7. 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 the other cultures of the world and to ensure that these measures are geared to the objectives pursued under the present Convention.

States, when adopting measures that they deem relevant to support the diversity of cultural expressions at the national level, States Parties shall should guarantee, in an appropriate manner, openness to other cultures of the world and ensure that these measures conform are adapted to the objectives of the present Convention.

8. Principle of Sovereignty

Principle of Sovereign Equality

States have, in accordance with the Charter of the United Nations and the principles of

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2 Grammatical correction.
3 INCD proposes these changes to strengthen the Principle. INCD notes that the clause, “in an appropriate manner,” provides sufficient flexibility to States Parties.
international law, the sovereign right to adopt measures and policies *that they deem appropriate*\(^4\) to protect and promote the diversity of cultural expressions within their territory.

*(Article 2 – Except as specifically noted, this text is as recommended by the Drafting Committee with the selection of an option where that is provided and the removal of all brackets.)*

**ARTICLE 3 - SCOPE OF APPLICATION**

This Convention shall apply to the policies and measures by the States Parties that have an impact on the diversity of cultural expressions.

*(Article 3 – As recommended by the Drafting Committee with the removal of all brackets.)*

**ARTICLE 4 - DEFINITIONS**

1. Cultural Diversity

"Cultural diversity" refers to the manifold ways in which the cultures of social groups and societies find expression. These expressions are passed on within and among societies and are not necessarily confined by national borders.

From the diverse forms taken by culture over time and space stem the uniqueness and plurality of the identities and cultural expressions of the peoples and societies that make up humankind.

Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humankind is expressed, protected, augmented and transmitted to future generations but also through the variety of cultural expressions which are borne by cultural goods and services, as well as through diverse modes of production, dissemination, distribution and consumption, whatever the means and technologies used.

\(^4\) This wording is used in Article 1(c).
2. Cultural Expressions

[Cultural expressions,] are the expressions/manifestations that are conveyed by [goods, services] and activities that result from the creativity of individuals, groups and societies, which have [cultural content]. The [cultural content,] of such [goods, services] and activities includes the symbolic meaning, the artistic dimension and cultural values that may be conveyed through them.

“Cultural contents”, include the values and symbolic meanings and identities which are created and conveyed by individuals, groups and societies.

"Cultural expressions”, comprise the goods, services and activities that are carriers of convey cultural contents as defined above.

"Artistic expressions”, of these goods, services and activities are an aesthetic expression resulting from creativity.

3. Cultural Goods and Services

"Cultural goods and services" (a non-exhaustive list of which is annexed to the Convention, see Annex I) refer to are those goods, services and activities that embody or yield cultural expressions and have the following characteristics:

(a) they are the outcome of human labour (industrial, artistic or artisanal) and require the exercise of human creativity for their production;

(b) they express or convey some form of symbolic meaning, which endows them with a cultural value or significance distinct from whatever commercial value they may possess;

c) they generate, or may generate, intellectual property, whether or not they are protected under existing intellectual property legislation.

4. Cultural industries

The term "Cultural industries" refers to industries producing and distributing cultural goods and services as defined above.\(^5\)

\(^5\) The deleted words are redundant.
5. Cultural policies

"Cultural policies" refers to policies, which address or affect, whether at the local, regional, national or international level, any aspect of the cultural expressions of an individual, community, or society, including the creation, production, distribution, dissemination of, access to, and preservation of, cultural goods and services.

6. Interculturality

"Interculturality" refers to the presence and equitable interaction of diverse cultures and the possibility to generate shared cultural contents acquired through dialogue and an attitude of mutual respect.

(Article 4 – Except as noted, Article 4 as recommended by the Drafting Committee, with options selected and the removal of brackets.)

ARTICLE 5 - GENERAL RULES ON RIGHTS AND OBLIGATIONS

1. The States Parties, in conformity with the obligations they have assumed under the Charter of the United Nations, the principles of international law and universally recognized human rights instruments to which they are parties, and consistent with other international obligations, reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures, of a kind and in a manner that they deem appropriate, to protect and promote the diversity of the cultural expressions within their territory and recognize their obligations to protect and promote it both within their territory and at the international level.

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6 INCD notes that heritage institutions are an important component of the cultural sector and many States do or may implement policies concerning libraries, museums, galleries and other heritage institutions. This must be reflected in the Article.

7 INCD observes that the bracketed text which has been deleted is superfluous, in light of the requirement to conform to “principles of international law.”

8 This will strengthen the right and conforms to wording in Article 2(8).
2. When a State Party takes measures to protect and promote the diversity of cultural contents and expressions within its territory, its measures shall conform to the provisions of this Convention and other international obligations.

3. No State Party may invoke the provisions of the present Convention to infringe human rights guaranteed under international law or to restrict their scope.

(Article 5 – As recommended by the Drafting Committee with options selected.)

ARTICLE 6 - RIGHTS OF STATES PARTIES AT THE NATIONAL LEVEL

1. Within the framework of its cultural policies as defined in Article 4.5, consistent with its international obligations and taking into account its own particular circumstances and needs, each State Party may adopt measures, such as regulatory and financial measures, aimed at protecting and promoting the diversity of cultural expressions within its territory. These measures may include those that take into consideration cases where cultural diversity is threatened or in a situation of vulnerability.

2. Such measures may include the following:

   (a) measures which, in an appropriate manner, reserve a certain space for domestic cultural goods and services among all those available within the national territory, in order to ensure opportunities for their production, distribution, dissemination and consumption; and include, where appropriate, provisions relating to the language used for these above-mentioned goods and services.\textsuperscript{10}

\textsuperscript{9} INCD believes this is a fundamental obligation and notes that other language in this Articles 6.1 and 6.2 provide sufficient flexibility to governments.

\textsuperscript{10} Grammatical changes only.
(b) measures which aim at providing domestic independent cultural industries with effective access to the means of producing, disseminating and distributing cultural goods and services;

(c) measures aimed at providing public financial aid; in granting such aid, States Parties may determine the nature, amount and beneficiaries thereof;

(d) measures which aim at: developing and promoting the free exchange and circulation of ideas, cultural expressions and cultural goods and services; encouraging non-profit organizations and government public service institutions; and stimulating both the creative and the entrepreneurial spirit;

(e) measures which aim at establishing, encouraging and supporting appropriate public service institutions; and

(f) measures which aim at encouraging and supporting the creators of cultural expressions.

(Article 6 – Except as noted, as recommended by the Drafting Committee with options selected and brackets removed.)

ARTICLE 7 - OBLIGATION TO PROMOTE AND PROTECT THE DIVERSITY OF CULTURAL EXPRESSIONS AND CONTENTS

1. States Parties shall endeavour to create in their territory an environment that encourages individuals and social groups:

   (a) to create, produce, disseminate, distribute, and have access to their own cultural contents and expressions, goods and services, paying due attention to the special circumstances and needs of the various social groups, in particular, minorities and indigenous peoples;

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11 Grammatical change only.
12 INCD notes that “public service institutions are covered in (e).” Different punctuation marks allow the clause to be understood.
(b) to have access to the cultural expressions and cultural goods and services of representing cultural diversity in other countries of the world.\(^{13}\)

2. States Parties shall also endeavour to recognize the important contribution of artists, creators, cultural communities, and the organizations that support their work, and their central role in nurturing the diversity of cultural expressions.

3. States Parties shall ensure intellectual property rights are fully respected and enforced according to existing international instruments to which States are parties, particularly through the development [or strengthening] of measures against piracy.\(^{14}\)

4. States Parties undertake to ensure in their territory protection against unwarranted appropriation of traditional, indigenous\(^{15}\) and popular cultural contents and expressions, with particular regard to preventing the granting of invalid intellectual property rights.

\textit{(Article 7 – Except as noted, as recommended by the Drafting Committee with options chosen and brackets removed.)}

\section*{ARTICLE 8 - OBLIGATION TO PROTECT VULNERABLE FORMS OF CULTURAL EXPRESSION}

If some forms of cultural expressions are deemed to be vulnerable, or threatened by the possibility of extinction or serious curtailment (hereafter referred to as “situations”), States Parties shall take appropriate measures to protect the diversity of cultural expressions within their territory according to the following provisions:

(a) each State Party may at any time bring before the Intergovernmental Committee referred to in Article ___ situations which may require action under this Article. Such situations shall be identified in conformity with the criteria

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\(^{13}\) These changes are required for clarification purposes.

\(^{14}\) INCD endorses recognition of the need to respect and enforce intellectual property rights. However, highlighting only one aspect of the issue may weaken the clause overall.

\(^{15}\) This provides greater certainty.
established by the Intergovernmental Committee or [the Advisory Group referred to in Article 22], exception being made for cases covered by existing international instruments relating to the protection of cultural heritage;

(b) the Intergovernmental Committee shall consider each case according to criteria it establishes by the Advisory Group. In cases Where the Intergovernmental Committee determines that action is necessary, it shall require the relevant State Party or Parties to take appropriate measures within a reasonable period of time;

(c) a State Party required to take appropriate measures by the Intergovernmental Committee may, through this body, seek international cooperation and assistance in identifying the necessary resources for effective action.

(Article 8 – As contained in the original text and modified for consistency and recognizing the decision to remove the proposed Advisory Group.)

ARTICLE 9 - OBLIGATION OF INFORMATION AND TRANSPARENCY

States Parties shall:

(a) designate or appoint a point of contact responsible for information-sharing with relation to this Convention;

(b) share and exchange information relating to the protection and promotion of the diversity of cultural expressions

(c) provide a written report to UNESCO every four years of the new measures that have been taken to protect and promote the diversity of cultural expressions within their territory.

(Article 9 – As recommended by the Drafting Committee with grammatical changes and brackets removed.)
ARTICLE 10 - EDUCATION AND PUBLIC AWARENESS

States 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 programmes, knowledge and public awareness building;

(b) cooperate, as appropriate, with other States Parties and international and regional organizations in developing, *inter alia*, educational and public awareness programmes relating to the protection and promotion of the diversity of cultural expressions.

(c) endeavour to encourage creativity and strengthen production capacities by setting up education, training and exchange programmes for in the field of cultural industries. without having a negative impact on traditional forms of production.

(Article 10 – As recommended by the Drafting Committee with brackets removed and changes to ensure the language has meaning.)

ARTICLE 11 – PARTICIPATION OF CIVIL SOCIETY

States Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural contents and expressions. States Parties shall work in close association with civil society to achieve the objectives of this Convention.

States Parties shall, as appropriate, may encourage civil society to participate actively in the protection and promotion of the diversity of cultural contents and expressions, and shall, as appropriate, may foster the participation of civil society in their efforts in this domain.

(As recommended by two States in the Report of the Drafting Committee and as put forward collectively by the NGOs.)
ARTICLE 12 – PROMOTION OF INTERNATIONAL COOPERATION

States Parties shall endeavor 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 different forms of vulnerability of such expressions, in order to, inter alia:

(INCD urges the deletion of “endeavour to” to ensure the Article establishes a substantive obligation on States Parties.)

a) facilitate dialogue among States 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;

c) reinforce partnerships with and among civil society, non-governmental organizations and the private sector in fostering and promoting the diversity of cultural expressions.

d) promote the exchange of information and expertise through data collection, analysis and dissemination of information, through existing mechanisms and institutions such as the UNESCO Institute of Statistics.

e) promote the use of new technologies and encourage innovative partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions.

16 These words are redundant.
f) encourage, when possible and appropriate, the conclusion of production and co-distribution agreements.

(Article 12 – Except as noted, as recommended by the Working Group)

ARTICLE 13 – PROMOTION OF THE CENTRAL ROLE OF CULTURE IN SUSTAINABLE DEVELOPMENT

1. State Parties shall endeavour to incorporate the dimension of culture in their development policies. Likewise they commit themselves to cooperate and cooperate for the creation of international conditions conducive to sustainable development which is inseparable from cultural development, and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions.

2. In pursuance of the objectives of this Convention, States Parties shall encourage the development of innovative 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 and the increase of the exchange of cultural goods and services. These innovative partnerships shall, according to the practical needs of developing countries, emphasize the development of necessary infrastructure, human resources and policies necessary for the sustainable utilization of cultural resources.

3. States Parties shall endeavour to cooperate with developing countries to support, promote and enhance sustainable development and foster the emergence of a dynamic cultural sector in those countries, according to their specific needs, by inter alia: 17 support cooperation for sustainable development, according to the specific needs of

17 INCD believes this language will provide greater clarity to the Article.
developing countries, 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 by;

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

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

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

(iv) the adopting, where possible, of appropriate measures in developed countries with a view to improving facilitating access to their territory for the cultural goods and services of developing countries;

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

(vi) encouraging, when possible, of appropriate innovative collaborations between developed and developing countries in the areas of, *inter alia*, music and film.\(^\text{18}\)

(b) Capacity building by the exchange of information, experience and expertise, as well as the training of human resources in developing countries, *inter alia*, in the public and private sector strategic and management capacities, policy development and implementation, marketing of cultural goods and services, small, medium and micro enterprise (SMME) development, the use of technology, and skills development and transfer.

\(^{18}\) Changes in 3(a) are required for purposes of grammatical consistency.
(c) Technology transfer by the introduction of appropriate incentive measures for the transfer of technology and know-how, notably in the areas of cultural industries and enterprises.

(d) Financial support by:

i) the establishment of an International Fund for Cultural Diversity, contributions to which will be voluntary and the modalities of which shall be determined by the General Assembly of States Parties to the Convention.

(ii) the provision of official development assistance, as appropriate, including technical assistance, to stimulate and support creativity.

(iii) Other forms of financial assistance such as low interest loans, grants and other innovative funding mechanisms.

(Article 13 – INCD urges the deletion of “endeavour to,” and the removal of conditional clauses, to ensure the Article establishes a substantive obligation on States Parties. All other provisions are as recommended by the Working Group except for necessary language and grammatical modifications.)

ARTICLE 14 – PREFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional frameworks, expedited temporary rights of entry and other preferential treatment to their artists and other cultural professionals and practitioners, as well as to their cultural goods and services, with a view to assisting developing countries to promote and protect the diversity of cultural expressions, in accordance with their international obligations.

19 INCD believes this will strengthen the commitment.
(Article 14 – as recommended by the Working Group. INCD notes that this clause is NOT redundant with Article 13.3(a) since the latter is dealing exclusively with “cultural industries.” Article 14 addresses the totality of the sector.)

ARTICLE 15 – VULNERABLE FORMS OF CULTURAL EXPRESSION

In the application of Articles 12 - 14, States Parties shall endeavour to provide appropriate recognition, and attention and action to endangered and vulnerable forms of cultural expression, specifically those that are at the risk of extinction, as well as to cultural actors facing discrimination, marginalization or exclusion, such as persons belonging to minorities and indigenous peoples.

(Article 15 – as recommended by the Working Group. If Article 8 is retained as drafted in this version, Article 15 could be deleted.)
SECTION IV – RELATIONSHIP WITH OTHER INSTRUMENTS

ARTICLE 16 – RELATIONSHIP TO OTHER INSTRUMENTS

INTERNATIONAL CONSULTATION AND COORDINATION

1. States Parties shall bear in mind the objectives of this Convention when making any international commitments. They undertake, as appropriate, to promote its principles and objectives in other international fora. For these purposes, States Parties shall consult each other in order to develop common approaches.

1. Nothing in this Convention may be interpreted as affecting the rights and obligations of the States Parties under any existing international instrument relating to intellectual property rights to which they are parties.

2. The provisions of this Convention shall not affect the rights and obligations of any State Party deriving from any existing international instrument, except where the exercise of those rights and obligations would cause serious damage or threat to the diversity of cultural expressions.

Or,

1. Nothing in this Convention shall affect the rights and obligations of the States Parties under any other existing international instruments.

1. States Parties shall appropriately protect and promote the diversity of cultural expressions in international instruments that could affect cultural diversity.

2. Bearing in mind the specificity of cultural goods and services, Contracting Parties shall respect, in interpreting and applying international instruments, the provisions of this Convention.
3. Contracting Parties shall foster mutual supportiveness between this Convention and other international instruments.

4. *Nothing in this Convention may be interpreted as affecting the rights and obligations of the States Parties under international law relating to the protection of human rights.*

5. *Subject to the requirement of paragraph 4, this Convention shall not be subordinated to other international instruments. Neither shall other international agreements be subordinated to this Convention.*

(This language is adapted from the written proposal circulated by the European Union and its member states on 11 February 2005. INCD has commissioned a legal analysis from an international trade lawyer on this text. This analysis is available in English on request and will be made available at the Intergovernmental Committee of Experts meeting.)
V. FOLLOW-UP BODIES AND MECHANISMS

ARTICLE 17 – CONFERENCE OF STATES PARTIES

1. A Conference of States Parties, hereinafter referred to as “the Conference”, shall be established. The Conference shall be the sovereign body of this Convention.

2. The Conference shall meet in ordinary session every two years in conjunction with the meeting of UNESCO’s General Conference. It may meet in extraordinary session if it so decides or if the Intergovernmental Committee receives a request to that effect from at least one-third of States Parties.

3. The Conference shall adopt its own rules of procedure.

4. The functions of the Conference shall be, inter alia:
   (a) to elect the Members of the Intergovernmental Committee;
   (b) to receive and examine the summary reports of the States Parties to the Convention transmitted by the Intergovernmental Committee;
   (c) to approve the operational guidelines prepared by the Intergovernmental Committee;
   (d) to take whatever other measures it may consider necessary to further the objectives of this Convention.

(Article 17- as proposed in the original Draft, adapted to the consensus in the Plenary that the Conference should be held in conjunction with the regular meetings of the UNESCO General Conference.)
ARTICLE 18 – INTERGOVERNMENTAL COMMITTEE

1. An Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Intergovernmental Committee”) shall be established within UNESCO. It shall be composed of representatives of 18 States Parties, elected by the General Assembly of States Parties upon the entry into force of this Convention pursuant to Article 28. The Committee shall meet once a year.

(The Plenary decided that the Committee shall be elected on a geographical basis and there shall be a formal rotation system, on a four-year cycle.)

2. The number of States Members of the Intergovernmental Committee shall be increased to 24 once the number of States Parties to the Convention reaches 50.

3. Without prejudice to the other responsibilities conferred upon it by this Convention or the Conference, the functions of the Committee shall be:

   (a) to promote the objectives of this Convention, and to encourage and monitor the implementation thereof;
   (b) to prepare and submit for approval by the Conference operational guidelines for the implementation and application of the provisions of the Convention in different situations;
   (c) to transmit to the Conference summary reports from States Parties, together with general comments;
   (d) to draw up criteria, rules and operational guidelines aimed at supporting the establishment of partnerships;
   (e) to propose appropriate actions to be taken in situations brought to its attention by States Parties in accordance with Article 8;
(f) to establish procedures and other mechanisms for consultation aimed at promoting the principles and objectives of this Convention in other international arenas;

(g) to determine, in consultation with international financial institutions and development banks, mechanisms for allocating a share of international financing to international cooperation in favour of the diversity of cultural expressions;

(h) to establish such subsidiary bodies as may be useful for the efficient implementation of the Convention;

(i) to offer an opinion on the consistency of the actions of a State Party with its obligations under this Convention, if requested to do so under Article 20.6.\textsuperscript{20}

(Article 18 – as proposed in the original Draft and modified to take into account the consensus in the Plenary)

\textbf{ARTICLE 19 – UNESCO SECRETARIAT}

UNESCO shall provide the secretariat of the Conference of States Parties and the Intergovernmental Committee.

(The Plenary decided that the Statistics Bureau of UNESCO should have an appropriate role in collecting statistics on cultural diversity and the impact of the Convention)

\textsuperscript{20} See proposed new Article 20.6
ARTICLE 20 – SETTLEMENT OF DISPUTES

1. (new) In the event of a dispute between States Parties concerning the interpretation or application of this Convention, including the right of a State Party to undertake actions in a manner consistent with its obligations under this Convention, the parties concerned agree to seek resolution of that dispute exclusively through the dispute settlement provisions of this Convention. This provision shall not apply to disputes arising out of actions taken or measures adopted by a party prior to the entry into force of this Convention.

2. In the event of a dispute between States Parties concerning the interpretation or the application of this Convention, the parties concerned shall seek solution by negotiation.

3. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

4. If good offices or mediation are not undertaken or if there is no settlement by negotiation, good offices or mediation, the parties concerned may have recourse to one of the following means of dispute settlement:

   (a) arbitration, at their joint request, in accordance with the procedure laid down in Annex III to this Convention; the arbitral award shall be binding. Parties shall implement the award in good faith;

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21 INCD believes it is essential for the Convention to contain a dispute resolution mechanism. States Parties will assume concrete commitments upon implementing the Convention, such as those contained in Article 8 and Articles 12-15. Further, the sovereign right of States Parties to implement cultural policies is constrained by an obligation to respect human rights instruments and to respect the principle of openness and balance, among other limitations. Consequently, there may be situations in which one State Party will object to a measure introduced by another State Party and a dispute resolution mechanism will ensure there is a fair and orderly way for the parties to discuss and resolve it.
(b) submission, at their joint request, of the dispute to the International Court of Justice.

5. If the parties concerned have not accepted either of the procedure provided for in paragraph 3 above, the dispute shall be submitted to conciliation in accordance with the procedure laid down in Annex IV of this Convention. The parties shall consider in good faith the proposal made by the Conciliation Commission for the resolution of the dispute.

6. (new) In the event of a dispute between a State Party and a State which is not a Party to this Convention, concerning an action taken or measure adopted by that State Party pursuant to this Convention, the State Party may seek from the Intergovernmental Committee an opinion on the consistency of its actions with its obligations under this Convention.

(Article 20 – as proposed in the original Draft with changes recommended by INCD’s legal counsel. This analysis is available in English on request and will be made available at the Intergovernmental Committee of Experts meeting.)
VI. FINAL CLAUSES

ARTICLE 21 – RATIFICATION, ACCEPTANCE OR APPROVAL

1. This Convention shall be subject to ratification, acceptance or approval by States Members of UNESCO in accordance with their respective constitutional procedures.

2. The instruments of ratification, acceptance or approval shall be deposited with the Director-General of UNESCO.

ARTICLE 22 – ACCESSION

1. This Convention shall be open to accession by all States not Members of UNESCO that are invited by the General Conference of UNESCO to accede to it.

2. This Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but which have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.

3. The instrument of accession shall be deposited with the Director-General of UNESCO.

(INCD believes it is appropriate for economic integration areas, such as the European Union, to be able to join the Convention since the Convention deals with areas of responsibility that can be in the competence of such areas.)

ARTICLE 23 - COMPETENT AUTHORITIES
Upon ratification, States Parties shall designate the “competent authorities” referred to in Article 9.

ARTICLE 24 – ENTRY INTO FORCE

This Convention shall enter into force three months after the date of the deposit of the 30th instrument of ratification, acceptance, approval or accession, but only with respect to those States that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other State Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.

ARTICLE 25 – FEDERAL OR NON-UNITARY CONSTITUTIONAL SYSTEMS

The following provisions shall apply to States Parties which have a federal or non-unitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;

(b) with regard to the provisions of this Convention, the implementation of which comes under the jurisdiction of individual constituent States, countries, provinces or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

(INCD looks forward to the conclusions from the Working Group on this issue)
ARTICLE 26 – DENUNCIATION

1. Each State Party may denounce this Convention.

2. The denunciation shall be notified by an instrument in writing deposited with the Director-General of UNESCO.

3. The denunciation shall take effect 12 months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the denouncing State Party until the date on which the withdrawal takes effect.

ARTICLE 27 – DEPOSITARY FUNCTIONS

The Director-General of UNESCO, as the Depositary of this Convention, shall inform the States Members of the Organization, the States not Members of the Organization referred to in Article __, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles __ and __, and of the denunciations provided for in Article 27.

ARTICLE 28 – AMENDMENTS

1. A State Party may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all States Parties. If, within six months from the date of dispatch of the communication, no less than one half of the States Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the Conference for discussion and possible adoption.

2. Amendments shall be adopted by a two-thirds majority of States Parties present and voting.
3. Once adopted, amendments to this Convention shall be submitted to the States Parties for ratification, acceptance, approval or accession.

4. For States Parties which have ratified, accepted, approved or acceded to them, amendments to this Convention shall enter into force three months after the deposit of the instruments referred to in paragraph 3 of this Article by two-thirds of the States Parties. Thereafter, for each State Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that State Party of its instrument of ratification, acceptance, approval or accession.

5. The procedure set out in paragraphs 3 and 4 shall not apply to amendments to Article __ concerning the number of States Members of the Intergovernmental Committee. These amendments shall enter into force at the time they are adopted.

6. A State which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered to be:
   (a) a Party to this Convention as so amended; and
   (b) a Party to the unamended Convention in relation to any State Party not bound by the amendments.

ARTICLE 29 – AUTHORITATIVE TEXTS

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, all six texts being equally authoritative.

ARTICLE 30 – REGISTRATION

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of UNESCO.