PRELIMINARY DRAFT CONVENTION ON THE PROTECTION
OF THE DIVERSITY OF CULTURAL CONTENTS AND ARTISTIC EXPRESSIONS

DRAFTING COMMITTEE

Paris, UNESCO Headquarters, 14-17 December, Room IV

SUMMARY\(^1\) OF THE COMMENTS AND AMENDMENTS
SUBMITTED BY THE STATES AND NGOs WITH REGARD TO

I. PRELIMINARY REMARKS ON THE WHOLE RANGE OF CONTRIBUTIONS

The Secretariat has received 61 contributions from Member States, including that of the European Union (on behalf of its 25 Member States and the two countries seeking membership), which amounts to a total of 88 Member States which have replied to the Director-General’s circular letter of 15 July 2004 (Ref. CL/3726). Furthermore, 15 NGOs and three IGOs (WTO, WIPO and UNCTAD) have forwarded their comments and/or proposals for amendments to the Secretariat. The analysis below focuses on the contributions submitted by the Member States of UNESCO and by the NGOs. The degree of participation of Member States warrants a number of preliminary comments.

Firstly, the Member States of the European Union grouped together their comments in a single contribution submitted to the Secretariat by the Presidency of the European Union (Netherlands), on behalf of the 25 Member States, to which were added comments from Croatia and Romania. With regard to Africa, 10 States have submitted their proposals for comments and/or amendments to the Secretariat. Furthermore, some 15 contributions from Latin America and the Caribbean, as well as from Asia and the Pacific, have been forwarded by each of these groups. Lastly, the Secretariat has received comments from some 10 Arab States.

More than two thirds of the countries that submitted a contribution introduced their comments by a series of general remarks on the preliminary draft as a whole. While several countries took the opportunity of expressing their satisfaction at the quality of the preliminary draft and the work achieved since the last session of the General Conference, others expressed their concern and/or their desire to assert with greater vigour a number of ideas for which they

\(^1\) This 16-page summary has been prepared with a view to facilitating comprehension of the consolidated document of approximately 400 pages, comprising five parts and compiled in five brochures. The summary, as well as the consolidated document, have been prepared by the Secretariat on the basis of contributions received.
expressed particular interest (e.g., respect for human rights, acknowledgement of the role of public policies, respect for the sovereign right of States to adopt such policies, etc.). These concerns, *inter alia*, included the clarification of certain provisions or expressions featured in the preliminary draft, respect for the mandate granted to the Director-General, the strengthening of certain rights and obligations, the extension of provisions relating to “development” (and consequently those dealing with cooperation and international solidarity), preservation of freedom of cultural exchange and the free flow of ideas, the articulation of this Convention with other international instruments (particularly agreements on trade and intellectual property) and the elaboration of follow-up structures and mechanisms that will be flexible, efficient and inexpensive.

Most of the States also submitted remarks on certain chapters or articles of the Convention and even on the title. In that regard, it will be noted that Articles 1 to 4 (objectives, principles, scope of the Convention and definitions) are the focus of most of these comments, which are frequently accompanied by proposals for amendments. As regards the nature of the amendments proposed for the text as a whole, they extend over a wide spectrum of proposals (ranging from minor modifications on the use of certain terms to the redrafting of a number of articles, and even the deletion of certain provisions). The deletions refer in particular to the definitions, the establishment of an observatory, the creation of certain follow-up bodies and Annexes I and II (on cultural goods and services and cultural policies). It will also be noted that almost all of the States expressed an opinion on the two options proposed under Article 19 (Relationship to other instruments). In that regard, a distinct preference was shown for Option A (some States expressing satisfaction with its drafting, while others wishing to make certain alterations). Nonetheless, several States expressed the desire to adopt a third option and a number of proposals were made along those lines. Lastly, the provisions regarding follow-up bodies were the subject of many proposed amendments. As for machinery for the settlement of disputes, it elicited a considerable number of comments but few States dwelt upon the matter and preferred to rework other chapters of the Convention before this matter was tackled in depth.

As regards the nature of these contributions, three major trends have emerged:

An initial group of Member States chose to submit commentaries only, without presenting any proposals for amendments to the text of the preliminary draft. There were not many contributions of this kind (some 15), but they do account for more than 40 countries as the contribution from the European Union belongs to this category.

A second group brought together comments and proposed amendments to the text of the preliminary draft. Broadly speaking, the amendments were precise and referred to specific articles or paragraphs. Mention should be made, in this regard, of detailed proposals submitted by several countries. Conversely, two States preferred to attempt a reformulation of the structure of the preliminary draft and focused on major alterations to the articles (new preamble, deletion of various articles, merging or deletion of certain chapters, and drafting of new provisions).

A third group includes both States which submitted only a limited number of observations and other Members who chose to remain silent. This group comprises all the countries which – particularly on account of interministerial deals under way in each of the States – expressed the desire to wait until a second intergovernmental meeting before engaging in active negotiation on all or part of the Convention (particularly the rights and obligations and the follow-up mechanisms). For those reasons, their silence can only be interpreted as approval of the Convention or of certain chapters. Consequently, the volume of comments and amendments submitted on each article of the Convention cannot prejudge what degree of consensus might have been achieved among the Member States on these articles and on the text as a whole.
II. SYNOPSIS OF THE COMMENTS AND AMENDMENTS BEARING ON EACH OF THE PARTS OF THE CONVENTION

Title of the Convention

Comments from the States

- 19 countries + the European Union provided comments on the title.
- Majority in favour of adding the term “promotion” to that of “protection” in order to extend the field of application of the Convention.
- Differing views on the choice of terms: “cultural content and artistic expressions” (considered as reflecting UNESCO’s initial remit), “cultural expressions” (terms proposed by experts and used in the corpus of the preliminary draft) and “cultural diversity”.

Amendments proposed by the States

Twenty-six States proposed amendments to the title of the Convention. Most of them focused on additions (“promotion”, “preservation”, “development”). A majority of States expressed the wish to modify or replace the terms “cultural contents and artistic expressions” either by “cultural contents and expressions” or by “cultural expressions”. A minority of States suggested eliminating these terms so that the Convention would focus explicitly on “cultural diversity”.

Comments and amendments from the NGOs

Three NGOs proposed amendments to the title which were along the same lines of most of the proposals made by the Member States.

PREAMBLE

Comments from the States

- 33 countries + the European Union provided comments on the preamble.
- On the one hand, the text was considered well balanced and expressing the spirit of the Convention adequately.
- On the other hand, many called for reformulating, reorganization and additions.
- Harmonize the preamble with the principles and objectives in order to avoid repetitions.
- Reference UNESCO’s international instruments and those on human rights.
- Clarify the notion of rights (individual and collective rights).
- Establish a clearer link between cultural diversity and human rights.
• Mention cultural diversity, cultural freedom, the role of education, culture as a factor of integration and social cohesion, the role of States and public services, respect for the intangible heritage and traditional methods of knowledge and expression as sources of sustainable development.

• Specify that the Convention fills a vacuum in the legal sphere.

Amendments proposed by the States

Ten States suggested adding new paragraphs to the preamble. These additions included language, education, social cohesion, inequality in cultural exchanges and public policies. Two States modified the preamble. Paragraphs 5, 8, 10 and 11 were those that were most amended. Nevertheless, the modifications proposed in the amendments are of limited importance insofar as they do not make any profound change to the spirit of the Preamble, with the exception of two contributions which propose a new preamble and various additions focusing on certain paragraphs.

Comments and amendments from the NGOs

Several amendments and/or additions of new paragraphs were proposed by the NGOs, mainly: the addition of a reference to the instruments of UNESCO (Florence Agreement), to the Human Rights Declaration (Articles 19 and 27) and treaties relating to intellectual property rights (Berne Convention). It was also suggested that mention be made of the role of women.

Section I – Objectives and Guiding Principles

Article 1 – Objectives

Comments from the States

• 37 countries and the European Union provided comments on the objectives.

• Article globally accepted.

• Article to be redrafted by harmonizing the terms, changing the order of the clauses, avoiding repetitions with the preamble and with the principles.

• Give stronger wording, particularly to Article 1(c) considered to be weaker than the rest of the Convention.

• Mention the linguistic dimension, social and economic development, the role of education, the necessary strengthening of cultural sectors, the necessary protection of traditional cultures and the pluralism of the media.

Amendments proposed by the States

Ten States proposed new objectives, five of which expressed comments on these amendments. Among the new objectives, the most frequent included social cohesion, the link between culture and development and the sovereign right of States to devise cultural policy. On the whole, there were few amendments which substantially modified the objectives, except for proposals for additions and requests for the deletion of certain objectives. Those objectives which elicited most of the amendments were (g), (c) and (a).
Comments and amendments from the NGOs

Two additions were suggested: an objective dealing with the protection of intellectual property and the promotion of international trade; an objective on coherence between cultural and commercial aspects within the context of international governance.

Article 2 – Principles

Comments from the States

- 38 countries + the European Union provided comments on this chapter.

- On the one hand, the article was considered satisfactory as it adequately expressed all aspects of the Convention.

- On the other hand, the article was considered to be too long, repetitive in relation to other chapters, drafted too vaguely and lacking legal commitment.

- Avoid confusing declaratory and operational principles.

- Bring together principles on human rights.

- Clarify or avoid operational principles (proportionality, openness, transparency) on account of procedural red tape.

- New formulations and new principles proposed.

Amendments proposed by the States

Seven States proposed new principles (one of which made comments on the proposed amendment) on national sovereignty, education and the dual nature of cultural goods and services. Most of the amendments focused essentially on a redrafting and/or strengthening of principles. Principles 2, 8, 4 and 9 were most focused on for amendments. Some States requested the deletion of certain principles (principles 3, 5, 8 and 9).

Comments and amendments from the NGOs

Several NGOs suggested including a reference to “the pluralism of the media” in principle 2. Other proposals involved adding new principles on “equality between men and women” and “respect for intellectual property”.

Section II – Scope of Application and Definitions

Article 3 – Scope of application

Comments from the States

- 20 countries + the European Union submitted comments on the scope of application/differences.

- Scope of application considered well defined as it emphasized the role of States and corresponded to the objectives.
• Article considered too vague and likely to impinge on the provisions of other existing instruments within UNESCO or within the context of WTO.

• Article considered to be too restrictive as it did not take account of all aspects of culture.

• Give international dimension to this article and introducing the field of cooperation.

• Questions relating to the definition of “cultural policies”, Annex 2 (very controversial) and the concept of “measures”.

• Only the terms “measures” and/or “policies” adopted by the States Parties should be preserved, affecting the diversity of cultural expressions (to be adapted to the title).

Amendments proposed by the States

One State suggested that this article be deleted. Two States proposed amendments, five of which made comments on the proposed amendments. The amendments focused essentially on harmonizing the scope of application according to the respective priorities and concerns of the States. Three countries suggested deleting the adjective “cultural” (cultural measures).

Comments and amendments from the NGOs

No comments from the NGOs.

Article 4 – Definitions

Comments from the States

• 41 countries + the European Union submitted comments on the definitions/differences.

• Only retain definitions considered to be technical and operational within the context of the Convention (cultural expressions, cultural goods, cultural services, cultural industries, cultural policies) and remove definitions of “culture”, “cultural diversity and “cultural capital” which no longer appear in the text.

• Only retain definitions of “culture” and “cultural expressions” by including all other notions which would not have been defined.

• Revise definitions according to the scope of application and the content of the Convention.

• Excessively economic connotation of the definitions and fear that emphasis placed on cultural goods and services would exclude taking account of cultural expressions not conveyed by cultural goods and services.

• Make better use of and clarifying “cultural expressions”, “cultural contents”, “cultural goods”, “cultural services”, and “cultural industries”.

• Remove in all definitions such terms as “other cultural activities” or “activities” as they needlessly broaden the scope of definitions.

• Majority in favour of deleting Annexes I and II considered to be too broad and not sufficiently precise.
• Revise criteria defining cultural goods and services: they are not appropriate as, apart from (b), they apply to other goods and services.

• Broaden the definition of cultural industries.

• Remove the definition of cultural capital or assimilate it to cultural heritage.

• Perfect the definition of cultural policies by harmonizing it with the scope of application while taking account of the fact that policies affecting the diversity of cultural expressions do not necessarily come under cultural policies as such.

Amendments proposed by the States

Five States proposed new definitions, referring to the following terms: “protection”, “promotion”, “cultural contents”, “the economy of culture”, “measures”, “globalization” and “global partnership”. Seventeen States proposed amendments regarding the definition of “Culture”, seven of which wanted its deletion, while three redrafted the definition. Thirteen States put forward amendments to the definition “Cultural diversity”, two of which called for its deletion while one redrafted the definition. Nine States proposed amendments to the definition “Cultural expressions”, including one State which called for its deletion while three redrafted the definition. Nineteen States proposed amendments to the definition “Cultural goods and services”, with two States calling for its deletion, while seven suggested a new definition. Eleven States proposed amendments to the definition “Cultural industries”, four of which made comments while three called for its deletion. The majority of amendments focused on adding activities concerning these industries such as publication and distribution. Twenty States suggested amendments to the definition “Cultural capital” which elicited the largest number of amendments, with 13 States calling for its deletion, while one redrafted the definition. The amendments focused on adding elements making up cultural capital and on the substitution of “capital” by “heritage”. Seven States put forward amendments to the definition “Cultural policies”, while no State called for the deletion of this definition and one redrafted it. Most of the amendments focused on adding the adjective “public” or “national”.

Comments and amendments from the NGOs

As regards the definition of “Cultural industries”, several NGOs, like the Member States, suggested that the nature of their activities should be more explicitly defined. One NGO suggested a new definition of a “public service institute”.

Section III – RIGHTS AND OBLIGATIONS OF STATES PARTIES

Comments from the States

• 27 countries + the European Union submitted comments on this section/differences.

• Section considered to be the very heart of the Convention, adequately corresponding to its objectives and principles and reflecting accurately the goals of international solidarity enshrined therein. Vocation globally acclaimed.

• Section considered too vague, insufficiently linked to other sections, likely to infringe on other legal instruments, poorly balanced (too many obligations and not enough rights).
Section to be redrafted: harmonizing Sections III and IV, to be shortened to avoid repetition and to link more closely with objectives.

Amendments proposed by the States

With regard to Section III as a whole, as well as the following section relating to relationships between the treaties, one State suggested combining these two sections and put forward a new structure which comprised several new articles. In a similar fashion, another State reworked this section considerably by eliminating several articles and suggesting new provisions. The modifications will be dealt with in detail in the analysis of each article presented below.

Comments and amendments from the NGOs

Several NGOs submitted contributions to the whole of this section. Their opinions repeatedly converged and it would seem that there had been preliminary concertation between some of them.

General rules (Article 5)

Comments from the States

- Article considered as essential to the Convention, even its article of reference as it enables States to take measures to protect and promote the diversity of their cultural expressions.

- The hope was expressed that this article would not be reduced in scope by Articles 6.1 and 8 which defined specific cases where cultural expressions are vulnerable.

- It was hoped that several notions would be clarified: how can the sovereign rights as exercised by a State be executed in relation to international commitments of those same States? Is the right of a State Party to protect and promote diversity “in its territory” to be exercised for the benefit of “domestic” or “foreign” cultural expressions?

- Avoid repetition in the second clause. Possible deletion.

Amendments proposed by the States

Article 5 on the General rules on rights and obligations was the subject of 28 proposed amendments and three States suggested adding one or several paragraphs. Some amendments suggested combining the two paragraphs in the preliminary draft. Some 15 proposals specifically targeted the first paragraph of this article and several of them refer specifically to the “sovereign right [of States] to adopt measures” or their “obligation to protect and promote”. Consequently, amendments question the choice of certain terms such as “adopt measures”, “protect”, “promote” and “cultural expressions”. In general, amendments to the second paragraph are minor. Several suggested the deletion of the last part of the paragraph (“its objectives, principles and scope of application”). Suggestions for adding new paragraphs were aimed principally at framing the general rules with regard to rights and obligations as expressed in the first two paragraphs.

* Comments and amendments from the NGOs: The NGOs agreed on the addition of a reference to the instruments regarding human rights (paragraph 2).
Section III.1 – Rights and obligations at the national level

Comments from the States

- 38 countries + the European Union provided comments on this section.
- Redraft certain articles in respect of other international instruments.
- Avoid national obligations too cumbersome for the States (cf. Art. 9).
- Specify (Art. 6 and Art. 8) notions of threats and situations of vulnerability. Include them in the Convention while avoiding that such contexts become the sole pretext for the protection of diversity.
- Avoid risks of any loss of sovereignty of States to the Intergovernmental Committee.
- Widen the obligation regarding public education and awareness (Art. 10) and the involvement of civil society (Art. 11).

Amendments proposed by the States

As regards Article 6, entitled Rights of States Parties at the national level, 45 proposed amendments were aimed either at the first paragraph or at clauses (a) to (e) of the second paragraph. It was also suggested that the title of this article be changed as well as new clauses be added. Several States requested the deletion of the reference to cultural expressions “threatened or in a situation of vulnerability” (paragraph 1). Other amendments aimed at defining the rights of States. Therefore, some called for adding a reference so that the exercise of such rights be conducted with respect for the international obligations of the States. Several minor modifications were aimed simply at the choice of certain terms or expressions. Lastly, one State wanted to delete this article as a whole and to submit a new provision entitled “Cultural policies”.

* Comments and amendments from the NGOs: Concern with regard to the reference to cultural expressions “threatened or in a situation of vulnerability”. Deletion requested. Several additions proposed to various clauses: reference to technological neutrality (2(a)), preferential treatment for domestic industries (2(b) and (c)), and reference to the pluralism of the media and the status of artists and creators (new paragraphs).

Amendments (60 in number) regarding Article 7 (Obligation to promote the diversity of cultural expressions) reflect firstly the debate between “individual rights” and “collective rights”. Several States suggested either to delete the reference to “individuals” (heading to paragraph 1), or to delete the reference to “minorities and indigenous peoples” and to “social groups” (paragraph 1(a)). Many amendments were suggested to paragraph 2(a), particularly full recognition of the “legal and social status of artists and creators”, reflecting disagreement on the drafting of this provision. This was also true of respect for “intellectual property rights” suggested in paragraph 2(b). Lastly, new clauses were proposed and one State went so far as to suggest that the article entitled “Obligation of States Parties at the national level” be completely rewritten.

* Comments and amendments from the NGOs: Addition of a new obligation on States aimed at ensuring “that cultural rights and cultural policies be taken into account in all political fields”.

9
Three States suggested deleting Article 8 dealing with the Obligation to protect vulnerable forms of cultural expression. Among the 20 other amendments, several were aimed at revising the role attributed to the Advisory Group (of Article 22) or at eliminating any reference to that body. The others required either minor changes to the drafting or the addition of new paragraphs.

* Comments and amendments from the NGOs: One NGO called for civil society to be involved in the work of the Advisory Group (clause (c)).

As regards the Obligation of information and transparency (Article 9), some States suggested that the article or some clauses be deleted, whereas other amendments were aimed simply at the use of certain terms. In spite of the 36 amendments proposed, this article does not seem to raise any particular problem.

Apart from a few exceptions, the same conclusions are applicable to the Obligation of public awareness and education in Article 10. Nevertheless, paragraph (c) was the subject of several amendments, three of which were aimed specifically at the reference to the “cultural industries”. Apart from the 24 amendments proposed on the current text, two new paragraphs were suggested and a new drafting of this article has also been submitted.

* Comments and amendments from the NGOs: Proposal to add a new paragraph creating an obligation of public awareness and education on respect for intellectual property.

Article 11 on the Responsibility and participation of civil society was the subject of 14 proposed amendments. These were aimed particularly at the title (two suggested deleting the words “responsibility”, while one proposed the addition of the word “obligation”) and the use of certain words or expressions (such as “encourage” or “shall encourage”, “protection” and “share of responsibility”).

* Comments and amendments from the NGOs: Many comments were expressed. The NGOs considered this article to be fundamental but were of the opinion that the text did not give them the importance they deserved. They suggested a redrafting.

Section III.2 – Rights and obligations relating to international cooperation

Comments from the States

- 46 countries + the European Union provided comments on this section.
- Acknowledgement that international cooperation, particularly in favour of the developing countries, countries in transition and the least developed countries, is an essential component of the Convention.
- Dynamic vocation of the section welcomed (partnerships, exchanges of good practice, etc., and not merely financial assistance).
- Define in more practical terms machinery for cooperation, particularly for vulnerable cultural expressions.
- Resolve the problem of formulation: developing countries are not necessarily the only countries with “vulnerable” cultural expressions, as developed countries also have their own threatened cultural expressions. The “economic” distinction is not relevant.
• Redraft the section by bringing together certain articles (12, 15 and 18).

• Strengthen Article 13 and bring it closer to Article 19 to ensure that the obligation to promote the objectives and principles of the Convention in other environments be enlarged to the reciprocal consultation machinery which could provide a basis for a renewed drafting of Article 19.

• Extend Article 14 on aid for co-production and dissemination to all fields of cultural cooperation.

• Under Article 15, most comments were aimed at using the UNESCO Institute of Statistics and/or the Secretariat, as well as other existing institutions, in place of creating a Cultural Diversity Observatory. Need to reflect on the tasks of an observation body.

• Reasserted importance of collecting reliable and comparable data for implementation of the Convention.

• The International Fund (Article 16) and the Observatory raised the question of the means for implementing the Convention.

• Bring together these two structures and integrate them within the follow-up machinery in liaison with the Advisory Group and the network of experts.

• Specify and expand Article 17 (supported by many countries) on preferential treatment for developing countries. Bring this article closer to Articles 16 and 18.

Amendments proposed by the States

One State suggested that Section III.2 be completely rewritten whereby it would comprise only three articles: “Culture and development”, “Economics of culture and international cooperation” and “International cooperation and interculturality”. These modifications would entail the deletion of Articles 12 to 18 of the preliminary draft.

As regards Article 12 (Objectives), 44 proposed amendments were submitted. They focused principally on paragraph 2 and clauses (a) to (g). The heading of paragraph 2, in particular, was the subject of several amendments including three requiring deletion of part of the first sentence, namely “within the framework of their development cooperation agreements”. It should be noted that one State suggested the redrafting of clauses (a) to (f) and the deletion of clauses (e) to (g). Other amendments to various paragraphs were minor, with the exception of paragraph (e), which was the subject of six amendments, two of which were aimed at deleting the reference to increasing public sector competitiveness and to cultural industries. Furthermore, several States called for the deletion of the word “enterprises” under paragraph (g). Lastly, new paragraphs were suggested, particularly for including a reference under Article 12 to the transfer of technology and the exchange of data and statistics.

Although two States had requested the deletion of Article 13 (International consultation and coordination), that particular paragraph did not seem to raise any major problems as only four other amendments had been put forward. Nonetheless, the States called for the term “within UNESCO” to be deleted so as not to limit the consultation forums of Member States. Furthermore, the amendment put forward by another State aimed at deleting the reference to the present Convention in the drafting of this article. Finally, several States, in their comments, called for Articles 13 and 19 of the preliminary draft to be brought closer together.
* Comments and amendments from the NGOs: Many comments – several NGOs believed that the link between the Convention and other international instruments should be clarified.

As regards Article 14 dealing with Aid for co-production and dissemination, three countries expressed the wish that this provision be deleted. Eight other proposed amendments were submitted. Several of these were aimed at limiting such aid to “the conclusion of cinematographic and other audiovisual co-production and co-distribution agreements”. References to “cultural products”, to “audiovisual works and other cultural industries” or to “televised” works were therefore put forward.

* Comments and amendments from the NGOs: The Convention should not be confined to cinematographic industries, but should include all cultural industries.

Article 15 on the Establishment of a Cultural Diversity Observatory elicited considerable disagreement and seven States expressly called for the deletion of the article. Others questioned the creation of such an establishment. Apart from these deletions, 25 amendments were put forward. Four focused on the title and were aimed at deleting the reference to the “Observatory” and at transforming this article into a provision devoted mainly to the “exchange of information”. Amendments proposed to paragraphs 2, 3 and 4 were aimed particularly at attributing certain duties to the UNESCO Institute of Statistics and/or the UNESCO Secretariat. Several States suggested that certain paragraphs be deleted.

Cooperation for development dealt with in Article 16 was the subject of 37 proposed amendments and two proposed additions of new paragraphs. The most substantial modifications were put forward by one particular State which suggested adding the term partnership in the title of the article. Clauses (a) to (e) were rewritten and the deletion of (f) was suggested as well as the addition of two new paragraphs (devoted to the creation of partnerships and the strengthening of the UNESCO Global Alliance for Cultural Diversity). Other States suggested deleting several clauses or making substantial modifications to the current draft. It was clauses (d) to (f) in particular which elicited most of the suggestions as several States had modified paragraph (e) on “other forms of financial and technical assistance” (particularly the establishment of a fund), and seven countries had expressly requested the deletion of paragraph (f).

* Comments and amendments from the NGOs: The NGOs wished to modify clause (e) so that provision be made for the creation of an international fund.

Three countries requested that Article 17 (Preferential treatment for developing countries) and one country asked that the reference to developing countries be removed. The other seven amendments put forward focused on just a few words, with the exception of one proposal aimed at adding a new paragraph dealing with the increase in national market shares devoted to developing countries.

* Comments and amendments from the NGOs: Some considered the article to be important, while others suggested deleting it or removing the term “preferential” (to avoid conflict with the GATS).

Thirty-five proposed amendments were aimed at Article 18 dealing with Partnerships for development. Most of the amendments to paragraph 1 were minor (with the exception of one State which considerably modified the heading and added a reference on taking account of the specific needs of the developing countries). As regards paragraphs 2, 4 and 5, several amendments aimed solely at deleting the reference to the “Advisory Group”. Furthermore, three
countries expressed the desire to delete paragraph 4 completely. No amendment was put forward regarding paragraph 3 and three amendments targeted paragraph 6 (including one calling for its deletion). Lastly, one State suggested that Article 18 be deleted and suggested two new articles entitled “The role of technology” and “Educational exchange and cooperation”.

Section IV – RELATIONSHIP TO OTHER INSTRUMENTS

Comments from the States

- 48 countries + the European Union submitted comments on this section.
- A majority of countries stated a preference for Option A reasserting the restrictive aspect of the Convention and the primacy of this instrument over other existing international instruments.
- Other countries opted for Option B as they did not wish to contravene their rights and obligations within the context of other international agreements.
- Several countries suggested a “third approach” based on the logic of complementarity rather than competition. Accordingly, many of them suggested bringing this article closer to Article 13 so that the obligation to promote the objectives and principles of the Convention in other institutions could be widened to reciprocal consultation machinery.

Amendments proposed by the States

Almost all of the States expressed an opinion on the two options proposed in Article 19 (Relationship to other instruments), whereas three proposals for deleting this article were also submitted. With regard to the two options, comments from the States revealed a distinct preference for Option A (some States stated that they were satisfied with its drafting while others wanted to introduce some modifications). Others, conversely, expressed their support for Option B and some of them suggested amendments to the current title. Lastly, several States expressed a preference for a third option and various proposals were put forward along those lines.

* Comments and amendments from the NGOs: Preference for Option A. Several suggested modifying paragraph 2 of Option A in order to strengthen the status of the Convention by comparison with other instruments.

Section V – FOLLOW-UP BODIES AND MECHANISMS

Comments from the States

- 45 countries + the European Union submitted comments on this section.
- There was a consensus on the fact that follow-up bodies and mechanisms should guarantee implementation of the Convention and its implementation without incurring heavy administrative and financial costs.
- Make the best use of existing structures, particularly within UNESCO.
- Distinguish between institutional mechanisms (General Assembly and Intergovernmental Committee) and operational mechanisms (Advisory Group, Observatory and Fund).
• Creation of an Advisory Group strongly brought into question in favour of an ad hoc group or a network of experts.
• Clarify representation within the Intergovernmental Committee.
• Reinforce the General Assembly.
• Clarify the sharing of tasks between the various bodies.
• Avoid mechanisms exposed to risks of intervention.
• Clarify the content and deadlines of all reports to be provided (Articles 9, 15, 20 and 21).
• Differing opinions on the settlement of disputes: remove it from the Convention and redraft and strengthen it. In fact, choose a mechanism accessible to most States.

Proposed amendments

The provisions regarding follow-up bodies were the subject of many proposed amendments. Initially, two States called for the title to present the bodies and mechanisms “for implementation” of the Convention. It should be noted that one State called for the deletion of Articles 20 to 24.

Article 20 on the General Assembly of States Parties did not cause any particular concern on the part of the States although 18 proposed amendments were submitted. The proposals were aimed particularly at paragraphs 4(c) and (d), while two States called for the deletion of the latter. Other amendments suggested that additional duties be attributed to the General Assembly.

Similarly, the Intergovernmental Committee (Article 21) did not raise any particular problem with the exception of paragraph 3(d) (which deals with the establishment of the Cultural Diversity Observatory) of which seven States requested the deletion and of paragraph 3(j) (which refers to consultation of the Advisory Group), of which six States had already requested the abolition. It should be noted that these deletions correspond to the amendments proposed by the same States to Article 15 (Observatory) and Article 23 (Advisory Group). Lastly, proposals for the addition of new paragraphs were aimed particularly at giving this Committee additional duties.

* Comments and amendments from the NGOs: The addition of a reference to the participation of civil society; the consultation mechanism in other international bodies should also be aimed at “ensuring coherence between the rights and obligations of this Convention with every other international instrument”.

The creation of a Advisory Group (Article 22) was far from enjoying unanimous approval. There seems to have been a trend in favour of deleting this article and nine States explicitly expressed that request. Two others merely suggested the deletion of paragraph 2(b). Five other proposed amendments remained negligible.

As for Article 23 on the UNESCO Secretariat and the seven proposed amendments submitted, they were aimed particularly at eliminating any reference to the Advisory Group. One State, in particular, suggested the addition of two new paragraphs which defined certain tasks for the UNESCO Institute for Statistics.

One State also suggested the addition of a new section entitled “Fund for Cultural Diversity”, containing four articles on “Nature and the Fund’s resources”, the “Contribution of
States Parties to the Fund”, “Supplementary voluntary contributions to the Fund” and “International campaigns for collecting funds”. These articles are therefore aimed at creating such a fund and to defining the various conditions.

**Article 24** and the **Settlement of disputes** mechanism raised a considerable number of comments, but few States dwelt on the matter as they preferred to revise other chapters of the preliminary draft before this particular issue was dealt with in depth. Apart from three proposals to delete this article, the eight amendments submitted were aimed specifically at recourse “on the joint request of the parties” (paragraphs 2, 3 and 4). One country also proposed to grant a role to the Cultural Diversity Observatory in the settlement of disputes.

* Comments and amendments from the NGOs: Several NGOs believed that the mechanism for the settlement of disputes and Annexes III and IV were not clear and did not adequately ensure the strengthening of respect for the rights and obligations of States.

**Section VI – FINAL CLAUSES**

**Comments from the States**

- 9 countries + the European Union submitted comments on this section.
- Provisions were considered standard.
- Call for a clause enabling regional organizations and the European Community to join.

**Amendments proposed by the States**

Very few amendments were put forward with regard to **Articles 25 to 34** of this section. In fact, no amendment was targeted at **Articles 35, 38, 30, 31, 33 and 34**. Besides that, **Article 25 (Accession)**, paragraph (2), was the subject of two amendments and one State called for its deletion. Another country suggested the addition of a new paragraph which would enable States to express reservations on the occasion of ratification of the Convention. Three amendments were aimed at **Article 27 (Competent authorities)**, including a request for deletion. The other amendments focused on the drafting of **Article 29** regarding **Federal or non-unitary constitutional systems**, as well as **Article 32** dealing with **Amendments**.

**ANNEXES I TO IV**

**Comments from the States**

- Majority in favour of deleting Annexes I and II.
- Desire on the part of some countries to retain Annexes I and II for indicative purposes.
- Additional information to be added to Annexes III and IV according to the decision on the settlement of disputes.
**Amendments proposed by the States**

Most of the 30 amendments relating to Annexes I to IV were aimed at deleting them. Furthermore, although only five States explicitly requested the deletion of **Annex I**, as well as **Annex II**, several expressed reservations on the usefulness of these annexes. As regards Annexes III and IV, four States also requested their deletion while others wished to postpone discussion on these texts to a later stage of negotiation.

Other proposed amendments focused on adding certain goods and/or services and cultural activities to **Annex I**, the addition of a reference to “neighbouring rights” in **Annex II** on cultural policies and the addition of new paragraphs to **Annexes III and IV**.

**Comments and amendments from the NGOs**

Annex I: Two NGOs highlighted the “Audiovisual and new media” domain by putting forward several additions; Annex II: the same NGOs also suggested modifications to “Promotion of pluralism and cultural and linguistic diversity”; Annex III: one NGO suggested deleting this annex.

**III. FINAL REMARKS**

On the basis of the contributions submitted by Member States, NGOs and IGOs, the Secretariat drew up a document comprising five parts dealing with the whole range of comments and amendments.

These parts, which are the subject of five brochures, can be read independently or as complements to each other. The presentation corresponds to Executive Board practice (e.g. 170 EX/12 – proposals for document 33 C/5).

Part I: General comments from Member States (approx. 60 pages)

Part II: Specific comments from Member States (approx. 120 pages)

Part III: Amendments proposed from Member States (approx. 120 pages)

Part IV: Comments from three IGOs (UNCTAD, WTO and WIPO (approx. 25 pages)

Part V: Comments and amendments from NGOs (approx. 70 pages)

This presentation, of outstanding clarity, is aimed at facilitating ready identification of comments and amendments and their authors, which should enable the Drafting Committee to proceed more rapidly with redrafting in the form of consensual proposals, or options. The greatest attention has been given to facilitating cross-referencing between Parts II and III which are intimately linked. The same analytical criteria have been applied to contributions from the NGOs which have been submitted to the Drafting Committee for consideration. Conversely, the contributions from the three IGOs (UNCTAD, WTO and WIPO) will be conveyed in full to the Drafting Committee without undergoing any analytical processing.