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Diversity of Cultural Expressions

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

First Extraordinary Session
Paris, UNESCO Headquarters, Room II
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ORAL REPORT

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Paris, 27 June 2008

Mr Chairperson of the Intergovernmental Committee,
Ms Françoise Rivière, Representative of the Director-General and Assistant
Director-General for Culture,
Honourable Delegates,
Ladies and Gentlemen,

I should like to extend my heartfelt appreciation to the States Members of the Committee for the trust that they have demonstrated in the Bureau by deciding to extend its term of office until the end of the next ordinary session.

Assigned with the task of reporting on the debates of this First Extraordinary session of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions, I shall reflect the substance of our discussions as faithfully and objectively as possible, limiting my report to a strict synthesis of the debates, and the decisions adopted during the four days of the Committee's work.

I should also like to offer special thanks to the Chairperson, H. E. Ambassador Gilbert Laurin, for the smooth and gentle way with which he conducted our rich and challenging debates, supported by the goodwill and openness that have guided the discussions of the Committee.

At the opening ceremony on Tuesday 24 June 2008 Mr Koïchiro Matsuura, Director-General of UNESCO, as well as H.E. Mr Olabiyi Babalola Joseph Yaï, Chairman of the Executive Board delivered statements emphasizing that the Operational Guidelines to be submitted to the Conference of Parties for approval in June 2009 will have a major impact on the implementation of the Convention. They also pointed out the need to protect the diversity of cultural expressions and promote creativity as driving forces of sustainable development.

Item 1: Opening of the session

At the opening ceremony on Tuesday 24 June 2008 Mr Koïchiro Matsuura, Director-General of UNESCO, as well as H.E. Mr Olabiyi Babalola Joseph Yaï, Chairman of the Executive Board delivered statements emphasizing that the Operational Guidelines to be submitted to the Conference of Parties for approval in June 2009 will have a major impact on the implementation of the Convention. They also pointed out the need to protect the diversity of cultural expressions and promote creativity as driving forces of sustainable development.

Item 2: Adoption of the agenda

Before proceeding to the adoption of the agenda, the Chairperson acknowledged that the Committee had an immense task to finalize in this extraordinary session the draft Operational Guidelines for the implementation and application of certain provisions of the Convention, in order to submit them to the Second Conference of Parties in June 2009. The Chairperson then invited the Secretary, Ms Galia Saouma-Forero, to briefly present the seven working documents prepared by the Secretariat regarding each of the items covered by the agenda, as

well as the eight information documents.

The Committee adopted the agenda (Decision 1.EXT.IGC 2) without amendment, although it was agreed to advance the discussion of item 7, on the Terms of reference for the studies on preferential treatment, to the morning of the 2nd day.

Item 2bis: Adoption of the Summary Records of the First Ordinary Session of the Committee

Presenting the Summary Records of the First Ordinary Session of the Intergovernmental Committee, Ms Rivière, Assistant Director-General for Culture, informed that additional efforts would be undertaken to prepare more concise and synthetic summaries of the deliberations. While acknowledging such efforts, two delegations expressed their preference for the precision and comprehensiveness of the Summary Records, as they constitute the memory of the work accomplished by the Committee and a useful working tool. No changes were approved, then. The Summary Records of the First Ordinary Session of the Intergovernmental Committee (Decision 1.EXT.IGC 2bis) were adopted without amendments.

Item 3: Preparation of Operational Guidelines for the implementation and application of the provisions of the Convention: measures to promote and to protect cultural expressions (Art. 7, 8 and 18 of the Convention)

Introducing Item 3, the Chairperson recalled that, under Decision 1.IGC 7 adopted at its First Ordinary Session, the Committee agreed to discuss at the present session the elaboration of draft Operational Guidelines concerning the protection and promotion of cultural expressions. He further pointed out that the Annex to document CE/08/1.EXT.IGC/3 presented an outline for operational guidelines under Article 7 (Measures to promote cultural expressions), Article 8 (Measures to protect cultural expressions), and Article 17 (International cooperation in situations of serious threat to cultural expressions) and suggested discussing these one-by-one.

The Chairperson then indicated that substantial amendments were proposed by eight countries (Albania, Burkina Faso, Canada, Mali, Mauritius, Saint-Lucia, Senegal and Tunisia), members of the Committee and of the Francophonie group, as well as by eight other countries (Austria, Croatia, Finland, France, Germany, Greece, Lithuania, Luxembourg and Slovenia), members or candidate countries of the European Union (EU).

Due to the complexity of the issues under consideration, the Chairperson proposed an innovative working method, which was accepted by the Committee after some additional clarifications. The working method was as follows:

- the Members having submitted major amendments would present these as a whole, briefly explaining the reasoning underlying them,
- an adjournment of the session would permit the Delegates to examine in depth the proposed substantive amendments,
- the draft Operational Guidelines would then be discussed paragraph by paragraph and further oral amendments could be presented by Committee Members.

The Committee recognized the quality of the document prepared by the Secretariat and its early distribution, which allowed for a productive and constructive consultation process among the Parties.

Regarding Article 7, the Francophonie Group explained that its proposal was intended to offer a more generic and less prescriptive framework, foster the sharing of information among Parties, and better address technological changes. The EU proposal, based on the text of amendments proposed by the Francophonie Group, aimed to reformulate some concepts in-line with the wording used in the Convention, highlight the key role of grassroots movements, and emphasize the specificities of the 2005 Convention. A last substantive amendment was proposed by the Chinese delegation before the Chairperson adjourned the session to permit the Delegates to examine in depth the proposed substantive amendments.

The debate of the afternoon session of the first day focused on measures to promote the diversity of cultural expressions (Art. 7), to which 19 Members of the Committee contributed. Most of the paragraphs of the draft Operational Guidelines on Article 7 were adopted on a provisional basis without discussion, while certain paragraphs gave rise to more extensive debate. The constructive discussion and contributions of the Committee Members concerning the Principles upon which the measures to promote cultural expressions should be based, resulted undoubtedly in the improvement and streamlining of the text under discussion.

After an extensive discussion on the amendment of China concerning the right of Parties to monitor the creation, production and distribution of cultural expressions in order to protect public moral or to maintain public order, it was agreed that the proposed amendment related more closely to the provisions of Article 5 of the Convention and should therefore be deferred to discussions relating to that Article. China decided to withdraw its proposal and made a request that it be reflected in the meeting Summary Record.

The questions concerning the policy instruments to be developed and implemented by the Parties did not provoke lengthy discussion. Certain Members of the Committee suggested amendments based on the original text proposed by the Secretariat, with regard to policies focused on access to cultural expressions. These amendments were accepted by the Committee.

The debate on the draft Operational guidelines on Article 8 (Measures to protect cultural expressions) began with amendments proposed by Brazil, in order to safeguard the right of Parties to resort to measures to face special situations under Article 8 without prior consultation to the Committee. The Committee would then be consulted in the event that international assistance was needed or there might appear to be a conflict with Parties' obligations under other international instruments. Other delegations observed that such an amendment might rather fall under the scope of Article 20 of the Convention. Further to a request of the Chairperson, the Legal Advisor explained that by virtue of Article 8.1 only a Party can determine the existence of special situations where cultural expressions on its territory are at risk, and pursuant to Article 8.2, may take appropriate measures to protect and preserve them without consulting the Committee. The Committee's role in this regard is limited to making appropriate recommendations under Article 8.3 and Article 23.6 (d). He

added that neither Article 17, nor any other provision of the Convention, makes Committee decisions a pre-condition regarding international cooperation concerning special situations in accordance with Article 8. The function of the Committee, in accordance with Articles 8 and 23 is solely to formulate or not, appropriate recommendations concerning the reports of Parties on measures taken to protect cultural expressions in special situations.

During the afternoon session, the debate on Item 3 was postponed by the Chairperson with a request that the Committee hold consultations on this issue in order to find common ground that would shed light on the capacity of Parties to adopt measures under Article 8. The following morning, whilst commencing with a debate on item 7, would provide an opportunity to return to this issue.

On the morning of Wednesday, 25 June, after the Committee had addressed Item 7 of the agenda according to the decision of the Bureau, the Chairperson reopened the debate on Articles 8 and 17 of the Convention.

The Committee held a lively and extensive debate on this issue. Many delegations took the floor, and, as a result, the Committee agreed upon a new sequence of headings and provisions, in line with the sequence of Article 8 of the Convention. Accordingly, the Committee agreed to reaffirm the right of each Party to adopt all necessary measures to face special situations where cultural expressions on its territory were at risk of extinction, under serious threat, or in need of urgent safeguarding, as well as the necessity of disassociating this right from reporting to the Committee. The vast majority of the Members of the Committee stressed that the function of the Committee is to support the Parties, rather than to oversee the measures adopted by them in special situations under Article 8(1). Thus, the provisions listed under the heading 'Role of the Intergovernmental Committee' were discussed in detail and reformulated.

Among the provisions subject to in-depth debate were those listed under the heading 'Reporting to the Committee'. Many delegations acknowledged the central role of reporting in allowing the Committee to offer support and recommendation to the Parties, where necessary. Extensive discussion also took place on the question of which elements should be brought before the Committee by a Party that has decided to report on measures taken under Article 8(2).

Concerning the Provisions listed under the heading 'International cooperation', the Committee agreed that in the case of special situations, coordinated actions by the Parties should be encouraged to help face the situation, rather than collaborative actions, as the latter seem difficult to achieve.

Four Observers, including three States Members and a non-governmental organization, took the floor at the invitation of the Chairperson. Most of them praised the work entered into by the Committee as particularly promising. The Chairperson then indicated that the draft Decision 1.EXT.IGC/3, including the amendments agreed upon by the Committee would be submitted to it today for approval.

Item 7: Selection of experts and terms of reference for the reports on preferential treatment (Art. 16 of the Convention): interim report

Following the decision of the Bureau, discussion on Item 7 ‘Selection of experts and terms of reference for the reports on preferential treatment’ (Article 16 of the Convention), was opened by the Chairperson as the first order of business on the morning of Wednesday, 25 of June. The Chairperson presented his interim report and Annexes A and B of the working document CE/08/1.EXT.IGC/7, which contain respectively the terms of reference for the work, requested in accordance with Paragraph 5 of Decision 1.IGC 5, and the list of selected experts. The Chairperson then provided additional information concerning the selection process as well as the agreed working schedule for the elaboration of the reports. He also thanked the Spanish Ministry of Culture for their financial contribution to the carrying out of this study. He proposed that the Secretariat invite the coordinators of the reports to present them at the next ordinary session of the Committee, to be held in December 2008. He recalled that examination of the Operational Guidelines on Article 16 of the Convention would be included within the agenda of the next ordinary session, in December 2008, and invited the delegations wishing to make comments and remarks, to do so.

While praising the proposed terms of reference and the expert selection process conducted by the Chairperson and the Secretariat, seven Members of the Committee and two Observers highlighted complementary elements which should be taken into account in the reports on Article 16. Among the suggestions made were proposals to address the issue of preferential treatment in respect of both the commercial and non-commercial flow of cultural goods, services and activities. It was felt that the twofold nature of these cultural goods, services and activities should be taken into account. Furthermore, a broader view should be taken of the overall situation regarding preferential treatment beyond each expert’s country of origin, taking into consideration the various scenarios of trade, services and intellectual property regimes at the multilateral, regional, inter-regional and national levels. Lastly, it was suggested that the relationships between the Convention and other relevant international instruments ought to be explored in the context of preferential treatment. Several speakers recalled the high expectations of developing countries with regard to the implementation of Article 16 of the Convention.

The Chairperson proposed to forward to the selected experts and the coordinators the Summary Record of the debates on this issue in order to guide their work.

The Decision 1.EXT.IGC 7 was unanimously adopted by the Committee as it stood.

Item 4: Operational Guidelines: concept and modalities for partnerships (Article 15 of the Convention)

The President opened the debate on Item 4 concerning the Operational Guidelines on the modalities for partnerships in the afternoon of Wednesday, 25 June. Two documents have been presented on this item: the working document *strictu sensu*, supported by an information document on the processes of forming

partnerships.

The discussions were based upon the proposal of the Francophonie group and the EU proposal, presented beforehand. Fifteen Members of the Committee took the floor. The initial text presented by the Secretariat was amended except for paragraphs 1 and 2 and shortened by the removal of explanatory paragraphs. The amendments concerned the definition and features of partnerships as well as their scope and process. They aimed at clarifying and focusing the text prepared by the Secretariat by presenting simplified guidelines closer to Article 15 of the Convention.

The debate started with the provisions under the heading 'Definition and features of partnerships', to which several modifications were introduced, mainly with regard to the different levels of public authorities, i.e. local, national, regional and international levels. The provisions under the Heading 'The objectives and scope of partnerships' were subject to more in-depth discussion. Many delegations insisted on the need to make more precise use of the terminology: e.g. the use of 'cultural policies' instead of only 'policies' was agreed upon. It was also agreed that capacity-building, as an objective of the partnerships, will also include public sector officials, in addition to cultural professionals. Another essential improvement was introduced in paragraph 6.1, where the Committee decided to insist specifically on the necessity to undertake an analysis of the needs of developing countries in order to take forward collaborative arrangements in the interest of these countries, and where appropriate, in collaboration with national, regional and international partners.

Finally, as a result of our exchanges, the role of the UNESCO Secretariat has been considered with relation to three main functions:

- promoting inter-sectoral partnerships among various stakeholders,
- providing information on existing and prospective partners in the public and private sectors as well as the non-profit sector, as well as links to useful management tools, particularly through its website, and
- elaboration and submission of innovative projects to donors in the fields of operation of the Convention.

The Secretary of the Convention pointed out that the Global Alliance should become the communication platform at the service of partnerships as indicated in the Convention. This platform should allow partners to meet and exchange high-quality information. However, as the Global Alliance's resources are drawn entirely from limited extrabudgetary funding, the responsibility for negotiating and reaching agreements would rest with the partners themselves.

Given the nature of partnerships, which need time to develop, the Committee decided to avoid rigid operational directives, and agreed that the guidelines should be adaptable to real needs, as necessary, based upon experience. The Chairperson then indicated that the draft Decision 1.EXT.IGC4, including the amendments agreed upon by the Committee, would be submitted to it today, for approval and the Committee adopted them this morning.

Item 5: Operational guidelines on the role and participation of civil society

The Chairperson opened the discussion on the participation of civil society informing the Committee about the exchange session with representatives from civil society on Monday 23 June, organized in conformity with decision 1. IGC 5 adopted at the Ottawa session. After authorization by the Committee, two representatives of civil society, speaking on behalf of more than 100 participants from civil society having participated in this session, made an oral report to the Committee summing up their views. The recommendations prepared by civil society as an outcome of this exchange session have been distributed to the Committee.

While appreciating the proposals made by the Secretariat, two sets of amendments have been proposed by the Francophonie group Members of the Committee and by some Members of the Committee belonging to the European Union. According to these proposals, several paragraphs of the initial text were merged or shortened in order to enhance the structure and clarity of the operational guidelines.

One of the major discussion points concerned the definition of civil society. The Committee opted for a broader definition of civil society not confined to that of NGOs only.

All the delegations that took the floor stressed the essential role of civil society both at the national and international levels in promoting the objectives of the Convention and assisting the Committee to interpret and apply the provisions of the text. Therefore, the Committee deemed it highly important to give a strong and active role to civil society.

The Committee also considered important to maintain a constructive dialogue in an interactive manner with civil society. The idea of organizing exchange meetings with civil society on a more or less regular basis, and if necessary just before the sessions of the organs of the Convention, met with strong support.

With regard to the criteria for admission of civil society to the meetings of the organs of the Convention, the Committee proposed, in order to benefit from the widest possible expertise of civil society organizations and groups, to admit all those complying with the criteria independently of the duration of their existence.

Item 6: Interim report on the use of the resources of the International Fund for Cultural Diversity

Upon invitation of the Chairperson, Mme. Rivière, as representative of the Director-General, recalled that the Committee, at its Ottawa session, decided to adopt operational guidelines at its second ordinary session. On the basis of the comments made in Ottawa and on the basis of contributions received by 50 Parties, the Secretariat prepared an interim report summarizing the contributions received. The document provided to the Committee highlighted the points of agreement and the nuances/differences. The Chairperson requested the members of the Committee to provide clear indications to the Secretariat on every paragraph of the document in

order to ensure that the draft Operational Guidelines to be submitted to the next ordinary session in December 2008 be as consensual, comprehensive and clear as possible.

The Committee agreed with the majority of topics presented in the document, and in particular with regard to the following points:

The drafting of the Operational Guidelines should be less prescriptive and more flexible than the texts examined during this session under other items of the agenda. It was also decided at this stage not to define priorities as mentioned in paragraphs 21, 27 and 44. Following a three-year pilot phase, an appraisal and evaluation of the Operational Guidelines will be conducted. Any necessary adjustments will then be made. Decisions regarding the expenditure of funds and the approval of projects are the sole responsibility of the Committee. Expert and administration costs should be streamlined and should not hinder the availability of Fund allocations for projects.

Committee member experts from LDCs could be provided with financial assistance upon request for the purposes of attending sessions, subject to the availability of funds.

Paragraph 35 ('the eligibility of private sector organizations as Fund beneficiaries should be conditional upon this sector's ability to help finance the Fund') and paragraph 44 (concerning the prioritization of public-private partnerships) should be deleted.

The Committee left to a later stage the consideration of the minimum and maximum amounts to be allotted to projects to be examined by the Committee (paragraph 46). The Secretariat was therefore requested to present various options of the possible processes of submission of the requests by the civil society (paragraphs 33, 51, 54), alternatively:

- to be submitted by States,
- to be submitted by civil society through National Commissions or other official channels,
- to be submitted by civil society directly to the Committee.

While the Committee agreed that requests shall be pre-selected by a panel of experts (paragraphs: 59, 65, 66), it did not concur on the selection procedure of these experts. However, it was agreed that the panel should be geographically balanced. This issue shall be revisited at the next Committee session in December.

The Committee unanimously agreed that 'the Fund should be multilateral and unable to accept tied or earmarked contributions', as stated in paragraph 22. Nevertheless, Finland, on behalf of the European Union, while acknowledging that no conditions should be attached to contributions, proposed that this particular issue be further discussed among Members of the Committee and Parties, so as to enable the Committee to make a final recommendation at its next session.

Item 13 'Fundraising/Financing' was not discussed thoroughly since the observations presented by Parties had not been requested by the Committee. However, a proposal on this important issue was tabled by the Brazilian Delegation, which pointed out that innovative fund-raising approaches, such as the 'Tobin tax', could serve as a model for a similar mechanism in favour of the diversity of cultural

expressions. A document with some reflections on how to further develop this idea was circulated among Members of the Committee, in which it was proposed that a very low tax be levied on blockbuster motion pictures broadly distributed in a significant number of cinema theatres and the resources generated be channelled to the Fund.

The representative of the Director-General took due note of the Committee's concern that substantial funds be made available to meet the expectations raised by the Convention. She made an appeal to Committee Members, Parties to the Convention, Members States not Party to the Convention, and civil society, to assist the Secretariat between now and the December session, in developing new modalities for fundraising, proposing ideas and providing contacts.

Item 8: Closing session

On the morning of 27 June, the Chairperson invited the Committee to examine the draft Operation Guidelines on Items 3, 4, 5, and 6 as debated by it for the purpose of adoption, and their respective draft decisions.

Regarding decision 1. EXT. IGC.3 (Measures to promote and protect cultural expressions), several Members of the Committee expressed concern that since there is a close link between Article 6 and Article 7, the Draft Operational Guidelines of Article 7 should be adopted at a later stage, together with the adoption of the Draft Operational Guidelines for Article 6.

After having debated the point, the Committee adopted the Decision 1. EXT. IGC.3 as amended, by which it provisionally adopted the Draft Operational Guidelines concerning Article 7 (Measures to promote cultural expressions) and submitted for approval to the Conference of Parties the draft Operational Guidelines concerning Article 8 (measures to protect cultural expressions) and Article 17 (international cooperation in situations of serious threat to cultural expressions).

The Committee adopted decision 1. EXT. IGC.4, deciding to provisionally adopt the Draft Operational Guidelines concerning the promotion of cultural expressions (Article 7 of the Convention), and to submit to the Conference of Parties for approval the Draft Operational Guidelines on the concept and modalities for partnerships within the framework of the Convention as annexed and amended to this Decision.

After having discussed a few amendments of the Draft Operational Guidelines on the role and participation of civil society in the implementation of the Convention, the Committee decided to adopt the decision 1. EXT.IGC.5.

After several comments from Member States, the Committee adopted decision 1. EXT. IGC.6, requesting the Secretariat to prepare preliminary draft guidelines with options covering areas where disagreements still exist.

The decision also requested the Secretariat, using extra-budgetary funding where available, to hold informal consultations with Parties, experts, enterprises and donors with a view to identify potential sources of financing for the Fund. The decision also appealed to the States and organizations with expertise in the field of fund-raising to provide the Secretariat with assistance in this regard.

I hope that I have succeeded in reflecting the main points of the rich debates that have taken place over the last four days. These discussions addressed extremely complex issues essential for the successful implementation of the Convention. I would like to thank the members of the Committee and the Observers for their considerable efforts throughout this session. I also hope that I have succeeded in conveying for you the enthusiastic nature of the discussions held in a spirit of openness and mutual respect. I should like to remind you that the adopted decisions will shortly be made available on the UNESCO website, and that the debates will be reflected in greater detail in the Analytical Report.