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منظمة الأمم المتحدة
للتربية والعلم والثقافة

联合国教育、
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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
24-27 June 2008

DRAFT SUMMARY RECORDS

This document contains the draft summary records of the first extraordinary session of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions.

Item 1 – Opening of the session

1. The first extraordinary session of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter called “the Committee”), was held at UNESCO Headquarters in Paris from 24 to 27 June 2008.
2. It brought together 373 participants including 132 participants from 24 States Members of the Committee, 119 participants from 43 Parties to the Convention (42 States Parties and the European Community), 86 participants from 36 States not Parties to the Convention, one permanent observer mission to UNESCO, six participants from four intergovernmental organizations and 30 participants from 11 non-governmental organizations with observer status.
3. In its opening address, Mr **Koïchiro Matsuura**, Director-General of UNESCO thanked the representatives of the Parties to the Convention for attending. He welcomed observers from civil society, expressing his belief that the previous day’s meeting held to exchange views with the Parties would be a source of inspiration for the Committee. He paid special tribute to the Chairperson of the Committee, commending his excellent stewardship of the first session. Welcoming the continual progress achieved in the ratification of the Convention and the international community’s efforts in that regard, he stressed the need for guidelines to enable the Convention to deliver all of its promises. After a brief overview of the session’s documents, he expressed his gratitude to France and Spain for their contribution in terms of human resources, and to Germany, which would be funding an associate expert post. He then thanked Mr Indrasen Vencatachellum, Acting Director of the Division of Cultural Expressions and Creative Industries, and announced the forthcoming appointment of the Director of the Division. Stressing that considerable imagination and creativity are required to ensure that everyone benefited from the implementation of the Convention, the Director-General wished the Committee every success in its work.
4. **H.E. Mr Olabiyi Babalola Joseph Yai**, Chair of UNESCO’s Executive Board, stressed in his speech the importance of the session as a major step towards the implementation of the Convention. By focusing on preferential treatment, he stated that support for creativity, as the major driving force of cultural diversity, was both a moral duty and an economic necessity. He wished the Committee, on behalf of the Executive Board and on his own behalf, every success in its work.

Item 2 – Adoption of the agenda **Document CE/08/1.EXT.IGC/2**

5. The **Chairperson** invited the **Convention Secretary, Ms Galia Saouma-Forero**, to list the seven working documents drawn up by the Secretariat on the respective agenda items and the eight information documents.
6. The Committee adopted the agenda (Decision 1.EXT.IGC 2), without amendment, and decided to move the discussion under item 7, on the selection of experts and terms of reference for reports on preferential treatment, to the morning of the second day.

Item 2 bis – Adoption of the draft summary records of the first ordinary session of the Committee (document CE/07/1.IGC/10)

7. In presenting the draft summary records of the first ordinary session of the Intergovernmental Committee, **Ms Rivière, Assistant Director-General for Culture**, said that in future such reports would be less detailed and more concise.
8. The delegation of **Saint Lucia**, while taking note of **Ms Rivière’s** comments, said that it did not wish the reports to be too concise as they formed part of the institutional memory of UNESCO and are an essential tool for both the members of the Committee and the other States.

9. The draft summary records of the first ordinary session of the Intergovernmental Committee was adopted without amendment.

Item 3 – Preparation of the operational guidelines for the implementation and application of the provisions of the Convention: measures to promote and protect cultural expressions (Articles 7, 8 and 17 of the Convention)
Document CE/08/1.EXT.IGC/3

10. Amendments had been tabled on the working document prepared by the Secretariat, by eight States (Albania, Burkina Faso, Canada, Mali, Mauritius, Saint Lucia, Senegal and Tunisia), Members of the Committee and of the French-speaking Group of UNESCO and by nine States (Austria, Croatia, Finland, France, Germany, Greece, Lithuania, Luxembourg and Slovenia), Members of the Committee and of the European Union (EU) or candidates for EU membership.

11. The delegation of **Canada** praised the considerable efforts made by the Secretariat in preparing the many preliminary drafts of the operational guidelines on the provisions of the Convention, highlighting the speed with which they had been published on the UNESCO website. This had enabled the States to exchange views and discuss the documents ahead of the meeting. On behalf of several French-speaking countries, the delegation then tabled some amendments to the preliminary draft operational guidelines on Article 7 of the Convention. It explained that the intention was to simplify the text prepared by the Secretariat, make it more flexible and reword the principles. The delegation stressed that the goal was to make the content more generic in nature so that it could serve as a guide for States, as they were free to draft, adopt or implement cultural policies or measures as they wished. Furthermore, the proposed amendments focused on information sharing among the Parties. Lastly, the proposed amendments sought to deal more efficiently with the constant technological changes in the way cultural expressions were created, disseminated and accessed.

12. Following the statement by the delegation of **Slovenia**, pointing out that the amendments proposed by the EU Member States and one candidate country, all Members of the Committee, would be presented by the State that had originally proposed the amendment, the delegation of **Germany** introduced and explained some amendments on the operational guidelines of Article 7, recalling that the amendments were based on those tabled by the French-speaking group of countries. In paragraph 1.1 on the Principles, the delegation wished to insert the words “at the appropriate level and in accordance with the constitutional frameworks” with reference to the “cultural policies and measures formulated by the Parties to promote the diversity of cultural expressions that should be part of an integrated approach”. In paragraph 1.5, the delegation proposed to replace “links in the cultural channel” with “aspects of the cultural activities, goods and services” and add a reference to technological neutrality.

13. With regard to measures used to facilitate the promotion of cultural expressions, the delegation of **Austria** wished to insert “with the participation of all stakeholders” into paragraph 2, considering that addition to be crucial in view of the need to harness the skills of all players in the field. In order to align paragraph 2.4 with Article 5 of the Convention, the delegation wished “national interests” to be replaced by “rights of Parties”.

14. The delegation of **Germany** also called for the inclusion of a paragraph 4 on policies and instruments that should be based, whenever possible, on existing structures and networks.

15. After it had introduced the amendments tabled by the French-speaking Group on the preliminary draft operational guidelines for Articles 8 and 17 of the Convention, the delegation of **Canada** indicated, on the whole, that the proposed amendments aimed mainly to simplify the text. It also mentioned that a new item entitled “Role of the Intergovernmental Committee” had been added in order to state explicitly the role and functions of the Intergovernmental Committee in the implementation of the provisions relating to the protection of the diversity of cultural expressions. Lastly, the delegation stressed that simplifications had been made in the “Periodical Reports”

heading, and that new paragraphs had been added in order to provide for international cooperation as set out in the Convention.

16. The delegation of **Germany** wished paragraph 2.1 to provide for the involvement of experts, civil society and communities at the local level. The delegation of **Lithuania** said that paragraph 2.6 had been added to make it clear that the special situation could not be subject to action under other UNESCO conventions. The delegation of **Luxembourg** stressed that when a special situation had been identified by a Party, the Committee could inform the Parties thereof and request them to provide assistance under Article 17 of the Convention (paragraph 10.2).

17. Regarding the preliminary draft operational guidelines for Article 7, the delegation of **China** proposed adding paragraph 1.5.1 stating that nothing in the guidelines should affect the right of each State Party, by means of legislation or regulation, to monitor the production, distribution and dissemination of any works of cultural expression and related services in order to protect public morals or maintain public order. The delegation explained that the Berne Convention for the Protection of Literary and Artistic Works contained a similar provision and it seemed important to include such a term.

18. The delegation of **Brazil**, supported by the delegation of **China**, considered that paragraph 1.4 of the Principles, which concerned cultural policies and measures designed to take into account the provisions of other international standard-setting instruments in the field of culture should not refer to those concerning intellectual property and the status of the artist. The delegation explained that since the issue of intellectual property was being discussed by the World Intellectual Property Organization (WIPO), it should not be a matter for debate by the Committee.

19. The delegation of **Slovenia**, speaking on behalf of EU Member States and one candidate country, all Members of the Committee and supported by the delegations of France, Germany, Greece, Luxembourg and Oman, stated that the amendment proposed by China raised the question of public morals and public order, traditionally a human rights issue under Article 2, entitled “Guiding Principles” of the Convention, the first being respect for human rights and fundamental freedoms. The delegation recalled that the Committee had decided in Ottawa not to draft operational guidelines for Article 2 of the Convention and stressed that the operational guidelines for Article 7 were pursuant to Chapter IV of the Convention on “Rights and obligations of Parties”, Article 5 of which reaffirmed the sovereign right of Parties to formulate their cultural policies to ensure respect for human rights. It pointed out that the operational guidelines on the rights and obligations of Parties were not intended to rewrite the Convention or to interpret the guiding principles. It therefore stated that the amendment tabled by China seemed neither necessary nor appropriate and that it would be most concerned if a debate were to ensue on the sovereign rights of States set out in Article 5.1 of the Convention.

20. After substantially amending its proposal, the delegation of **China** pointed out that some cultural expressions were extremely sensitive from religious and ethnic standpoints and had caused much damage to public morals and, to some extent, to public order. The delegation also stated that everyone had the right to produce, distribute and disseminate any cultural expression but should not have the right to propagate expressions injurious to the feelings of other religious or ethnic groups. It then pointed out that its proposal was not a Chinese invention and quoted Article 17 of the Berne Convention, which reads as follows: “The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.” It also quoted Article 20 of the General Agreement on Tariffs and Trade (GATT), which provides that “nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures a) necessary to protect public morals”, and said that those treaties had been signed by all Member States of the Organization.

21. The delegation of **Luxembourg**, supported by the delegation of **Canada**, stressed that the document set out operational guidelines that focused on the ways and means of implementing the Convention and not on matters of interpretation.

22. The delegation of **Senegal**, supported by the delegation of **Canada**, considered that the concerns expressed by the delegation of China were well founded, although the wording of the amendment was somewhat awkward because it contained a repressive element. It requested China to consider drafting a more finely shaded text.

23. With regard to the point that the amendment related to the interpretation of the Convention, the delegation of **China** pointed out that the Committee had formulated policy guidelines which it consequently considered indeed to be an interpretation of the Convention. Addressing the point that the proposal could be inconsistent with human rights and fundamental freedoms, the delegation said that there was a difference of opinion in that regard since the principles could not be bent to one's every wish. In that connection, the delegation said that any attack on an ethnic group, race or religion in China constituted a crime under the penal code and was punished as such. It also stated that in some countries people could publish whatever they wished and that in several regions, including Europe, opinion regarding such situations differed, so that countries of the same region interpreted such situations differently. Lastly, the delegation stated that its aim was to create a favourable environment for the diversity of cultural expressions in which all cultural expressions could genuinely develop and thrive, and that it was open to discuss amendments.

24. Following this discussion, the delegation of **China** indicated that it was withdrawing its amendment to the operational guidelines on Article 7 and would re-submit it when Article 5 would be discussed. It requested that its statement be placed on the draft summary records.

25. The delegation of **India**, referring to the EU amendment proposing to delete "develop the capacity for the public to avail itself of such access" in paragraph 1.6.4 relating to the access stage, proposed that it be reintroduced. In that connection, the delegation of **Brazil** said that access was not merely a matter of information but concerned genuine access, not only physical access but also access in terms of income. The delegation of **India** then said that it was referring mainly to capacity-building, which Parties should understand not only in terms of providing access but also in terms of capacity and resources to gain access. The delegation of **Senegal** said that developing countries considered that their works were not sufficiently disseminated and that market access was required to make them available to the public.

26. With regard to measures used to promote cultural expressions, the delegation of **Brazil** suggested that the following be inserted in the heading of the previous paragraph 2: "with the participation of all stakeholders, notably civil society as defined in the Operational Guidelines for Article 7."

27. The delegation of **India** pointed out that paragraph 2 of the Secretariat's text had contained a reference to export strategies and called for it to be restored. No objection being made by the delegation of Canada, the delegation of **India** proposed the wording, which then became the current paragraph 2.5, entitled "Export and import strategies", following a statement by the delegation of **Brazil**.

28. The delegation of **Brazil** proposed a new paragraph 2.6 entitled "Access Strategies" which, following statements by the delegations of India, Canada, Germany, Saint Lucia, Oman and Luxembourg, was worded as follows: "e.g. encourage programmes for economically disadvantaged groups and incentives so as to facilitate their access to cultural goods and services."

29. The delegation of **Brazil** also called for the insertion of a new paragraph 2.7 on tax advantages. The delegation of **Canada** then pointed out that the matter was addressed in

paragraph 2.3 and that the insertion referring to tax incentives should therefore be made in this paragraph rather than inserting a new paragraph. Paragraph 2.3 was amended accordingly.

30. Referring to Article 8, the delegation of **Brazil**, supported by the delegations of **China** and **India**, hoped there would be no confusion between the provisions of the 2005 Convention and that of 2003 on the safeguarding of intangible cultural heritage. The delegation subsequently indicated that the Committee could not follow up all measures taken by the Parties to protect the diversity of cultural expressions. It recalled that Committee Members knew that Parties could take all appropriate measures to protect cultural diversity, provided that such measures were consistent with their international obligations and commitments. Moreover, according to the delegation, the Committee would be consulted if the matter were particularly complex or the situation were such that there could be a potential conflict between the Convention and other international standard-setting instruments, or if the Party had decided to rely on international cooperation. Although the proposed EU amendment had improved the Secretariat's text, the delegation of **Brazil** stressed that the text could give the impression that whenever the Party adopted a measure it should write a report and send it to the Committee for deliberation, whereas such was not the case. Finally, it added that it understood the reasons why a Party might wish to inform the Committee of the measures taken, but the idea that the Committee might agree or not agree to those measures seemed somewhat excessive.

31. The delegation of **Germany** pointed out that in situations of risk or threat, the Parties should refer to the Convention for assistance. According to the delegation, should a threat be detected, the Party was required to initiate a dialogue with other Parties so that the Committee could make an informed decision.

32. The delegation of **Brazil** proposed amendments, the first of which read as follows: "Without prior consultation of the Committee, Parties may take all measures necessary to protect and preserve cultural expressions on their territories, as long as such measures are consistent with their international obligations." The delegation explained that it was designed to leave the Parties some room to adopt their own measures without being required to report to the Committee because the latter would be unable to deal with every situation. The delegation's next amendment read as follows: "In order to provide information on best practice, the Parties shall inform the Committee of measures taken to protect and preserve cultural expressions". The last amendment stated that: "In order to enable a Party to implement the measures under Article 8 which are likely to call for or require international cooperation or which could be seen as conflicting with other international instruments, the Committee must intervene."

33. A discussion ensued on those amendments and the delegations of **China** (supported by **Saint Lucia** and **Senegal**) and **Germany** suggested that they be reworded.

34. The delegation of **India** considered that the impression should not be given that States were encouraged to respond actively without consulting the Committee. However, it suggested that the first phrase of Brazil's proposal "without prior consultation of the Committee" be deleted. Regarding the reference to the compatibility of the measures with the international obligations of the Parties, the delegation said there was no need to check for compatibility unless there was a specific reason to do so. The delegation, supported by **Germany** and **France**, also said it did not want the Committee to be faced with a situation in which Article 20 of the Convention would be jeopardized and requested the Legal Adviser's opinion on whether the new proposal reflected the spirit and letter of the Convention.

35. The **Legal Adviser** said that consultations on Article 8 had taken place between the Culture Sector and the Office of International Standards and Legal Affairs and then read out the opinion of the Director the Office to the effect that under the first paragraph of Article 8 of the Convention, only a Party might determine the existence of special situations where cultural expressions on its territory were at risk of extinction, under serious threat or required in any way urgent safeguarding. Moreover, the second paragraph of the same Article stated that Parties might take all appropriate

measures to protect and preserve cultural expressions in situations referred to in paragraph 1 in accordance with the provisions of this Convention without first applying for a decision of the Intergovernmental Committee on the matter. Finally, under the third paragraph of Article 8, the Committee's competence was restricted to formulating or otherwise appropriate recommendations concerning the reports that Parties were required to submit to the Committee on any measures taken to cope with the requirements of a special situation. With regard to the case for considering Article 8 in the light of the provisions of Article 20, the Legal Adviser could only answer subjectively and did not believe that any legal remarks were necessary. He then read the opinion of the Director of the Office on Article 17, as it was closely linked to Article 8, stating that Article 17 explicitly provided that Parties to the Convention must cooperate in providing assistance to each other in situations referred to under Article 8 which requires urgent safeguarding, with special emphasis on developing countries. In no way did the article or any other provision of the Convention subject such cooperation to any decision of the Intergovernmental Committee, whose role under Articles 8 and 23 was solely to make (or not) appropriate recommendations concerning the reports by Parties on the measures they have taken to protect cultural expressions in special situations.

36. The delegation of **Brazil** stressed that the opinion of the Legal Office's Director was very close to the Brazilian position. The delegation said that the EU's interpretation of Article 8 was somewhat restrictive and that it did not wish the operational guidelines on Article 8 to be more restrictive than the provisions of Articles 5 and 8 of the Convention. It considered that Parties should be able to take whatever measures were deemed appropriate, provided that they remain within the legal framework of the Convention, without first consulting the Committee.

37. The Legal Adviser, at the request of the Chairperson, answered the question raised by the delegation of **India** and indicated that the key issue in point was that the articles should not require prior consultation of the Committee. To his mind, the various proposals contained no such requirement.

38. The delegation of **Brazil** agreed to delete the words "could be seen as conflicting with other international instruments" for, having participated in the negotiations on the Convention, it understood the sensitivity of other delegations with regard to Article 20 of the Convention. The delegation explained that the Convention should be on an equal footing with other conventions.

39. The delegation of **Greece**, supported by **India**, stressed that measures likely to entail international cooperation were not mentioned in Article 8, but rather in Article 17 of the Convention, as Article 8 referred only to national measures required to address special situations. Consequently, international cooperation was not covered by Article 8, but by another provision. Following that comment, the delegation of **Brazil** withdrew its amendment, but requested clarification of the cases in which the Parties were required to report to the Committee, the types of recommendations that the Committee should make and the scope of the Committee's power in regard to special situations.

40. Furthermore, the delegation of **Greece** remarked that if the Brazilian amendment were adopted the outlook would change radically, since the question related to the conditions for applying Article 8 and not to the report that Parties should submit to the Committee after applying Article 8. Paragraph 3 of Article 8 provided that the Parties would report on the measures taken: Parties were to adopt measures first and then report to the Committee.

41. Referring to its amendment relating to public morals and public order, the delegation of **China** pointed out that even some Members of the Committee who had not agreed to the proposal had said that they understood the reasoning behind it. To facilitate the Committee's work, the delegation stressed that it would exercise its sovereign right under the Convention and that nothing in the operational guidelines would affect the right of the Parties to monitor the production, distribution and dissemination of any work or cultural expression to protect public morals or maintain public order.

42. The delegation of **Brazil** proposed the following new amendments: “3. The special situations referred to in Article 8 assume that cultural expressions on the territory of a Party are under serious threat or in need of urgent safeguarding”; “4. Whenever a Party reports to the Intergovernmental Committee, in accordance with paragraph 3 of Article 8, the Party should be able to (...)”. The delegation of **Saint Lucia** said that the amendment involved a complete reversal of the correct procedure, namely to take measures or draw up reports, and so requested clarification. The delegation of **India** could see no reason for adding that new paragraph, stressing that it exceeded the provisions of Article 8 of the Convention, it requested the opinion of the Legal Adviser. The **Legal Adviser** said that the new text went beyond the Convention, as the operational guidelines related to the implementation of the Convention and not to its interpretation; the wording ran counter to the objective of the operational guidelines and introduced a new element. Following these explanations, the delegation of **India**, supported by **Germany**, called for the amendment to be deleted. The delegation of **Brazil** withdrew its amendment, stating that its main concern had been to clarify special situations.

43. The delegation of **Brazil** also proposed deleting the reference to the use of “factual data” to prove the source of the threat. In contrast, the delegation of **Saint Lucia**, supported by **Germany**, wished to retain that reference and wondered how proof could be shown without such facts.

44. Following a proposal by the delegation of **Brazil**, supported by the delegations of **India** and **China**, to delete from the new paragraph 3.5 the reference to the fact that cultural consequences should prevail over economic consequences, the delegation of **Canada** recommended that “the cultural consequences should be clearly established when the decision is taken”, be inserted for circumstances when the Parties will determine what impact the threat or danger might have on cultural expression. The delegation of **India** suggested instead that “the cultural consequences should be taken into account when taking decisions”. The delegation of **Greece** said that such wording merely stated the obvious, it being self-evident that the cultural consequences should be taken into account, and suggested the following wording: “the cultural consequences should be the major concern when making decisions”. The delegation of **India** did not wish priority to be given to any particular consequence. The delegation of **Canada**, supported by **Brazil**, then proposed that the “cultural consequences should be highlighted when the decision is made.” The delegation of **Senegal** considered that the cultural element should be the priority. The delegation reiterated its support for the Greek proposal. Canada’s proposal was accepted by the Committee following explanations given by the Chairperson.

45. The delegation of **Greece** pointed out that the amendments to the draft operational guidelines on Article 8 had altered the spirit of the Convention. The delegation of **Luxembourg** then suggested changing – with the consent of the Chairperson – the order of the paragraph to begin with “special situations”, followed by “measures to protect and preserve cultural expressions”, and then all matters relating to reports under the same heading.

46. Regarding the reports that Parties should submit to the Committee after identifying a special situation in accordance with Article 8.1 and after taking measures under Article 8.2, the delegation of **Brazil** feared that the Committee would be unable to examine all measures taken by the Parties and would be overwhelmed by reports. The delegation of **Saint Lucia**, supported by **Luxembourg**, said that there should be no fear of the Committee being overloaded with cases since the question concerned special situations. The delegation of **Germany**, supported by **Luxembourg**, understood the concerns of **Brazil** but wondered how the Committee would be able to make informed decisions and act without a report from the Party concerned. The delegation recalled that the operational guidelines could be reviewed periodically and that a pilot phase was to be implemented for which the Parties concerned were to submit reports.

[Observers]

47. The delegation of **Norway** noted that a general trend was emerging from the preliminary draft operational guidelines, namely that the measures formulated as rights of the Parties under

Article 6 of the Convention were sometimes being incorporated more exactly into the directives. It said that such a shift reflected the Committee's wish that the Parties would be committed above and beyond the requirements set in the Convention articles.

48. The delegation of the **United States of America** drew attention to paragraph 1.4 in the principles of the operational guidelines on Article 7, according to which cultural policies and measures drawn up by the Parties to promote the diversity of cultural expressions should take into account the provisions of other international instruments relating to culture. It said that in some other parts of the text of the guidelines, the Committee had avoided interpreting the provisions of Article 20. It believed that the paragraph in question only required account to be taken of other international instruments dealing with culture, which implied that other major conventions such as the International Covenant on Civil and Political Rights, would not be included. The delegation felt that such was not the Committee's intention and therefore proposed that the Committee consider amending the wording to include other international instruments.

49. The delegation of **Jamaica** wished to know whether all cultural policies and measures adopted by States on cultural expressions should be reported on or whether the adoption of such measures and policies were still a matter of national sovereignty. The delegation was concerned that the Committee could not react very quickly when a Party had adopted a measure to deal with a special situation because it only met once or twice a year. The delegation said that if an emergency situation arose, its country did not wish to delay action until the Committee met; the reports should, in its view, have a purpose and so it called for further explanation on the Committee's potential use of the reports to protect cultural expressions.

50. **Gary Neil** of the International Network for Cultural Diversity recalled that Article 7 encouraged the Parties to create a climate conducive to the production and reception of cultural expressions but, unlike Article 6, that article did not mention certain objectives. Consequently he welcomed the Secretariat's decision to provide operational guidelines to encourage such a creative process, in particular by proposing policies. He indicated that the text adopted by the Committee did not state sufficiently clearly how the objectives of Article 7 could be achieved, in particular in its paragraph 2 relating to the important role of artists in the creative process. In respect of Article 8, Mr Neil stressed that the operational guidelines would restrict the Parties' capacity to take emergency measures to protect cultural expressions that might be at risk. He stated that some of the conditions introduced could restrict States' freedom to protect cultural expressions.

Item 4 – Operational guidelines: concept and modalities for partnerships (Article 15 of the Convention) **Document CE/08/1.EXT.IGC/4**

51. The **Assistant Director-General for Culture** presented the working document based on commissioned contributions (*Partnering Initiative* in cooperation with the University of Cambridge Programme for Industry), and presented the four main stages of the partnership process (1. creation, establishment of relations; 2. implementation, management and operation; 3. review, evaluation and revision, and 4. sustainability of results) and was designed to assist stakeholders in developing partnerships in the Convention's various fields.

52. On behalf of several French-speaking countries, Members of the Committee, the delegation of **Canada** presented the amendments in detail and said that they were designed to refocus and clarify the text and to highlight some guidelines set out in the preliminary draft operational guidelines.

53. On behalf of several French-speaking countries, Members of the Committee, the delegation of **Senegal** explained the proposed amendments regarding the Secretariat's key role as regards partnerships.

54. Regarding the heading “Definition and features of partnerships”, the delegation of **Slovenia** explained the amendments proposed by the EU Member States and candidate country, all Members of the Committee. The purpose of one amendment was to make it clear that, in the same way as in the public sector there were authorities at different levels, so too did civil society comprise different players. It then called for the reinstatement of a paragraph, deleted by the French-speaking Group, on the principles underpinning successful partnerships (equity, transparency, mutual benefit, responsibility and complementarity).

55. The delegation of **Brazil** proposed that text be included to provide for capacity-building for government officials and institutions responsible for cultural affairs in the heading “Scope of partnerships”. The delegation of **Mali** called for a specific statement that advocacy and policy formulation were focused on culture. Turning to the objectives, the delegation of **South Africa** proposed that the objective on access to international markets be supplemented by text referring to “other appropriate forms of assistance on issues relating to the international movement of goods, cultural services and cultural exchanges”.

56. The delegation of **South Africa** recommended that the needs of developing countries be assessed in cooperation with their international partners. The delegation of **India** said that the new paragraph exceeded the spirit of Article 15 of the Convention, which related to innovative partnerships. In addition, the delegation stressed that the last sentence of the paragraph made a distinction between civil society and NGOs. Supported by **Germany** and **Saint Lucia**, it said that the two entities formed a whole that should not be separated and also proposed that the public sector and non-profit organizations be included in the paragraph.

57. In the section on the partnering process, the delegation of **South Africa** suggested that the following sentence be added at the end of the paragraph on reviewing, evaluating and revising partnerships: “Parties are encouraged to share best practices identified from reviews conducted on successful partnerships.” Given the need to avoid fostering any false hopes with regard to partnerships, the delegation of **Germany**, supported by **Canada**, **France** and **Greece**, wished to delete the following paragraph: “the establishment of a successful partnership requires much time and resources”.

58. Finally, the section on the role of the UNESCO Secretariat did not give rise to any substantive amendments, other than from the delegation of **South Africa** which proposed adding a sentence to the second paragraph of this section: “They [the Headquarters and field offices] are encouraged to utilize the capacities and networks of National Commissions for UNESCO in the promotion of their objectives in this regard”. The delegation of **Senegal** requested explanations on the last paragraph of the section which stated that “the Secretariat submits innovative projects to donors in the fields covered by the Convention”. The **Secretary of the Convention** then indicated that all was still to play for in this matter and that a proposal had been made to transform the Global Alliance so that it could serve the Convention; it could then become an information and communication platform for tri-sectoral partnerships. She also explained that as the programme was funded from extrabudgetary resources, partners would negotiate agreements among themselves and that the Secretariat would ensure that they received quality information.

Observers

59. The delegation of **Jamaica** said that there was a need to ensure that the partnerships were balanced, that they recognized the capabilities of each partner, and that they were targeted. It also wondered what the expected objectives of those partnerships would be.

Item 5 – Operational guidelines on the role and participation of civil society (Article 11 and related articles)

Document CE/08/1.EXT.IGC/5

60. The **Assistant Director-General for Culture** touched on the meeting held on Monday, 23 June at UNESCO Headquarters to exchange views on the role and participation of civil society in the implementation of the Convention. That meeting had been convened in accordance with Decision 1.IGC 5C, adopted by the Committee at its first session, and had enabled more than 200 people, half of whom represented the Parties and the other half civil society, to engage in an informal dialogue. Stressing its innovative character, she said that the meeting had been prepared in consultation with the Committee's Chairperson and the NGO-UNESCO Liaison Committee. The **Assistant Director-General for Culture** thanked the NGO-UNESCO Liaison Committee and its Chairperson Bernard Loing, as well as the moderator of that meeting, H.E. Ms Ina Marčiulionytė, Ambassador and Permanent Delegate of Lithuania to UNESCO. She spoke of the cordial atmosphere of the meeting and listed the agenda items. Finally, she announced that the Secretariat would not draw up a report on that informal meeting and that civil society would submit its own report, which would be posted on the NGO-UNESCO website.

61. In introducing the working document prepared by the Secretariat, the **Assistant Director-General for Culture** said that Annex I to the document contained draft operational guidelines, including a definition of civil society and the modalities by which it could contribute to the implementation of the Convention and the work of its organs. Annex II to the document contained a set of criteria for admitting civil society representatives to participate in meetings of the organs of the Convention. Finally, the Assistant Director said that the Secretariat had received amendments from the French-speaking Group and EU Member States that were Members of the Committee.

62. The **Chairperson** proposed to Committee Members that two civil society representatives be allowed to report on the meeting held to exchange views on the role and participation of civil society in the implementation of the Convention, before the debate on the preliminary draft operational guidelines began so that Committee Members that had not attended the meeting would gain a better understanding of the issues and challenges. There being no objections, the Chairperson invited Mr Rasmane Ouedraogo (Burkina Faso), an actor, screenwriter, filmmaker and educator who was helping to train new generations of filmmakers in his region, West Africa, and Ms Margaret Shiu, from Hong Kong and Taiwan of China, a sculptor and cultural professional, to take the floor.

[Observers]

63. **Mr Rasmane Ouedraogo** expressed his appreciation to the Secretariat and Committee Members for convening that unique meeting. He stressed that the meeting had been extremely useful insofar as it had enabled NGOs to explain clearly how they worked to protect and promote cultural diversity, to focus attention on specific projects that had been implemented to achieve the objectives of the Convention and to look at how they operated in order to encourage further ratifications. Mr Ouedraogo stressed the unprecedented nature of Article 11 and given its high degree of commitment required that relations between the Parties and civil society should produce new forms of cooperation, involvement and openness on different levels. Firstly, at national level, Parties would work with local and national NGOs that were very often members of international NGOs to devise programmes and measures to promote the diversity of cultural expressions and to frame national cultural policies and policies to promote cooperation and international exchanges. Secondly, at international level, the Committee and the Conference of Parties could develop formal relations that could benefit all stakeholders, especially with those organizations that attended the exchange of views and the Convention negotiations and were also attending the Committee's session.

64. **Ms Margaret Shiu** hoped that some of the recommendations made by the civil society representatives would be taken on board, even if some of them went beyond the agenda of the

session. She stressed that implementation of the Convention was under way and that it was the role of civil society to contribute. Finally, she hoped that in a spirit of partnership, new relationships could be developed at all levels (national, regional and international).

65. The **Chairperson** thanked the civil society representatives and opened the debate on point 5.

66. The delegation of **Saint Lucia** introduced the amendments tabled by the French-speaking Group, which were intended to simplify the preliminary draft operational guidelines and said that one amendment concerned the definition of civil society for the purposes of the Convention.

67. Several paragraphs of the draft operational guidelines gave rise to some discussion. With regard to paragraph 3 concerning the definition of civil society, the delegation of **Croatia** supported by the delegations of **Saint Lucia, Greece and Canada**, called for the term “including” to be added to the definition in order to refer to “non-governmental organizations, non-profit organizations, cultural professionals and associated sectors and groups who support the work of artists and cultural communities”, and for “associated sectors” to be deleted. The delegations of **South Africa and India** were opposed to that proposal. The delegation of **Saint Lucia**, supported by the delegation of **India**, considered that the addition of the term “including” would make the definition very restrictive; civil society was much broader. The delegation of **Senegal** said that there had been intense discussion of the issue within the French-speaking Group; the objective of the Convention was to support creation and consequently no one should be excluded. The delegation believed that the definition took account of the interests of professionals, activists and institutions and that the Committee should be vigilant in order to ensure that there was no confusion of roles and to include bodies because they could be useful for the Convention rather than for sectoral or corporatist reasons. The **Chairperson**, endorsing the comments of the delegation of Senegal, in particular regard to the Committee’s supervisory role, requested Croatia to return to the original text. It was so agreed.

68. In the third subparagraph of paragraph 6 on the areas in which civil society could contribute, including the promotion of specific cultural expressions, the delegation of **Brazil** proposed to include the Lesbian, Gay and Transgender (LGT) group on the list of groups covered by this paragraph. The delegation of **India** pointed out that the group was not listed in the Constitution of the Organization. The delegation of **Greece** said that it could not accept another group, since Article 7 of the Convention only mentioned persons belonging to minorities, indigenous peoples and women. The delegation of **Mexico** suggested deleting the references to indigenous peoples and women, since this paragraph already included a reference to minorities. The **Chairperson** told Members that it would be best to adhere to the terminology of the Convention. No objections were made.

69. The amendment tabled by the EU Member States and one candidate country regarding the contribution of civil society to the work of the organs of the Convention was designed to enable accredited civil society organizations to attend the Conference of Parties and the Intergovernmental Committee as observers, to attend the meetings of the organs, to speak at meetings and make written contributions to the work of the organs concerned. The delegation of **Germany** said that those arrangements were important but not exhaustive, as those governing the International Fund for Cultural Diversity and Article 18 should also be considered. The delegation said that the other Committee Members had been consulted on the amendment. The delegation of **Brazil**, supported by the delegations of **Senegal and India**, called for the addition of a general requirement for the Parties to the Convention and civil society representatives to meet before each session of the organs. The delegation of **India** proposed the following wording: “maintain dialogue with Parties in an interactive manner with regard to their positive contribution to the implementation of the Convention”. The **Chairperson** noted that the Secretariat could not be placed under an obligation to organize a meeting systematically before each session of the organs of the Convention. The delegation of **Austria** then suggested inserting the words “as appropriate”, and the delegation of **Finland** said the wording should not be too prescriptive, while endorsing the

solution put forward by the delegation of **Austria**. The **Legal Adviser** reminded Members that the submission of written contributions by civil society representatives and their circulation to Committee Members was not covered by the Committee's Rules of Procedure and should be incorporated, if the Committee is in favour to this proposal. The delegation of **Saint Lucia** asked the Legal Adviser whether the written contributions were information documents or official documents and whether the Committee's Rules of Procedure needed to be amended. The **Legal Adviser** replied that it needed to be clarified. The delegation of **India** proposed that the words "as information documents" be included in the text of the operational guidelines.

70. Two paragraphs of the preliminary draft were deleted: one concerning the Committee's option to consult public and private organizations and individuals under Article 23 (7) of the Convention; and the paragraph encouraging civil society representatives attending meetings of the Convention organs to engage in prior consultations with each other and with other agencies or civil society groups. Several paragraphs of the draft operational guidelines were amended without debate. (4, 5 et 6.1), while others were adopted as proposed by the Secretariat, or without further amendments when discussed by the Committee (1, 2, 6.2, 6.4, 6.5 and 10).

71. The discussion of the criteria for admitting civil society representatives to the meetings of the organs of the Convention gave rise to a substantive debate as to whether the agencies or civil society groups needed to have an interest or to have been active in one or more areas covered by the Convention for at least four years. The delegation of **Saint Lucia** questioned the four-year term and requested the EU Member States which had tabled the amendment to explain that addition. Supported by **India**, **Brazil** and **South Africa**, it said that the criterion had been introduced in the Directives of the Convention for the Safeguarding of the Intangible Cultural Heritage, but that such a time period was too restrictive in the context of the 2005 Convention because it could be an obstacle for many stakeholder professionals, actors and designers wishing to organize a group. The delegation of **France** precised that the aim was to ensure the participation of groups and civil society organizations whose existence had been confirmed for some time and had a certain degree of stability. It said that, after consultation, it had been agreed that a term of four years was relatively long. Backed by the delegations of **Lithuania**, **Luxembourg**, **Greece** and **Slovenia**, it indicated that it wished to retain the amendment and to reduce the duration to two years, knowing that when the operational guidelines would be adopted, some associations or other groups would have been in existence for that length of time. As indicated by the delegation of **Saint Lucia**, the **Chairperson** pointed out that organizations could form at any time. He then asked the delegation of Slovenia whether it would withdraw the amendment. It was so agreed.

Item 6 – Preparation of the operational guidelines on the use of the resources of the International Fund for Cultural Diversity: interim report (document CE/08/1.EXT.IGC/6)

72. In introducing the item, the **Assistant Director-General for Culture** said that the Secretariat had prepared the interim report on the basis of discussions at the first session and contributions received from 50 Parties, summarizing the points of agreement and difference on the issue. **Ms Rivière** also said that, in accordance with the recommendations of the Committee, the Secretariat would submit a simple and concise working document on the Fund.

73. The **Chairperson** then invited Committee Members to provide the Secretariat with detailed information on each paragraph so that the draft operational guidelines to be submitted to the Committee at its next ordinary session would be as consensual and comprehensive as possible.

[Paragraph 15]

74. While agreeing to the text, the delegation of **Germany** suggested that the pilot phase should be for a period of three years, to take account of two phases between the two Conferences of Parties that could adopt decisions. The delegation of **Canada** suggested that the pilot phase should be for a period of one to two years.

[Paragraphs 16 and 17]

75. The delegation of **India** suggested that the Secretariat should be guided by other existing models within UNESCO or other international organizations, bearing in mind that governance of private funds and civil society, as advocated by the EC, was very different from the UNESCO model. The delegation of **Austria**, supported by the delegations of **Germany** and **Luxembourg**, pointed out that the proposals of Jamaica and the EC were not contradictory but complementary. It suggested that the Committee retain both.

76. The Chairperson gave further information on the parts relating to “differences”. Those parts concerned areas in which: (a) there had been totally different proposals; (b) partly different proposals; (c) proposals involving special cases; or (d) specific proposals made by one Party or a group of Parties only.

77. The **Secretary of the Convention** said that unlike the proposal by Jamaica (paragraph 16), which was easy to take on board, the recommendation by the EC (paragraph 17) was of a very general nature and that further clarification was required if it was to be taken into account in the preliminary draft guidelines.

78. The delegation of **Luxembourg** stressed that the most important feature of paragraph 17 was the requirement for high standards of accountability and innovative practices.

79. The delegation of **Saint Lucia** said that the Committee had already adopted the Financial Regulations for the Fund and was working on arrangements for operating the Fund. It recalled that there were already Fund management systems within UNESCO and said that it could not accept the proposal unless there were some clarification.

80. The delegation of **India** said that paragraph 17 contained an implicit suggestion, which India – as a founding Member of UNESCO – could not accept, namely that the existing UNESCO models and systems were not subject to high standards of accountability and innovative practices. It said it was willing to discuss the matter with its EU colleagues.

[Paragraph 21]

81. The delegation of **India**, supported by the delegations of **Saint Lucia** and **Canada**, proposed adding “South-South-North” after “South-South cooperation”. The delegation of **Saint Lucia**, supported by the delegations of **Canada** and **Tunisia**, felt that while regional initiatives should be encouraged, it was not advisable to make them a priority to the detriment of some regions, which ran the risk of being penalized.

[Paragraph 22]

82. The delegation of **India** stressed that India had always been against any tied or earmarked contributions and would oppose it if a regional group sought to introduce such an option. The delegation of **Slovenia** proposed that, in view of the differences within the group, discussion of paragraph 22 be postponed.

[Paragraph 26]

83. The delegation of **India** asked the Secretariat for clarification of the phrase “transversal national strategies”. The **Secretary of the Convention** said that the Secretariat had made no judgement of the document, but had submitted to the Committee a document that reflected as closely as possible the content of the contributions of several groups or individual Parties. As the next step was the drafting of operational guidelines, Committee Members were required to indicate to the Secretariat what should be retained. The delegation of **Germany** said that “transversal national strategies” incorporated the various modes of creation, production and dissemination.

[Paragraph 27]

84. The delegation of **Mali** expressed reservations about limiting priority fields because that could lead to some projects being excluded. Supporting that view, the delegation of **France** requested clarification of what the priority fields covered. The delegation of **Canada** said that the proposal was intended to avoid spreading the budget over a large number of different projects, which would not have any structuring effect. The delegation of **Saint Lucia**, supported by the delegations of **Slovenia** and **India**, said that it had understood the term to mean the setting of priorities over time.

[Paragraph 29]

85. Replying to the Chairperson's question regarding the exact meaning of "regularly" and "reassessed", the delegation of **Canada** explained that the phrase was linked to the definition of priority areas of action which had been discussed during the morning's meeting, when the delegation of **Saint Lucia** had pointed out that those priorities should be reviewed as and when they arose.

[Paragraph 32]

86. The **Secretary of the Convention** asked whether the Committee agreed with the proposal that the Committee should establish a mechanism for the Fund to provide financial support for projects submitted by civil society, and whether the Secretariat should then seek the appropriate mechanisms.

[Paragraph 33]

87. While asking for clarification, the delegation of **India** said that it did not support the direct submission of projects by civil society with the support of two Parties to the Convention, unless the opinion of the State Party on whose territory the agency concerned was situated was taken into account. The delegation of **Saint Lucia** suggested that the idea should be fine-tuned through the addition of further criteria. Explaining that the idea was inspired by UNESCO's Participation Programme, it said that it was for the Committee to decide whether projects should be submitted to the Committee with the consent of the State Party where the NGO was based or the beneficiary State Party. The delegation of **India** expressed its preference for text requiring the consent of the State in whose territory the project would be carried out and of the State where the NGO was based.

[Paragraph 35]

88. At the request of the **Chairperson**, the delegation of **Canada** explained that the mechanism was that private sector projects should be funded solely from funds within the sector. The delegation of **Germany** stressed the need to encourage the private sector and to engage in fund-raising activities. Believing that the proposal did not encourage the private sector to contribute to the Fund, it requested Canada to provide further clarification of the thinking behind the proposal. The delegation of **Canada** endorsed Germany's remarks on the need to encourage private-sector contributions. Regarding the eligibility of the private sector as Fund beneficiaries, Canada explained that, given the limited resources, the two separate fund allocations were designed to ensure that financial resources would also be available for non-profit organizations. Replying to the question raised by the delegation of **India**, **Canada** said that it was probably a question of tied contributions, but that the main purpose of the proposal was to secure a separate fund allocation for the private sector. The delegation of **Germany** suggested that the paragraph be placed in brackets until the drafters found a different wording. The delegation of **Saint Lucia** urged the Committee to allow the private sector direct access to the Fund. It noted that Parties could encourage such access by submitting private-sector projects to the Committee. The **Chairperson** then suggested that the discussion of the issue be postponed.

Continuation of the discussion on paragraph 22

89. The delegation of **India** confirmed its support for the paragraph proposed by the French-speaking Group and said that in accordance with the principle of the multilateral nature of the Fund, no tied contribution could be accepted. Reminding Members that the Legal Adviser had confirmed that the Committee was free to make its own decision, it said that if the paragraph were to refer to tied or earmarked funds, India would be forced to call for a vote on the matter.

90. The delegation of **Finland** clarified the position of the delegations of EU Member States. It said that the Convention was an instrument for development cooperation and that, when deciding to contribute to the Fund, the EU Member States would consider those contributions to be part of their development aid. It said that the operational guidelines should be flexible and allow for the establishment of funding mechanisms that were compatible with the conditions usually applied to development aid, that all such conditions should comply with Article 18.6 of the Convention and should avoid introducing provisions into the operational guidelines that were more restrictive than those contained in Article 18.

91. The delegation of **Saint Lucia**, supported by the delegation of **India**, said that no restriction should be added, since the paragraph quite rightly stated that the Fund was multilateral and that all decision-making on the use of its resources was the prerogative of the Committee and not of the donors. Recalling Article 18.5 of the Convention, it considered that there was no contradiction with this paragraph. In conclusion, the delegation stressed that even if a project had already been prepared and approved by the Committee, the latter was required to ensure that the Fund was used in a fair and balanced way with regard to all Parties and all cultural expressions.

92. The delegation of **Finland** thanked the delegation of Saint Lucia for its explanations and said that the EU delegations were not referring to Rule 18.5, but to Articles 18.3 (a) and 18.6, which invalidated any condition that did not comply with the Convention.

[Paragraphs 37 and 38]

93. The delegation of **Mali** said that the challenge was to minimize expenditure on experts, so that the most of the Fund's resources could be allocated to projects. Endorsing that view, the delegation of **Germany** said it would consider that question after the pilot phase.

[Paragraph 39]

94. The delegation of **India**, believing that such a provision was necessary to promote participation by civil society in developing countries in meetings of the organs of the Convention, spoke in favour of restricting financial support to experts from developing countries.

95. The delegation of **Saint Lucia** pointed out that the paragraph comprised two proposals, including that of Namibia on financing the participation of artists and experts in the sessions. In that regard, the delegation pointed out that Article 23.7 of the Convention provided that the Committee might invite experts to its sessions. It stressed that the Fund could not always finance experts who wished to participate in those meetings and that funding for experts, especially those in developing countries, could only be considered for the purposes of consultation. In regard to the second part of the paragraph concerning participation in Committee sessions by experts from Committee Member States, the delegation of **Saint Lucia**, supported by the delegations of **Canada**, **Austria**, **Mexico** and **Brazil**, spoke in favour of funding, subject to availability of funds, experts from the least developed countries on request.

[Paragraph 43]

96. The delegation of **Mali** asked the delegations of **Canada**, **Chile** and other co-signatories of the French-speaking Group whether the import of that paragraph was that major projects would not be eligible for financing under the Fund. The delegation of **Saint Lucia**, supported by the

delegation of **Canada**, said that as long as thresholds and ceilings had not been set for the projects, the paragraph was meaningless and the idea was actually to include a degree of flexibility for cases where project funding thresholds had been prescribed.

[Paragraph 44]

97. The delegation of **Mali** expressed its reluctance to use the term “priority” because setting priorities would result in the exclusion of some projects to the benefit of others and proposed that eligibility criteria be defined to enable the Committee to choose which projects to fund. The delegation of **Saint Lucia** proposed replacing this term by “encourage public-private partnerships”; the delegation of **Mali** agreed to that wording.

[Paragraph 46]

98. The delegation of **India** expressed concern about the reference to “contributions to the Fund” and stressed that contribution to the Fund should not be a prerequisite when the Committee decided allocation of funds. The delegation of **Saint Lucia**, supported by the delegation of **Mauritius**, recalled that the Committee had just decided that it was premature to set any amounts. The delegation of **Germany**, supported by the delegation of **Luxembourg**, endorsed the comments of the delegation of **Saint Lucia** and said there was no need, in its opinion, to embark on this path until the Committee had set minimum and maximum thresholds.

99. The delegation of **Canada**, while acknowledging that it was risky to fix the size of the contributions, wondered whether a ranking system could be established for funding a number of projects, using the short-term allocations to the Fund. The delegation also noted the importance of benchmarks that could serve as indicators for applicants and enable them to submit funding requests. It also considered that some flexibility should be maintained so that particularly important projects could occasionally be funded beyond established thresholds.

100. While agreeing to the establishment of a ranking system, the delegation of **Mali**, supported by the delegations of **Austria** and **Mauritius**, stated that it was premature to do so. The delegation of **Oman** proposed that the reference to “contributions to the Fund” be deleted, leaving the reference only to “available resources”, in order to avoid confusion. The **Chairperson** suggested that the references to amounts be deleted and that the Committee return to the subject when provided with more information on the operation of the Fund.

[Paragraph 47]

101. The Committee expressed its preference for a biennial period for the duration of the projects financed by the Fund.

[Paragraphs 50, 51 and 52]

102. The delegation of **Saint Lucia** recalled that the Committee had previously spoken in favour of projects being submitted directly by civil society with the consent of the State of origin and the beneficiary State. It therefore considered that paragraph 50 was no longer applicable.

103. The **Secretary of the Convention** asked whether submission through the National Commissions was necessary in all cases. The delegation of **India** said that in previous discussions the Committee had decided that the Parties concerned, whether National Commissions or other official channels, should be consulted. The delegation of **Saint Lucia** said that it did not understand what had happened to the idea of giving direct access to civil society or whether submission through the National Commissions was necessary. The delegation of **India** said that the Committee had never spoken about civil society having direct access to the Fund. It said it had been agreed that any request from civil society had to be submitted by the Member States and possibly through the National Commissions, the principle being that the Member States should be involved in the process. The delegation of **Saint Lucia** said that there had been a major

misunderstanding and that the Committee was making it more complicated for civil society to have access to the Fund. The delegation of **India** said that given the requirement to obtain the consent of the Member States through the National Commissions, there was no need to obtain the support of a Member State for the submission of a regional project. Under the Participation Programme, the support of one or two States might be required for regional projects. According to the delegation of **India**, the principle was that official support and consent should be obtained for project requests. The delegation of **Saint Lucia** pointed out that there was a difference between requesting the support of a Member State and requesting the Member State to submit a draft, and that the Committee could not therefore require the submission to be made through the National Commission when the requirement was simply to obtain the support of the Member State.

104. The delegation of **Greece** said that the paragraph focused on three different things: the consent of the State concerned; the submission of the draft directly by a civil society organization; and the transmission of the request through an official channel of the State concerned, which should submit it to the Committee, stating that it had granted consent.

105. The delegation of **Senegal** agreed with the comments made by the delegation of **Greece**, and opined that a different procedure should be considered, bearing in mind that the option being offered to civil society was somewhat innovative. For reasons of greater clarity, it advised establishing a procedure for projects that could be submitted directly or indirectly, or through a National Commission, by a civil society organization.

106. The delegation of **Tunisia** called for paragraph 50 to be clarified in order to identify other official channels in addition to the National Commissions.

107. The delegation of **Lithuania** pointed out that paragraphs 51 and 52 should also be discussed. The delegation said that there were two possible scenarios for submitting civil society projects. Either civil society would submit its project directly to the UNESCO Secretariat, in which case written approval from the State Party would be necessary, or civil society requests would be transmitted through the official channels (the focal point of the State Party or the National Commission), in which case the State Party would have automatically approved the project. The delegation of **Germany** agreed with the delegation of **Lithuania** and suggested that discussion of the issue be postponed to the following session. The delegation of **Mali** also agreed with the delegation of **Lithuania** and suggested using the Participation Programme procedure.

108. The **Chairperson** summarized the discussion and pointed out that the Committee should decide in advance whether civil society could submit projects directly to the Committee. If the decision was negative, the Committee would be required to decide on a procedure for civil society to submit its proposals.

109. The delegation of **Canada** pointed out that paragraphs 51, 52, 53 and 65 were linked to the subject and drew attention to the need to know whether the bodies responsible for transmitting civil society requests would serve as filters, which would ensure that the Secretariat would not be inundated with funding requests, or would simply act as intermediaries.

110. The delegation of **Greece**, supported by the delegation of **Luxembourg**, said that the answer to the Chairperson's question was already to be found in paragraph 50, which indicated that there was unanimous agreement that requests for assistance should be submitted by States or civil society through National Commissions or other official channels. It noted the contradiction between the two paragraphs and proposed that paragraph 51 be deleted.

111. The delegation of **India** said that in some countries NGOs had to be approved in order to obtain external funding and it would therefore be more appropriate to go through the National Commissions or other official channels in order to avoid unwieldy procedures.

112. The **Chairperson** suggested that all texts relating to the procedure for submitting civil society projects be placed in brackets and that the Secretariat prepare several options.

[Paragraph 53]

113. The **Secretary of the Convention** explained that the proposal that had been received pursuant to the paragraph concerned requests submitted by States Parties and not by civil society. She then said that the Secretariat would prepare several scenarios for the submission of projects by civil society, taking into account all remarks made during the discussion.

114. Noting that the current version no longer reflected opinions expressed previously, the delegation of **Germany** proposed that consideration be given to a new consolidated version for discussion at the following session. It requested the Secretariat to take the discussions on board so that the Committee might have the requisite flexibility for the pilot phase.

115. The Committee endorsed the **Chairperson's** recommendations for simplifying proposals, coordinating them with earlier paragraphs, and for a more flexible wording. The Chairperson suggested that paragraphs 53 and 54 relating to civil society be placed in brackets. Paragraphs 55 and 56 were not discussed.

[Paragraph 59]

116. The delegation of **Saint Lucia** reiterated its preference for independent experts, for reasons of credibility, and pointed out that projects should not be evaluated by a subcommittee of the Committee.

117. Responding to the delegation of **South Africa**, which had raised the question of the panel selection procedure, the delegation of **Saint Lucia** assumed that the Committee would establish guidelines. It considered that experts would not be used systematically and that the experience already gained on the use of independent experts could be exploited. It stressed the need to ensure that experts came from all regions, were competent and could interact by using inexpensive methods.

118. The delegation of **India** noted the need to decide on basic principles to facilitate the establishment of such a panel, such as that of equitable geographical distribution.

119. The delegation of **Germany** suggested that the discussion should not be confined to the evaluation mechanisms and considered that time should be given over to the projects in order to ensure their success.

[Paragraph 63]

120. The delegation of **India** requested clarification of the assessment grid and the stage at which it should be used. The delegation of **Saint Lucia** expressed support for the adoption of an assessment grid, as it was designed to assist States Parties and the Secretariat in screening the many projects that would be submitted.

[Paragraph 65]

121. The delegation of **Canada** proposed that the two ideas contained in the paragraph be merged. It said that the Committee could request either the Committee or the Secretariat to establish a data bank on experts, which should also include information on their degree of expertise and fields of specialization.

122. The delegation of **Saint Lucia**, supported by the delegation of **India**, pointed out that if the projects were neither pre-selected nor assessed, the Committee would be unable to choose the experts, and further thought should be given to the matter.

123. The delegation of **Lithuania** recalled that the Committee had appointed a panel of independent experts rather than a subcommittee to assess requests for assistance and said that the power of decision lay with the Committee.

124. The **Chairperson** considered that it was too early for the Committee to reach a final agreement on paragraph 66.

[Paragraph 68]

125. The delegation of **Mali** stressed the need to assess all projects. The delegations of **Saint Lucia** and **India** were of the view that it would be very expensive and that greater flexibility was necessary. They also stressed that applicants only received an advance payment once a detailed working plan had been submitted. They supported the delegation of **Germany**, which proposed that the paragraph be reworded.

126. Replying to a request for clarification by the delegation of **South Africa**, the delegation of **Canada** said that a progress report would be required for long-term projects, while such a report was probably not necessary for short-term projects.

127. The delegation of **Saint Lucia** proposed that consideration of the paragraph be deferred to the following session.

128. Paragraphs 20, 24, 25, 31, 34, 36, 40, 41, 42, 45, 48, 49, 55, 56, 57, 58, 61, 62, 64, 67, 70 and 72 were agreed by all delegations and did not give rise to discussion. Paragraphs 66, 69 and 71 were not discussed because the Committee had not yet decided whether a panel of experts or a subcommittee would be tasked with the assessment.

[Observers]

129. The delegation of **Jamaica** stressed the importance of the Fund to cultural industries in developing countries. In its opinion, a link should be established between the debate on the Fund and that on partnerships, and it referred to partnerships between UNESCO, the World Bank and International Labour Office (ILO). It also suggested that cultural industries be involved in financing the Fund, and noted the need to draw on existing models in order to position the Fund strategically and avoid duplication.

130. The delegation of **Brazil** wished to elaborate on its proposal for financing the Fund. It said that the idea was to put in place, in countries that so wished, an innovative mechanism for collecting funds so that the Fund would not be funded solely through resources from developed countries. Taking the film industry as an example, it proposed a tax of 1% on the price of cinema tickets for films that were not conducive to the diversity of cultural expressions. The delegation explained that such a tax was similar to the Tobin tax on financial transactions designed to combat poverty.

131. The delegation of **Finland**, on behalf of the EU Member States, Members of the Committee, said that further discussion was required for paragraph 22. It stated that the EU was ready to contribute to the Fund's resources but considered that official development aid criteria were relevant and should be taken into account. It said that the EU Member States were willing to continue discussion on the subject with other Members of the Committee, other Parties to the Convention and the Secretariat, before the Committee convened in December.

132. The delegation of **Canada** said that, given the importance of the Fund and its limited resources, a strategy for attracting funds should be formulated. It was important to make progress in that regard as soon as the Committee met in December and the Secretariat could draft preliminary fund-raising strategies or approaches for consideration by the Committee.

133. Endorsing the proposal by **Brazil**, the delegation of **Senegal** took the view that it should be backed up by consultations between the Secretariat and financial professionals. Furthermore, realism and ambition were of the essence to avoid establishing a mechanism that would be indefensible in other institutions.

134. The delegation of **India** drew attention to paragraph 12 and pointed out that funds-in-trust constituted a mechanism through which donations could be tied to specific projects. In regard to paragraph 22, the delegation was in favour of the proposal of the French-speaking Group.

Item 7 – Selection of experts and terms of reference for the reports on preferential treatment (Article 16 of the Convention): interim report
Document CE/08/1.EXT.IGC/7

135. The **Chairperson** said that the item concerned an interim report only and then read out the report.

136. The **Chairperson** then informed the Committee that a telephone conference call had taken place on 16 June 2008 involving the selected experts, the Convention Secretariat, the coordinator, Mr Pierre Defraigne, and the assistant coordinator. The terms of reference had been discussed during the conference call and an account of the conference had been sent to the experts. The **Chairperson** also outlined the work schedule and said that the detailed plans for the reports would be ready by mid-July 2008; a two-day meeting would be held in Paris between the experts, the Secretariat and the coordinator at the beginning of September 2008 and the reports should be submitted to the Secretariat on 15 October 2008. The Chairperson suggested to the Committee that the Secretariat should invite Mr Defraigne to its second ordinary session (December 2008). The Chairperson expressed his thanks and gratitude to the Ministry of Culture of Spain which was very generously funding the studies and the September meeting.

137. Noting that the expert panel did not include representatives from India, China or the United States of America, the delegation of **Brazil** wondered whether the studies might be extended to other geographical areas. It believed that the results of the studies would be limited if experts merely addressed the situation in their own country or region of origin. It also sought clarification on two points. The first was whether the aim of the studies was to broach cultural issues relating to the World Trade Organization (WTO), in other words, whether a distinction would be made between commercial and non-commercial cultural property. The second was whether the study would address the issue of the interface between the Convention and WTO agreements.

138. The delegation of **Canada** thanked the Secretariat for drawing up the terms of reference and for the steps taken to find the experts and indicated that statement was only a comment. The delegation stressed that the Convention stated that cultural activities, goods and services had a dual nature, being both economic and cultural, and that they should therefore not be approached from a purely commercial standpoint. They had noticed, however, that the second part of paragraph 2 of the terms of reference was worded in such a way that it could lead experts to draw exclusively on frameworks and mechanisms applying to the commercial sphere. Under the current terms of reference, cultural activities, goods and services were covered by the second point (a) of paragraph 2, as they related to frameworks and mechanisms that apply to the commercial sector; but such was not the case if the second point (b) of paragraph 2 were interpreted restrictively, in view of the statement that only matters relating to the cultural sector *stricto sensu* should be addressed. To avoid any misunderstanding concerning the interpretation of that section and to promote an approach towards preferential treatment that was mindful of the cultural aims and purposes of the Convention, it was both important and necessary, in the delegation's view, for the coordinator and the experts to know that the review of preferential treatment should take account of frameworks and mechanisms covering cultural activities, goods and services from both a commercial and a non-commercial standpoint.

139. That statement was supported by the delegations of **Luxembourg**, speaking on its own behalf and on that of other EU Member States, Members of the Committee, **Brazil, Burkina Faso, Mali, China and Mauritius**.

140. The delegation of **Mauritius** proposed that the word “artists” be inserted into paragraph 2 (a) of the terms of reference on the mobility of persons and that the adjective “cultural” be inserted into paragraph 2 (b) with reference to goods and services, although it wondered whether the terms of reference could be amended at that stage.

141. The **Chairperson** said that no changes could be made to the terms of reference because contracts had already been signed between experts and UNESCO. The Chairperson said that the remarks, points and comments submitted by States would be forwarded to the experts as soon as possible so that they could be taken into account.

142. The **Chairperson**, replying to the delegation of **Brazil**, said he was fully aware that a number of large countries were not represented on the panel of experts. As stated in the interim report, the Secretariat had contacted the Parties three times requesting them to nominate experts. Following a request from the Chairperson, Brazil submitted its comments in writing so that they could be transmitted to the experts.

[Observers]

143. Following the discussions with the Committee Members, the **Chairperson** gave the floor to the observers. The delegation of the **United States of America** made two comments. The first concerned the terms of reference having regard to the very notion of preferential treatment. It stressed that there were rules on treaty interpretation (Vienna Convention) that the experts should take into account in their studies. The second concerned paragraphs 3 and 4 of the terms of reference, in which a factual case study was mentioned. It was therefore essential that experts focus on qualitative and quantitative data to produce an analysis of preferential treatment regimes, as provided for under the current terms of reference.

144. **Ms Edna dos Santos**, Chief of the Creative Economy and Industries Programme of the United Nations Conference on Trade and Development, expressed gratitude to UNESCO and the Committee for inviting other intergovernmental organizations to take the floor. She informed the Committee that UNCTAD and several intergovernmental organizations (UNESCO, WIPO, UNDP and the International Trade Centre) had issued a very detailed report on the creative economy with regard to the flow of cultural goods and services. She believed that the report could be useful for the factual case study on preferential treatment and proposed to make it available to the experts. Finally, she said that it was accessible on the UNCTAD website and that it contained comprehensive annexes on trade statistics, compiled in cooperation with the UNESCO Institute for Statistics.

145. The **Chairperson** said that the comments made by the delegation of the United States of America (observer) would be recorded and communicated to the experts. Turning to the text of the decision under item 7, he asked if Committee Members had any questions, comments or amendments. There being none, the Chairperson declared Decision CE/08/1.EXT.IGC/7 adopted. In this Decision, the Committee took note of the Chairperson’s interim report on the selection of experts and terms of reference for the work requested by the Committee, pursuant to paragraph 5 of Decision 1.IGC 5B (preferential treatment), and requested the Secretariat to organize a meeting at UNESCO Headquarters with the experts and Mr Defraigne before the requested reports were completed.

[Adoption of the decisions on items 3, 4, 5 and 6]

146. The **Chairperson** briefly explained the proceedings of the morning’s meeting. He said that the Committee should first adopt decisions on agenda items 3, 4, 5 and 6 and explained that,

before adopting decisions on items 3, 4 and 5, Committee Members would have the opportunity to state whether the texts of the operational guidelines that had been circulated were a true reflection of the discussions. The Rapporteur would then make his oral report and lastly, before closing the session, Committee Members would have the opportunity to make a few comments.

147. Since Committee Members had not commented on the draft operational guidelines on measures to promote and protect cultural expressions, the **Chairperson** moved to proceed with Decision 1.EXT.IGC 3. The delegation of **Slovenia**, on behalf of EU Member States, Members of the Committee, explained the proposed amendments to the decision and said it would be better to wait until the operational guidelines for Article 6 were available before finalizing those for Article 7. The **Assistant Director-General for Culture** requested clarification as to the action that the Committee wished to take on the operational guidelines for Article 7, as the Conference of Parties had not requested operational guidelines for Article 6, but primarily for Articles 7, 8 and 17. At the request of the delegation of **Saint Lucia**, the **Secretary of the Convention** read out Resolution 1CP 6. According to the delegation of **Saint Lucia**, the resolution clarified the Committee's order of priority, but if the Committee wished to go further, it was free to do so. It called on the Legal Adviser to give an opinion. The **Legal Adviser** confirmed that interpretation. The delegation of **France** pointed out that there was a very close link between Articles 6 and 7 of the Convention and it was not possible to anticipate what the Committee would include in the operational guidelines for Article 6; the main concerns were that there should be consistency between the operational guidelines for the two articles. The delegation of **Saint Lucia**, supported by **India** and **Greece**, proposed that the draft operational guidelines for Article 7 be adopted. Following those amendments, the Committee adopted the draft operational guidelines for the protection of cultural expressions (Articles 8 and 17 of the Convention), as amended and annexed to the Decision. It adopted provisionally the draft operational guidelines relating to the promotion of cultural expressions (Article 7 of the Convention) which will be adopted definitively by the Committee when the draft operational guidelines for Article 6 were adopted.

148. The Committee then turned to the draft operational guidelines on the modalities for partnerships. The delegations of **Saint Lucia** and **France** pointed out to the Secretariat that some linguistic and substantive corrections were required. Following these changes, Decision 1.EXT.IGC 4 was adopted: the Committee decided to submit to the Conference of Parties for approval the draft operational guidelines on the modalities for partnerships within the framework of the Convention as amended and annexed to the Decision.

149. The Committee then adopted Decision 1.EXT.IGC 5 on the role and participation of civil society and decided to submit to the Conference of Parties for approval the draft operational guidelines, as amended, on the role and participation of civil society in the implementation of the Convention as set out in Annex I to the Decision. It also decided, pending an amendment to the Rules of Procedure on the modalities of participation of civil society representatives in the sessions of the Intergovernmental Committee, to adopt the draft criteria, as amended in Annex II to the Decision, to govern the admission of civil society representatives to the sessions of the Committee after its second ordinary session to which Decision 1.IGC 7 would be applicable. Finally, it decided to propose that the Conference of Parties implement the draft criteria set out in Annex II to the Decision with regard to the admission of civil society representatives to participate in the sessions of the Conference of Parties, as amended.

150. Lastly, the Committee considered draft Decision 1.EXT.IGC 6. After some discussion, not least on the method that the Secretariat would adopt in preparing the draft operational guidelines on the use of Fund resources and on possible sources of funding, the Committee adopted the Decision, in which the Committee requested the Secretariat to prepare preliminary draft guidelines on the use of the resources of the Fund. The draft would suggest options covering the issues on which there was still some disagreement, taking into account – as far as possible – the discussions that had taken place during the session. The draft would be submitted to the Committee at the following session. It also requested the Secretariat to use extrabudgetary funding, where available, to convene informal consultations with the Parties, experts, businesses and donors in order to

identify possible sources of funding for the Fund. Lastly, the Committee appealed to States and organizations with fund-raising expertise to provide the Secretariat with assistance as required.

Item 8 – Closure of the first extraordinary session of the Intergovernmental Committee

8A. Oral report by the Rapporteur of the first extraordinary session of the Intergovernmental Committee

151. The **Assistant Director-General for Culture** provided background information on forthcoming Committee sessions. She said that the forthcoming ordinary session would be held in the week beginning on 8 December 2008 and gave details on the items on the agenda, namely the articles concerning international cooperation: 12 (Promotion of international cooperation), 13 (Integration of culture in sustainable development), 14 (Development cooperation), 16 (Preferential treatment for developing countries) and 18 (International Fund for Cultural Diversity). She also said that the Committee might need to consider holding a second extraordinary session in order to be able to submit as many draft operational guidelines as possible at the second Conference of Parties.

152. The **Chairperson** then provided some additional information on preferential treatment. He said that the Committee would have to convene a second extraordinary session because the experts' reports would be discussed only at the next ordinary session in December, when the Committee would have the opportunity to hold the first debate on the issue, but no draft operational guidelines would be ready at that stage. The Chairperson then reminded Members that, following a decision by the Chairperson and the Secretariat, a coordinator, Mr Defraigne, had been appointed, owing to the complexity of the issue. He said that, pursuant to a meeting of the Bureau, it would be useful to invite a second expert/co-coordinator to the December meeting; that person should be a national of a developing country so that the entire process would reflect the broadest opinion possible. He also indicated that the co-coordinator would be one of the experts who were already on the panel and that the decision would be taken shortly.

153. The **Chairperson** invited **Mr Antonio Ricarte** to submit his oral report on the deliberations and decisions of the first extraordinary session.

154. Following the submission of the oral report, which was applauded by the audience, the **Chairperson** called on Members who wished to take the floor.

155. The delegation of **India** declared "India reiterates its position on paragraph 22 of the interim report on the use of the International Fund for Cultural Diversity, namely that contributions to the Fund should not be tied or earmarked. India is totally opposed to the imposition of any conditions on contributions to the Fund and to the introduction of conditions on official development assistance to the Fund. India believes that under the Convention, it was the prerogative of the Intergovernmental Committee to decide on the use of resources in accordance with procedures approved by the Conference of Parties. India acknowledges the statement made by the Finnish delegation on the previous day on behalf of the EU, according to which the EU would take account of paragraph 6 of Article 18 of the Convention which stated that 'no political, economic or other conditions that were incompatible with the objectives of the Convention may be attached to contributions made to the Fund', in their future deliberations".

156. The delegation of **Mexico** praised the efforts of the Bureau and particularly of the Secretariat in organizing the extraordinary session. It also expressed its appreciation for the information document that the Secretariat had prepared in Spanish on the various measures taken by Latin American countries to promote the diversity of cultural expressions.

157. The delegation of **Senegal** complimented the Rapporteur on his report and expressed its appreciation to the Bureau for the work that it had accomplished. In particular, it expressed

gratitude to the Chairperson for his patience, loyalty, punctuality and – his kindness notwithstanding – his firmness.

158. The **Chairperson** then called on the observers that wished to take the floor. The delegation of the **United States of America** echoed the remarks made by the delegation of **Senegal**. It congratulated the Committee and the Rapporteur on the clear, coherent and comprehensive presentation. Referring to the part of the report dealing with the issue of preferential treatment, it requested an amendment to the report to include the commitment made by the Chairperson that all written comments submitted in good time by either members or observers on the question of preferential treatment would be submitted to the panel of experts for consideration.

159. The **Chairperson** thanked the delegation of the **United States of America** for its comments. The delegation of **Saint Lucia** said that it had understood that it was the summary records that would be submitted to the experts. The **Chairperson** said that the Committee had taken note of the statement made by the delegation of Saint Lucia.

8B. Closure by the Chairperson

160. **The Assistant Director-General** thanked the Chairperson on behalf of the Secretariat and of the whole audience. She thanked him for the way in which he had conducted the proceedings and for managing to include that morning's deliberations in his report. She also thanked all of the on-screen word-processing operators, who performed an extremely difficult task. Referring to the unique nature of the Convention, in terms of the speed of its ratification and its rapid transposal into operational directives, Ms Rivière stressed that the Committee had been able to act so quickly because States had become used to organizing themselves in advance to prepare the decisions. She concluded by thanking all those who had worked with the Secretariat to ensure that the discussions could be as productive as possible.

161. The **Chairperson** echoed the remarks made by Ms Rivière and wished to thank the on-screen word-processing operators on behalf of the Committee. He expressed his particular gratitude to Ms Rivière, Ms Saouma-Forero and her team, without whom the Committee would never have been ready for the meeting. He pointed out that, as in Ottawa, the secret of the Committee's success on that occasion lay in the work done upstream, and he encouraged Committee Members to continue on that path for the following session in December. After expressing his thanks to Committee Members and observers, the Chairperson declared the first extraordinary session of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions closed.