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Explanatory Report to the Framework Convention of the Council of Europe on the value of cultural heritage for society

Document prepared by the Secretariat

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I. The Council of Europe Framework Convention on the Value of Cultural Heritage for Society, drawn up by a committee of governmental experts under the authority of the Steering Committee for the Cultural Heritage, was adopted by the Committee of Ministers at the ... meeting of the Ministers' Deputies on {date}. The Convention was opened for signature by the member states of the Council of Europe on {date} at {place}.

II. The text of the explanatory report prepared by the committee of experts and transmitted to the Committee of Ministers of the Council of Europe does not constitute an instrument providing an authoritative interpretation of the text of the Convention although it may facilitate the understanding of the Convention's context and provisions.

Preliminary note

This is a Framework Convention. It sets out principles and broad areas for action which have been agreed between states Party. No provision of this Convention is capable of conveying rights to individuals solely through national ratification without legislative action by individual states Party. The Convention's operation will be subject to the usual rules for international treaties as set down in the Vienna Convention on the Law of Treaties (1969).

A. Aims and origins of the Convention

Aims

The Convention arose from the desire of the Committee of Ministers to provide a framework of reference for heritage policies, particularly in the context of rights and responsibilities in this area and the positive benefits which can be drawn from the use of the heritage as cultural capital, with a view to underpinning existing Council of Europe instruments concerning more specific aspects of cultural heritage. A sound and all-embracing framework was judged necessary to ensure cultural heritage and culture in general their rightful place at the centre of a new vision for sustainable development.

Existing instruments do not affirm the growing importance of the cultural heritage relative to:

- sustainable development: cultural heritages are seen as precious resources in the integration of the different dimensions of development: cultural, ecological, economic, social and political. Cultural heritage is valuable for its own sake and for the contribution it can make to other policies;
- globalisation: cultural heritages are resources for the protection of cultural diversity and sense of place in the face of growing standardisation;
- renewed awareness of the cultural identity dimension in conflicts: cultural heritages are resources on which to develop dialogue, democratic debate and openness between cultures.

Origins

Formally, the Convention has its roots in the Council of Europe's work on "Heritage, Identity and Diversity", following the 4th Conference of Ministers responsible for the Cultural Heritage (Helsinki, May 1996), itself a response to the destruction of cultural heritage during recent conflicts within Europe.

Following the 5th European Conference of Ministers responsible for the Cultural Heritage (Portorož, April 2001), the Ministers' Deputies, at their 759th meeting, instructed the then Cultural Heritage Committee (CC-PAT) to draw up a draft additional protocol to the Granada Convention (architectural heritage, 1985) and, if appropriate, the Valletta Convention (archaeological heritage, 1992) setting out: "*a universal principle for protecting and enhancing the representative heritage of the various forms of cultural expression which have emerged in the course of history in a single territory, irrespective of the current political context of that territory*" and providing for "*a follow-up mechanism tasked with helping to overcome the difficulties encountered*".

However, early consultations led to the conclusion that such protocols could not provide a sufficiently broad basis to pursue these objectives. Even when taken together, these Conventions do not deal with all aspects of the cultural heritage as it is now defined, particularly its intangible aspects.

This reappraisal led to the idea of a new legal instrument to deal with the cultural heritage as a whole, in the particular contexts of globalisation and the new political situation in Europe, but also looking beyond Europe to a world in which the values of culture and cultural heritage were increasingly being recognised as vital in every aspect of life.

In January 2003 the Ministers' Deputies approved the terms of reference for a select committee of experts, working to the Steering Committee for the Cultural Heritage (CDPAT), to assist in drawing up a draft Framework Convention on cultural heritage as a development resource, with the following aims:

- reaching agreement on an enlarged and cross-disciplinary approach to cultural heritage and the concept of a common European heritage by asserting the principle of every person's right of access to the cultural heritage of his or her choice, while respecting the rights and freedoms of others;
- establishing the principle of fair treatment for heritages that represent the various cultural traditions that co-exist on European territory;
- committing the States Parties to introduce heritage policies and educational initiatives to promote intercultural and interfaith dialogue and mutual understanding of differences, with a view to prevention of conflicts;
- establishing a pan-European context for co-operation in the joint preparation of the criteria for sustainable development in the use of knowledge and skills as a development resource;

- committing States to use management approaches that are based on participation by all players in society;
- making proposals for the follow-up of the future convention.

The Convention text was drafted at a series of meetings of the Select Committee of Experts, held in Strasbourg during 2003 and 2004, taking into account representations received from other related Committees. It was finalised by a Working Group of CDPAT, taking into account suggestions made at its October 2004 plenary meeting. The enlarged Bureau of CDPAT subsequently made minor amendments.

B. Specificity and timeliness of a Council of Europe instrument

The approach adopted is consistent with the specificity of the Council of Europe while also being innovative.

1. In accordance with the concept of the “common heritage of Europe”, constituted essentially through shared experience and commitment to human rights and democratic principles, the Convention deals with heritage as an object of individual rights which give it meaning. This avoids the uncertainty of changing definitions of heritages, by referring to their foundation in human rights and liberties (Article 4 exactly follows the logic of interpretation of the European Convention on Human Rights). In the present Convention, heritage is treated both as “source” (Preamble, paragraph 1) and as “resource” for the exercise of freedoms (Preamble, paragraph 3 and Article 2).

2. The text also addresses the right to cultural heritage (Article 4) which it expresses as a dimension of the right to participate in the cultural life of the community (Article 1) and the right to education (Preamble, paragraph 4, citing Article 27 of the Universal Declaration of Human Rights and Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights). Thus all reference to cultures and to heritages as concrete entities is avoided.

3. The text develops the idea of a “common heritage of Europe” (Article 3) in which the cultural heritage shared by Europeans interacts with the agreed democratic, political and social ideals of Europe to generate the idea of a common European responsibility towards cultural heritage. This corresponds to the distinctive character of the European heritage resulting from its depth and rich historical stratification, its diversity of regions and shared cultural phenomena, the products of the interaction of diverse cultures over the centuries.

4. Thus defined, the European cultural heritage is a primary resource for democratic engagement in support of cultural diversity and sustainable development; by the same token, it is a source of prosperity and of unity for the diverse communities present in Europe. Europe’s cultural heritage is treated in this Convention as the “cultural capital” from which, through the investment of human ingenuity and effort, originate the rich and varied cultures of modern Europe. Conservation of this cultural capital is essential, both for its intrinsic value and its

potential as an investment from which future development – cultural, social and economic - may be generated.

5. The Convention is consistent with new trends which underline the growing importance of cultural values in the environment, territorial identity, the character of landscape and the environmental dimensions of cultural heritage. This specificity clearly distinguishes the Convention from earlier international instruments of the Council of Europe and from those launched by UNESCO. It provides the basis for the concept of a “cultural environment.”

6. The idea of the common heritage of Europe allows an approach to the notion of “heritage communities”, for there can be no cultural life without a community (Article 27 of Universal Declaration of Human Rights). A heritage community is defined here as a variable geometry (Article 2b), avoiding reference to ethnicity or other rigid communities. “Heritage communities” here are therefore a very different concept from “the heritage community”, the term sometimes used to encompass all professionals engaged in heritage-related activities. This Convention concentrates upon the benefits of developing co-operation between the diverse heritage communities which occur within Europe.

7. This is an area which, more than any other, requires international and transnational co-operation to bring together the community of peoples represented in the Council of Europe. Consequently, the Convention is distinct from the work of UNESCO, both

- in respect of cultural diversity: the field has been expanded by the Universal Declaration of UNESCO on Cultural Diversity (2001). The present Convention, while recognising the important synergy between cultural heritage and cultural diversity, concentrates primarily upon how the cultural heritage can be used sustainably to create economic and social conditions favourable to the survival of diverse communities. The maintenance of cultural diversity in the face of globalisation is the objective of international effort;

- in respect of tangible elements of the heritage: UNESCO’s work on a global scale continues to operate by a sectoral approach, establishing lists of major assets regarded as world heritage, whereas the present Convention deals with cultural heritages as ensembles;

- in respect of intangible aspects of cultural heritage, where the present Convention focuses primarily on ascribed values rather than on the material or immaterial elements which combine to constitute heritages, thus taking an approach which is distinct from UNESCO’s Convention for the Safeguarding of the Intangible Cultural Heritage (2003).

This is a Convention which, without excluding the exceptional, particularly embraces the commonplace heritage of all people.

C. The character of the Convention

A framework convention was considered the most appropriate type of instrument to develop a policy framework for a new era.

Framework conventions define broad objectives and identify areas for action, as well as the directions in which the Parties agree to progress. Instruments of this type may identify generic activities but, unlike ordinary Conventions, do not create obligations to specific actions. There will often be alternative means of achieving the objectives, and it is open to Parties to choose the route most suited to their own national traditions of law, policy and practice, always taking into account the need to ensure that their own approaches are consistent with those of neighbouring States and other Parties.

A framework convention identifies the direction and the destination of an ambitious European journey, but is not a detailed route-map or timetable. The Convention presents a new way of considering Europe's cultural heritage. While previous instruments have concentrated on the need to conserve that heritage, and *how* it should be protected, this instrument identifies a range of ways of using the cultural heritage, and concentrates upon *why* it should be accorded value.

D. Detailed commentary on the text of the Convention

THE PREAMBLE

The Preamble sets out briefly the themes and the context of the Convention.

In referring to the founding ideas and principles of the Council of Europe, the Convention makes explicit the potential of cultural heritage to contribute to the wider objectives of the Council of Europe.

The second paragraph sets out the need to consider the human values and functions of cultural heritage, and indeed the need to define cultural heritage itself, in response to major changes in society.

The third paragraph, in emphasising the value of cultural heritage as a factor in sustainable development, serves as a reminder that respect for diversity and identity is inherent in the concept of sustainability.

The fourth paragraph introduces a key idea: rights to cultural heritage. The derivation and consequences of this right largely form the basis for the innovative content of this Convention.

The fifth paragraph specifies that cultural heritage, understood as a common good, justifies the widest possible democratic participation, and the exercise of cultural citizenship.

The sixth paragraph emphasises the importance of education, in which cultural heritage can be used as a factor for peace, in inter-personal and inter-cultural dialogue and by promoting mutual understanding and conflict-prevention.

The penultimate paragraph restricts itself to citing instruments which are intimately linked to subject matter of the present Convention. But as this Convention's aims of broadening and intensifying the role of cultural heritage in all aspects of life are progressively achieved, a much larger number of instruments, in many different fields, will become increasingly relevant. This Convention does not supersede earlier instruments, but provides a wider social context for their provisions.

The final paragraph asserts the need for joint action to ensure Europe-wide achievement of the Convention's aims. Follow-up monitoring mechanisms will be put in place to ensure that the application of the provisions of this Convention establishes the link between human rights and heritage values in European society.

SECTION I – AIMS, DEFINITIONS AND PRINCIPLES

Article 1 – Aims of the Convention

Article 1 encapsulates the aims of the convention in three assertions, involving:

- a. the existence of rights relating to cultural heritage, derived as an unavoidable consequence of the internationally accepted right to participate in cultural life,
- b. the fact that a right to cultural heritage creates inescapable responsibilities towards that heritage,
- c. the fact that the ultimate purpose behind the conservation of cultural heritage and its sustainable use is the development of a more democratic human society and the improvement of quality of life for everyone.

These principles underpin the remainder of the Convention.

The final paragraph (Article 1d) emphasises the distinctive perspective of this Convention, which must be borne in mind in its implementation.

Existing instruments dealing with the cultural heritage have treated cultural heritage assets, both tangible and intangible, as something to be preserved for their own sake, because they possess intrinsic or scientific value, or because they contribute to cultural diversity. This Convention builds upon that position by taking the stance that the value of cultural heritage may also be measured by the effectiveness of its contribution to the life of everyone in Europe.

The consequence of this perspective is that efforts to conserve and appreciate the heritage must be regarded not as an activity peripheral to modern life, but as an essential action to sustain and deploy assets which are vital to the quality of everyday life and to future progress. In broad philosophical terms, the foundation of this Convention is that a functional view of the cultural heritage can and should supplement the aesthetic and scholarly view, provided always that proposed uses accord with the principles of sustainability.

Article 2 – Definitions

The definition of “cultural heritage” is the broadest proposed by any international instrument to date. It pays particular attention to the interactive nature of the cultural heritage, recognising that it is defined and redefined by human actions and that it must not be perceived as either static or immutable.

The definition draws particular attention to the environmental dimension, recognising the inseparability of human and natural influences in landscape and also the inherited context of cultural environment. It thus goes beyond the concept of “historic environment”, which tends to be concerned mainly with tangible aspects of the inherited environment.

It is important to note the reference to ownership: the fact that an item is regarded as the cultural heritage of one or more communities or interest groups does not negate private proprietary status. However, limitations in the exercise of private rights may be justified in the public interest, in proportion to the values placed upon particular items. (See Articles 4c and 5a.)

The concept of heritage community is treated as self-defining: by valuing and wishing to pass on specific aspects of the cultural heritage, in interaction with others, an individual becomes part of a community. A heritage community is thus defined as a variable geometry without reference to ethnicity or other rigid communities. Such a community may have a geographical foundation linked to a language or religion, or indeed shared humanist values or past historical links. But equally, it may arise out of a common interest of another type. An interest in, for example, archaeology, can create an “archaeological community” whose members are linked only by the cultural heritage which forms the focus of their activities.

The definition does not require action. One can be a member of a heritage community simply by valuing a cultural heritage or wishing to pass it on. Individual incapacity may prevent action or even physical contact with the cultural heritage in question without invalidating an individual’s right to identify with that community.

Article 3 – The common heritage of Europe

The Convention’s aim of addressing the cultural heritage of Europe in its wider social context is expressed by the introduction of the idea of “common heritage of Europe”, composed of two inseparable elements:

- the *cultural* heritage, which represents a resource and a source of collective memory for people in Europe, and;
- the shared *intellectual* heritage of an agreed set of social values, rooted in history, which form “the European ideal” in terms of how society should operate.

The mutually-supporting interaction of these two elements constitutes a unifying theme of the Convention, developing the important principles of the Declaration on Intercultural Dialogue and Conflict Prevention (the Opatija Declaration), of respect and fair treatment for “cultural identities and practices and the expression of the corresponding forms of heritage, provided that these comply with the principles upheld by the Council of Europe”.

Cultural heritage offers reminders of Europe’s often troubled history, during which lessons have been learned towards the current consensus on values in society. Those values in turn lead to agreement on the existence of shared responsibility for elements of the cultural heritage. This European perspective comes particularly to the fore in respect of cultural heritages which fail to fit neatly within modern political boundaries.

Article 4 – Rights and responsibilities relating to cultural heritage

Article 4 deals with the rights and responsibilities of individuals in respect of cultural heritage.

a. The right to cultural heritage is presented as the ability to be involved with the heritage, helping to enrich it or add to it, and also to benefit from activities linked to it. Although not explicitly stated in the Convention, it must be understood that the right to participate also includes the right not to participate. But non-participation must be the result of choice and not dictated by economic, social or political circumstances.

b. The responsibility to have as much respect for the heritage of others as for one’s own heritage suggests how, through interaction, different cultural heritages may come together to form a common heritage.

c. The clause approving a restriction on the exercise of rights and corresponding freedoms relies for its interpretation clearly upon the spirit and arrangements of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Public interest considerations (see Article 5a), for example to protect important elements of the cultural heritage, must always be balanced against the need to protect individual property rights.

Article 5 – Cultural heritage law and policies

Article 5 concerns the political undertakings that are necessary to permit and guarantee the exercise of the rights to heritage. There is a logic to the order of the paragraphs which flows from recognising the public interest inherent in elements of the cultural heritage, through the processes of identification and understanding, leading to a policy of integration of respect for cultural heritage in all dimensions of development, with the participation of all.

a. It is important to set bounds to the public interest, recognising that it may conflict with private interests. A proportionality principle must be applied because everything cannot be protected. It is the responsibility of Parties to define the criteria for public interest and to translate them into both the extent and the degree of protective measures that they consider necessary.

b. This paragraph develops the complex idea of “valorisation” (see note * below), integrating a chain of actions in the public interest: identification, study, interpretation, protection, conservation and presentation. The idea of “valorisation” is, like cultural heritage itself, multi-dimensional: it involves “giving value to” the ethical, cultural, ecological, economic, social and political dimensions of a heritage. As a resource for personal and communal development, cultural heritage is an asset which requires preservation, and thus its valorisation can be considered as one factor of development.

c. As emphasised in Article 6c, a Framework Convention does not impose directly applicable obligations, but invites Parties to adopt adequate measures if existing arrangements are not sufficient.

d. It is recognised that participation in cultural heritage activities flourishes in an atmosphere of economic well-being and confidence. Participation may, indeed, act as an indicator of the health of society.

e. Although this Convention is not primarily concerned with protection, it is recognised that, for cultural heritage to play the many roles expected of it, its protection is essential.

f. In reaching decisions about how to deal with cultural heritage, Parties should afford equality in the process of consideration to elements of all cultural heritages under their jurisdiction, without arbitrary discrimination. For example, the situation may arise where one state, for historical or other reasons, finds itself in control of cultural heritage assets recognised as of importance by communities or states outside its own borders. The requirement is to treat such heritage with as much care as heritage which is regarded as a national interest of the “host” state. The Convention does not prescribe mechanisms, but it might reasonably be expected that bilateral or multilateral discussions between states directly involved would be the most appropriate solution.

g. Finally, policies must themselves integrate the different dimensions so as to permit heritages to be used as factors in integrated development.

*A remark is necessary here about a difficulty in correspondence between the English and the French versions of the text. In Articles 5 and 10 “*valoriser*” has been used in French. In English “valorise” has a much narrower meaning, so “*valoriser*” has been translated as “accord value”(Article 5) and “make full use of” (Article 10).

Article 6 – Effects of the Convention

is the last disposition setting out fundamental premises.

a. The provisions of this instrument are to be interpreted in accordance with human rights and fundamental freedoms. The Universal Declaration of the United Nations is cited before the European Convention, in view of the fact that this Framework Convention particularly develops Article 27 of the Declaration, which does not have a precisely corresponding Article in either the European Convention or the Social Charter.

b. The second rule of interpretation is the “no detriment” rule. No provision of this Convention will set aside a provision under another national or international instrument where (a) the provisions both relate to the same specific aspect of the cultural heritage and (b) the provision in the other instrument is more favourable for the cultural heritage than the provision in this Convention. In cases of doubt about what is “more favourable”, the choice should be founded upon the question of what is more likely to promote the objectives of this Convention. This rule allows a Party to retain, or to create, laws which go further than this Convention, or for a new instrument to be created to deal with some aspect which is dealt with in summary manner in this Convention, but which is in future judged to require more rigorous definition and agreement in stronger terms.

c. It was thought advisable, for absolute clarity, to emphasise that this Convention does not create any enforceable rights in respect of the subjects with which it deals. Rights of such a character may only be created by national legislative action.

SECTION II – CONTRIBUTION OF CULTURAL HERITAGE TO SOCIETY AND HUMAN DEVELOPMENT

The Articles of Section II successively explore different dimensions of development affected by the need to take into account the right to cultural heritage.

Article 7 – Cultural heritage and dialogue

Article 7 deals with dialogue and relationships between individuals and communities. It sets out four responsibilities designed to ensure that cultural heritage plays a positive role in promoting mutual understanding and tolerance between the many communities within Europe.

a. Valorisation of a cultural heritage through intercultural dialogue requires ongoing research and debate, especially to take account of disagreements which arise in the course of interpretation, for example when an ancient site is sacred to more than one religion. Europe’s history is scarred by conflicts caused or exacerbated by misrepresentations of the values, beliefs and practices of different communities.

b. Disagreements are valuable for democratic debate, and conciliation has as its aim taking fair account of all the knowledge and viewpoints represented. The process of conciliation must accord a role to all interested actors and make use of diverse specialist expertise, including at the international level if necessary.

c. Conflicts often arise from a misunderstanding on the part of one side of values attributed to their heritage by the other. That is why this Article commits Parties to work to develop knowledge of the cultural heritage of all cultural communities and apply it to these ends.

d. Development of understanding of cultural heritages is not possible unless there are policies ensuring its integration in the processes of education and training.

Article 8 – Environment, heritage and quality of life

Article 8 deals with the cultural heritage aspects of environment as a necessary resource for territorial cohesion and quality of life.

a. Territorial cohesion involves ongoing concerted action to integrate various dimensions, including the ecological, cultural, economic and social: valorisation of cultural heritages is a factor of coherence, to the extent that the different aspects of valorisation (see Article 5 above) link together into a single development strategy the various interrelationships between cultural heritage and territory.

b. The cohesion defined in the previous paragraph might be interpreted in a restrictive and monocultural fashion. On the contrary, it is important to consider territories as meeting places between cultures, in both a geographical and a historical sense.

c. The territory is also, and above all, a meeting place for all actors in society. The need to exercise responsibility communally allows links to be established between individuals in the full diversity of their knowledge, experience, interests and positions in society. In this paragraph, as in the preceding one, cultural heritage is accorded value as a factor of inclusiveness.

d. Continuity needs to be assured, not by the systematic reproduction of the same objects and customs, but by a process in which quality is pursued, if not in linking contemporary creativity to existing heritage, then at least in ensuring that there is no damaging dichotomy between the two and that, for instance, the architecture of today respects the values of its context and cultural environment. The key concept here is that the creations of today, together with the environment into which they are inserted, form the cultural heritage of tomorrow.

Article 9 – Sustainable use of the cultural heritage

Article 9 integrates the dimensions discussed above into the sustainable management of the cultural heritage itself.

a. Integrity as invoked here cannot be reduced to a static perspective. It involves interpreting, respecting and where possible adding weight to the complex and multi-dimensional values which constitute the identity and authenticity of the heritage, including values which are contested.

b. Valorisation is a complex process which must include continuous research, debate, information and training.

c/d. Knowledge and skills constitute a tradition, the fruit of a deep understanding of traditional materials, of the environment and of human needs. The links between such knowledge, techniques and practices need to be sustained and developed as much as possible.

e. The state has an important role to play – both through training and as a purchaser of goods and services – at the level of establishing methodologies and in quality control. The responsibility for qualification systems and professional accreditation may be undertaken through agencies such as professional associations or private bodies: the role of the state is to ensure that controls on quality contribute to achieving the aims of this Convention.

Article 10 – Cultural heritage and economic activity

Article 10 establishes continuity between the various dimensions of cultural heritage and its economic aspects, corresponding to the multi-dimensionality of the concept of “value”.

a. The first undertaking corresponds to the right to information: a sound understanding of the whole cultural heritage of a region on the part of all the actors in its development is necessary for sustainable economic activity, for only this permits the full diversity of resources present to be taken into account and ensures the widest participation.

b. Making full use of the cultural heritage is an essential factor in establishing the appeal of a region (the attachment of the inhabitants to their land and the capacity to attract tourism and new enterprises). But economic use must not jeopardise the heritage assets themselves.

c. The cultural heritage possesses, by definition, a value which surpasses its utility at a particular time and for a particular purpose and therefore merits conservation and wider recognition of its value, respecting the rights of diverse communities and especially of future generations.

SECTION III – SHARED RESPONSIBILITY FOR CULTURAL HERITAGE AND PUBLIC PARTICIPATION

Articles 11 to 14 raise the necessity for involving all members of society in a rationale of democratic governance in all matters connected with the cultural heritage. In this the governments of Parties and of their regions are seen as the leaders of a partnership process.

Article 11 – Organisation of public responsibilities for cultural heritage

Article 11 sets out the spirit in which Parties will exercise their responsibility as the leading initiators of national dispositions in respect of the cultural heritage.

a. Integration should be understood as comprising that between different levels of public authorities (local, regional, national), including cross-frontier cooperation, and also that between different policy sectors and domains.

- b. While goodwill is often present, many practical obstacles to concerted action require to be addressed. These may particularly include legal restrictions on types of partnership, inappropriate taxation provisions or lack of mutual recognition of qualifications between professions. It follows logically that the first step should be for each Party to proceed with a systematic assessment of the current position.
- c. Public authorities do not have to assume all cultural heritage responsibilities on behalf of the public, but should see themselves as leaders in a partnership.
- d. The third Portorož Declaration (2001) drew attention to the huge potential of willing and able voluntary effort which exists in Europe, which should be mobilised whilst avoiding the transfer of responsibilities which properly belong to the state.
- e. Non-governmental organisations (NGOs) promoting the protection of the cultural heritage (and meeting any requirements under national law) can provide an effective means of ensuring that the interests of the cultural heritage are represented in administrative or legal proceedings. In order to do so they must have the right to participate (the legal concept of 'locus standi'). Articles 2(5) and 9(2) of the Aarhus Convention – the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) – give NGOs a similar right in respect of environmental matters.

Article 12 – Access to cultural heritage and democratic participation

Article 12 deals with what is needed for the Parties to encourage public and democratic access to cultural heritage.

- a. This paragraph highlights the value of public involvement in the process of cultural heritage evaluation and of open discussion in determining national priorities for the cultural heritage and for its sustainable use.
- b. This is a reminder that the all views should be sought and considered before decisions are taken. It does not require Parties to carry out the desires of all, merely to give them a fair hearing in determining priorities for action and making decisions.
- c. Once again, voluntary organisations can be very useful, for example by offering alternative views which marginalised groups may see as less authoritarian than official positions.
- d. For the views of all to be considered, it may be necessary for some groups to be encouraged to consider and develop their own views. This may require special efforts to ensure that certain groups who may otherwise feel excluded from cultural heritage have the opportunity to engage with the democratic process.

Article 13 – Cultural heritage and knowledge

Article 13 addresses the interface between cultural heritage and the education and training sector. It deliberately does not provide an exhaustive listing of relevant areas of education and research. The need for a cultural heritage element is self-evident in the arts, architecture, archaeology, civil engineering, environmental, social and political studies, spatial and economic planning, tourism and leisure, but the ideal would be for cultural heritage material to be incorporated even in courses where it might not be expected: for example language teaching could use scenarios drawn from this field, as could legal training. Perhaps most important of all is the need to develop linkages between courses in different fields of study, avoiding a compartmentalised approach.

Article 14 – Cultural heritage and the information society

Article 14 explores the manner in which the rapid development of digital technologies relates to two objectives of the Convention: access (including democratic engagement) and economic progress. The approaches to be preferred are those which will tend to enhance the European dimension.

- a. A particular concern is the tendency of digital technology to advance in a few major languages. Even if multi-lingual operating systems are sometimes beyond reach, at the very least priority should be given to comprehensive thesauri and other means of ensuring that the pragmatic advantages of standardisation do not endanger the richness of human diversity.
- b. Huge progress is being made throughout Europe in harnessing digital technology for the benefit of cultural heritage, especially in respect of more rapid access to it. It is important, in order not to waste limited resources, to share experience and develop common operating methods which avoid having to resolve the same practical problems several times.
- c. Digital approaches have great educational potential, but this is to some extent hindered by the need to seek a just accommodation between the desire for the greatest possible free access and the need to give fair reward to those who create or own digital materials. This is a general problem, not one restricted to the cultural heritage sphere, and is likely to be addressed internationally as trade in information grows ever faster.
- d. Many cultural activities already take place in a digital environment, creating materials which form an addition to cultural heritage. In addition to such “born-digital” material, many physical cultural heritage assets are translated into digital copies. There is a need to ensure that the primary resource – the “original” - is not neglected in the excitement of moving to the “virtual”. This need exists no less for “born-digital” material as for pre-existing material: already new technology tends to render older material inaccessible without costly translation.

SECTION IV – MONITORING AND CO-OPERATION

This Section sets out how the Parties are expected to work together towards the Convention's objectives, laying particular stress upon monitoring of progress as the source of priorities for collaborative action.

Article 15 – Undertakings of the Parties and Article 16 – Monitoring mechanism

Articles 15 and 16 respectively set out the responsibilities of the Parties and of the Council of Europe in creating, maintaining and using a system of monitoring which can guide future actions.

The broadly defined objectives of the Framework Convention will, by their nature, be harder to monitor than those of narrower, more specific Conventions. It may be anticipated that qualitative monitoring based on agreed indicators will be more useful, and that simply assembling facts from each country about numbers of protected or preserved heritage items will be of less importance.

Early agreement on specific monitoring mechanisms is important, and it is envisaged that the starting points will be the existing systems HEREIN (European Heritage Network) and the COMPENDIUM of Cultural Policies, which would be adapted to meet the needs of monitoring Council of Europe Conventions more effectively. Monitoring should be seen primarily as the foundation of a dynamic process for sharing and developing good practice rather than an onerous obligation.

To take advantage of modern techniques of information management, and in pursuit of operational efficiency, the Convention takes a different approach to that applied in earlier Conventions. Rather than requiring Parties to submit regular reports, the Convention substitutes the requirement to provide input to a shared information system, to be managed by the Council of Europe advised by the relevant Steering Committee.

Such an approach is intended to allow Parties to contribute, expand and amend information about their own national situation much more flexibly, without the need to register formal reports on every aspect at one time. This, in turn, should ensure that the data in the system is more likely to be updated, allowing Parties and the Council of Europe to maintain an overview of the state of implementation.

The system will be drawn upon whenever required to provide synthetic reports or material for analysis, either across the whole scope of the Convention or dealing with specific aspects. It will form the basis for performing an "observatory function" which develops in response to the needs of the Parties.

Article 16 also provides for the possibility of seeking opinions of the monitoring committee on legal interpretation and of undertaking an evaluation of the practicalities of implementation. The initiative for such demands would come from the Parties.

Article 17 – Co-operation in follow-up activities

Without follow-up action, monitoring would serve little purpose, and Article 17 requires the results of monitoring and analysis to be deployed to prioritise collaborative activities intended to progress the objectives of the Convention. The linkage of subsequent activities to the monitoring process is important, as it will help to avoid diversion of precious resources to activities which, while interesting in themselves, may not be of high priority in the overall perspective. A further source of inspiration for activities will lie in the general programmes of technical co-operation, as developed, when appropriate, by the members of the Council of Europe, upon common agreement, focused on particular geographical areas.

Finally, it should be noted that priority is given to activities which support the European dimension.

SECTION V – FINAL CLAUSES

Articles 18 to 23¹ conclude the Convention, covering the customary procedures for all Conventions: signature, entry into force, accession, territorial application, denunciation, amendments and notifications.

Article 20 requires explanation. It is normal to allow Parties to specify which parts of the territory under their jurisdiction will be subject to the provisions of a Convention. This provision is not intended to permit Parties to exclude major parts of their territories. Rather, it accommodates the historical and legal status of certain territories under the jurisdiction of states Party which have the right separately to accept or reject conventions affecting their internal affairs. This Article also allows each Party subsequently to adjust the territorial application of the Convention.

¹ Article 18 – Signature and entry into force
Article 19 – Accession
Article 20 – Territorial application
Article 21 - Denunciation
Article 22 – Amendments
Article 23 – Notifications