

## ***A Draft International Legal Instrument on Cultural Diversity***

### **RATIONALE**

The international community has been engaged over the past decade in a broad effort to equip itself with objectives and standards for meeting the challenge of globalization. Milestones in the course of those efforts include Rio, Monterrey, Doha and Johannesburg. The Millennium Declaration has provided a general framework as a summary and reference document. For governments, this now constitutes a road map for achieving full political, social and economic development in the years ahead.

Recent worldwide gatherings have produced a consensus on the need to preserve and promote cultural diversity as a key objective of the international community. Cultural diversity, which embraces all cultural expressions and output, traditional and contemporary, is the precondition for dialogue among cultures, for enriching them and for ensuring their mutual understanding. It can also foster a culture of peace. As well, it is one of the cornerstones of sustainable development and democratic practice that are essential to good governance. A corollary of this crucial and multifaceted role is the right of states and governments to preserve and promote cultural diversity, by supporting their cultural industries through the development and implementation of cultural policies at all levels.

Freedom of action for states and governments may conflict with the rules of the World Trade Organization and other trade agreements that fail to recognize the special nature of cultural and audiovisual goods and services. Those goods and services are now at risk of being treated as mere commodities: trade in them is being progressively liberalized and the capacity of states and governments to intervene is considerably reduced. Consequently, it is important for the international community to adopt an international convention, through UNESCO, that would guarantee the preservation and promotion of cultural diversity.

#### **1. The threat to cultural diversity**

Despite the many promises it holds, globalization is a threat to cultural diversity. It facilitates the movement of cultural goods and services, of course, and helps to reduce production costs. Cultural products are in fact playing an increasing role in creating wealth and jobs throughout the world. Growing markets open new horizons for creative talent everywhere, and the progress of information and communication technologies offers new chances for all cultures and languages, particularly minority ones.

Yet the growth and liberalization of international trade, together with the convergence of information and communication technologies, is leading to the concentration of cultural industries and the appearance of dominant enterprises. These trends pose the threat of homogenizing cultures and marginalizing creative talent, and in this way they imperil cultural and linguistic pluralism. In this context, it is urgent to preserve cultural diversity as a source of creativity, as well as a factor of social cohesion and economic development. Cultural support and promotion policies must ensure that all cultures are able to make their voices and opinions heard in the context of globalization.

It is also important that debate about cultural diversity should not be limited to the competing interests of countries that have traditionally been the producers of cultural goods and services. On this point, we need to recognize the special situation of developing countries, which will require sustained support if they are to strengthen their capacities for cultural development, capitalize on the economic potential of their cultural output, and gain access to cultural goods

and services appropriate to their own culture -- all of these conditions are essential to any true dialogue among the world's cultures.

These trends carry with them the risk of homogenization and cultural impoverishment against which states and governments are reacting by adopting policies to guarantee diversity in the output of cultural offerings. Yet the philosophy of market liberalization tends to question such policies since, from a strictly commercial viewpoint, they would seem to constitute barriers to trade that should be eliminated.

## **2. A two-pronged response**

### *A. Avoiding any commitment to cultural liberalization*

In multilateral, regional and bilateral forums for international trade negotiations, such as the WTO, protecting cultural diversity means refusing to accept any commitment for liberalization in the cultural goods and services sector. This was the position of a majority of the Organization's member states during the Uruguay round. Now that a new round of negotiations is beginning, it is essential for governments that do not want to deprive themselves permanently of their cultural policy maneuvering room to refuse, as the Francophone states and governments undertook to do at the Beirut Summit in October 2002, to make any commitments for further liberalization, or to sign on to such commitments when they join the WTO.

Together with this watchful stance, cultural diversity should be protected by its own binding legal instrument.

### *B. Giving legal recognition to cultural diversity*

States and governments have increasingly felt the need in recent years to legitimize their cultural policy at the multilateral level.

In follow-up to discussions in more restricted settings such as the Council of Europe, La Francophonie (Declaration of the Francophone Ministers of Culture in Cotonou, June 15, 2001) or the International Network on Cultural Policy (INCP), the Universal Declaration of UNESCO, adopted unanimously on Nov. 2, 2001, marked a major advance in the international community's recognition of the need to preserve and promote cultural diversity.

That Declaration set forth some fundamental principles and committed UNESCO and its member states to develop them further:

- UNESCO affirms for itself the responsibility "to pursue its activities in standard-setting... in the areas related to the present Declaration within its fields of competence (Article 12 of the Declaration).
- Member states must, for their part, attempt to move forward with "the opportunity of an international legal instrument on cultural diversity" (Point 1 of the Action Plan appended to the Declaration).

At the Johannesburg Summit on Sustainable Development in September 2002, the President of France reaffirmed that cultural goods and services are inherently exceptional and cannot be treated like other commodities, and he presented culture as "the fourth pillar of sustainable development, along with the economy, the environment and social concerns". He spoke in favor of having the international community "adopt a world convention on cultural diversity" that

"would give the force of international law to the principles of the Declaration that UNESCO has just adopted". He also confirmed that this responsibility should lie with UNESCO.

A draft convention, prepared by the INCP, was submitted to ministers of culture at their meeting in South Africa on Oct. 14 to 16, 2002. They considered that text an appropriate basis for further work, and they recognized UNESCO as the proper multilateral forum for sponsoring and eventually implementing a convention on cultural diversity.

At the Beirut Summit (Oct. 18-20, 2002), Francophone Heads of State and Government declared their determination "to contribute actively to adoption by UNESCO of an international convention on cultural diversity enshrining the right of states and governments to maintain, establish and develop policies of support for culture and cultural diversity." As a result of the ministerial conference at Lausanne (Dec. 12-13, 2002), a working group was established to contribute to international debate, particularly within UNESCO.

Building upon UNESCO's Universal Declaration, the international convention on cultural diversity would be designed to enshrine in law the legitimacy of policies for the preservation and promotion of cultural diversity. As a legal instrument, it would serve as a frame of reference for states and other international organizations, serving thereby to strengthen the balance between international trade rules and cultural norms.

This international convention could contain the following elements:

- The right of states and governments to design and implement policies to promote cultural development.
- The right of states and governments to support production through policies that involve appropriate regulatory and financial measures.
- Recognition of the special nature of cultural goods and services and of the special treatment they deserve, including their economic dimension.
- Recognition of the need to preserve linguistic pluralism.
- Specific provisions for less-developed countries to promote development of their cultural industries and their capacity to adopt vigorous cultural policies.
- Permanent dialogue among cultures with a view to preventing conflicts.
- A means for monitoring implementation of the convention and a dispute settlement mechanism.

### **3. The specific role of UNESCO**

As the declarations cited above have suggested, UNESCO would appear at the present time to be the most appropriate forum for preparing and adopting this international convention on cultural diversity.

Within the United Nations system, UNESCO has overall responsibility for cultural issues. Its Constitution declares that it will act "with a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the States members of this Organization". With 188 members, UNESCO is well positioned to ensure virtually universal accession to such a convention.

UNESCO has been concerned since its creation with the issue of cultural diversity. In 1998, the Action Plan adopted by the Stockholm Intergovernmental Conference on cultural policies placed

cultural diversity at the very center of the goals to be achieved, declaring that "cultural goods and services should be fully recognized and treated as being not like other forms of merchandise".

Since the Stockholm conference, UNESCO has consistently stressed the importance of national policies in support of cultural industries. The Organization has been concerned in particular with the need to consider the situation of developing countries, which face serious obstacles in creating and sustaining cultural industries reflecting their creativity. The Organization has devoted a number of studies to this dimension of the issue.

UNESCO is steadfastly in favor of safeguarding cultural heritage. It is currently working on a draft international convention on intangible cultural heritage, the provisions of which would be complementary to those of the eventual convention on cultural diversity.

While there are forums other than UNESCO that are producing studies and doing preparatory work, it is within the universal framework of UNESCO that these initiatives will be most effective.

#### **4. The need for prompt and concerted action**

The pace of the international trade negotiations calendar is such that a prompt start must be made on preparing an international instrument for the preservation and promotion of cultural diversity. The current round of WTO negotiations is scheduled to wind up in 2005. Unless UNESCO can adopt a binding legal instrument by that time, there is a sharp risk that cultural development issues will be dealt with by default, and from the strictly commercial perspective that prevails in trade forums such as the WTO.

It will be important, then, for member countries of UNESCO to mobilize their efforts within the next few months:

- The offers of WTO members for liberalizing trade in services will be known by March 31, 2003, at which time a new phase of the negotiations will begin.
- From April 4 to 16, 2003, the UNESCO Executive Committee will meet: this is the appropriate body for ensuring that the draft international convention on cultural diversity is placed on the agenda for the fall General Conference.
- From Sept. 29 to Oct. 18, 2003, the UNESCO General Conference will meet, and member countries that support the draft convention will have to insist that a start be made at its drafting, immediately and on the basis of a clear mandate.

Through a combination of vigilance and determination within the WTO and other forums, and an activist thrust in UNESCO, governments must ensure that they retain their freedom of action to preserve and promote cultural diversity.

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