

TOWARDS A CONVENTION ON CULTURAL DIVERSITY: BACKGROUND & EVOLUTION*

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PART I: HISTORICAL ANTECEDENTS

- Promotion and preservation of Culture and its advancement in relations among nations is one of the basic purposes of UNESCO through which the objectives of peace and common welfare of Mankind is to be realized.
- The Constitution of UNESCO refers to the preservation of the “...integrity and fruitful diversity of the cultures” of the States Members of the Organization.
- But the manner in which the organization addressed cultural diversity in relations among nations and the approaches adopted depended on the issues and priorities identified by Member States or enjoying prominence on the international agenda of the period concerned.
- The organization’s early work (in the 1940’s and 1950’s) emphasized intercultural dialogue as a key strategy for peace building. Back in the 1950’s the organization, among other things, carried out a survey on the “Unity and Diversity of Cultures” whose aim was to offer an insight into the world’s different culture’s and their mutual relations.
- Following decolonization and the political emancipation of many peoples around the world in the 1960’s, UNESCO’s General Conference adopted the well-known Declaration on the Principles of international Cultural Cooperation. Article 1 of this declaration States that: “Each culture has a dignity and value which must be respected and preserved” and that “every people has the right and duty to develop its culture”.

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- Establishing the link between human rights, human dignity and culture was an important step in bringing culture into the political mainstream of international cooperation making it constitutive and not only expressive of individual and group identity and independence. This was particularly important for the newly independent countries.

PART II: EVOLUTION OF UNESCO'S WORK ON CULTURE

- In the 1970's and 1980's the emphasis of UNESCO's work on cultural relations was on "culture and development" and on "the protection of Cultural heritage". The objective was to ensure the promotion of cultural identity within the context of a global development strategy, which was at the time being fostered by the international community.
- It was also during this period in which a conceptual shift took place in the manner in which culture was defined and considered in UNESCO's Work. UNESCO had indeed maintained until the early 1980's a traditional "arts and literature" definition of culture. But, following the 1982 World Conference on Cultural Policies in Mexico, it was agreed that "in its widest sense, culture may be said to be the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society and social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs". Culture and the approach to cultural cooperation were henceforth cast in an anthropological frame.

- The “Convention concerning the Protection of the World Cultural and Natural Heritage” was adopted in 1972; The UN General Assembly proclaimed “the world Decade for Cultural Development” (1988-1997) and a World Commission on Culture and development was established under the Chairmanship of Javier Perez de Cuellar, former Secretary-General of The United Nations, and an Intergovernmental Conference on “Cultural Policies for Development” was convened in Stockholm in 1998.

PART III: WHY A CONVENTION ON CULTURAL DIVERSITY?

- It was the Stockholm Conference, which among its recommendations called on Member States “to promote the idea that cultural goods and services should be fully recognized and treated as being not like any other form of merchandise”.
- This was a reflection on the challenges represented by the process of globalization and of the rapid liberalization of trade in goods and services. Thus in a statement adopted by a Roundtable of Ministers of Culture held at UNESCO headquarters in 1999, the Ministers affirmed their determination to defend and promote cultural diversity in a globalizing world for the sake of preserving human dignity.
- And in October 2000, the Executive Board of UNESCO invited the Director-General to identify the basic elements of a “UNESCO Declaration on Cultural Diversity” taking into account recent consultations with members States, and referring explicitly to the “strengthening of UNESCO’s role in promoting cultural diversity in the context of globalization”.
- Thus, UNESCO’s work on culture and cultural diversity was henceforth squarely placed in the context of globalization, and the challenges flowing from such globalization for the preservation and promotion of cultural diversity.

- The first phase of this work was the adoption in 2001 by the UNESCO General Conference of the “Universal Declaration on Cultural Diversity”.

A- THE DECLARATION ON CULTURAL DIVERSITY

- The Declaration contains 12 articles around the four main pillars: (1) Identity, Diversity and Pluralism; (2) Cultural Diversity and Human Rights; (3) Cultural Diversity and Creativity; (4) Cultural Diversity and International Solidarity. It was adopted together with “the Main Lines of Action Plan for the Implementation of the UNESCO Declaration on Cultural Diversity.”
- The Declaration defines “culture” as “*the set of distinctive spiritual, material, intellectual and emotional features of social group, and that encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs*”. This definition is in line with the conclusion of the World Conference on Cultural Policies (Mexico City, 1982), of the World Commission on Culture and Development (“*Our Creative Diversity*”, 1995), and of the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998).
- The declaration came in the wake of the events of 11 September 2001. It was an opportunity for States to reaffirm their conviction that intercultural dialogue is the best guarantee of peace and to reject outright the theory of the inevitable clash of cultures and civilizations.

- It is stated in Article 1 of the Declaration that “As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature”. It also declares cultural diversity as “the common heritage of humanity” and makes its defense an ethical imperative indissociable from respect for the dignity of the individual.
- The Declaration, in Articles 1 to 6, establishes the link between the defense of cultural diversity and the observance of human rights and fundamental freedoms, and emphasizes the importance of the promotion of cultural pluralism which is considered as being conducive to cultural exchange and to the flourishing of creative capacities both within nations as well as among nations.
- The Declaration also stresses the link between development and cultural diversity which is considered as one of the roots of development, understood not simply in terms of economic growth, but as a mean to achieve a more satisfactory intellectual, emotional moral and spiritual existence.
- The Declaration recognizes the specificity of **cultural goods and services** as “vectors of identity, values and meaning” which “must not be treated as mere commodities or consumer goods”. (Article 8)
- While affirming the right of each State to define its cultural policy and to implement it in the manner it sees fit, it also emphasizes that cultural policies must ensure the free circulation of ideas and works, and create conditions conducive to the production and dissemination of diversified cultural goods.

- Finally, the Declaration is accompanied by an Action plan Which commits Member States of UNESCO, among other things, “To deepen the international debate on questions relating to cultural diversity” and “to take forward the consideration of an international legal instrument on cultural Diversity”.
- It is in pursuit of this further consideration of an international legal instrument that work was started in UNESCO on the elaboration of an International Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions.
- Various options were considered with regard to the nature and scope of the instrument. The Director-General of UNESCO proposed four such options: (a) a new comprehensive instrument on cultural rights; (b) an instrument on the status of the artist; (c) a new protocol to the Florence agreement which governs the importations of educational, scientific and cultural materials; and (d) a new instrument on the protection of the diversity of cultural contents and artistic expressions.
- Member States of UNESCO opted for this fourth option and the General Conference at its 32nd session in October 2003 invited the Director-General to submit to it at its following session a preliminary report and a draft convention on the protection of the diversity of cultural contents and artistic expressions.

B. A DRAFT CONVENTION ON THE PROTECTION OF THE DIVERSITY OF CULTURAL CONTENTS AND ARTISTIC EXPRESSIONS

- In the elaboration of the draft convention issues such as the following will need to be considered and debated: What are Cultural contents and expressions? What are cultural goods and Services? Are they products like any others or are they unique products with a dual economic and cultural nature which have to be treated differently from other products? Can Market forces alone ensure cultural diversity nationally and internationally and what is the role of government policies with respect to cultural diversity? To what extent should States support their own artists and cultural producers as well as their own cultural industries? What strategies could be adopted to maintain and promote diversity of cultural traditions and expressions within nations and among nations in an increasingly globalizing world? What measures could be adopted internationally with regard to the issues surrounding threatened languages and cultures, including those of indigenous peoples? How can international cooperation and solidarity be mobilized to assist those countries that do not have the economic and financial wherewithal to promote cultural diversity or to preserve vulnerable cultures?
- This is definitely a tall order and the breadth and depth of the issues to be addressed promises interesting and prolonged debates regarding the contents of the draft convention.
- A preliminary draft text was prepared, at the request of the Director-General, and in cooperation with the UNESCO Secretariat, by a group of fifteen experts from different parts of the world, representing a range of disciplinary approaches from philosophy to economics to law and anthropology, reflecting the complexity and diversity of the issues to be dealt with in the draft Convention. They based themselves on the principles enuncoated in the Universal Declaration on Cultural

Diversity, notably, the links between cultural diversity, on one hand, and fundamental human rights and development, on the other; access to cultural expressions, international solidarity and cooperation, in order to concretize them in term of rights and obligations of States.

- It is this text that the Director-General submitted to Member States in the First session of the Intergovernmental Meeting on the Draft Convention in September 2003 and that has also been circulated to all member States of UNESCO, IGO's and NGO's for comments and observations.
- Following those comments and observations, a Drafting Committee was convened in December 2003 to try to reflect in the draft text the gist of those comments and observations or to present them as options to be studied during future sessions of the Intergovernmental Meeting.
- The preliminary draft Convention consists of seven chapters: "Preamble", "Objectives and guiding principles", "Scope of application and definitions", "Rights and obligations of States Parties", "Relationship to other instruments", "Follow-up bodies and mechanisms" and "Final clauses".
- The draft text recognizes the right of States to protect and promote the diversity of cultural expressions by adopting their own cultural policies and measures. This is considered to be necessary to enable all countries, and in particular developing countries, to participate in a more balanced form of globalization and to benefit from the diversity of their cultural expressions in order to ensure long-term development. These policies and measures may include, according to the preliminary draft Convention, those which reserve a certain space for domestic cultural goods and services within the national territory; those which guarantee independent cultural industries effective access to the means of producing, disseminating and distributing cultural goods and services; those which grant public financial aid; or those

which promote the free exchange and circulation of ideas, cultural expressions and cultural goods and services.

- The preliminary draft also addresses the rights of individuals by obligating States parties to ensure all individuals within their States opportunities to create and disseminate cultural expressions and goods and services as well as to have access to the cultural expressions, goods and services. Those rights are ensured in particular by the recognition of the legal and social status of artists and creators, and by enforcing their intellectual property rights.
- The draft text addresses the issue of rights and obligations specific to States to take measures in support of cultural diversity within the limits of respect for basic human rights, but the views are divergent as to the status of those new rights in relation to rights and obligations arising from other texts, measures that might be “appropriate” in respect of those rights, and possibly correlative obligations, which were left to be determined in the subsequent course of the negotiation by the Member States.
- The draft attempts to define “cultural diversity” and “cultural goods and services”, although these definitions remain yet to be fully determined.
- The draft also addresses the possible relationship of the future convention with other agreements entered into by States Parties. This is a very delicate issue which has already been the subject of much debate in the intergovernmental Meeting.
- International cooperation also receives much attention in the draft text, but still needs much further elaboration.
- It is too early to predict the exact contents or the manner in which the text will be finally formulated, but there is no doubt that much work and effort will be required from all those involved for the finalization of this draft convention in view of its importance and complexity.

