SECOND MEETING OF EXPERTS (CATEGORY VI)
ON THE PRELIMINARY DRAFT OF THE CONVENTION ON THE PROTECTION OF THE DIVERSITY OF CULTURAL CONTENTS AND ARTISTIC EXPRESSIONS
UNESCO HEADQUARTERS, 30 MARCH – 3 APRIL 2004

Report

I. BACKGROUND

Following the adoption of the UNESCO Universal Declaration on Cultural Diversity in 2001, the appropriateness of a binding legal instrument, as recommended by the first main line of the Declaration’s Action Plan, was raised by a number of Member States of the Organization. On the recommendation of the Executive Board, the 32nd session of the General Conference (Resolution 34) gave a mandate to the Director-General to submit a preliminary report, accompanied by a preliminary draft of the International Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, at its 33rd session in 2005.

In fulfilling this mandate, the Director-General has favoured a step-by-step approach, based on past experience acquired by UNESCO in the development of a range of normative instruments. As a result, the first stage of this process consisted in launching a preliminary reflection on the objectives and challenges of the future Convention, the conceivable ways of attaining these objectives, and the appropriate responses to these challenges. At the end of this first stage and following the decision of the UNESCO Executive Board, intergovernmental discussions may be undertaken. These discussions will mark the second phase in the development of the Convention. All Member States, associated members, observers, and concerned Intergovernmental Organizations (IGOs) and Non-Governmental Organizations (NGOs) will be invited to participate.

For the first stage of this process, the Director-General established a core group of 15 experts, acting in their personal capacity, collectively representing a wide range of disciplinary and cultural approaches. Their first meeting took place from 17 to 20 December

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2003. The results were presented in the report (CLT/CPD/2003-608/01) that was distributed to all Member States on 20 February 2004. The objective of the meeting was to find a common ground to initiate discussions. Next, the experts were invited to submit a series of drafting proposals, accompanied by comments and explanatory notes on the five chapters envisaged for inclusion in the future Convention. These sections are dedicated to “Objectives and Principles”, “Definition and Scope”, “Rights and Obligations of States”, “International Cooperation and Assistance”, and “Follow-up Mechanisms”.

The current report summarizes the results of the second meeting devoted to the analysis of the expert proposals and the elaboration of a preliminary outline of the Convention.

II. ORGANIZATION OF WORK

The second meeting of the experts took place at UNESCO Headquarters in Paris, from 30 March to 3 April 2004. The Director-General, Mr Koïchiro Matsuura, opened the meeting. The Assistant Director-General for Culture, Mr Mounir Bouchenaki was present throughout the meeting. The Director of the Division of Cultural Policies and Intercultural Dialogue, Mrs Katérina Stenou oversaw the coordination of the meeting. Addressing the experts, Mr. Matsuura referred to the mandate entrusted to him by the Member States of UNESCO to develop a preliminary report along with a preliminary draft of the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions for the next General Conference in the autumn of 2005. The Director-General warmly thanked the experts for the draft proposals for the articles submitted to the Secretariat between the two sessions and noted that this procedure, decided during the first session, would considerably facilitate the second session. He also emphasized that, in light of the complexity of the subject, “Objectives and Principles” and “Definition and Scope” needed further reflection and elaboration. At the end of his speech, the Director-General called on the experts to continue their efforts with a view to proposing an adapted normative response.

Following the Director-General, Mr. Bouchenaki provided details on the working methods of the meeting. The five days had been structured around the preamble and the five above-mentioned themes, with discussion on each item to be led in turn by two experts acting as Rapporteur and Moderator. The start of each morning session was dedicated to summarizing the discussions of the previous day, the re-examination of the proposed formulations, and the revision of the draft proposal. The goal was not to re-open debate, but rather to validate the end points of the discussions and the decisions taken, in particular concerning drafting. The final session, with Mr Bouchenaki as Moderator and Mrs Stenou as Rapporteur, allowed for the presentation of a synthesis of the provisional drafts of the articles, which was submitted to the Director-General.

III. SUMMARY OF THE DEBATES

Following a debate on the acceptance of a certain number of fundamental concepts such as the definitions, principles, scope and objectives of the Convention, it was agreed that the definitions should be employed in the Convention in such a manner as to give the instrument an indisputable legal dimension, rather than to define in an absolute manner these
terms. The definitions should facilitate and respond to the usage of the concrete concepts contained in the Convention, with an overall functional approach. Concerning the principles, they must interpret and drive the Convention. The experts considered that they should abstract from the rules found in the Convention, thereby becoming a sort of “meta-rule” that could be applied in different circumstances. Principles are reflected in the provisions of the agreement on the rights and obligations of States Parties and are closely related to the definitions, scope, and objectives of the Convention. The notion of scope is a central element in the Convention, as cultural diversity concerns a vast domain and a wide variety of manifestations. Nonetheless, the experts recognized the necessity to adhere to the version adopted during the General Conference ("the protection of the diversity of cultural contents and artistic expressions").

Title of the Convention

The debate that took place during the first meeting on the title of the preliminary draft of the Convention was re-opened at the beginning of the second meeting. The discussion led the experts to opt for a more synthetic formulation. Thus, phrase “protection and promotion of the diversity of cultural expressions” was deemed preferable to the previously used "protection of the diversity of cultural contents and artistic expressions”. The experts underlined that this new wording did neither reduce nor expand the scope of the future instrument in conformity with the resolution adopted by the 32nd session of the General Conference.

III.1. PREAMBLE, OBJECTIVES AND PRINCIPLES

The preamble, principles, and objectives of the Convention were the subject of discussions during the second day of the meeting, after having examined the definitions and scope (cf. III.2 below).

With regard to the relationship between the preamble, the objectives, and the principles, it was emphasized that these elements are at once both distinct and related: the preamble should detail the reasons and motivations of the parties in favour of a Convention, the objectives should define the goals of the Convention and the principles should explicate how it will function. The Group agreed to use the preamble of the UNESCO Universal Declaration on Cultural Diversity as the reference text. The singular importance of this text was underlined.

III.1.1. Preamble

From the outset, the experts agreed that the decisions taken on the preamble should be subject to amendment over the course of the debate on the other chapters of the Convention. It was recalled that the preamble should attempt to explain the necessity of adopting such a convention and outline the context of the Convention.

The first discussions dealt with the analysis of the preamble of the UNESCO Universal Declaration on Cultural Diversity. Several experts expressed the hope that only the bare essentials be transcribed in the preparatory text, which has a more limited scope than the contents of the Declaration. Proposals formulated by the experts respectively sought to retain: the importance of wide dissemination of culture; the guarantees for peace that are ensured through tolerance, dialogue, and cooperation; solidarity (by including assistance for
developing countries); and globalization as a source of both opportunities and challenges. The experts judged it useful to envisage the inclusion of a recognition of the dual nature (cultural and economic), and thus the specificity, of cultural goods and services. It was also recognized that the possibility for societies and social groups to preserve cultural diversity, in particular for minorities and aboriginal peoples, depends on issues of identity and social cohesion. The experts also proposed to include a paragraph in the preamble on the recognition of cultural diversity as a source of creativity and sustainable development. Others expressed the preference that the preamble make reference to the Universal Declaration of Human Rights. Finally, the experts noted that there may be some overlap between certain points of the preamble and the objectives and the principles of the Convention.

III.1.2. Objectives

During the exchange on the objectives of the Convention, it was proposed to use as a template the Convention for the Safeguard of Intangible Heritage, which states clear and concise objectives, two relating to the aims of the Convention and two to the means appropriate to their achievement. Discussion subsequently focused on the substance of the objectives.

A first debate gave experts the opportunity to express their views on the distinctive character of cultural goods and services as one aim of the Convention. Whilst several experts gave their support to the idea, others considered that the purpose of the document made it necessary to go beyond mere recognition of such distinctive character. Disagreement also emerged regarding recognition of the dual nature of cultural goods and services: whilst some supported the idea, others considered that the Convention should recognize only their cultural nature, in so far as their economic nature lies outside the scope of the Convention. Several members of the group were in favour of a proposal to include among the objectives “the defence, promotion and development of the diversity of cultural contents and artistic expressions”, although this formulation also gave rise to conceptual and terminological debate on the terms “safeguard”, “promotion”, “protection”, “preservation” and “defence”. The concern was expressed that a strict construction of the word “protection” might conflict with the general purpose by “freezing” the evolution and development of cultures. However, the experts agreed that the preamble would have presented a very different understanding of protection, thereby precluding such interpretation of whichever term was chosen. The experts eventually decided in favour of one objective aiming at the defence and enhancement of the diversity of cultural expressions and another designed to facilitate the development and adoption of appropriate policies and measure for the protection and flourishing of the diversity of cultural expressions. Other proposed objectives addressed the creation of a framework conducive to cultural diversity (the phrase “institutional framework” having given rise to a debate on its precise meaning, it was replaced by “framework of rules and practices”), encouragement of cultural exchange and intercultural dialogue, awareness of the value of cultural diversity at national and international level, and enhancement of international cooperation and solidarity.
III.1.3. Principles

In the course of the exchange, the experts emphasized that the advantage of defining principles is to provide States with rules of conduct that are valid in all situations envisaged by the Convention. In light of this, the list of principles should be restricted. A long list risks becoming inoperative. Similarly, other experts made the point that the idea of a “principle” should be highly action-oriented in order to be understandable within the framework of the rights and obligations of States.

With the respect to the list of principles to be included in the Convention, several experts had already mentioned in their outline drafts proportionality, openness and balance. It was further proposed to include the principle of transparency. Questions were raised as to the relevance of including respect for human rights along with freedom of expression and dialogue in the Convention list of principles. In light of these proposals, agreement was reached on the inclusion of the following principles: respect for human rights; respect for freedom of expression and communication; balance, transparency and proportionality; freedom of access to diversity of cultural expressions; due concern for minorities; and international solidarity. The principles of free consumer choice and free movement of cultural goods and services were also brought up. It was stressed that the preservation of the diversity of cultural expressions might at times require forms of government intervention in order to guarantee genuine choice in situations of vulnerability. A discussion ensued about the effects of protectionism on cultural diversity and the effects of free trade on diversity and dialogue.

III.2. DEFINITIONS AND SCOPE OF THE CONVENTION

III.2.1. Definitions

The proposed formulations for the definition of the concepts of “cultural diversity”, “cultural goods and services”, “cultural expressions” (and “cultural contents”), “cultural industries”, “cultural capital”, and “cultural policies” were then presented.

The importance of not confusing popular understandings of “culture” with the more comprehensive anthropological definition of this term was underlined. Two other elements were highlighted: the artistic object should be distinguished from the utilitarian object; the tangibility or intangibility of a cultural product should be taken into consideration.

The notion of “cultural diversity” was the subject of in-depth debate. The evolutionary and dynamic character of culture was judged to be important, and several experts wanted the definition of cultural diversity to include the concept of temporal and spatial “difference”. Therefore, drawing on the UNESCO Universal Declaration on Cultural Diversity, the experts considered the possibility that “cultural diversity” should refer to “multiple and varied states in which the culture of social groups and societies finds expression”. The idea of relating culture to “nations”, “regions” or “communities” was thus excluded, the experts being of the opinion that cultures do not necessarily correspond to a determined geographical area. On the other hand, some experts wanted the conception of culture to refer to the “individual” or “person”; others responded by indicating that such a broad conception of culture was too large for the scope of the convention. However, it was accepted that guarantees related to the liberty of individuals’ expression and creation could figure in the chapter on the rights and obligations of states. Other than discussion on the definition of the bearers and the addressees
of the diversity of cultural expressions, participants stressed that the notion of cultural diversity should also encompasses the plurality of modes of production, diffusion, distribution, and consumption of cultural goods and services.

Discussion of the definition of “cultural goods and services” raised the issue of the utility of the notion of “cultural products” to designate both cultural goods and cultural services. It was generally accepted that the expression “cultural goods and services” was better because it was more precise and avoided the potential ambiguities generated by the notion of “product”, which was more likely to be associated with “goods” than with “services”. Some experts made the point that the notion of “cultural goods and services” evokes the vocabulary used in trade agreements, which have specific legal consequences that often depend on whether the object of exchange has been qualified as a “good” or as a “service”. From another point of view, the experts felt that the proposed definition boiled down to a more cultural conception of this notion, thus allowing for a distancing from the strictly trade-related understanding, whilst recognizing the dual nature of these goods and services. Finally, the inclusion of a non-exhaustive list of goods and services in the Convention was favourably received, although several experts emphasized the difficulty of reaching consensus on the content of such a list. For the time being, this list is included as a footnote.

The experts agreed that “cultural expressions” relate to the different ways in which cultural goods and services can transmit a symbolic meaning or particular forms of cultural value. Although this definition is related to the notion of “cultural goods and services”, some experts felt it necessary to highlight the fact that “cultural expression” goes beyond the notion of “cultural goods and services”, in that it assumes a relationship between the subject-creators and the addressees, which is an essential element of the Convention. Members of the group wanted the notion of “cultural contents” also to be further clarified, as the term was used in the definition of cultural expressions.

Concerning the definition of “cultural industries”, it was decided that it would suffice to indicate that cultural industries are those that produce cultural goods and services. This provision did not provoke any debate.

Moreover, the discussion of the definition of “cultural policies” did not give rise to significant divergences of opinion. Nonetheless, the experts debated whether or not to include in the Convention a non-exhaustive list of cultural policies to illustrate this notion and clarify what it includes. Whilst certain experts expressed reservations regarding this proposal, many felt that such a list would be useful as a reference. As a result, a non-exhaustive list based on the Action Plan of the 1998 Stockholm Intergovernmental Conference on Cultural Policies for Development, which covers five domains of intervention, was proposed. Some reservations were expressed concerning the inclusion in the list of measures related to the preservation of cultural heritage, which does not fall within the scope of the Convention. Most of the experts, however, wanted to retain these measures in the list, and the Group agreed to include the list in a footnote, derived from the above-mentioned Action Plan.

Finally, it was debated whether the notion of “cultural capital” should be defined. It was suggested that it is pointless to elaborate a definition of this notion if there is no rule or provision in the text of the Convention that refers to it. The notion was recognized as being rich and innovative, and especially useful regarding the overarching objective of sustainable development, which implies the management of certain elements of cultural capital. Some experts felt that such a definition should not be limited to a reference to cultural heritage of
the past, but should also cover future heritage that has yet to constituted. It was proposed that further reflection on this topic be undertaken.

III.2.2. Scope of the Convention

Many experts wanted the scope of the Convention to be more limited than implied by the anthropological conception of culture, and narrower than the UNESCO Universal Declaration on Cultural Diversity. The concept of “cultural expression” was considered to be a central element of the Convention, inasmuch as it deals specifically with cultural goods and services, as with the conditions of creative development and support for creators. As to the question whether the Convention should deal with “cultural policies” of States Parties and/or with “measures” adopted by these States, the discussion led the experts to the decision that the scope of the Convention should cover both of these two themes (the cultural policies and the measures of States Parties). These latter were nonetheless clarified in such a way that the Convention only deals with “cultural policies and measures adopted by States parties for the protection and promotion of the diversity of cultural expressions”. This formulation was almost unanimously agreed upon.

III.3 RIGHTS AND OBLIGATIONS OF STATES PARTIES

With a view to organizing the structure of States’ rights and obligations, it was proposed to use the Convention for the Safeguard of Intangible Cultural Heritage as a template. In order to organize the various contributions submitted in advance by the experts, some members presented to the group a consolidated text comprising three sections: first, general rules with respect to rights and obligations, followed by the rights and obligations of States at the national level (including one section on the rights of States parties and another on their obligations), and finally obligations at the international level. The experts emphasized that, at the international level, States do not have “rights” relating to the preservation of cultural expressions, but rather “obligations”.

III.3.1. General Rules with respect to Rights and Obligations

In their opening remarks, some experts insisted on the importance of ensuring complementarity between rights and obligations of States. This complementarity, a guarantee of a proper balance within the instrument, must be reflected in the Convention's structure as well as in its content. The discussion then turned to the subject of the confirmation of States’ sovereign right to take measures to guarantee diversity of cultural expressions and their obligation to preserve and promote such diversity within their jurisdiction (preservation and promotion of the plurality of cultures within the jurisdiction along with openness to other cultures). In line with this idea, some experts suggested including a provision to ensure conformity of measures taken by States Parties with the objectives and principles of the Convention (notably the principles of transparency, balance and proportionality) on the grounds that such a provision would be useful in directing the internal implementation of such measures. It was also agreed that the rights and obligations of the Convention should be exercised and fulfilled in conformity with the United Nations Charter and the principles of international law. Finally, the idea that States should avoid all forms of protectionism was suggested. Some concerns arose in connection with the respect for national sovereignty, and the desire to avoid any ambiguity in the drafting of this article was expressed. Most experts
emphasized that States should be free to take national measures aimed at guaranteeing and promoting diversity of cultural expressions. If States enact measures within their own boundaries and at the international level, they should remain free to decide on the type of measures to be adopted. Moreover, the experts stressed the importance of respecting obligations to which they are bound under pre-existing measures and agreements.

III.3.2. Rights and Obligations of States Parties at the National Level

The appropriate terminology to be used to express the rights and obligations of States Parties under the Convention was the subject of an important debate. Out of respect for the principle of State sovereignty, the use of verbs such as “must”, “shall” and “undertake” with States as subjects, and of expressions implying the obligation to perform specified actions (such as “States Parties are under the obligation [or have a duty] to…”)) was questioned. In response to this concern, the experts were reminded that the mandate given to the expert group was to produce a draft Convention and that, as a result, it was necessary to use terms expressing with some force the commitments of the States under the Convention. In the absence of the terminology appropriate to such an instrument, the document would become a series of statements of principles that would have the impact of a simple declaration. In view of the existence of the UNESCO Universal Declaration on Cultural Diversity, some members insisted on the need to go beyond the document adopted in 2001 by giving to the future Convention a binding character particularly expressed in the chapter on rights and obligations, which should be regarded as the core of the legal document under discussion.

The debate continued on the basis of draft proposals for the rights of States with respect to support for cultural diversity at the national level. The proposals covered in particular regulation favourable to national cultural goods and services, financial support measures (such as subsidies for cultural activities and industries) and other measures deemed appropriate by States Parties to support cultural expression (such as the establishment and maintenance of public service institutions, etc.). In this respect, the duty of States Parties to act was reaffirmed along with their right to determine the appropriate internal measures in light of the objectives. The experts discussed the freedom of choice that States Parties should retain in identifying appropriate measures to protect cultural expression, and reached unanimous agreement that more prescriptive language should be avoided. Furthermore, obligations should be conditional upon the means available to States, which in turn reflect the particular situation of each country. With this in mind, it was stressed that the very different situations of the various countries require that States should enjoy room for manoeuvre and preclude the imposition of any uniform standard. Measures should be defined by governments in light of an assessment of the issue and of the cultural implications of proposed measures. No expert objected to this conception.

It was thus established that solutions should not be considered permanent by States but set rather within an evolving perspective: as the cultural expression of a society or a social group grows in confidence and strength, the need for protection vanishes. Furthermore, it was emphasized that, with respect to national regulations on cultural goods and services, the challenge is to ensure diversity of cultural expressions, not only on the basis of their geographical origin, but also in terms of the variety of their modes of production, which should vary in size and type.

An alternative proposal was presented in support of cultural diversity pointing States Parties in the direction of expanding free trade, lower taxation and the development of
entrepreneurship. Another proposal called for a provision to the effect that no article of the Convention should be construed as conflicting with or detracting from existing international agreements along with a provision stating that States Parties reiterate their commitments to such agreements.

Several experts stressed the weaknesses as well as the strengths of the market. It is because of the weaknesses of the market that, in situations of vulnerability, intervention may appear necessary to preserve the diversity of cultural expression. Along with statistics to support this claim, some experts stressed the particularly critical situation of several developing countries and of small countries. Some also stressed that a few forms of cultural expression currently monopolize the market whilst others are deprived of the right to exist. In light of this, they considered that the Convention should provide an opportunity for every culture to express itself, whilst in no way being regarded as a protectionist instrument. In light of the sensitivities that could be aroused by the very notion of “protection” of cultural expressions, it was proposed that two kinds of policies might be distinguished: those that are adopted to support cultural diversity and those that aim at protection of cultural diversity when it is “vulnerable”. As for the means of achieving such protection, it was again agreed that States have the sovereign right to choose such measures as they deem appropriate to meet the objectives. It was furthermore emphasized that there was no question of imposing a predefined regulatory framework.

The experts also stressed the problems caused by concentration of supply of cultural goods and services, which causes defensive identity reactions calling for the expression of genuine solidarity in the current world context. If particular attention is not given to “receptivity” (understood as the capacity of recipients to take on board in a positive manner the message carried by cultural goods and services), rejection will occur, possibly leading to radicalism and fundamentalism, which constitute a threat cultural diversity. However, whilst recognizing the importance of such issues, the experts sought to confine their drafting proposals within the scope of the competence of UNESCO and the mandate given to the Director-General.

A final discussion point gave the experts the opportunity to consider in detail the promotion of diversity of cultural expressions and the place given to the expression of foreign cultures within the national jurisdiction. Some were concerned to avoid undue interference by the Convention with the competence reserved to States in respect of immigration and nationality policy. Others expressed their support for the inclusion of provisions to facilitate residence within State jurisdiction of artists from other countries and to encourage the free movement of artists. In the view of these experts, such provisions are the corollary of the principles of openness and free movement of cultural ideas, goods and services. The solution ultimately adopted lies in the middle ground.

Finally, among draft articles considered for the section on the obligations of States at the national level is a provision establishing a framework (designation of competent national authorities with responsibility for cultural diversity, establishment of information exchange mechanisms, development of statistics, plans and programmes for the promotion and protection of cultural diversity, and notification of new national measures). The experts also agreed to include a number of other obligations relating in particular to the promotion of cultural diversity and the diversity of cultural expressions, education and raising of public awareness, and the participation of civil society.
III.3.3. Obligations of States Parties at the International Level

With respect to international obligations, the experts opted to include a provision on international coordination and on promotion of the principles and objectives of the Convention within other international arenas. Furthermore, they agreed to include articles on access for cultural goods and services from developing countries as well as on support for co-production and distribution. Finally, the connection between the Convention and other international instruments was discussed. At this stage, several options are available. There is general agreement that a commitment to protection of intellectual property should be included in this section of the document. With respect to the relation to other international treaties, some experts expressed their preference for a provision that the States Parties should act in conformity with their rights and obligations under other international instruments. Other experts wished to include a provision explicitly authorizing States to derogate from such existing commitments if the exercise of their rights or the fulfilment of their obligations might threaten or cause serious damage to cultural diversity.

III.4. INTERNATIONAL COOPERATION MECHANISMS

The chapter devoted to international cooperation mechanisms could include obligations for States Parties at the international level. Although some obligations of this kind are already in the chapter dealing with the rights and obligations of States, the experts agreed that, given the particular nature of the mechanisms to be implemented and the distinctive character of the commitments to be made by the States Parties, it was necessary to include in the Convention a chapter dealing specifically with development and cooperation. Several experts expressed the opinion that provisions specially designed for this purpose were a precondition for the achievement of tangible results.

For the purposes of the Convention, the experts thus considered a list of four provisions expressing the wish of States Parties to commit themselves to development in a spirit of sharing and solidarity.

In an initial discussion, the experts agreed to include a provision aimed at strengthening cooperation between States and the private sector and civil society. This commitment covers in particular the creation and reinforcement of cultural production capacities, support for local markets and measures to facilitate access to the world market for cultural goods and services from developing countries. There should also be a commitment to develop innovative partnerships to promote diversity of cultural expressions and to increase trade in cultural goods and services. With this in mind, the Convention might provide for a series of means that could be implemented by States pursuant to their commitments in this respect. A discussion also took place on the criteria and selection procedures for beneficiaries of support made available by States pursuant to this chapter. It was agreed that one of the basic criteria for assistance to be made available should be the genuine commitment to cultural diversity of the country making the request.

2 Remarks on themes 4 and 5: Themes 1, 2 and 3 gave rise, on some points, to lengthy debate, which obliged the experts to extend their discussions beyond the time initially allotted. As a result, discussion on chapters III.4. and III.5. was curtailed. Nonetheless, the experts did have the opportunity for a preliminary exchange of views on the basis of the draft proposals made by some members of the group. There was general agreement to discuss these chapters in greater depth during the third meeting in May. This report summarizes the points on which the experts have reached provisional agreement.
The experts also agreed that it would be desirable for States Parties to establish a Clearing House or Observatory with particular responsibility to collect, analyse and disseminate information, statistics and good practices relevant to the protection and promotion of the diversity of cultural expressions.

III.5. MECHANISMS AND FOLLOW-UP BODIES OF THE CONVENTION

In the course of the discussion on this subject at the end of the session, the experts considered various institutional structures to ensure the implementation and follow-up of the Convention. Several of the ideas circulated will require more detailed discussion at a later stage.

The experts first agreed that a General Assembly of States party to the Convention should be established and that it should be the sovereign body of the Convention. A second institution of a consultative nature was also considered and presented in the form of three options for further discussion: (a) establishment of an Intergovernmental Committee for the Safeguard of the Diversity of Cultural Expressions (similar to the World Heritage Committee); (b) establishment of a Consultative Committee of independent experts on cultural diversity; or (c) establishment of a body combining proposals a and b. Finally, the experts expressed the unanimous wish that UNESCO should provide the secretariat of the Convention. With respect to settlement of disputes, the experts opted for a form of arbitration to which States Parties should submit in case of conflict over the interpretation or application of the Convention. This proposal remains to be worked out in detail.

Finally, the question was raised of funding for the establishment and operation of these new bodies.

IV. GENERAL CONCLUSIONS

The meeting took place in an excellent climate of mutual trust and cooperation and the exchanges were varied and stimulating. In addition, the decision of designing a team of two experts (who assumed the roles of moderator and rapporteur) for each chapter proved to be particularly efficient. The reference to principles of dialogue and development provided the underlying themes of the debate. Other founding principles of the UNESCO Universal Declaration on Cultural Diversity were constantly referred to: the need to ensure respect for human rights, democracy and the free flow of ideas. Agreement was reached in most of the discussions, and there were only a few outstanding questions concerning formulations. Moreover, pre-eminence of the cultural value of “cultural goods and services” over their commercial value was forcefully reaffirmed. Elaborated in this way, the first preliminary draft of the Convention constitutes a solid basis for future work. It will be re-examined and improved during the third meeting of experts scheduled to take place in late May 2004.

Title of the Convention: All of the experts agreed that the formulation “protection of the diversity of cultural contents and artistic expressions”, considered cumbersome, should be replaced by “protection and promotion of the diversity of cultural expressions”, which was already proposed in the report of the first meeting of experts (December 2003).
Preamble, Objectives and Principles: The preamble was completely re-examined with a view to establishing a corpus of principles offering a general overview of the stakes of cultural diversity in the twenty-first century. In doing so, the experts ensured consistency between the Declaration and the Convention and guaranteed that the latter be a continuation of the former. The list of seven objectives includes aspirations, aims and means. The philosophical and legal principles must not be mistaken for objectives: rather they must serve as guidelines for the implementation of the Convention, particularly in regard to the rights and obligations of the States. The experts agreed on a list of principles, whilst others, reflecting the differing viewpoints, were admitted as alternatives.

Definitions and Scope of the Convention: The experts underlined that the Convention must propose a sufficient number of functional definitions to facilitate its implementation with as much legal clarity as possible, without sacrificing Culture’s anthropological significance. After the discussions, seven distinctly formulated draft proposals were presented, i.e., six articles dedicated to definitions and one article on the Convention’s scope. The experts chose to incorporate the two-non exhaustive lists of cultural goods and services in the form of footnotes. It was agreed that the scope would focus on cultural expressions – in conformity with the resolution of the 32nd session of the General Conference (32 C/Res. 34) – thereby being more limited than the scope of the Declaration.

Rights and obligations of States Parties: At the conclusion of the debate on the rights and obligations of the States Parties, the experts agreed on the structure of the chapter dedicated to this subject and on a series of binding measures, most of which met with consensual agreement. In the other cases, the questions were left open, and the experts intend to continue their discussions on these proposals during their next meeting.

International Cooperation: Neither this chapter, nor «Mechanisms and Follow-up Organs”, was debated in depth owing to lack of time. The experts agreed to examine these two chapters more carefully in their third meeting. Particular attention was given to the question of international cooperation, a fundamental aspect of the future Convention, which must benefit developing countries in particular.

Mechanisms and Follow-up Bodies of the Convention: Despite the insufficient amount of time dedicated to this chapter, the preliminary work of the experts resulted in a first draft that raised a question of whether the proposed body should be essentially governmental or entrusted to a committee of independent experts or both. In the three cases, UNESCO would be called upon to serve as the Secretariat to this body.

For the preparation of the third and last meeting (28 – 31 May 2004), the experts will be asked to propose new formulations or additional articles, particularly taking into account the debates of the two preceding meetings. They will be expected to complete any lacunae in the preliminary draft of the Convention and to improve the text’s coherence with a view to defining more strictly the terms of reference whose meanings can vary tremendously.