



**UNITED NATIONS EDUCATIONAL, SCIENTIFIC
AND CULTURAL ORGANIZATION**

**Oral report
of the Rapporteur, Mr Artur Wilczynski**

at the Closing Session of the

**First Intergovernmental Meeting of Experts on the Draft Convention
on the Protection of the Diversity of Cultural Contents
and Artistic Expressions**

UNESCO, 20 – 25 September 2004

Merci beaucoup Monsieur le Président. Ce fut un honneur pour moi d'être parmi vous au cours de ces 5 derniers jours. Le travail accompli par cette assemblée sous votre gouverne a été remarquable et je vous en remercie.

Cette première session de la réunion intergouvernementale d'experts relative à l'Avant-projet de convention sur la protection de la diversité des contenus culturels et des expressions artistiques a rassemblé environ 600 participants représentant 132 Etats membres, ainsi que 2 observateurs, 9 organisations intergouvernementales et 20 organisations non gouvernementales. Au cours des cinq derniers jours de la délibération, cette réunion a élu son Président et son Bureau, et elle a procédé à la constitution d'un comité de rédaction composé de 24 membres ouvert à la participation des observateurs.

Cette réunion a entendu les remarques importantes du Président de la Conférence générale, du Président du Conseil exécutif et du Directeur général de l'UNESCO. Les participants se sont ensuite livrés à un premier examen de l'Avant-projet de convention.

Suite à son élection, le Président a délivré un discours d'ouverture présentant le contexte dans lequel intervient cette première réunion. Il a précisé qu'il s'agissait là d'une première opportunité pour les Etats membres de procéder à un échange de vues sur l'Avant-projet et d'engager un dialogue constructif sur la façon d'élaborer ce projet de convention conformément au mandat approuvé par la résolution de la 32^e Conférence générale.

The plenary decided on a method of work that divided the discussion into three distinct segments. First, member states engaged in a discussion on the Preamble, Section I (Objectives & Principles) and Section II (Scope & Definitions) and related annexes I and II. This first segment was used by member states as an opportunity to make general statements reflecting their initial reactions to the preliminary draft, as well as an opportunity for some delegations to make specific recommendation and suggestions for particular changes to the Preamble, Section I and II of the draft convention.

The subsequent discussion was divided into 2 additional segments: one that addressed Section III (Rights and Obligations) as well as Section IV on the relation of this convention to other instruments – the final segment of the discussion focused on Section V (Follow-Up Mechanisms), Section VI (Final Clauses) as well as on the related annexes. When

member states completed their interventions, the Chairman set aside time, under each of the segments of the discussion for interventions by observer delegations – notably intergovernmental organizations and non-governmental organizations.

The discussion at this first meeting can best be described as diverse. It reflects a spectrum of views on the range of issues under consideration in the elaboration of this convention.

Member states' interventions may be characterized as falling into two broad categories. On the one hand, some interventions reflected the reality that delegations were primarily prepared to engage in a general, broad discussion of their views on issues. Some delegations said that they approached this week's deliberations as a learning exercise – an opportunity for them to share their views, but also to listen to the interventions of other member states, international organizations and non-governmental organizations.

On the other hand, some delegations engaged in a more detailed discussion, where they volunteered their views on specific articles within the draft convention and, in fact, at times offered precise amendments to the text.

Because of these different approaches to participation in this session, and the fact that the vast majority of delegations taking the floor said that they would be submitting written comments by the middle of November, the contents of this report are a preliminary reflection of what was said by member states in plenary. While some states have drawn conclusions, others are at the early stage of the process.

As a matter of principle, it is clear that silence on any issue may not and has not been interpreted as agreement, disagreement or consensus.

Mr. Chairman, during our deliberations, delegations thanked the Director General, the Secretariat and, in particular, the Group of Experts who prepared the preliminary draft convention that was presented to this meeting for its consideration. Delegations said that the draft prepared by the Group of Experts is a valuable basis of discussion and a useful tool in facilitating the work of the intergovernmental process. Delegations said that a clearly articulated convention with focused scope, objectives, rights, and obligations, could be a significant tool in the development, preservation, protection and promotion of cultural diversity.

Many delegations addressed the title of the convention in their preliminary remarks. Some participants suggested shorter formulations of the title, while others thought it important to add concepts such as development and promotion, in addition to the concept of protection that is already included. Some delegations also used the discussion on the title to seek clarification on exactly how cultural contents, artistic expression and cultural expressions were defined.

In their general comments, many delegations outlined their view that the preamble, scope, objectives and principles of the convention be shortened, and less repetitive. In particular, many delegations said that the objectives and scope of the convention must stay focused on the specific mandate given to this meeting by the general conference, and concentrate on the preparation of a draft convention that would protect a diversity of cultural contents and artistic expressions as a sub-set of the broader concept of cultural diversity.

Other delegations applied a wider interpretation of the mandate given by the general conference. Among the range of issues that they wanted to include as substantive elements of the draft convention were issues such as social cohesion, linguistic diversity, cultural liberty, and the role of education.

A further element that was mentioned was intercultural and inter-religious dialogue.

The Assistant Director General for Culture made an intervention, at the request of the Chairman for greater clarity, on the mandate given by the General Conference to this meeting.

Many of the general comments that delegations made on the convention were repeated in the context of the discussion on the Preamble. While some recognized the need to consolidate the text, and rationalize its diverse elements, others felt it important to include other themes such as:

1. Balance
2. The importance of international cooperation and solidarity and the particular challenges of developing states
3. Collective rights
4. Media Pluralism
5. Linguistic Diversity, and
6. An appropriate reference to the range of international instruments that are relevant to the pursuit of this convention

La discussion sur les objectifs de la convention a d'abord fait ressortir l'attachement de nombreux États à la reconnaissance de la spécificité des biens et des services culturels, c'est-à-dire leur double nature à la fois économique et culturelle. Une incertitude s'est d'ailleurs manifestée à savoir si cette spécificité ne devait pas figurer également parmi les principes.

Aussi, plusieurs intervenants ont souhaité ajouter à la liste des objectifs le respect du droit des États d'adopter des mesures relatives à la promotion et à la protection de la diversité des expressions culturelles et ce, en dépit du fait que ce droit figure déjà au Chapitre des droits et obligations de la convention.

Ces deux exemples montrent parfaitement les problèmes de cohérence soulevés par la convention. Des difficultés similaires se posent aussi avec le Préambule. Les Délégués ont souligné qu'un choix devra éventuellement être effectué entre un préambule plus long et détaillé, reflétant l'ensemble du texte, ou l'élimination de toute répétition.

De même, des thèmes qui seront possiblement couverts par le préambule, ont été évoqués par des intervenants. En effet, plusieurs ont souhaité que la Cohésion sociale, la Préservation de la diversité linguistique, l'Éducation et le développement fassent partie de la liste des objectifs.

Au niveau des principes, il ressort de la discussion une volonté de réduire la liste actuelle qui, pour certains, apparaît beaucoup trop longue. Plusieurs ont plaidé en faveur d'une simplification de cette liste et d'une harmonisation avec les autres parties de la convention, en particulier le Préambule et le chapitre consacré aux objectifs. À nouveau, le souci de cohérence devrait nous guider dans cette tâche. Aussi, comme plusieurs l'ont rappelé, une attention particulière doit être portée à la rédaction de ces principes : ils ne sauraient être rédigés de façon à constituer une obligation.

Sur la substance, les intervenants ont manifesté un appui à l'égard du respect des droits de l'Homme. Aussi, plusieurs propositions ont été formulées afin de fusionner ce principe avec le principe des libertés fondamentales, voire même avec le principe de libre accès et de participation. Une réflexion plus approfondie à ce sujet a été proposée par plusieurs Délégués.

De plus, il semblerait que plusieurs États soient préoccupés par la recherche d'un équilibre entre la reconnaissance des droits collectifs et des droits individuels; plusieurs ont d'ailleurs rappelé que la culture prend ses racines au sein des communautés formées par les individus.

Le principe de solidarité et de coopération internationale a aussi été défendu par de nombreux intervenants.

Enfin, beaucoup se sont dit préoccupés par le principe d'équilibre, de proportionnalité et d'ouverture; cette disposition, selon plusieurs Délégations, devrait faire l'objet d'une clarification.

En ce qui a trait à l'article 4 qui, rappelons-le, comporte actuellement les définitions de la Culture, de la diversité culturelle, des expressions culturelles, des biens et services culturels, des industries culturelles, du capital culturel et des politiques culturelles, de nombreuses délégations ont jugé qu'un travail reste à faire et qu'un maximum de clarté devra être atteint. Cette opération pose certainement un défi de taille, notamment lorsque les définitions portent sur des concepts aussi mouvants que la Culture.

En particulier, la définition de la « Culture » suscite des préoccupations. A ce sujet, il a été rappelé les origines de cette définition : son libellé a été intégralement repris de la définition de la Culture qui figure dans la Déclaration universelle sur la diversité culturelle. Un certain nombre de délégations ont suggéré la suppression de cette définition.

Aussi, la définition du capital culturel a soulevé quelques interrogations et plusieurs ont mis en doute la pertinence de maintenir cette définition dans la mesure où aucune disposition de la Convention n'y fait référence.

Enfin, la pertinence et le contenu des annexes 1 et 2 ont été questionnés. À ce propos, deux tendances se dégagent. Certains ont souhaité conserver les listes, soutenant qu'elles facilitent l'interprétation de la Convention et précisent les définitions. D'autres ont plutôt opté pour la suppression de ces annexes. Selon quelques Délégations, cette dernière option impliquerait alors une réécriture des définitions concernées de façon à y intégrer les grandes idées des annexes. À ce sujet, certains ont proposé une alternative : qu'il appartienne à chaque État de dresser de telles listes, adaptée à sa situation, et de les intégrer à la convention.

Le champ d'application de la Convention suscite aussi quelques préoccupations. Certains l'ont qualifié de trop étroit et de trop restrictif ; ils ont souhaité que sa portée s'étende à la compréhension interculturelle. Il s'agit là de l'expression d'une volonté aspirant à ce que la Convention recouvre tous les domaines couverts par la culture, définie au sens large, c'est-à-dire entendu dans son sens anthropologique, et non limitée aux expressions artistiques. À l'inverse, d'autres ont considéré ce champ trop vaste et ont souhaité qu'il soit précisé.

Néanmoins, il a été rappelé par plusieurs intervenants que le mandat accordé au Directeur général devait être respecté.

There was a significant and sustained discussion on Part III of the Convention on Rights and Obligations of the States parties aimed at clarifying what these might be. Many delegations identified this section as the “heart” of the convention and stressed the need for this section to be clear on rights and obligations. Some delegations noted that there was too great a focus on national level obligations – internal to states – and not enough of a focus on obligations that would govern the relations between states that would assist in the preservation and promotion of cultural diversity.

Many delegations expressed the view that the general rule on rights and obligations found in article 5 was an important element, meriting ongoing consideration. It was seen by some as key in enabling States to take the measures that protect, preserve, promote and develop cultural diversity.

While recognizing the right to adopt measures to protect and promote the diversity of cultural expressions was an important principle for many delegations, some questioned the link between having the right to take these measures and the capacity and resources to give effect to this right. Other delegations also questioned the appropriateness of what they believed was the creation of new rights. Some countries also observed that there should be greater coherence between the rights and obligations section and the objectives section of the draft text.

Member states had a vigorous exchange on the question of rights and obligations at the national level. Questions were raised about the relationship between the rights in article 6 and the obligations in article 8. They sought clarity on terms such as vulnerability and threat, and sought a better understanding of the impact of such terms on the right of states to take measures aimed at fostering cultural diversity. Many questioned who

would define these terms, how would they be measured and when they would be applied.

There was also a discussion on the list of measures that states could take to promote diversity – for example some delegations questioned the appropriateness of reserving certain space for domestic cultural goods and services, while others felt that it was important to include additional measures that would contribute to the implementation of this convention.

Delegations discussed the provisions under article 7. Some delegations said that the article did not recognize or acknowledge the importance of collective rights. Other delegations questioned the practical effect of this provision, noting that many states parties may simply not have the resources to effectively provide all individuals and/or groups on their territory with the opportunities outlined in this article, nor have the ability to ensure the social status of creators.

Delegations also discussed the obligation to protect vulnerable forms of cultural expression in article 8. While some felt that protecting cultures that are in danger of disappearing should be a clear priority of this convention, others felt that it was an unjustified limitation of their right to take measures to develop, preserve, protect, and promote the diversity of cultural expressions at the national level. Many delegations expressed concern about the mechanism associated with this provision and in particular, questioned the role of the Advisory Group and the Intergovernmental Committee in this process.

In terms of the obligations of information and transparency, some delegations questioned the establishment of new authorities or structures. They expressed their preference for using existing mechanisms to achieve this objective and not create any onerous or heavy reporting requirements or mechanisms.

Many delegations spoke of the importance of education and the responsibility of working with civil society. They spoke of the importance of education to the promotion of cultural diversity and made a range of proposals to strengthen this provision. Delegations also discussed the nature of the relationship with civil society and the extent to which the convention should contain binding elements that prescribe the nature of their relationship with the non-governmental and not-for-profit sector.

Many delegations viewed the creation of rights and obligations relating to international cooperation, as particularly significant. They

viewed this section of the text as having the potential of assisting developing states meet the overarching objective of protecting a diversity of cultural contents and artistic expressions. Others raised questions about the practical application of this provision and the practical mechanism that would meet the needs of developing countries.

International consultation and coordination was viewed a key element by many delegations. While some questioned article 13, a significant number of member states saw it as essential in building an effective relationship between this and future international instruments. Some delegations mentioned the importance of strengthening this concept.

Many delegations engaged in a discussion of article 14 on co-production agreements and some suggested that this provision could be expanded beyond simply the cinematographic sector. Others found that this article needed to be reconsidered given that entry into separate international agreements may be outside the scope of this convention.

Many delegations expressed reservations regarding the creation of an international cultural diversity observatory. They felt that the allocation of scarce resources should not go to the establishment of new bodies and mechanisms within UNESCO but rather should be allocated to existing structures such as the UNESCO institute on statistics. However, others mentioned that it would be difficult to measure the effectiveness of the convention if there was no mechanism that could independently develop objective evaluation criteria – a role that some saw for the observatory.

The Chairman requested clarification from the Secretariat on the role of observatories and the Director of the cultural policy and intercultural dialogue division, provided the meeting with an explanation of these bodies and how they figured within the existing priorities of UNESCO.

Many delegations also supported the cooperation for development aspects of the obligations section. They viewed the cooperation outlined in this section not only in terms of north – south cooperation, but also in the context of south – south. A number of delegations also discussed the significance of article 17 on the preferential treatment for developing countries and sought clarity as to the relationship of this provision to other international agreements.

Article 18 on the partnership for development was supported by a significant number of delegations that saw this as an innovative mechanism that would greatly assist in developing effective and viable cultural sector

that would contribute to the promotion of the diversity of cultural expressions in various regions of the world.

A fundamental discussion took place on the relationship of this convention to other international instruments. Many delegations identified their preference for one or another of the two options proposed by the Group of Experts. While some delegations expressed themselves in favour of option B or option A – many suggested that more work was needed in order to more adequately, appropriately and effectively articulate the relationship between this convention and other international instruments.

Many delegations said that they would continue to work on further options and share the results of their work with the plenary.

In order to assist in the further exploration of these options, the Chair asked the Legal Advisor for a further clarification of the range of options open to delegations. The Legal Advisor described a range of possibilities open to delegations, and undertook to share a written version of his presentation with delegations prior to the middle of November. Many delegations welcomed this offer, as it would assist them in the further elaboration of their positions.

Une tendance générale en faveur d'une révision de l'architecture institutionnelle des organes de suivi de la Convention se dégage de la discussion qui a été menée sur le troisième thème. Pour plusieurs, une nouvelle répartition des tâches entre les trois organes créés par l'avant-projet apparaît comme une nécessité.

Une préoccupation largement exprimée par les intervenants porte sur le coût et la lourdeur des structures. Plusieurs ont manifesté le souhait que les organes soient réduits au strict minimum et qu'une utilisation optimale des structures existantes soient étudiée.

C'est d'ailleurs dans cet esprit que les propositions visant à renoncer à la création d'un groupe consultatif ont été formulées. Néanmoins, de nouvelles idées ont émergé, notamment la constitution d'un groupe consultatif ad hoc.

En ce qui concerne spécifiquement le Comité intergouvernemental, plusieurs Délégations ont souhaité que sa composition soit précisée. En outre, plusieurs ont manifesté le désir que ses 18 membres soient sélectionnés de façon à refléter l'équilibre « geo-culturel » des États parties à la Convention.

Enfin, au cours de ce grand débat, des intervenants ont rappelé l'attachement de plusieurs États aux objectifs de cette convention. Par conséquent, ils ont jugé que tous les efforts nécessaires à la mise en place de mécanismes de suivi efficaces soient déployés.

Pour ce qui est du règlement des différends, les Délégations ont noté qu'un travail important reste à faire, notamment en vue de préciser son fonctionnement. Néanmoins, certains ont appuyé les dispositions de ce mécanisme, alors que d'autres ont demandé sa suppression. Plusieurs souhaitent patienter jusqu'à ce que les droits et obligations soient précisés avant d'exprimer leurs attentes quant à ces mécanismes. L'examen approfondi des annexes 3 et 4 sera donc réalisé ultérieurement. I

Mr. Chairman, it is difficult to summarize and reflect on the rich diversity of comments and views that have been expressed over the past week. It has been most remarkable, that on a subject as complex as this, we have had such an effective and efficient exchange of views. Much of that is due to your leadership and the spirit of openness and co-operation that has characterized this meeting - for that I thank you all.

Ladies and gentleman, it has been an honour to serve as your Rapporteur.

Thank you.