



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

Address by Professor KADER ASMAL, Chairman of the Conference

at the Opening Session of the

**Second Intergovernmental Meeting of Experts on the Draft
Convention**

**on the Protection of the Diversity of Cultural Contents
and Artistic Expressions**

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DRAFT

Director-General,
Chairman of the General Conference,
Chairman of the Executive Board,
Excellencies,
Ladies and Gentlemen,
Dear friends,

INTRO

It is a great pleasure for me to chair the Second Intergovernmental Meeting of Experts and to launch this new crucial phase in the incremental process of the elaboration of the draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions. For the benefit of all concerned and particularly for those of you who might be joining us for the first time, I would like to begin by briefly summarizing the previous phases leading up to the present session.

SOUTH ASIA DISASTER

But first allow me to briefly refer to the situation in South Asia. Last month's unprecedented disaster has painfully reminded the international community of the vulnerability of societies, particularly in the developing world. Yet that vulnerability extends not only to their lives and livelihoods; in fact it also involves wider aspects of culture, that are not so easily repaired, however generous the support of donor countries. The benefits of globalization have been uneven, and measures to ensure autonomous cultural development are urgent and necessary. We would

hope that the solidarity demonstrated by the international community in response to the tsunami can also extend to the field of culture.

And I would now ask that we observe a minute of silence (for prayer or contemplation).

And now I will return to the matter at hand: our draft convention.

BACKGROUND

The first intergovernmental meeting I had the honour of chairing last September was an extraordinary occasion for the exchange of ideas and to engage in constructive debate on the draft Convention. Most of the Member States at that meeting acknowledged the quality of the text and accepted it as a sound basis for the future convention. This initial exchange also encouraged all participants to re-examine and compare their positions on several of the key issues.

After this fruitful collaborative effort, each Member State undertook interministerial consultations in their own countries to prepare their comments and amendments in written form. Despite the short amount of time between the first intergovernmental session and the meeting of the Drafting Committee — the Member States, NGOs, IGOs and more specifically the WTO, WIPO and UNCTAD — proved that they were capable of rising to the challenge in a timely manner. By the mid-November deadline, the Secretariat had received over 100 responses from 88 Member States, 15 NGOs and 3 IGOs. I trust you will agree with me that this remarkable response is a most positive sign.

As I stated in my address at the opening session of the Drafting Committee, the commitment of the various stakeholders to the future convention was reflected not only in the range and quality of the responses received by the Secretariat, but also in the manner in which these responses were collected. Indeed, in many cases the comments were the fruit of consultations at the national and international levels, which went beyond the field of culture to embrace such related realms as human rights, economy, development, social issues and intellectual property rights. And this lends support to my belief that the draft convention has already begun to change the manner in which States view culture and their inter-action with it. The contributions received by the Secretariat reveal a genuine desire to take ownership of the text and the issues at stake.

DRAFTING COMMITTEE

The next step involved the examination, analysis and the summarizing of the myriad contributions. I would like to take this opportunity to commend the Secretariat, under the supervision of the Director-General, for accomplishing a veritable *tour de force*. They succeeded in the mammoth task of compiling, in fewer than three weeks, the extremely readable and practical five-part document that served as the basis for the work of the Drafting Committee, and I might add, that this document greatly facilitated its work.

As you know, the Drafting Committee, comprising 24 members, four from each Electoral Group, met from 14 to 17 December with the general mandate received from the Plenary to:

“propose a revised text of the Convention for consideration at the next session of the Plenary. This revised text is to be based upon the current draft submitted by the Director-General in July 2004 and should incorporate the written comments submitted by Member States. Moreover, this revised text will serve as the basis of negotiation by the Plenary at its subsequent sessions”.

The Drafting Committee session was attended by over 90 experts. This wide participation demonstrates once again the significance of this project in the eyes of the international community. In addition to the representatives of the Member States participating on the Drafting Committee, a large number of additional Member States and several IGOs (European Commission, UNCTAD and the Latin Union) took part in one or more sessions. Furthermore, the NGO-UNESCO Liaison Committee was present throughout the meeting.

As the Director-General has stated, the Drafting Committee's task was not easy, which is hardly a surprise to all of us who have been involved in the elaboration of international legislation. The Committee's mission was further complicated by the fact that it met very soon after the mid-November deadline for contributions and that the Plenary did not provide the Committee with detailed instructions as to the working method to be implemented.

Despite these hurdles, the Drafting Committee did in fact make progress as shown in the revised version of the preliminary draft Convention you have before you. This document, prepared by the Secretariat at the request of the Chairman of the Drafting Committee, is a synthesis of the contributions proposed by Member States. Instead of manipulating five separate documents totalling nearly 400 pages, we can now refer to a single volume comprising some 130 pages. In other words, the initial 1015 options have been condensed into 650, which are still far too many. Clearly this handy compilation will make our lives much easier over the next two weeks. In the revised version, you will also find a summary of the remarks of the Drafting Committee for those sections of the draft convention it examined, namely articles 1 through 11. I will describe this document in greater detail shortly, along with the presentation of our proposed working method.

REASSURING THE SCEPTICS

I am well aware that several States have expressed their concern with the consequences of this Convention, particularly with regard to the scope of the convention. But, I must urge you to bear in mind that the Convention we are trying to create is not some sort of instrument to achieve a form of ultra-nationalism where countries attempt to hide behind enormous barriers. Rather the Convention represents a rational approach to the protection and enhancement of the various expressions of cultural diversity. Contrary to popular belief, our world is not a global village, and as we have often stated, no one present aspires to creating a homogenous world. Neither can we have a world based on autarchy, behind walls that keep us apart. We recognize that interaction between societies is vital for

human development because it is clear that societies can only reap benefits through interaction. Indeed, as national culture – expressed through the constellation of its local forms and voices – is further enriched, the greater and the more effective the interaction between states and societies for shared human development. Therefore cultural creativity needs to be nourished and enhanced. And it is precisely this issue that the Convention attempts to address.

It is my firm conviction that this Convention poses no threat or danger to the relations between States and to their cultural and economic interests. Only equality of treatment can ensure the rich development of all societies.

Ladies and Gentlemen,

Let us not forget that that this Convention has resulted from a specific mandate of UNESCO's General Conference because the international community recognized a gap in the landscape of international legally binding instruments.

I would also like to remind you that the fundamental ideas enshrined in the current draft convention are hardly new. Already in 1966, the United Nations' International Covenant on Economic, Social and Cultural Rights, which has been ratified by some 150 states recognized the importance of creating conditions “whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights”. Along with the Covenant on Political and Civil Rights, this agreement establishes an international consensus but reminds us all that States are obliged to ensure

that everyone within their boundaries is able to enjoy these rights, and States are obliged to vindicate them. Otherwise, such agreements are only “ropes of sand” to borrow a term used by the Indian Supreme Court. To “enjoy” these rights, there must exist the material conditions for their pursuit.

As I stated before the Drafting Committee last month, the task before us involves a three-pronged approach, taking into consideration the conceptual, political and legal challenges involved in drawing up a viable Convention.

At the **conceptual level**, we must clarify the text's fundamental principles and as well as a number of horizontal or cross-cutting terms, including “cultural expressions”, “cultural contents” and “cultural policies”. This is a crucial exercise because it is a prerequisite for properly defining the obligations of the State Parties to the Convention. Nevertheless, we must bear in mind that the scope of the Convention is wide, and the definitions must necessarily reflect this breadth of vision.

At the **political level**, most Member States consider that the rights and obligations of States Parties concerning the protection and promotion of the diversity of cultural expressions lie at the heart of the Convention. In the spirit of international solidarity embodied in this text, the desire to strengthen the mechanisms of cooperation and to underline their innovative nature has been clearly expressed. Many of the suggestions aim to balance the text and ensure consistency among its objectives.

One of the most important tasks facing this drafting committee will be to find the language and terminology needed to transform the conceptual and political commitment into a suitable **legal framework** capable of ensuring the flourishing of cultural diversity, which, after all, remains, our common goal. I share the legitimate concern of many Member States who apprehend the additional financial and administrative burden of these mechanisms and propose instead to work within existing but enhanced structures. However, without such tools, the Convention will not succeed in reducing the disparities between those states that already possess the means to create and disseminate their cultural expressions and those that do not—the "haves" and the "have nots", as it were.

The Third Challenge (Legal level):

I now come to the question that has provoked such spirited debate at the first intergovernmental meeting: the relationship between the future Convention and other international instruments. I might add that the very fact that this issue appears so crucial reveals the extent to which the stakes are interconnected at the international level. Even though Article 19 is an important matter — as you know, it is the only article with two options — I do not consider this issue to be the Achilles heel of the Convention. While the majority of Member States and NGOs have expressed a preference for Option A, which gives precedence to this Convention over other international instruments, many States, in agreement with comments advanced during the first intergovernmental meeting, have suggested a third option based on the notion of complementarity rather than competition or hierarchy.

I am confident that you will find a solution for a suitable synergy between the new Convention and existing and future instruments. The question is: will a resolution of this issue strengthen the Convention and ensure that more states will accede or ratify the final instrument, or will it gather dust in the chancelleries of foreign offices?

The task before us is particularly urgent; we have much work to accomplish in a short amount of time. As stressed by the Director-General, we must present a draft Convention to this year's General Conference, but in order to respect UNESCO's regulations, a draft must be ready to be sent to Member States by 3 March, that is in just one month's time. As I have mentioned in our previous meetings: "the perfect is the enemy of the good". We can spend the entire two weeks drafting a Convention that meets all our philosophical, cultural and political interests; but we shall be consigning such a Convention to the dustbin of irrelevance, like many other international treaties. Rather let us work together to achieve an instrument that is based on broad agreement and which will be effective in meeting humanity's common needs. Let's not be afraid to compromise, and let us not lose sight of the *raison d'être* of the Convention.

I count on your cultural and political will to successfully fulfil our common goal.

I would like to end with the words of my friend Seamus Heaney, Irish poet and Nobel laureate in literature, who has written that:

History says, Don't hope
on this side of the grave.
But then, once in a lifetime
the longed for tidal wave
of justice can rise up,
and hope and history rhyme.

If there's fire on the mountain
and lightning and storm
and a god speaks from the sky.

That means someone is hearing
the outcry and the birth-cry
of new life at its term.

It means once in a lifetime
that justice can rise up
and hope and history rhyme*.

My friends, there are voices out there that wish to be heard. This meeting can be the instrument for ensuring that in our lifetime, we can make hope and history rhyme. It is a beautiful challenge for us.

I thank you for your attention,

* Excerpt from *The Cure at Troy*