

UNESCO's convention on cultural diversity comes into force on March 18

We need to move now from 50 to 150 signatory states to ensure that the Convention is implemented effectively

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On December 18, 2006, the number of states that had ratified the *Convention on the protection and promotion of the diversity of cultural expressions* reached the required minimum threshold of 30 countries. The UNESCO convention will accordingly come into force on March 18, three months after the 30-ratifications threshold was reached, as stipulated in the text of the Convention.

This coming into force will allow the Convention implementation process to begin with the holding of the first Conference of the Parties. According to persistent rumours, this first meeting of the signatory states should moreover be convoked soon by UNESCO's Director-General Koïchiro Matsuura and be held in Paris before the end of June (very probably June 18 to June 20).

The Convention's coming into force represents an immense victory for all the countries, all the government officials and all the organizations representing the cultural professionals around the world who have fought with tenacity and fervour for almost 10 years to bring this convention into being.

If it is time to celebrate, it is doubtlessly also a good time to produce a first report and to map out what still needs to be achieved.

Remarkable success of Phase I of the ratification campaign

With the movement to ratify the Convention continuing in January and February, 53 countries have now deposited their ratification instruments. Ten or so additional countries have completed all the stages of their internal approval processes and should proceed with the deposition of their instruments in the near future. Some 55 to 60 signatory states, therefore, will be invited to participate in the first Conference of the Parties next June.

The coming into force of the Convention and the convocation to the first Conference of the Parties will signal the end of Phase I of the ratification process, a phase that has enjoyed an entirely remarkable success.

First of all, this success is remarkable in that such a large number of countries, which already represent very exactly half the world's population, should have ratified the Convention in less than a year and a half after the adoption of the Convention by UNESCO's General Conference in October 2005 – a pace of ratification that Director-General Matsuura described as exceptionally fast. The success is significant as well in that the signatory countries are found

on every continent and represent most of the main language groupings. Finally, the success is remarkable because the group of signatory states includes equal numbers of so-called emerging countries (China, India, Brazil, Mexico, South Africa) and key developed countries (Canada, France, Germany, Spain, Italy).

One must remember that this success is the result of the unstinting efforts of the hundreds and hundreds of people who took part in the ratification process in dozens of countries around the world, particularly heads of state and government leaders, ministers of culture and senior officials in key countries (Canada, Quebec, France, Spain, Brazil, India, China, South Africa, etc.), heads of international organizations (European Union, Francophonie, etc.), and representatives of cultural communities.

On this score, we must recognize the significant contribution made to the success of the ratification campaign by the international movement of coalitions, which now includes 37 national coalitions worldwide, brought together in the International Liaison Committee of Coalitions for Cultural Diversity (ILC). It is a fact that the Convention ratification process has been concluded or almost concluded in 25 of the 37 countries where these coalitions exist.

Objective of Phase II of the ratification campaign: 150 signatory states

The Canadian Coalition and the entire international coalitions movement will embark on Phase II of the ratification campaign in the coming weeks, with the goal of reaching at least 125 to 150 ratifications during the next two or three years. This objective is shared by a number of other stakeholders involved in the issue, particularly government officials in Canada and other key countries.

Here's why: having only 53 signatory states representing barely a quarter of UNESCO's 192 member states remains clearly insufficient.

For the Convention to wield real judicial and political clout, it is effectively imperative that the Convention be ratified by a substantial number of countries, as with all major international treaties. So it is that 150 countries belong to the WTO, 169 have ratified the Kyoto Protocol, and 152 have ratified the *Anti-Personnel Mine Ban Convention*. In the mid term, there is no good reason, moreover, not to believe that a similarly large number of countries will ratify the UNESCO Convention, all the more so in that more than 148 pays voted in favour of the text and only two voted against it in October 2005.

The coalitions will also pursue a second objective within the framework of Phase II of the ratification campaign: ensuring that the Convention's signatories provide a more balanced representation of all the world's regions or sub-regions and all the major language groupings.

The fact is that the current representation still leaves a lot to be desired. Thus, at present, the Asia-Oceania region has just two signatory states (but not the least of them, however, since the signatories are China and India) and the Arab world only has two (Tunisia and Jordan). When it comes to Africa, 11 countries have already ratified the Convention, but these are mainly countries from French-speaking Africa, while English-speaking African is currently only represented by South African and Namibia. Furthermore, although a strong majority of the

South American countries have concluded the ratification process or are on the point of doing so, only three countries so far in the Caribbean-Central American region have ratified it. Finally, while ten or so Eastern European countries are already among the signatories, key countries in the region, such as Russia, Ukraine, Poland and the Czech Republic, still have not joined their ranks.

The Canadian Coalition therefore intends to focus the bulk of its international mobilization activities in Phase II of the Convention ratification campaign on the following five priority zones: Asia, English- and Portuguese-speaking Africa, the countries of the Arab world, Eastern Europe and, finally, Central America and the Caribbean.

What's at stake in the initial phase of Convention implementation

What makes the UNESCO Convention so unique is that it formally recognizes, for the first time in the history of international law, “the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory.”

It also recognizes “the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning,” which therefore means that they “must therefore not be treated as solely having commercial value.”

In short, the Convention henceforth legitimizes under international law the differential treatment that states give to cultural goods and services compared with other merchandise when these states establish cultural policies such as national content quotas or cultural support measures reserved for national enterprises. This treatment, moreover, is legitimate even if these policies technically breach the normal rules that generally govern trade agreements, such as the principles of market access and national processing.

This being said, it is one thing to have a right and quite another thing to have the capacity and the will to exercise the right – the institutional and financial capacity of states, and particularly developing states, to establish support policies for the development of production and national cultural activities, and the political will to not surrender the states' right to establish these policies by caving in to requests to liberalize the cultural sector as part of multilateral or bilateral trade negotiations.

Here then are the two main issues that the coalition's movement wants to address in the initial phase of the Convention implementation over the next two or three years:

- How can we successfully establish North-South co-operative mechanisms that can effectively and significantly support the development of cultural industries in the countries of the South?
- How can we ensure consistency between the positions held by the signatory states within the framework of UNESCO and the positions that these same countries will advance at the WTO or other international trade agreement negotiation forums?

In terms of seeking to develop the cultural industries of the countries of the South, the Convention provides various mechanisms to help strengthen the institutional and financial

capacities of these countries, the most important of which mechanisms is the creation of the *International Fund for Cultural Diversity*. Article 18 of the Convention stipulates that the Fund will be funded from, among other sources, the “voluntary contributions made by Parties” and from the “funds appropriated for this purpose by the General Conference of UNESCO.”

As for the consistency objective, the text of the Convention stipulates in Article 20 that “when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention.” In addition, in Article 21, the text requires that “Parties undertake to promote the objectives and principles of this Convention in other international forums. For this purpose, Parties shall consult each other, as appropriate, bearing in mind these objectives and principles.”

In practical terms, the implementation of the Convention – and therefore the pursuit of these two objectives – will be overseen by the *Conference of Parties*, “the plenary and supreme body of this Convention” which brings together all the signatory states, and by the *Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions*, whose mandate it is “to promote the objectives of this Convention and to encourage and monitor the implementation thereof,” (...) “under the authority and guidance of [...] the Conference of Parties.” The Intergovernmental Committee will be composed of representatives from 24 States Parties to the Convention, elected by all the signatory states participating in the first Conference of the Parties next June.

The Intergovernmental Committee is responsible, among other things, for preparing draft “operational guidelines for the implementation and application of the provisions of the Convention,” which draft guidelines it must subsequently submit for approval at a future meeting of the Conference of the Parties. The Committee must also “establish procedures and other mechanisms for consultation aimed at promoting the objectives and principles of this Convention in other international forums.”

Some signatory states will perhaps propose that the agenda of the first Conference of the Parties next June be minimal, and that it be limited to the election of the members of the Intergovernmental Committee and the adoption of its Rules of Procedure. For the movement of coalitions, on the contrary, it is imperative that the signatory countries be more ambitious from the outset at their first meeting.

In particular, the first Conference of the Parties must give the Intergovernmental Committee clear parameters and precise deadlines, especially in requesting that the Committee give priority to preparing: 1) draft operational guidelines for the creation of the *International Fund for Cultural Diversity*; and 2) draft procedures and mechanisms for consultation among the Parties aimed at encouraging the promotion of the Convention’s objectives and principles, in particular including international forums, more specifically when the Parties are involved in international trade agreement negotiations.

Furthermore, important decisions will also have to be made regarding two other major issues: the frequency of meetings of the bodies implementing the Convention, and the participation of civil society in these meetings.

On the first point, the Convention provides that the Conference of the Parties must meet in an ordinary session every two years, and that the Intergovernmental Committee must meet once a year, but that both bodies may increase the frequency of these meetings by holding special sessions as well. In this regard, it seems clear that the participants at the June meeting must establish a schedule of meetings that includes a significant number of special meetings over the next two years, both for the Conference of the Parties and the Intergovernmental Committee. Otherwise, the initial phase of Convention implementation will only be able to progress at a snail's pace and it risks being spread out over more than five years.

Moreover, several provisions in the Convention, particularly Article 11, provide for "the active participation of civil society" in the Parties' efforts to implement the Convention. The June conference must make sure that these principles are transposed into concrete mechanisms that will guarantee real and effective participation on the part of NGOs that truly represent cultural communities at the meetings of the Conference of the Parties and the Intergovernmental Committee. In this regard, it should be mentioned that the Liaison Committee of Coalitions for Cultural Diversity has asked UNESCO to renew the observer status the Committee was granted for the Convention negotiation conferences in 2004 and 2005 and for the General Conference in 2005.

How to ensure that Convention is implemented effectively

In closing, it must be clearly stated that the vigorous pursuit of the ratification campaign remains the best way to ensure that the Convention is implemented in a way that will allow its main objectives to be attained.

Thus, so long as only 50 or 60 signatory states have signed the UNESCO Convention, these countries will remain a minority among the 150 countries that make up the WTO. The majority of WTO members will feel in no way bound, in their actions in the WTO, by the objectives and principles of a UNESCO convention to which they are not party.

This majority of countries will continue then to be very sensitive to pressures to include culture in trade agreements. The minority of countries that have complied with the Convention will therefore have little influence on these issues and will have trouble maintaining positions at the WTO that are consistent with the principles of the Convention.

Conversely, one can hope for greater overall consistency between the decisions of countries that are signatories to the Convention and the decisions of the WTO when 125 of the 150 member countries of the WTO have ratified the Convention – and all the more so if these 125 countries have first consulted together on these issues at UNESCO before making a decision at the WTO.

Similarly, it can be expected that more substantial contributions to the *International Fund for Cultural Diversity* – both in terms of individual contributions from states and of funds allocated by the decision of the General Conference – will be made when all 148 member countries that voted in favour of the Convention in October 2005 will have ratified it.