



Declaration of the Fourth International Meeting of Cultural Professional Organizations (The Madrid Declaration)

May 11, 2005

On May 9 to 11, leaders of 170 cultural organizations representing authors, composers, directors performing artists, technicians, writers, visual and plastic artists, and new media artists, as well as independent producers, publishers, broadcasters and distributors from 60 countries gathered in Madrid, Spain for discussions focusing on the theme “Cultural Diversity: A new pillar of the international legal system”, endorsed the following declaration.

We, the participants of the Fourth International Meeting of Cultural Professional Organizations:

THANK the Spanish Coalition for Cultural Diversity and its partners for organizing and hosting this meeting.

APPLAUD the progress achieved to date, through the negotiations now underway at UNESCO, to elaborate an international convention on the protection and promotion of the diversity of cultural expressions, strongly supported by the vast majority of countries, that will:

- fill a crucial void in international law by affirming the sovereign right of countries to develop, implement and maintain cultural policies designed to ensure a space for the full diversity of their own cultural creation and production, whatever the mode of distribution, and to support the conditions necessary for a genuinely balanced exchange of cultural goods and services among all countries;
- recognize the distinctive nature of cultural goods and services, affirming the principle that they should not be considered solely in terms of their commercial value, and that consequently they should not be subjected to the rule of trade agreements but rather be considered within the framework of an international instrument that explicitly recognizes their unique nature as vehicles of identity, values and meaning; and
- reinforce international cooperation in favour of a truly balanced exchange of cultural goods and services among all countries, notably through the establishment of an International Fund for Cultural Diversity that will strengthen the creative, production and distribution capacity of developing countries.

SUPPORT the consolidated draft text (April 2005) prepared by the Chairperson of the Intergovernmental Meeting on the convention as the appropriate point of departure for this final phase of negotiations. This draft clearly represents an advance on the composite text (March 2003) which preceded it, and equally important, to a great degree reflects the strong prevailing majority perspectives expressed on key elements of the draft convention during the February intergovernmental negotiations. Recognizing the value of the Chairman’s consolidated draft text

as a basis for further negotiation and refinement, we propose a number of limited but key amendments with the goal of ensuring that the convention, to be proposed for adoption at the 33rd General Conference in October 2005, is an effective one that can be supported by the world's cultural professional organizations. These proposals are attached to this Declaration in the form of an Appendix.

URGE all Member States of UNESCO to:

- engage fully in these negotiations, as they head into their final phase leading up to the October General Conference, in order to secure a strong, truly effective convention that clearly reflects the will of the vast majority of countries involved in these negotiations to enshrine the above principles in international law—and to resist all pressures throughout this period to dilute the convention;
- continue to build support among a wide number of Member States to ensure the convention is adopted in October 2005 with the strongest possible majority—and to resist pressures to delay the timeline for adoption to 2007 or beyond, as any delay risks seriously compromising the impact of the convention; and
- commit themselves to ratify the convention directly following its adoption to enable it to immediately enter into effect as an international instrument.

ENCOURAGE signatory countries to the convention to adopt cultural policies.

UNDERSCORE the important role of all cultural professionals in the UNESCO process now underway. We therefore resolve to intensify our mobilization efforts in our capacity as organizations representing cultural professionals in each of our countries. Notably, we affirm our will to expand the growing movement of national coalitions for cultural diversity, united through the International Liaison Committee of Coalitions for Cultural Diversity, a movement which seeks to provide a common voice for cultural professional organizations, and which now includes member coalitions in 24 countries: Argentina, Australia, Belgium, Benin, Burkina Faso, Cameroon, Canada, Chile, Colombia, Congo, France, Germany, Hungary, Ireland, South Korea, Mexico, Morocco, New Zealand, Peru, Senegal, Slovakia, Spain, Togo and Uruguay.

Together, we will work to:

- build awareness and support, at the national and international level, for a strong UNESCO convention;
- persuade countries to undertake to ratify it quickly following adoption so that it goes into effect on a timely basis; and
- maintain our engagement in the years to come to ensure that the convention has a genuine life following ratification, and becomes the definitive reference on questions of cultural policy.

REITERATE the importance, throughout the period when the UNESCO convention is being negotiated, adopted and ratified, of countries refraining from any liberalization commitments in trade negotiations that would constrain the application of the UNESCO convention.

AFFIRM the sovereign right of countries to determine their own cultural policies without fear of sanction or reprisal under trade agreements.

APPENDIX

Proposals for amending the Chairperson's Consolidated Draft Text (April 2005):

Affirm the Right of Countries to Have Cultural Policies in Unambiguous Terms

On balance, the consolidated draft text prepared by the Chairperson of the Intergovernmental Meeting on the convention represents a significant advance over the March 2005 composite draft that preceded it in that—through its removal of brackets around key terms such as ‘protection’ ‘cultural goods and services’ ‘cultural industries’—it emphatically recognizes the distinctive nature of cultural goods and services and clearly affirms the right of countries to take measures to protect and promote the diversity of cultural expressions within their borders and at the international level.

We generally support the list of cultural policies countries may take to this end, as set out in Article 6, but would suggest, in the interest of greater clarity, the reinstatement of earlier language, contained in the experts' preliminary draft text of July 2004, that affirms the right of countries to take ‘measures which in an appropriate manner reserve a certain space for domestic cultural goods and services among all those available within the national territory.’

We believe such language is important to clearly indicate that quotas for domestic cultural goods and services are included within the range of policy measures provided for under the convention.

Keep the Scope of the Convention Clear

One of the great strengths of the draft UNESCO convention is the way in which it clearly sets out to fill a void in international law: to recognize the distinctive nature of cultural goods and services, and to affirm the sovereign right of countries to take measures to protect and promote the diversity of cultural expressions within their territory.

In this light, we believe it would be much preferable to maintain the focus clearly on cultural expressions—and notably on cultural goods and services—by avoiding terminology that risks extending the convention into other, less easily-defined areas.

In particular, we have concerns that the incorporation of the new concept of ‘cultural activities’, takes the convention into terrain—specifically that of ‘beliefs, traditions and/or practices’—that is not easily defined and would extend the scope of the convention well beyond the original mandate of the resolution adopted at the 32nd General Conference.

Balance Rights with Obligations

The Chairman's consolidated text contains clear language in Articles 5 and 6 affirming the right of countries to take measures to protect and promote the diversity of cultural expressions in their territory.

However, this affirmation of rights is no longer accompanied in Article 5 by language asserting in similarly strong terms the responsibility of countries to recognize ‘their obligations to protect and promote it both within their territory and at the global level.’

We urge the reintroduction of this wording from the July 2004 experts' preliminary draft text in order to ensure that the right of countries to take such measures in favour of cultural diversity is accompanied by a clear responsibility to take such action.

We further urge that the original titles for Articles 7 and 8 be restored and that these articles incorporate a stronger undertaking by States Parties to take action affording their citizens access to a genuine diversity of cultural expressions originating locally, regionally and nationally, as well as from other countries, and to also take action in those specific circumstances where cultural expressions on their territory are at risk of extinction, or under serious threat.

Strengthen Provisions on International Cooperation for Development.

We note with great satisfaction the major progress that has been made in the Chairman's consolidated draft text in bringing both greater clarity and greater emphasis to the provisions of the convention relating to international cooperation. In particular, the provision in Article 18 establishing an International Fund for Cultural Diversity represents a major advance over prior drafts.

At the same time, we would urge the Member States of UNESCO to go one step further and commit themselves, in proportion to their financial capability, to contribute to this Fund to ensure it is properly resourced to carry out its mandate.

Further, the language in articles 12, 13 and 14 urging States to reinforce international cooperation should be strengthened.

Ensure the Status of the Convention in International Law

For the convention to be truly effective, it is critical that its status within the international legal system be clearly affirmed. To this end, we urge that the existing wording for Articles 20 and 21 be further refined with the objective of ensuring the following principles are reflected:

- the non-subordination of the UNESCO Convention to trade agreements;
- the convention's status as the definitive reference on questions of culture, including serving as a reference when interpreting and applying other international instruments that touch on culture; and
- coherence on behalf of States Parties by taking on the obligation to uphold the principles and objectives of the convention, notably by refraining from commitments in the context of other international negotiations that would be contrary to these principles and objectives.

Establish the Convention as the Definitive International Reference on Questions of Cultural Policy

In order for the convention to become the definitive reference on questions of culture, we consider it essential that the Convention contain an effective dispute settlement mechanism. We note that the provisions in Article 25 of the Chairman's consolidated draft remain those set out in the original experts' preliminary draft text. We believe this mechanism needs to be strengthened and made binding in order for it to be truly effective. Only a binding mechanism, and one which can be activated unilaterally by one party to a dispute, will invest the convention with genuine credibility in international law.