

## **International Liaison Committee of Coalitions for Cultural Diversity**

(Argentina, Australia, Belgium, Benin, Burkina Faso, Canada, Chile, Colombia, France, Germany, Ireland, Republic of Korea, Mexico, Morocco, New Zealand, Peru, Senegal, Spain, Slovakia, Togo, Uruguay)

**January 27, 2005**

### **ILC Position on the Preliminary Draft Convention on the protection of cultural contents and artistic expressions**

The international Liaison Committee of Coalitions for Cultural Diversity (ILC) met in Paris January 26 and 27 2005 to discuss recent developments in the process for developing an international Convention on the protection of the diversity of cultural contents and artistic expressions now underway at UNESCO.

After studying the revised draft text prepared by the drafting committee during its December 14-17 meeting, as well as the written comments of UNESCO's member states, the ILC adopted the following position with respect to the Convention, which it proposes be renamed the "Convention on the protection, promotion and development of cultural contents and artistic expressions".

The ILC reiterates the principles that should guide these negotiations:

- Cultural goods and services are vectors of the identity of peoples and cannot be reduced solely to commercial merchandise
- The access to a diversity of cultural content, originating from countries from all regions of the world, is a fundamental right
- Only the application of true national cultural policies can enable the development of cultural production in each country, thereby making this diversity possible.

### **Clearly focus the scope of the Convention**

The ILC considers it essential to keep the scope of the Convention text focused squarely on the diversity of cultural contents and artistic expressions. This means recognizing in international law the sovereign right of States to develop, implement and maintain cultural policies designed to ensure a space for national cultural creation—that is, policies to encourage the creation, production and distribution of books, films and television programs; music, the performing arts, visual arts, new media and other cultural contents and artistic expressions, whatever the medium, mode of exploitation or distribution technology used.

### **Affirm genuine rights and obligations for States**

The sovereign right of countries to adopt their own cultural policies must be enshrined unequivocally as the central objective of the Convention. In this context, Section III, which addresses the rights and obligations of States, is at the centre of the Convention. Section III must permit States to take measures to protect and promote the diversity of their cultural expressions. This right must not be limited to situations where cultural diversity is "threatened or in a situation of vulnerability"—a concern that is raised by the current wording of Article 6.

Nor must the scope and reach of the measures that States may adopt be unduly constrained by the application of the principle of 'proportionality' (art. 2.8) as criteria for determining the admissibility of a given measure. This principle could be replaced by a criterion that would instead seek to assess whether a given measure favoring national cultural production unfairly restrains access to a diversity of other cultures from around the world.

### **Put in place true international cooperation**

The Convention must itself be an instrument for international cooperation in favour of cultural development and must not simply defer this issue to the cooperation agreements concluded among States as is currently envisaged in Article 12.

The ILC supports the establishment of a Cultural Diversity Observatory as provided for in Article 15 in order to collect, analyze and distribute information concerning the diversity of cultural expressions. The Observatory should be put in place and operated with the participation of organizations representing cultural professionals.

Article 16 should be revised to explicitly provide for the establishment of an *International Fund for the Development and Promotion of Cultural Diversity* to which all States Parties to the Convention should participate and to which cultural professional organizations should also be associated.

### **Ensure States are coherent in their international commitments**

The Convention must provide for a clear engagement, in unambiguous terms, by which States commit to uphold the objectives of this Convention in other fora, notably by abstaining from liberalization commitments on culture in the context of international trade agreements. To this end, the ILC proposes that Article 13 be revised so that States categorically undertake to refrain from making commitments in other fora that would be contrary to the objectives of the Convention.

Strengthened in this fashion, Article 13 could play a key role in establishing the Convention as the international legal instrument of reference on questions relating to cultural policies, a reference that the signatory countries can cite as the basis for refusing to make liberalization commitments contrary to the objectives of the Convention.

### **Assign legal weight to the Convention**

The Convention must not be subordinated to other international instruments. It must have the same weight as other international instruments, including trade agreements, and must serve as the reference with respect to the measures that States may take to ensure a genuine diversity of cultural contents and artistic expressions. This matter is addressed in Article 19 of the draft text, which presents two possible options for defining the relationship between this convention and other international instruments. Of the two proposed options, the Coalitions urge the Member States of UNESCO to use Option A as a starting point, but recommend that the current wording be amended to afford States greater latitude to take measures to pursue cultural policies in favour of cultural diversity in situations where countries have previously taken liberalization commitments on culture in other international instruments.

### **Create an effective dispute settlement mechanism**

The Convention must contain a provision formally binding States Parties to use the mechanism provided for in the Convention for resolving disputes between them.

The dispute settlement mechanism must also be one that can be activated unilaterally by one State Party, and not solely in the case of a joint request by two parties as is specified in the current wording of Article 24 of the draft text. Moreover, the two parties to a dispute must clearly be bound by the decision rendered. It will only be possible to characterize the UNESCO Convention as a binding instrument if it contains an effective dispute settlement mechanism.

### **It is imperative that the Convention be adopted by 2005**

The ILC considers it imperative that the Convention be ready for adoption at UNESCO's next General Conference in October 2005. The intense pressures being applied to culture in trade negotiations make it imperative that the Convention be adopted before the conclusion of the WTO's current round of trade negotiations, as well as the proliferation of bilateral free trade agreements, pre-empts the Convention of its very purpose. It is therefore essential that States abstain from making liberalization requests or offers relating to culture in the context of the bilateral or multilateral negotiations now underway.