

## **CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSION**

In November 2001, the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) adopted the Universal Declaration on Cultural Diversity, accompanied by the Main Lines of an Action Plan for the implementation of the Declaration (31 C/Resolution 25). In article 12, paragraph (c), the Declaration stated that UNESCO has the responsibility to “pursue its activities in standard-setting, awareness-raising and capacity-building in the areas related to the Declaration within its fields of competence”. Article 12, paragraph (d), further outlined the responsibility to “facilitate the implementation of the Action Plan”, which, in its first paragraph, invited UNESCO to take forward “consideration of the opportunity of an international legal instrument on cultural diversity”.

At the initiative of eight Member States, the item “Preliminary study on the technical and legal aspects relating to the desirability of a standard-setting instrument on cultural diversity” was placed on the agenda of the Executive Board of UNESCO in 2002. At its hundred and sixty-sixth session in 2003, the Executive Board of UNESCO examined a study prepared by the Secretariat on this topic (166 EX/28), which invited the Executive Board to consider the advisability of including this item in the provisional agenda of the thirty-second session of the General Conference of UNESCO.

After examining the study, the Executive Board invited the Director-General of UNESCO to submit the study to the General Conference at its thirty-second session, together with its own observations. The Executive Board also decided to recommend to the General Conference “that it take a decision to continue action aimed at drawing up a new international standard-setting instrument on cultural diversity and to determine the nature of that instrument” (166 EX/Decision 3.4.3).

At its thirty-second session, in 2003, the General Conference examined the Preliminary Study and the observations made in that regard by the Executive Board at its hundred and sixty-sixth session (Report of the Executive Board, 32 C/52). The General Conference decided to adopt by acclamation resolution 32 C/Resolution 34 of 17 October 2003, in which it invited the Director-General to submit a preliminary report, accompanied by a preliminary draft of an international convention on the protection of the diversity of cultural contents and artistic expressions, at its thirty-third session.

For that purpose, the Director-General established a group of 15 experts representing a wide range of disciplinary approaches and serving in a personal capacity (Report of the First Meeting of Experts, CLT/CPD/2003-608/01). Its task was to submit suggestions and views on the elaboration of a preliminary draft convention. The first meeting of experts was held from 17 to 20 December 2003. The objective of this meeting was to launch preliminary deliberations and to find a common ground to initiate discussions. The Director-General organized the work into five key areas: (i) The objectives and principles of the Convention; (ii) The definition and scope of application of the “protection of the diversity of cultural contents and artistic expressions”; (iii) The rights and obligations of States; (iv) International cooperation and assistance; and (v) Mechanisms of follow-up (implementation) of the Convention.

The second meeting of experts took place from 30 March to 3 April 2004. The independent experts were invited to submit a series of drafting proposals, accompanied by comments and explanatory notes on the five aforementioned areas envisaged for inclusion in the future convention. The meeting was devoted to the analysis of the expert proposals

for the articles as well as the elaboration of a preliminary outline of the Convention (Report of the Second Meeting of Experts, CLT/CPD/2004/602/6).

The third meeting of experts took place from 28 to 31 May 2004. The meeting produced a draft text for all the chapters of the convention: “Preamble”; “Objectives and guiding principles”; “Scope of application and definitions”; “Rights and obligations of States Parties”; “Relationship to other instruments”; “Follow-up bodies and mechanisms”; and “Final clauses” (Report of the Third Meeting of Experts, CLT/CPD/2004/603/5). The preliminary draft was submitted to the World Trade Organization, the United Nations Conference on Trade and Development and the World Intellectual Property Organization for consultation.

In July 2004, the Director-General sent a preliminary report to Member States (CLT/CPD/2004/CONF.201/1), accompanied by the first preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions (CLT/CPD/2004/CONF.201/2). Member States were invited to submit their written comments and observations on the two documents before mid-November 2004.

At the invitation of the Executive Board (169 EX/Decision 3.7.2), the Director-General convened meetings of government experts to take forward the preparation of the preliminary draft convention. The first session of the Intergovernmental Meeting of Experts was convened from 20 to 24 September 2004. This session was attended by nearly 550 experts from 132 Member States, two permanent observers to UNESCO, representatives from nine intergovernmental organizations and 20 non-governmental organizations. In line with the agenda, a Bureau was established for the full duration of the process. It was composed of Professor Kader Asmal (South Africa), the elected Chairperson, Mr. Artur Wilczynski (Canada), the elected Rapporteur, and the representatives of four Member States as elected Vice-Chairpersons (Tunisia, Saint Lucia, Lithuania and the Republic of Korea). The session saw an initial exchange of views on the preliminary report of the Director-General and the preliminary draft convention prepared by the group of independent experts (CLT-2004/CONF.201/9). In addition, a Drafting Committee, composed of 24 members, with experts from four Member States from each of the six regional groups, was established to prepare a revised text of the preliminary draft convention.

Between July and November 2004, the Secretariat received contributions on the preliminary draft convention from 88 Member States, 15 non-governmental organizations and three inter-governmental organizations (World Trade Organization, the United Nations Conference on Trade and Development and the World Intellectual Property Organization). With a view to facilitating comprehension of the contributions received, the Secretariat provided a document summary of the comments and amendments submitted by States and non-governmental organizations on 10 December 2004 (CLT/CPD/2004/CONF.607/2).

The Drafting Committee met from 14 to 17 December 2004, and subsequently produced a draft revision of the preliminary draft convention, containing a series of options stemming from Member States’ contributions together with the Committee’s proposals on articles 1 to 11 of the preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions (CLT/CPD/2004/CONF.607/6). The revised text was submitted to the second session of the Intergovernmental Meeting of Experts.

The second session of the Intergovernmental Meeting of Experts took place from 31 January to 11 February 2005, with a focus on the revised text submitted by the Drafting Committee. The debates were divided into three parts: (i) Title, objectives, principles, scope of the Convention and definitions; (ii) Rights and obligations, and relationship to other instruments; and (iii) Follow-up bodies and mechanisms, and final clauses. A number

of informal working groups were established to consider, *inter alia*, the definition of terms such as “cultural expression” and “protection”.

The Intergovernmental Meeting of Experts also adopted a recommendation at its second session requesting the Chairperson to prepare “a consolidated text consisting of the draft provisions recommended by the Drafting Committee together with proposals by the Chairman himself based on the specific directives of the Plenary for the remainder of the draft text, using, wherever necessary, options or footnotes, to take into account different approaches that might require further consideration” (Recommendation of the Intergovernmental Meeting of Experts, 11 February 2005). In the same recommendation, Member States also requested that a third session of the Intergovernmental Meeting of Experts be convened.

On 3 March 2005, the Director-General submitted to Member States a preliminary report containing two preliminary draft conventions in the form of two appendices. The first appendix was a “composite text” that reflected the state of progress since the launching of the process in 2003 up to the end of the second session of the Intergovernmental Meeting of Experts (CLT/CPD/2005/CONF.203/6). That text was divided into three parts, each at different stages of completion: Part I – Results of the work of the Drafting Committee (articles 1 to 11, with the exception of article 8); Part II – Results from the informal working group on section III.2 (new articles 12, 13, 14 and 15); and Part III – Plenary session comments on the remainder of the text (article 8, former article 15, former article 13 and 19, articles 20 to 34 and annexes). The second addendum to the preliminary report of the Director-General consisted of the consolidated text prepared by the Chairperson of the Intergovernmental Meeting of Experts, which was circulated to Member States on 29 April 2005 (CLT/CPD/2005/CONF.203/6 – Add.).

At its hundred and seventy-first session, in April 2005, the Executive Board had before it the report of the Director-General on the progress towards the draft convention on the protection of the diversity of cultural contents and artistic expressions (171 EX/44 and 171 EX/INF.18). The Executive Board authorized the holding of a third session of the Intergovernmental Meeting of Experts (Decision 171 EX/19). The Executive Board also requested the Director-General to report at its hundred and seventy-second session on the progress accomplished on the preliminary draft convention at the third session of the Intergovernmental Meeting of Experts.

The third and last session of the Intergovernmental Meeting of Experts took place from 25 May to 3 June 2005. The Meeting conducted a thorough review of all the articles of the preliminary draft convention, discussing and amending them as well as proposing alternative wording to the consolidated text contained in Appendix 2 of the Director-General’s report of 3 March 2005 (CLT/CPD/2005/CONF.203/6 – Add.). Following the reading of the final text of the draft convention, the Intergovernmental Meeting of Experts requested the General Conference of UNESCO, on 3 June 2005, to, *inter alia*, adopt the preliminary draft convention at the thirty-third session of the General Conference (Recommendation of the Intergovernmental Meeting of Experts, 3 June 2005).

At its hundred and seventy-second session, the Executive Board had before it a report by the Director-General on the progress achieved during the third session of the Intergovernmental Meeting of Experts (172 EX/20), together with the preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions. The Executive Board decided to recommend to the General Conference that it adopt the preliminary draft as a UNESCO convention at the thirty-third session of the General Conference (172 EX/Decision 19).

At its thirty-third session, in 2005, the General Conference considered the report of the Director-General on the successive stages that had been completed, from the start of

the process in 2003, up to the end of the third session of the Intergovernmental Meeting of Experts, accompanied by the draft convention on the protection of the diversity of cultural contents and artistic expressions (Report of the Director-General, 33 C/23). On 20 October 2005, the General Conference adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expressions by 148 votes in favour, 2 votes against and 4 abstentions (33 C/Resolution 41). The Convention entered into force on 18 March 2007, three months after its ratification by 30 Member States, in accordance with its article 29.