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Diversity of Cultural Expressions

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INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

Second Ordinary Session
Paris, UNESCO Headquarters
8-12 December 2008

ORAL REPORT

By Mr Antonio Ricarte
Permanent Delegation of Brazil to UNESCO

Paris, 15 December 2008

Mr Chairperson of the Intergovernmental Committee,
Ms Françoise Rivière, Assistant Director-General for Culture,
Honourable Delegates,
Ladies and Gentlemen,

I should like first to thank all States Members of the Committee for the honour done to Brazil and for the trust that they have placed in me personally.

My assignment consists of once more, for the third and last time, reporting to you on the content and conduct of the debates of this session as faithfully and objectively as possible. As the task is no simple one, I seek your indulgence for any shortcomings or omissions that may become apparent.

I must emphasize the quality of the debates, which are the result of thorough preparation that enabled the substantial contribution and constructive commitment of all participants. H.E. Mr Gilbert Laurin, Chairperson of the Committee, once again has demonstrated his admirable skills in guiding our proceedings. His sense of responsibility, coupled with steadiness and tact, allowed agreement to be reached on all items of the agenda, particularly the most difficult, including the operational guidelines on Articles 13, 14 and 18 of the Convention, as well as the very rich and fruitful debate on Article 16.

We are all grateful for the Director-General's continuing support of the Convention. Ms Françoise Rivière, in cooperation with the Secretary of the Convention, Ms Galia Saouma-Forero and her team, spared no effort in doing everything to make a success of this session. We thank them all.

I must also acknowledge the commendable work of our Legal Adviser, Mr El Zein, and would like to thank the interpreters who have once again risen to the challenges placed before them.

The **second ordinary session of the Intergovernmental Committee** for the Protection and Promotion of the Diversity of Cultural Expressions **was opened on 8 December 2008** by the Assistant-Director General, Ms Françoise Rivière, representing the Director-General of UNESCO. In his speech, delivered on his behalf by Ms Françoise Rivière, the Director-General commended the speed and efficacy of the work undertaken by the Committee since its first session, and emphasized the importance of the operational guidelines to be elaborated during this session. He also welcomed the voluntary contributions to the International Fund for Cultural Diversity of a total amount of US\$ 946,600. Belgium, in the process of ratification of the Convention, announced its voluntary contribution to the Fund of US\$ 50,000 for 2008, a sum probably also extendable for 2009.

Before embarking upon the items of the agenda, the Chairperson, H.E. Mr Gilbert Laurin, invited the Committee to continue to embody the same spirit of cooperation that resulted in the achievement of positive outcomes during the deliberations of the past two sessions.

After the **agenda** was adopted as proposed, the Chairperson proceeded with the admission as observers to this session of 24 Parties to the Convention, non-members of the Committee and the European Community, 16 Member States of UNESCO not parties to the Convention, 1 permanent observer delegation, 6 IGOs and 12 NGOs.

The Summary Records of the First Extraordinary session of the Committee were adopted without amendments.

Allow me now to refer to item 4 of the agenda, concerning the **draft operational guidelines on the promotion of international cooperation** (Article 12 of the Convention). You may remember that all provisions of the Convention relating to international cooperation were earmarked by the Conference of Parties for priority consideration. In introducing this item, the representative of the Director-General highlighted a difficulty faced by the Secretariat: that the Convention is in itself very comprehensive and therefore does not require overly detailed guidelines.

Further to the proposal of the Chairperson, the Committee held a discussion of the operational guidelines for Article 12 on the basis of the Secretariat's document, together with the amendments proposed by 8 members of the Committee (Albania, Burkina Faso, Canada, Mali, Mauritius, Saint-Lucia, Senegal and Tunisia). This same group of countries also made proposals regarding the draft operational guidelines on Articles 13, 14 and 18, as I shall later refer to.

The debate demonstrated different points of view regarding the interpretation of Article 12. Some members of the Committee considered that this article concerned the promotion of international cooperation between all Parties, while others considered that specific focus should be given to developing countries in highlighting North-South and North-South-South cooperation.

A lengthy discussion did not succeed in bridging the different perspectives on this article. Brazil suggested that article 12 be considered as a general introduction to the application of the provisions on international cooperation as contained in the Convention, and, as such, not require the development of specific guidelines. This position was supported by many Committee members. Decision 2.IGC 4 was adopted as amended by proposing to the Conference of Parties not to adopt Operational Guidelines on the promotion of international cooperation as Article 12 is in itself fully self-sufficient.

In addition, the written amendments of the 8 countries proposed the complete deletion of the section comprising general principles of international cooperation. Many delegations stated that the principles of the Convention did not need to be restated or supplemented by principles introduced within the operational guidelines while others felt that it was important that more detailed principles be included within the guidelines. Paragraphs 1, 1.1, 1.2 and 1.6 were retained for later consideration. Brazil proposed that the General Principles be adopted as an introduction to the Operational Guidelines as amended. Given that it was not possible to reach an agreement on this proposal during the present session, I suggested that the language contained in this section be kept for reexamination after completion of the entire set of guidelines at the next session in order to consider whether and how to accommodate it.

When introducing **item 5** concerning the **draft operational guidelines on the integration of culture in sustainable development** (Article 13 of the Convention), the Secretariat informed the Committee that 29 States Parties had sent written comments on the implementation of this provision. These were issued as information document INF 2, with the exception of one contribution in Arabic, for which the translation was received after finalization of the document and which was therefore made available as a separate document during the session.

Amendments were proposed by the same group of countries that proposed amendments to Article 12. Senegal recognized that as Article 13 of the Convention is very short, the drafting of guidelines on an issue at the top of all Government agendas could not have been an easy task.

Despite the sensitive nature of the issue under discussion and the fact that the Convention is the first international legal instrument to bind Parties to integrate culture into sustainable development, the debate brought out general commitment towards this goal. I would therefore like to touch only upon those paragraphs discussed at length, since the others were approved with only minor amendments.

One of the debated issues concerned the integration of culture into development policies in all sectors and at all levels. In this regard, one Committee member deemed it essential to highlight the importance of culture for poverty reduction through job creation and its contribution to economic growth. As a result, two new sub-paragraphs were introduced which aimed to further detail how culture can play an important role within a wider perspective. The second issue, which gave rise to an interesting exchange of ideas, was the relationship between diversity of cultural expressions and education. Some Delegations were of the opinion that it is through education that wider access to cultural expressions can be promoted. Others believed that cultural expressions are a vehicle for the educational system and that culture, aside from its importance in itself, should be used as a tool for education. The Committee concluded however, that it should concentrate on elaborating operational guidelines for integration of culture into sustainable development policies and that the question of education should be treated in more depth when elaborating guidelines relating to Article 10 on education and public awareness.

To ensure that the text be as precise and as all-encompassing as possible, the Committee debated at some length the appropriate denomination of concerned stakeholders and actors in the cultural sector. Some Delegations preferred a more generic appellation while others wished to list all concerned categories. A proposal to make reference to the definition provided in the 1980 Recommendation concerning the Status of the Artist was not retained, but an agreement was reached to refer to all ‘concerned artists, professionals and practitioners in the cultural sector’.

Two observers took the floor on this item. Jamaica emphasized the need for promotion of the cultural component in education delivery as well as a better understanding of what culture is about. The International Network for Cultural Diversity, taking the floor on behalf of 5 NGOs, highlighted the importance of the interaction between civil society and public authorities for developing cultural policies, particularly in the South, and called upon developed countries to help developing countries in their endeavours.

Presenting the draft **operational guidelines on cooperation for development** (Article 14 of the Convention), item 6, the representative of the Director-General, while underlining the link between this provision and other articles of the Convention, in particular Article 16 and Article 18, stated that the Secretariat had tried to provide examples of concrete measures for the four pillar areas cited in Article 14, namely: strengthening of cultural industries, capacity-building, technology transfer and financial support.

Canada provided details and explanations concerning the amendments proposed by Albania, Burkina Faso, Canada, Mali, Mauritius, Sainte-Lucia, Senegal and Tunisia in consultation with other Committee members. These amendments were drafted with the

purpose of complementing the work of the Secretariat and further improving the structure of the document.

The Committee accepted the majority of the paragraphs without major changes. However, it reinforced several paragraphs through the use of language stronger than initially proposed and certain important aspects were added, namely: the mention of social inclusion and poverty reduction policies which take into account the cultural dimension for fostering local and regional markets for cultural goods.

The issue of mobility of artists and other cultural professionals and practitioners from developing countries gave rise to a lively debate. Some members of the Committee considered this question no less important than that of exchange of cultural goods and services. The Committee included a text concerning the consideration of flexible short-term visa regimes for artists in both developed and developing countries as a way to facilitate mobility through the improvement of such regimes.

Furthermore, the Committee discussed the issue of fair and favourable conditions for facilitating technology transfer to developing countries as well as legislative, administrative and policy measures to facilitate joint development of technology for the benefit of developing countries. As a result of the debate, a new sub-paragraph was added and another accordingly modified.

Two observers took the floor on this agenda item: Jamaica expressed its concern regarding a system to allow evaluation of achievements made after the Convention is effectively implemented. The International Music Council, speaking on behalf of 7 NGOs, recognized the important work being done by the Committee to widen and improve the range of possibilities for artists and cultural producers from developing countries with regards to the work they produce. It also welcomed the decision of the Committee related to flexible short-term visa regimes as a highly important issue but regretted that the proposal to introduce a mention of information exchange on artists' rights was not retained.

One full day was dedicated to **item 7** concerning the **draft guidelines on the use of the resources of the International Fund for Cultural Diversity** (Article 18 of the Convention). The representative of the Director-General recalled that the Financial Regulations of the Fund had been adopted by the Conference of Parties. The Fund is to be managed as a special account, given its multilateral nature. The proposed draft guidelines were based upon written contributions sent by States Parties and the debate in the Committee on this issue at previous sessions. The document prepared by the Secretariat reflected points of convergence expressed by the Delegations, and presented points the Delegations could not agree upon in the form of a series of options.

Saint-Lucia, speaking on behalf of the 8 countries that had proposed amendments (the same group of countries which proposed amendments for Articles 12, 13 and 14) acknowledged the high quality of the document prepared by the Secretariat, which took into account all concerns expressed. It informed the Committee that the proposed amendments were for parts of the operational guidelines which had already been the subject of a consensus, and that where options were presented by the Secretariat, the group had indicated its choice for one option.

All the Delegations which took the floor stressed that, in line with the spirit of the Convention and the nature of the Fund, it should be used in favour of developing countries, it

should not receive earmarked contributions, nor should the guidelines impose any economically or politically binding conditions. This was clearly indicated in the objectives of the Fund, particularly with regard to official development assistance to finance projects and programmes decided by the Committee in accordance with the provisions governing UNESCO Special Accounts.

Several members insisted that the management costs of the Fund be cost-effective in relation to the amounts allocated to projects and programmes. Furthermore, those projects should not be 'one-time projects'; they should have a structural impact whenever possible and, at a certain point, become self-sustainable. The notion of 'ownership' or 'appropriation' of a project presented for financing under the Fund was of particular importance to several Delegations. While encouraging applicants to partially finance projects, several members took the view that commitment to a project is related not as much to the amount of money disbursed, as to well-defined project evaluation criteria. Canada joined the consensus but insisted strongly on the fact that applicants should contribute the equivalent of 10% of the requested budget in order to demonstrate their involvement in the proposed project.

As regards the types of programmes and projects eligible for financing, the Committee debated at length a proposal from Brazil to include 'the protection of cultural expressions under threat of extinction as well as promoting the cultural rights of women and various social groups including persons belonging to minorities and indigenous people'. The Committee's preference was to address various situations and not to single out groups of beneficiaries. In addition, some Delegations expressed their great concern at the inclusion of women at the same level as social groups and minorities. As a result of the discussion and for the sake of consensus, the proposal was withdrawn. Nevertheless, after a lively exchange of views on the guidelines concerning the beneficiaries of the Fund, a small group of Delegations met during lunchtime to redraft the respective paragraph. The group proposed consolidated guidelines for both the beneficiaries and the procedure for submission of funding requests, giving an appropriate place to vulnerable and other social groups identified in the Convention, which had not been acknowledged in the initial draft.

Detailed discussions were held also in relation to the procedure for submission of funding requests and their selection and approval process. It was decided that following an initial technical evaluation by the Secretariat, the requests should be submitted to a panel of experts to be constituted by the Committee on the basis of equitable geographical representation. This body of experts shall present their recommendations to the Committee regarding their assessment of the feasibility and expected structural impacts of projects or programmes. Guidelines on evaluation and reporting were also drafted.

At the end of the day, the Committee approved the Operational Guidelines concerning the use of the Fund. The debates were extremely rich and all details will be reflected in the summary records to be prepared by the Secretariat.

I come now to the most far reaching item of our agenda, **item 8** concerning the **Reports of the Experts on preferential treatment for developing countries** (Article 16 of the Convention). Another full day was dedicated to this item. The debate took into account the reports on preferential treatment prepared by six qualified experts and presented by Ms Vera Thorstensen (Brazil) and Mr Pierre Defraigne (Belgium) who coordinated the work. Their overview of the issues dealt with in the reports was distributed in the room.

For easy comparison, the reports were prepared following the same structure and the coordinators highlighted areas of convergence in their conclusions. For example, all experts endorsed the understanding that the concept of preferential treatment within the meaning of Article 16 must be interpreted in the light of other articles of the Convention, in particular Article 14 on cooperation for development. These views held that Article 16 is related to issues beyond trade, such as partnerships and cooperation. They also coincided on the notion that preferential treatment under Article 16 is wider than a narrow trade understanding and should rather be built on partnership and cooperation mechanisms. Trade instruments are only one option among a variety of means and methods for granting preferential treatment that also include funding agreements and exchange arrangements, sharing of resources and experiences on best practices, technical capacity building and transfer of technology, fiscal incentives, visa facilitation arrangements, education and training, joint production and diffusion of cultural expressions, joint investments, etc.

Ms Thorstensen noted that the positions of the experts varied with regard to the adoption of certain trade-related criteria for granting preferential treatment, such as eligibility, reciprocity, conditionality, graduation and rules of origin. She suggested that guidelines be prepared for an experimental five-year phase before revisiting the question of defining these criteria. According to her, the reports attested to the variety of preferential treatment mechanisms available for adoption in the cultural field. However, the effective implementation of Article 16 requires the exploration of both trade and non-trade instruments and is facilitated through policies conducive to the promotion of cultural diversity, such as development cooperation measures targeted at fostering local cultural markets as well as training of artists, cultural professionals and practitioners.

Mr Defraigne noted that the obstacles to improving cultural exchanges between developing and developed countries can only be overcome if there is firm determination for cooperation, including cooperation between governments and the private sector, especially through co-production and facilitation of mobility of natural persons. He stated that cultural preference in trade is important, but not sufficient.

Mr Defraigne also highlighted the point that with the advent of the Convention the risk of conflict with the trade regime has diminished, not increased. He stated that once the principle of cultural preference is enshrined within a multilateral treaty such as the 2005 Convention, the trade rules will no longer be an obstacle to the introduction of corrective mechanisms favourable to developing countries. Both coordinators indicated that enough flexibility exists in the existing trade regime to allow for the adoption of cultural preference in market access and cultural policies. However, Mr Defraigne cautioned that the impact of preferential treatment should not be over-estimated if supply of cultural goods and services is not boosted in the developing world.

Following the presentations, several Delegations took the opportunity to ask questions and request clarifications of the coordinators. In reply to one question, Ms Thorstensen encouraged the Committee to promptly draft guidelines on preferential treatment in order to shed light on the relevant provisions of the 2005 Convention before any case be brought before the WTO Dispute Settlement Mechanism. She mentioned the experience of the WTO in dealing with Multilateral Environmental Agreements and trade. In this context, Brazil proposed that a seminar be held with the participation of culture and trade experts in order to build better mutual understanding and offered to contribute to making this possible. Some Delegations felt however that it was premature to hold such seminars before having clarified

the means for implementing Article 16, which need to be discussed primarily at the domestic level among the different government departments and civil society.

At the end of the session, one observer delegation took the floor to ask a question relating to the Economic Partnership Agreement between the European Union and CARIFORUM.

In the afternoon, the Chairperson explained that the Bureau had discussed the possibility of sending a questionnaire in order to obtain written views on some of the key issues to be addressed in the guidelines. This possibility met with the agreement of the Committee, with the understanding that replies could go beyond the questions asked. The Committee decided that the questionnaire should be addressed to Parties of the Convention and that the NGO-liaison Committee should be consulted on behalf of civil society having interests and activities in the fields covered by the Convention. India stated that the timeframe required that the questionnaire be short and focused in order for the Secretariat to prepare options to be considered by the Committee and guidelines be drafted and submitted to the next General Assembly. India stressed that no postponement of this issue would be acceptable.

I must observe that the discussions in the afternoon deviated to a great extent from the topic of preferential treatment to the relationship between the 2005 Convention and the multilateral trade system. However, given that this issue was not on the agenda for this session of the Committee, I shall refrain from reflecting it in detail, given that the proceedings of the Committee will contain transcripts of the interventions.

Brazil initiated the debate by pointing out that cooperation and trade were two aspects which required further work in the guidelines, and that, given the existing experience in cultural cooperation, it may be easier to develop guidelines on the former. India, on the other hand, considered that the negotiating history of Article 16 indicated that preferential treatment should not take a purely trade perspective but be examined as a tool for sustainable development.

France requested the floor for the representative of the European Communities and its Members States to express their position on this item. The EC representative elaborated on what he considered the innovative European experience in implementing this provision. He warned that it is not possible to arrive at a definition of preferential treatment applicable to all situations. Nevertheless, a number of instruments are available, such as the economic partnership agreement between the EU and the CARIFORUM as an example of innovative matching of cooperation and trade. In his view, regional cooperation mechanisms can be more effective than multilateral arrangements. Brazil cautioned, however, that regional schemes may be questioned multilaterally if non-participating countries feel their interests have not been respected and this could be detrimental to the Convention. The representative of the European Communities also drew the attention of the Committee to the reporting mechanism foreseen in Article 9 as a means of monitoring compliance by developed countries of the provision of Article 16.

Canada, in turn, suggested that the operational directives provide concrete examples. Canada wished for emphasis to be placed on the lasting and structural effects of exchanges favoured by preferential treatment. Croatia agreed that the guidelines should concentrate on the illustration of alternatives and added that they should not limit the ability of Parties to reach special agreements on preferential treatment. The representative of Saint-Lucia added that developing countries that have the capacity to do so should grant preferential treatment to

other developing countries as indicated in one of the expert reports. Several other members took the floor on this item in order to underline the importance of developing operational guidelines not exclusively or excessively focused on trade.

One observer State Party and one observer Member State of UNESCO also made statements on this issue. Two statements on behalf of NGOs were delivered by the representatives of the International Network for Cultural Diversity and the International Federation of Coalitions for Cultural Diversity.

With regard to **the date(s) of the next session(s) of the Committee, item 9 of the agenda**, the Committee decided to convene an extraordinary session, from 23 to 25 March 2009. At the extraordinary session, the Committee shall discuss issues related to the follow-up on preferential treatment with a view to proposing guidelines for the consideration of the Conference of Parties. The Committee has further decided to examine all those documents needed to be presented to the Conference of Parties, including the report on the activities and decisions of the Committee (item 10 of the agenda) as well as to discuss possible strategies for promoting the visibility of the Convention and fund-raising for the International Fund for Cultural Diversity, including innovative financial mechanisms.

A decision was taken to hold the third ordinary session in December 2009. Both sessions will be held at UNESCO Headquarters.

Concerning the **election of the Bureau of the third ordinary session** of the Committee, **item 11** of the agenda, the Committee decided to suspend Rule 12.1 of the Provisional Rules of Procedure, in accordance with its Rule 48. Indeed, following the selection by lot at the first session of the Conference of Parties, of members of the Committee whose mandate was exceptionally limited to two years, the Committee was faced with a difficulty at this session, as the two members from Group IV were ineligible, according to Rule 12.1. By suspending it, the Committee allowed the re-election of India to the Bureau and therefore guaranteed a geographically equitable balance.

The Bureau was elected, by acclamation, as follows: Ms Vera Lacoecilhe (Saint-Lucia) has been elected Chairperson of the Committee; the responsibility of the task of rapporteur was entrusted to Mr Mohamed Konate (Senegal); Croatia, India, Luxembourg and Oman have been elected as Vice-chairs.

With regard to **agenda item 12, any other business**, two observer delegations took the floor and made statements related to the Fund. The Delegate of Saint-Lucia referred to the hiring of personnel for the Secretariat and, in this regard, the desirability that new appointments take into account expertise on cultural policy. She also called the attention of the Committee to the fact that only a limited number of Parties had so far contributed to the Fund, and stated her intention to bring this matter to the attention of the Conference of Parties. Tunisia, on behalf of Oman and the other members of the Arab Group, supported by India, requested that future meetings of the Committee should take into account religious holidays of all cultures and not be scheduled to coincide with Eid.

Ladies and Gentlemen,

I have accomplished my task as rapporteur and I seek your indulgence for not having entered into all details of our rich debates. They will be duly reported in the summary records of this session to be prepared by the Secretariat.

Thank you for your attention.