

## THE CONVENTION ON THE DIVERSITY OF CULTURAL EXPRESSIONS: IMPLEMENTATION AND FOLLOWUP—THE CHALLENGE OF CONCERTED ACTION BY CIVIL SOCIETY

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The implementation of an international legal framework to preserve the diversity of cultural expressions is the direct result of efforts by a host of key actors, notably representatives of civil society who were actively involved at every stage of the drafting of the new *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. Even after the adoption of the Convention in October 2005, civil society continued to play an important role. Coalitions for cultural diversity immediately rallied to urge UNESCO member states<sup>1</sup> to ratify the text. Although the Convention is now in effect,<sup>2</sup> the ratification stage is far from complete, and efforts to spur other states to sign on to the Convention are ongoing. Since the legitimacy of the new instrument depends on the number of states who are party to it,<sup>3</sup> the pressure exerted by members of civil society will have a definite impact on the process.

But the contribution of civil society doesn't end there. Ratification is one thing, but the focus must now shift to Convention implementation and followup, which will pose a whole new set of challenges to civil society. The first will be to meet the expectations

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<sup>1</sup> Robert Pilon, then–Executive Vice President of the Canadian Coalition for Cultural Diversity, noted in April 2007 that the ratification process was complete or virtually complete in 28 of the 42 countries that had a coalition for cultural diversity. See “La Convention de l’UNESCO sur la diversité culturelle entre en vigueur demain,” *Le Devoir*, March 17–18, 2007, online edition: <http://www.ledesoir.com/2007/03/17/135336.html>, last access August 10, 2007

<sup>2</sup> The Convention came into effect on March 18, 2007. By September 15, 2007, it had been ratified by 67 States and one regional economic integration organization. UNESCO has 192 members. To consult the Convention: [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=33232&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=33232&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>3</sup> See I. BERNIER, with the collaboration of H. RUIZ FABRI, *Implementing the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, Study carried out on behalf of Ministère de la Culture et des Communications du Québec, 2006, pp. 6–7, online: <http://www.mcccf.gouv.qc.ca/diversite-culturelle/eng/pdf/UNESCO-anglais.pdf>, last access August 10, 2007.

generated by the text or expressed by the parties to the Convention. Given Article 11 of the Convention, which acknowledges “the fundamental role of civil society in protecting and promoting the diversity of cultural expressions,”<sup>4</sup> it seems clear that civil society’s role will grow increasingly important. Moreover, the parties have agreed to encourage the active involvement of civil society in their efforts to achieve the objectives of the accord. This is an innovative provision in that the new legal instrument, an intergovernmental tool designed, by its nature, to bind only those states who are party to it, expressly names a third player to help achieve all the objectives set by the members.<sup>5</sup> However, the role of civil society is not defined per se, and its representatives will have to give that role considerable thought. Civil society’s involvement will have to go beyond the “member/observer” status generally reserved for its representatives and take the form of a constructive dialogue and meaningful interaction between the two actors.

The second challenge facing civil society will be to impress upon the states and other beneficiaries of the document the role and importance of the Convention—no small feat considering the many ambiguities and misunderstandings that have arisen with regard to the new instrument’s scope of application and the nature of the commitments it entails. These ambiguities can be explained in part by the fact that many of the states have not yet had the opportunity to fully assimilate the content of the Convention. Only a few years have passed since the end of the Uruguay Round—the negotiation period during which many states refused to agree to commitments in the cultural sector by adopting what is now known as the “cultural exception policy”<sup>6</sup>—and the drafting of the Convention on the Diversity of Cultural Expressions.

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<sup>4</sup> It is worth noting that the Convention provides no definition of what is meant by “civil society.” Nor is it the purpose of article to try to provide one. We believe the make-up of civil society may vary depending on context and the objectives it targets through its actions. It is clear, however, that coalitions for cultural diversity are important civil society actors in the states in which they were created.

<sup>5</sup> It is true that the Convention for the Safeguarding of the Intangible Cultural Heritage (<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>) stipulates that each state party shall “identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities, groups and relevant nongovernmental organizations.” However, Article 11 of the Convention on the Diversity of Cultural Expressions is innovative in that it expressly acknowledges the fundamental role of civil society, and encourages it to participate in a much broader sense in the pursuit of all the objectives defined in the text.

<sup>6</sup> The WTO agreements contain no general exception that would exclude the entire cultural sector from their scope of application, therefore there is no real “cultural exception” in the legal sense of the term.

It is worth pointing out that, in the very early stages, only a few countries were conscious of the potential risk of an unconditional liberalization of cultural services in the context of multilateral negotiations. While a large number of states supported the launch of talks in 2003, very few at that time had in-depth knowledge of the issue. And though it has been two years since the text was adopted in 2005, the actual content of the Convention remains poorly understood by most people, with the exception of a handful of diplomats and experts.

That said, certain states that do have a very thorough understanding of the new text are worried about the effects it could have on their economic interests and are seeking to alter its scope so as to effectively render it toothless. One of the techniques they employ consists of pressuring their trading partners to not ratify the Convention. At the same time, some states are being encouraged to sign trade agreements (as part of bilateral, regional, or World Trade Organization (WTO) agreements) with no regard for the objectives and content of the Convention. These agreements that, in certain cases, may constitute a form of renunciation of the rights recognized by the Convention, are clearly a threat to the future of the new legal instrument.

We will keep these two concerns in mind in this article as we propose various ways in which civil society can work to help implement the Convention. As an actor, civil society must take these challenges into consideration when planning its actions at the national and international level. For its actions regarding the Convention to be effective, it is vital that its representatives concert their efforts.

Given the mobilization of these representatives at the national level, particularly in places where coalitions for cultural diversity have been created, a structured action plan could probably be drafted relatively quickly. The recent creation of the International Federation

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However, in the context of the General Agreement on Trade in Services, state commitments with regard to market access and national treatment extend only to those sectors included on a list drawn up by each WTO member. The “cultural exception policy” therefore reflects the refusal of a large number of states to include cultural services in their list of commitments, and testifies to their desire to exempt this sector from the market liberalization process.

of Coalitions for Cultural Diversity<sup>7</sup> also bodes well for the development of guidelines to direct the action of civil society representatives on the international scene. This article aims to do just that, by setting forth a number of proposals that could be incorporated into a national and international action plan—one designed not to dictate how states should act, but rather to foster debate and spur representatives of civil society to get involved in implementing and following up on the Convention. The plan could be organized around three main dimensions.

The first dimension is “operational,” and deals with the role civil society must play at a national level to encourage states to draft and implement policies and measures to protect and promote the diversity of cultural expressions. The second dimension is “cooperative,” and concerns the implementation of strategies worldwide to spur cooperation in the cultural sector. The third dimension is “institutional,” and looks at the role of civil society in the Convention’s decision-making organs and at the concerted efforts that must be made by Convention members to promote its objectives in other international forums. We will look at each of these dimensions in turn. The proposals that follow are merely discussion points to help develop an action plan that must be drawn up and structured by representatives of civil society themselves.

## 1. THE OPERATIONAL DIMENSION

The Convention’s operational dimension has to do with the rights and obligations of states at the national level, and must be examined from two angles. In drafting an action plan, civil society representatives must take into account the Convention’s two main objectives, namely the *protection* and the *promotion* of the diversity of cultural expressions.

This is an important distinction as the role of civil society will vary depending on the objective. With regard to the promotion of the diversity of cultural expressions, civil society will have the opportunity—some would say the responsibility—to intervene

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<sup>7</sup> For more on the creation of the International Federation of Coalitions for Cultural Diversity, see <http://www.cdc-ced.org/Anglais/Liensenanglais/frameFICDCeng.htm>, last access October 22, 2007.

directly with the public, social groups, minorities, aboriginal peoples, artists and creators, and consumers. Such actions could be direct, in the sense of promoting the diversity of cultural expressions “on the ground.” This work should ideally, but not necessarily, be carried out in cooperation with government authorities. In other words, civil society must work within its means to promote the diversity of cultural expressions, whether or not it receives assistance from the state. As for the “protection” component, its role will be defined in relation to the actions states are required to take. When it comes to “protecting the diversity of cultural expressions” or adopting policies and measures to protect and promote the diversity of cultural expressions in their respective states, the representatives of civil society cannot go it alone. Their main contribution in this regard will consist of developing proposals and exerting pressure on national authorities.

Furthermore, to ensure the content of the Convention is not misconstrued, it must be implemented in strict compliance with the scope of application defined in Article 3. Member states and representatives of civil society alike must keep in mind that the Convention applies “to the policies and measures adopted by the Parties.” Moreover, the policies and measures in question are those “related to the protection and promotion of the diversity of cultural expressions,” which is to say “those expressions that result from the creativity of individuals, groups, and societies, and that have cultural content.”<sup>8</sup> The states did not opt for a legal instrument to protect cultural diversity in the wider, anthropological sense of the term. Nor does the text aim to encourage all forms of cultural cooperation. Rather, the Convention is an innovative instrument that applies specifically to the policies and measures of States in relation to the diversity of cultural expressions. The document must therefore be read and implemented from this unique perspective.

The primary implementers of the Convention are of course the states that ratified it. However, Article 11 clearly states that civil society has an important supporting role to play. It is worth examining the wording on two levels to grasp its full meaning: First,

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<sup>8</sup> Article 4 (3) of the Convention. According to Article 4 (2), cultural content “refers to the symbolic meaning, artistic dimension, and cultural values that originate from or express cultural identities.”

civil society, which is considered a full-fledged actor, has a role to fulfill in protecting and promoting the diversity of cultural expressions. Second, governments must encourage the active participation of civil society in their efforts to achieve the objectives of the Convention. To get a clearer idea of civil society's role in this regard, we must refer back to the rights and obligations stipulated in articles 5 to 10 of the Convention. This role must be defined first and foremost in relation to three key objectives: the dissemination of information (1.1), the formulation of proposals to develop cultural policies (1.2), and public awareness (1.3).

### *1.1 Dissemination of information to the “beneficiaries” of the Convention*

First, civil society must start by quickly mobilizing to ensure that all Convention beneficiaries in both the developed countries and, especially the developing countries, are made aware of its existence. It is particularly important that they be informed as quickly as possible of the commitments of the states who are party to the Convention. This is key to enabling cultural professionals and other groups with an interest in the Convention to formulate and present cultural policy proposals to their respective government authorities.

The groundwork for this stage has already been laid in a number of states, notably through the mobilization of civil society representatives within coalitions for cultural diversity. However, the fact remains that in many countries, there has been no such mobilization, and this could threaten the future of the Convention. Should national authorities lose interest in implementing the Convention, it is difficult to imagine them being subjected to any pressure leading to concrete gestures to protect the diversity of cultural expressions. In this case coalitions and other groups representing cultural actors and other Convention beneficiaries take on even more importance in ensuring the effective implementation of the new instrument.

The circulation of information will therefore be vital. Civil society in the developed countries bears particular responsibility in this regard given that it has greater financial

and technological means, and more expertise in cultural policies than its counterpart in the developing world. These same means have already been employed in efforts to raise awareness among many states of the importance of adopting and ratifying the Convention. Such initiatives must continue, targeting not only beneficiaries of the Convention, but also states where, due to a lack of political will or a poor understanding of the new text, authorities are still reluctant to ratify it. For the implementation phase to be initiated in an effective and promising manner, these beneficiaries must be made aware of the commitments their governments have made or are preparing to make with a view to protecting and promoting the diversity of cultural expressions.

### ***1.2 Formulation of proposals to develop and implement cultural policies and exert pressure on government authorities***

Second, representatives of civil society must take a closer look at the state of the diversity of cultural expressions at the domestic level in each country that is a signatory to the Convention, notably by playing a frontline role in identifying the most vulnerable cultural expressions and proposing actions to protect these threatened expressions. It is worth mentioning that under Article 8 of the Convention, a Party may “determine the existence of special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding.” The wording of this article clearly reflects the idea that this is a right that can only be exercised in a discretionary fashion by a state. However, state intervention may in some cases be essential to the safeguard of certain cultural expressions. Representatives of civil society, particularly creators, producers, and disseminators of cultural expressions, are likely to have the most influence in exerting the pressure required to produce concrete results.

While the Convention places certain obligations on states at the domestic level, the degree of constraint is relatively low. Furthermore, although the document contains followup mechanisms and a conciliation procedure by which states can settle disputes, it is hard to imagine a member of the Convention being sued by another member for non-compliance with its domestic obligations. Given the relatively low level of constraint, the

pressure on states to respect their commitments to protect diversity will therefore have to come from elsewhere, namely from civil society.

However, one prerequisite will have to be met: Civil society actors will have to start by agreeing on the domestic objectives to be attained. This will likely require a certain amount of “in-house” debate if they are to agree on a definition of their concerns and objectives. They will have to reach a consensus on which actions to prioritize, in which sectors, and for which beneficiaries. In all cases, developed and developing countries alike, a concerted nationwide effort may be necessary if civil society representatives with a special interest in the Convention are to take effective action. To date, “the sometimes divergent interests they represent rallied around the draft Convention for the protection of the diversity of cultural expressions. But these divergent voices may seek to express themselves separately during the Convention implementation stage.”<sup>9</sup> If this is the case, civil society’s efforts to lobby governments could be seriously undermined. The consensus-building stage is therefore an essential preparation for the formulation of proposals to develop and implement policies to protect and promote the diversity of cultural expressions.

### ***1.3 Education and public awareness programs to promote the importance of protecting the diversity of cultural expressions***

Third, civil society’s action must also reach another audience, namely the indirect beneficiaries of the Convention, that is, the “consumers” of cultural goods and services. This targeted action by civil society would concord perfectly with Article 10(a) of the Convention, which stipulates that the parties shall “encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, *inter alia*, through educational and greater public awareness programmes.” Alone or in cooperation with national authorities, the representatives of civil society interested in the Convention must therefore make efforts to raise public awareness of the goals and

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<sup>9</sup> I. BERNIER, H. RUIZ FABRI, *op. cit.* note 3, pp. 18–19.

principles of the Convention, and the importance of developing and implementing cultural policies.

Civil society's involvement in this regard is of special strategic importance in attaining the Convention's objectives. The greater the demand for a diversity of cultural expressions, the more governments will be obliged to protect this diversity. But to achieve these goals, "consumers" of cultural goods and services must be made aware of and encouraged to consume and be exposed to diverse cultural expressions. However, very few policies exist to raise the public's awareness about the importance of diversifying their consumption of cultural products.

Lastly, it is worth mentioning that the impact of civil society's education and public awareness efforts will depend on the availability of cultural goods and services in their territory. While raising public awareness about the importance of diversifying consumption is essential, it is just as important to provide access to this diversity. In some countries, policies have been implemented to diversify cultural products, for instance in film, radio, television, and publishing. Unfortunately, access to diversity is not a common fixture in the cultural landscape of members and future members of the Convention. There still remains much work to be done in this regard and policies to be drafted to promote or protect the diversity of cultural expressions, which we will discuss further on in the third point of the cooperative dimension.

## **2. THE COOPERATIVE DIMENSION**

The international commitments of states are primarily defined in terms of cooperation for development. The main objective of the Convention in this regard is to strengthen cooperation between states to create conditions conducive to promoting the diversity of cultural expressions. This general objective is then broken down into various specific objectives and a series of obligations that fall to the parties to the Convention. As for the role of civil society, it is explicitly recognized in certain provisions of the document.

Among the commitments set out in the Convention, three are of special interest to civil society, namely the development of partnerships (2.1), involvement in the Fund for Cultural Diversity (2.2), and assistance in drafting and implementing cultural policies in developing countries (2.3).

## *2.1 Development of partnerships*

Articles 12(c) and 15 of the Convention deal with the development of partnerships between non-governmental organizations and the public and private sectors. This should be the primary focus for civil society, especially given that certain actors, in particular the coalitions for cultural diversity, are ideally positioned to define the needs of their countries and help forge these kinds of partnerships.

In addition to the expertise and on-the-ground knowledge they have acquired since their creation, these coalitions are largely made up of associations of cultural professionals and cultural industry groups whose members are potential partners. Coalitions in developed countries could therefore be extremely fertile ground for the emergence of new ideas and the creation of original partnership initiatives with developing countries.

From the standpoint of cooperation between private actors in developed and developing countries, partnerships could be an excellent way to develop cultural industries. However, it is also worth exploring other forms of partnership, and civil society could play a key role in this regard.

For instance, some States have adopted public/private partnership (PPP) policies. While examples of this type of partnership to fund cultural projects remain few and far between, certain tried and tested models could well be extended to the cultural sector.

PPPs can notably serve to help developing countries put in the infrastructure they need to disseminate certain cultural expressions, for example movie theatres, concert halls and theatres, libraries, or museums. They can also be a valuable source of funding for various

cultural events. Given their expertise, the coalitions for cultural diversity could explore this idea and even raise awareness among the private sector about the importance of creating these kinds of partnerships.

Lastly, another form of partnership could be created between representatives of civil society in developed countries and developing country governments to help the latter identify their needs in terms of cultural policies, and to develop and implement these same policies. The coalitions in developed countries generally have a thorough understanding of the support mechanisms available to help vitalize the culture sector. As a result, they could play an active role in transferring this knowledge to the developing countries to help them adopt effective legislative tools to protect and promote the diversity of cultural expressions.

## **2.2 *Involvement in the International Fund for Cultural Diversity***

Civil society's contribution must, however, go well beyond cultural sector partnerships. And the Convention makes provisions for just that. One such provision appears in Article 18 dealing with the International Fund for Cultural Diversity. "(T)he Fund is seen as a concrete means"<sup>10</sup> to help developing countries draft and implement policies and measures to protect and promote diversity. Since these policies and measures are often "not implemented for lack of sufficient funds,"<sup>11</sup> the drafters of the Convention saw fit to include a mechanism to provide support to developing countries. Civil society's efforts could help make this mechanism functional and effective.

Paragraph 3 stipulates that the resources of the Fund shall consist of: (c) "contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organizations; and public or private bodies or

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<sup>10</sup> I. BERNIER, *An Important Aspect of the Implementation of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions: The International Fund for Cultural Diversity*. Study carried out on behalf of Ministère de la Culture et des Communications du Québec, 2007, p. 2, online: <http://www.mcc.gouv.qc.ca/diversite-culturelle/eng/pdf/fonds-diversite-culturelle-eng.pdf>, last access August 10, 2007.

<sup>11</sup> *Id.*

individuals.” Coalitions in the developed countries may well be able to solicit their members to contribute to the Fund for Cultural Diversity. This would be a tangible, visible, and—most importantly—useful gesture towards those countries with fewer means to protect and promote their own cultural diversity.

Another way for coalitions to make a financial contribution would be to organize cultural events for the benefit of the Fund—a fundraising initiative explicitly provided for in Article 18(3)(e) of the Convention.<sup>12</sup> World Day for Cultural Diversity<sup>13</sup> could be the perfect opportunity to organize these kinds of events. This type of initiative would provide an opportunity to raise public awareness about the importance of protecting the diversity of cultural expressions and fostering international cooperation in the cultural sector. As pointed out by Ivan Bernier, “the idea here is that creators themselves, and civil society more generally, play an active role in funding the Fund.”<sup>14</sup>

### ***2.3 Assistance in drafting and implementing cultural policies in developing countries***

Lastly, civil society will have to contribute on another level, too, and play a role in the efforts by members to make the content of the Convention meaningful for developing countries. This delicate yet essential task will involve sitting down and defining the objectives for protecting and promoting the diversity of cultural expressions based on the situation in each of the developing countries that are party to the Convention. Furthermore, these efforts should lead to concrete proposals for new policies to protect the diversity of cultural expressions in these countries. Parallel to these efforts, civil society will also have to try and influence governments by pressuring them to ensure the proposed cultural policies are adopted and implemented. Given their expertise, there is no doubt that representatives of civil society could play a key role in this area.

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<sup>12</sup> Article 18(3)(e) stipulates that “The resources of the Fund shall consist of: (...) e) funds raised through collections and receipts from events organized for the benefit of the Fund”

<sup>13</sup> The General Assembly of the United Nations proclaimed May 21 as “World Day for Cultural Diversity for Dialogue and Development” to further understanding of the values of cultural diversity. See [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=12508&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=12508&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>14</sup> I. BERNIER, *op. cit.* note 9, p. 18.

It is worth reiterating that numerous representatives of civil society have joined forces to protect cultural diversity through coalitions. These groups of cultural professionals—now present in 42 countries, including a number in the developing world—have information that allows them to paint a relatively accurate picture of the state of the diversity of cultural expressions worldwide. Not only are the coalitions well positioned to assess the cultural goods and services available in their territory, they can also draw up an inventory of existing cultural policies. This information must be organized in such a way as to be of use to the Convention and its members—especially those countries with few means to analyze the state of their diversity—and to determine the best policies for developing their own cultural expressions. Without the information needed to understand the importance of adopting such policies to protect and promote the diversity of cultural expressions, these countries could cave in to pressure from certain large states and abandon their cultural industries to market forces or, inversely, adopt a protectionist policy with regard to cultural expressions from beyond their borders.

The Convention must help members reach a certain balance between opening up to other cultures and preserving diversity. Adopting policies favoring the extreme ends of the spectrum would in no way benefit the economic and cultural development of developing countries. It is precisely this balance governments in these countries should be striving for. And civil society in developed countries is well equipped to help them achieve it.

### **3. THE INSTITUTIONAL DIMENSION**

Articles 22 to 24 of the Convention on the Diversity of Cultural Expressions refer to the organs created by the new legal instrument. The three organs are the Conference of Parties (the plenary and supreme body of the Convention), the Intergovernmental Committee made up of 24 States Parties to the Convention, and the UNESCO Secretariat, whose mandate is to assist the Conference of Parties and the Intergovernmental Committee.

Civil society's role in implementing the Convention requires it to have a voice within some of these decision-making bodies. But there is a problem with respect to this aspect of civil society's role and contribution: the Convention does not specifically provide for the participation of civil society within the followup organs. However, neither does it exclude it entirely, and it is certainly worth envisaging the presence of representatives of civil society, as needed, at meetings of the various organs of the Convention (3.1), and even the creation of a network of experts (3.2).

Lastly, the institutional dimension also touches on another reality civil society must consider, namely the relationship between the Convention and other international treaties, and the need to implement cooperation mechanisms with international organizations whose fields of endeavor include the cultural sector, either directly or indirectly (3.3).

### ***3.1 Participation of civil society in the decision-making bodies of the Convention***

The matter of civil society's role within the decision-making bodies of the Convention primarily concerns the presence of its representatives in the Conference of Parties. However the Convention is silent on this point. The rules of procedure adopted at the first Conference of Parties from June 18 to 20, 2007, in Paris do, nonetheless, stipulate that "non-governmental organizations having interests and activities in the field covered by the Convention, may be invited by the Conference to participate in its work as observers, without the right to vote."<sup>15</sup> In this case, they may only address the Conference after obtaining the consent of the Chair.<sup>16</sup>

The experience of the First Conference of Parties clearly demonstrated the limits of this

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<sup>15</sup> See Article 2.3 of the Rules of Procedure in UNESCO, First session – Conference of Parties to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions – Paris, UNESCO Headquarters, Room I, June 18–20, 2007 – Resolutions, CE/07/1.CP/CONF/209/Resolutions, Paris, June 21, 2007, available online: [http://www.unesco.org/culture/culturaldiversity/cp1\\_resolutions\\_en.pdf](http://www.unesco.org/culture/culturaldiversity/cp1_resolutions_en.pdf), last access September 15, 2007. The text stipulates that these organizations will have no right to vote and may be invited to be present "at all its sessions, at a single session or at a specific meeting of a session upon written request to the Director-General of UNESCO."

<sup>16</sup> See articles 2.3 and 9.3 of the Rules of Procedure, *Id.*

classic formula. At the conference, representatives of sixteen non-governmental organizations were invited as observers and were allotted a limited time to address the audience at the end of the debate on certain items on the agenda. This formula does not, however, allow for any serious dialogue between representatives of the member states and representatives of civil society. Given the role the Convention appears to attribute to civil society, it would be worth identifying another provision in the document that would allow for this kind of dialogue.

The Intergovernmental Committee may be a more promising option in this regard. Article 23(7) stipulates that the Committee “may invite at any time public or private organizations or individuals to participate in its meetings for consultation on specific issues.” It is therefore the member states of this committee who will make the decisions in this regard. Consequently, the representatives of civil society should move quickly to promote their interests and expertise to members of the Intergovernmental Committee. In addition, they will have to put forth concrete proposals to foster the exchange of information and institutionalize consultations between members of the committee and representatives of civil society.

Other UNESCO conventions constitute valuable precedents civil society could turn to when requesting formalized relations with members of the Convention on Cultural Expressions. The 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage*,<sup>17</sup> for instance, calls for the presence of three non-governmental organizations on the Intergovernmental Committee. Representatives of other intergovernmental or non-governmental organizations can also be invited to join at the request of the parties.<sup>18</sup> As for the 2003 *Convention for the Safeguarding of the*

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<sup>17</sup> Text available on the UNESCO Website at <http://whc.unesco.org/archive/convention-en.pdf>, last access September 15, 2007.

<sup>18</sup> See Article 8 of this convention. Paragraph 3 reads as follows: “A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre), a representative of the International Council of Monuments and Sites (ICOMOS) and a representative of the International Union for Conservation of Nature and Natural Resources (IUCN), to whom may be added, at the request of States Parties to the Convention meeting in general assembly during the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization, representatives of other intergovernmental or non-governmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity.”

*Intangible Cultural Heritage*,<sup>19</sup> it explicitly provides for the accreditation of NGOs with recognized competence in the field of the intangible cultural heritage to act in an advisory capacity to the committee.<sup>20</sup>

Civil society should refer to these two conventions to formulate innovative proposals with regard to the participation of NGOs at Intergovernmental Committee meetings. The proposals could go even further, suggesting, for example, to the governments of the Parties to the Convention that they either consider naming a representative of civil society to their delegation, or organize meetings between members of their delegation and representatives of civil society in order to hear their opinions before the governments define their position. The coalitions, for one, must find a way to voice their opinions to their delegations prior to the meetings of the Convention's various decision-making bodies. Either of the aforementioned formulas would certainly ensure greater weight is given to the opinions and concerns of civil society in discussions within the Intergovernmental Committee and the Conference of Parties.

Moreover, it is worth exploring the possibility of holding structured talks alongside meetings of the committee and/or the Conference of Parties, for example, between members of the national delegations, NGOs, and representatives of private industry. This formula inspired by organs created within other international organizations could help facilitate serious dialogue between actors directly affected by the content of the Convention. Proposals resulting from these informal discussions could then be brought to the attention of the Intergovernmental Committee or the Conference of Parties. This could be one way of focusing greater attention on the proposals and requests put forth by civil society, without making the structure and workings of the organs of the Convention more cumbersome.

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<sup>19</sup> Text available on the UNESCO Website at <http://unesdoc.unesco.org/images/0013/001325/132540f.pdf>, last access, September 15, 2007.

<sup>20</sup> See Article 9 of this convention.

### 3.2 *Creating a network of experts*

The idea of creating a network of independent experts is not new. At the outcome of the three meetings of Category IV experts called by the director-general of UNESCO, the draft convention presented to member states contained an article providing for the creation of an independent advisory group.<sup>21</sup> However during the actual negotiations, intergovernmental meetings led to the removal of this article after a number of states expressed a desire to stick with a simplified institutional framework.

It is worth giving the idea a second look, but this time, the initiative will have to come directly from the representatives of civil society, specifically from experts committed to seeing the Convention implemented in such a way that the objectives set by the states are attained. The goal would not be to overburden the structure provided for in the document itself. On the contrary, the current organs could easily accommodate representatives of an advisory group of this kind. This group could be set up as an autonomous body, and act independently. Its findings and analyses could be periodically brought to the attention of the Intergovernmental Committee as a contribution from representatives of civil society. This would be entirely compatible with the terms of Article 23(7), which stipulates that the Intergovernmental Committee may “invite at any time public or private organizations or individuals to participate in its meetings for consultation on specific issues.”

Once its expertise is established, the group could also be given assignments by the Intergovernmental Committee. Its purpose would be not to impose its opinions, but rather to make itself available to the committee members, notably with a view to responding to their requests for studies. The committee would enjoy access to a valuable resource that could be called upon rapidly as needed. This form of cooperation between the organs of the Convention and the members of civil society would generate no additional costs for

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<sup>21</sup> See Article 22 of the *Preliminary Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions*, CLT/CPD/2004/CONF.201/2, Paris, July 2004. See also the *Third Meeting Of Experts (Category VI) on the Preliminary Draft of the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions – May 28–31, 2004*, CLT/CPD/2004/603/5, Paris, June 23, 2004, pp. 8–9.

the parties, and would in no way place a burden on the existing decision-making structure.

### ***3.3 Implementing international cooperation mechanisms***

Lastly, civil society and, specifically, the coalitions for cultural diversity, which recently joined together as a federation, must strive to create links between the 2005 text and law developed by other international negotiation forums. As we saw earlier, poor understanding or intentional misinterpretation of the Convention could render it ineffective or divert it from its initial purpose. In addition, there is a danger of the Convention remaining confined to discussions within the cultural sphere alone, and being intentionally kept apart from other instruments with which it must be connected.

To avoid this, civil society can look to the text of the Convention. Article 20, for one, encourages mutual supportiveness, complementarity, and non-subordination between the Convention and other international agreements. Article 21 stipulates that the parties undertake to promote the objectives and principles of the Convention in other international forums, and encourages mutual consultation. These two articles must serve as a foundation for creating links between the Convention and other international negotiation forums. Given the fact that this is an extremely politically sensitive issue, one that could conceivably result in initiatives in this field grinding to a halt, civil society has a key role to play.

Representatives of civil society concerned with both the content of the Convention and the issues under debate in other international forums, such as the WTO, will need to use these two articles to exert unrelenting pressure on their national authorities. In every international negotiation (multilateral, regional, bilateral) likely to jeopardize the objectives outlined in the Convention, civil society will have to recall the existence of these provisions and condemn any undertakings written into other agreements that imperil the rights of the states as acknowledged in the Convention.

It will be up to civil society to promote the implementation of a formal cooperation mechanism among the parties to the Convention. It will also have a role to play in developing common strategies for negotiations at other international forums that are likely to endanger certain rights or obligations laid out in the Convention. It is worth mentioning that one of the Convention's main achievements is its acknowledgment of the dual nature of cultural activities, goods, and services. This dual nature must be recognized not only in the cultural domain, but also and, most importantly, in trade negotiation circles. Articles 20 and 21 urge states to take into consideration the provisions of the Convention when they enter into other international obligations, and to promote its objectives and principles in other international forums.

## CONCLUSION

Representatives of civil society have an important task ahead of them with respect to the implementation and followup of the Convention, and it is clear that an action strategy and concerted action plan will have to be drawn up. But first, an important question must be raised: Is civil society truly prepared to assume its role to protect and promote the diversity of cultural expressions?

It is worth recalling that the first coalitions were created in the wake of the negotiations for a Multilateral Agreement on Investment (MAI) (1998) and the launch of the Seattle Ministerial Conference (1999). At that time, groups of cultural professionals joined together to rally against the liberalization of cultural services, and against the liberalization of foreign investments in the cultural sector. These circumstances largely helped define and structure interested segments of civil society, which then focused their efforts on promoting the idea of an international legal instrument on cultural diversity. However, with the recent paradigm shift, namely the dropping of the defensive strategy symbolized by the cultural exception policy, and the development of an approach oriented towards the preservation of cultural diversity, civil society must reconsider the way it organizes itself and acts on the international scene.

The creation of the International Federation of Coalitions for Cultural Diversity is certainly a step in the right direction, but it is already feeling pressure to define its actions and develop guidelines. The upcoming challenges the Federation will be confronted with during the implantation of the Convention should spur it to sit down and examine the issue as early as possible. This exercise should help clearly orient the demands to be made of each state on one hand, and spur global initiatives at the international level, on the other.

Moreover, it will be important to explore all the possible means to ensure fair representation of all the stakeholders in the Convention, not only in terms of geographic representation, but also to ensure that the interests of all the Convention's beneficiaries are fairly represented. This will require striking a balance to take into account the interests of all members in the developing and developed world alike, whether their cultural industries are thriving or threatened, and whether or not the diversity of their cultural expressions is in danger.

In reality, civil society must simply strive to reflect the cause it seeks to continue defending, by attempting to protect and promote “diversity” with “diversity.” This may be the first challenge it will face in the implementation of the new *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*.