

**Hundred and sixty-sixth Session**

166 EX/28  
PARIS, 12 March 2003  
Original: French

Item 3.4.3 of the provisional agenda

**PRELIMINARY STUDY ON THE TECHNICAL AND LEGAL ASPECTS  
RELATING TO THE DESIRABILITY OF A STANDARD-SETTING INSTRUMENT  
ON CULTURAL DIVERSITY**

**SUMMARY**

On the initiative of Canada, France, Germany, Greece, Mexico, Monaco, Morocco and Senegal, supported by the French-speaking group of UNESCO, item 3.4.3 has been placed on the agenda of the 166th session of the Executive Board. This working document, drawn up by the Secretariat, appraises the most recent activities on this subject. It highlights the international standard-setting corpus that is currently applicable, or under preparation, relating to cultural diversity and explores lines of inquiry as to the desirability, nature and scope of a new instrument on cultural diversity. It invites the Executive Board to consider the advisability of including this item in the provisional agenda of the General Conference at its 32nd session for examination.

Decision proposed: paragraph 26.

## I. APPRAISAL

1. UNESCO's commitment to promoting cultural diversity is in keeping with its specific institutional mandate within the United Nations system and with the continuity of the action that it has been carrying out for 50 years "with a view to preserving ... the fruitful diversity of the cultures" (UNESCO Constitution). To that end, the Organization has expended efforts on two fronts: on the one hand by reflecting on and defining concepts<sup>1</sup> and, on the other, by establishing an ethical and legal framework accepted by the international community.<sup>2</sup>
2. The growing pace of globalization raised new challenges for cultural diversity which the international community strove to meet by adopting the *UNESCO Universal Declaration on Cultural Diversity* in November 2001. For the first time, cultural diversity was acknowledged as "the common heritage of humanity", the defence of which was deemed to be an ethical and practical imperative, inseparable from respect for human dignity. The concept of "diversity" reaffirms that plurality is the reservoir needed for freedoms, that cultural pluralism therefore constitutes the political response to the actual fact of cultural diversity and that such pluralism is indissociable from a democratic framework. Thus, freedom of expression, media pluralism, multilingualism, equality of access for all cultures to artistic expressions, scientific and technological knowledge, and the possibility for them to be present in the means of expression and dissemination constitute essential guarantees of cultural diversity. Finally, cultural policies, which are the true driving force in cultural diversity, should foster the production and dissemination of diversified cultural goods and services.
3. Since the adoption of the UNESCO Universal Declaration on Cultural Diversity, there have been many international initiatives to encourage reflection on the desirability of reinforcing standard-setting action in relation to cultural diversity. Examples include: the Round Table "Cultural diversity and biodiversity for sustainable development" in the framework of the World Summit on Sustainable Development (Johannesburg, 3 September 2002), the Summit on the *Francophonie* (Beirut, October 2002), the annual Meeting of the International Network on Cultural Policy (Cape Town, South Africa, October 2002) and the adoption of resolution A/RES/57/249 by the General Assembly of the United Nations proclaiming 21 May as "World Day for Cultural Diversity for Dialogue and Development" (20 December 2002). More recently, the Director-General received the Ministers of Culture associated with the International Network on Cultural Policy (INCP) (6 February 2003), who stated that they "were sure that UNESCO's cultural mandate and its adoption of the Universal Declaration on Cultural Diversity in 2001 had initiated the processes for a legally binding convention that would secure for the world a diversity of cultural expressions". In Article 12(c), the UNESCO Universal Declaration on Cultural Diversity stipulates that the Organization has the responsibility to "pursue its activities in standard-setting, awareness-raising and capacity-building in the areas related to the (present) Declaration within its fields of competence". Moreover, the first paragraph of the plan of action invites UNESCO to take forward "consideration of the opportunity of an international legal instrument on cultural diversity".
4. The question of a standard-setting framework on cultural diversity has already been discussed with various intergovernmental and non-governmental bodies, and also within international associations of cultural professionals and national academic establishments. Those wide-ranging

---

<sup>1</sup> The World Conference on Cultural Policies (MONDIACULT, Mexico City, 1982), the World Decade for Cultural Development (1988-1997), the work by the World Commission on Culture and Development (*Our Creative Diversity*, 1995) and the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998) contributed significantly to this reflection process.

<sup>2</sup> See annex containing a non-exhaustive list of existing international instruments, adopted by the United Nations and UNESCO, which deal with various aspects relating to cultural diversity.

activities, which underpinned the UNESCO Declaration, continue to feed reflection on the desirability of a new instrument.

5. The Council of Europe adopted a *Declaration on Cultural Diversity*, the first of its kind, at its 733rd Meeting of the Ministers' Deputies on 7 December 2000, which highlights the distinctive feature of the audiovisual sector in relation to other industrial sectors, stating in particular that "cultural and audiovisual policies which promote and respect cultural diversity are a necessary complement to trade policies".

6. The International Organization of the Francophonie (OIF), in the *Cotonou Declaration* (June 2001) adopted on the occasion of the Third Ministerial Conference on Culture, affirms that cultural goods and services should be given special treatment and that the free determination by States and governments to adopt their cultural policies constitutes the best guarantee of the plurality of cultural expression.

7. The work of the International Network on Cultural Policy (INCP) has highlighted the particular importance of submitting a draft instrument/international convention on cultural diversity under UNESCO's responsibility, addressing, *inter alia*, the provisions to promote industry and national cultural expression and also to ensure their receptiveness to other cultures (Cape Town, South Africa, October 2002). In connection with the Franco-Quebec working group associated with this same network, an *Evaluation of the legal feasibility of an international instrument on cultural diversity* was conducted by Professor Ivan Bernier and Ms Hélène Ruiz Fabri (2002). The report by the working group, formed in 1998, proposes that the instrument be set around three objectives: (i) to place cultural diversity in the context of fundamental rights; (ii) to recognize the right of each State to determine the steps to be taken to ensure diversified cultural expression in its territory; and (iii) to guarantee national measures – in terms of quotas and subventions – which aim at influencing international exchange flows in respect of culture.

8. The International Network for Cultural Diversity (INCD), which brings together artists, cultural activists, cultural bodies and creative industries, stresses the need for an instrument guaranteeing support to artists and the involvement of civil society and encouraging States to adopt a proactive, rather than defensive, position regarding cultural policies.

9. As a sequel to the First International Meeting in Montreal (10-13 September 2001), the Second International Meeting of Professional Cultural Organizations (Paris, 2-4 February 2003) brought together more than 300 participants from 30 countries in order to analyse the impact of the negotiations carried out at the World Trade Organization (WTO) on cultural policies. The meetings discussed the need to draw up an international legal instrument to promote cultural diversity.

10. Lastly, the Freiburg Group, formed in 1991 within the Interdisciplinary Institute for Ethics and Human Rights of the University of Freiburg, subsequently becoming a UNESCO Chair in 1999, submitted a draft optional protocol on cultural rights to the European Convention on Human Rights in 1995. As the work of the ad hoc Commission of the Council of Europe had not been finalized, the Freiburg Group issued, as a co-publication with UNESCO, a preliminary draft declaration on cultural rights in 1998.

## **II. TECHNICAL AND LEGAL ASPECTS RELATING TO THE DESIRABILITY OF A STANDARD-SETTING INSTRUMENT ON CULTURAL DIVERSITY**

11. At the technical level, the concept of cultural diversity raises two main questions: on the one hand, the links between cultural diversity, human rights and cultural rights; on the other, the links

between diversity, creativity and cultural policies. The Universal Declaration on Cultural Diversity demonstrated that the debate between advocates of cultural goods and services and the champions of human rights could be transcended, the two approaches being complementary. At the legal level, the UNESCO Universal Declaration on Cultural Diversity, although non-binding, refers to a web of interrelated standard-setting texts as reflected in the list of instruments cited in its Preamble. A list of the main international instruments – existing or under preparation – that relate to the articles of the Declaration is annexed. The list, which is not exhaustive, will throw light on the spheres not yet covered by the current body of normative material and which might be the subject of a new instrument.

12. The UNESCO Universal Declaration on Human Diversity reflects the wide range of issues bound up with the acknowledgement of cultural diversity. Accordingly, in the process of reflecting on the nature of a standard-setting instrument on cultural diversity, it is clear that several divisions of the Declaration by thematic field might be envisaged. Nevertheless, for greater convenience at this preliminary stage, the structure of the Declaration has been followed.

**(a) Identity, pluralism and human rights (Articles 1 to 6 of the Declaration)**

13. Articles 1 to 6 of the Universal Declaration on Cultural Diversity establish the link between the defence of cultural diversity and the observance of human rights and fundamental freedoms, in particular cultural rights, notably insofar as the rights of persons belonging to minorities, the right to education and to multilingualism, and the right to take part in cultural life are concerned. The promotion of cultural pluralism, while not explicitly regulated as such by a specific international standard-setting text, is ensured within many international instruments intended to protect human rights. As regards cultural rights, they are not, any more than is cultural pluralism, the subject of a specific international instrument, and are not so extensively promoted as other human rights. A fuller acknowledgement of the value of cultural diversity as a factor of human security will permit a more fully developed understanding of these rights, and in particular of their unity and indivisibility. Given the abundance of issues entailed by culture – issues that differ according to the approach adopted, whether anthropological or artistic – international law has yet to reach a clear-cut definition of cultural rights and their content.

**(b) Cultural diversity and creativity (Articles 7 to 9 of the Declaration)**

14. Article 7 of the Declaration highlights the obligation to enhance the heritage in all its forms so as to foster creative diversity and to hand it on to future generations. This obligation amounts in its principle to a number of legal obligations that are well known to Member States and enshrined in the various UNESCO Conventions protecting the cultural heritage both in times of peace and in the event of armed conflict. A draft declaration concerning the intentional destruction of cultural heritage will be submitted to the General Conference for approval at its 32nd session. An obligation to ensure protection and enhancement should also be established in the case of intangible cultural heritage, with the convention currently being prepared on the safeguarding of such heritage, the preliminary draft of which will also be submitted to the General Conference at its 32nd session. Given the close conceptual links that exist between cultural diversity and intangible cultural heritage, the finalization of the convention for the safeguarding of the intangible cultural heritage will provide a sound conceptual basis for a new instrument on cultural diversity.

15. Article 8 of the Universal Declaration on Cultural Diversity stresses for its part the need for due recognition of the rights of authors and artists. At present, two conventions adopted by UNESCO govern the protection of copyright (Universal Copyright Convention of 1952, as revised in 1971) and neighbouring rights (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961)). The scope of these

Conventions has recently been updated through the adoption by the World Trade Organization (WTO), in 1994, of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and that of the “Internet Treaties” (1996) by the World Intellectual Property Organization (WIPO). Although some States are not parties to the new treaties and continue to apply the UNESCO Conventions only, most of them are on the point of adapting their national legislation to these new treaties, or have already legislated for the purpose of acceding to them. It does not therefore appear necessary at this stage to envisage further standard-setting action by UNESCO on this matter. Moreover, a number of aspects relating to the status of creators and artists are covered by the Recommendation concerning the Status of the Artist (1980), a non-binding instrument which continues to be followed to a limited extent in the cultural policies of most States. The scope of this Recommendation was reviewed at the World Congress on the Status of the Artist (Paris, 1997), which highlighted aspects relating to the funding of the arts, support for creation, art education, the arts and the new technologies, the working conditions, taxation and health of artists, the right to collective bargaining and the mobility of artists. Measures to ensure harmonization and the adoption of binding international instruments were recommended by the Congress. While several of the Congress’s recommendations have received positive follow-up in UNESCO’s programmes (art education, the arts and the new technologies), little headway will be made in the case of others without standard-setting action. The status of the artist might be the subject of a new international instrument of a binding nature.

16. Furthermore, Articles 8 and 9 of the Universal Declaration on Cultural Diversity stress the need to recognize the specificity of cultural goods and services as vectors of identity, values and meaning. Two standard-setting instruments of a binding nature, the Florence Agreement (1950) and its Protocol (Nairobi, 1976) were adopted with a view to liberalizing the trade in and flow of cultural goods. However, given the date of their adoption, these treaties do not take account of the new media used for the circulation of literary, scientific and artistic works, which are today enjoying a sizeable expansion as a result of globalization. A second Protocol to the Florence Agreement, designed to organize the international flow of cultural services in the light of present-day economic and technological developments, might be the subject of a new international instrument.

### **III. PROSPECTS AND OPTIONS FOR FUTURE STANDARD-SETTING ACTION**

17. As may be seen from the preceding analysis, several aspects of cultural diversity are already governed by international standards, some binding, some non-binding. In assessing UNESCO’s future prospects for standard-setting in this domain, two preliminary questions come to mind.

18. As regards the *legal nature* of the instrument, the existence of the Universal Declaration on Cultural Diversity, which despite its undeniable moral authority is non-binding, argues in favour of moving towards a new, more ambitious and, in principle, more effective instrument, in the form of an international convention. As regards the *scope* of such an instrument, the variety of forms which cultural diversity can take and the difficulty of setting standards for them calls for considerable caution in the normative realm. While the general nature of the Declaration was appropriate to a declaration as such, UNESCO is no longer being asked to lay down a timetable but rather to indicate a frame of reference and a set of rules acceptable to the greatest number of States in the form of a new binding instrument governing specific cultural domains.

19. The central purpose of the new instrument would be to establish a link between the preservation of cultural diversity and the goals of development, notably through the promotion of creative activity and the cultural goods and services through which such activity is expressed. This means, in particular, fostering States’ capacity to define their cultural policies. The goal is to define

a set of general cultural policy principles in such a way as to ensure the necessary autonomy in national policy while guaranteeing balanced international cooperation. In other words, the point is to ensure consistency between intra-State and inter-State policy. Under such circumstances, one might choose an instrument which placed particular emphasis on areas of cultural diversity in the context of globalization which do not yet enjoy adequate protection under existing conventions or recommendations. In view of the milestone reached with the approval of the UNESCO Universal Declaration on Cultural Diversity, the possible areas which might benefit from standard-setting efforts by UNESCO are as follows.

**(a) A new comprehensive instrument on cultural rights**

20. International law still does not clearly define cultural rights; nor does it determine exactly which rights fall into that category. What is more, provisions pertaining to cultural rights are scattered about in various international instruments, which impairs consistency and understanding of cultural rights as a whole. Generally speaking, on the basis of existing international instruments, cultural rights can be said to be those which best protect the participation in and access of every person to cultural life: the freedom to engage in creative activity and scientific research, the right to education, and the right of access to forms of artistic expression and to scientific and technological knowledge. In that regard, Article 27 of the Universal Declaration of Human Rights and Articles 13, 14 and 15 of the International Covenant on Economic, Social and Cultural Rights provide important features regarding the content of cultural rights. In addition to the fundamental ideas of “participation in” and “access to” science, culture and education, cultural rights also encompass a series of other freedoms such as those of expression, information and communication (at present only one part of the rights relating to freedom of opinion is explicitly developed in Article 19 of the International Covenant on Civil and Political Rights). This approach means that cultural diversity can be tied in with the universal principles of human rights and democracy, in accordance with Articles 4 and 5 of the UNESCO Universal Declaration on Cultural Diversity.

The wisdom of a specific instrument on cultural rights is under debate. Meanwhile, the prospect of actually seeing one remains very remote even though the Action Plan of the Universal Declaration on Cultural Diversity recommends, in paragraph 4, “Making further headway in understanding and clarifying the content of cultural rights as an integral part of human rights”.

**(b) An instrument on the status of the artist**

21. This second option would have the advantage of regulating internationally the professional status of creators and artists, whose recognition is at present more theoretical than real. As matters stand, only the protection of copyright and neighbouring rights is provided for in binding normative instruments to which many States are party. The freedom of artists to create, their international mobility, their social benefits, their right to employment, their conditions of remuneration, their tax status, their freedom to organize, their right to collective bargaining, art education, training, health, reintegration of artists due for retirement into the labour market (in the realm of dance for example), together with support for creative activities, financing of the arts and the participation of all in cultural life are all legitimate demands of artists which could be dealt with by UNESCO in such an instrument, perhaps in cooperation with the International Labour Organization (ILO). Nevertheless, because the general regimes governing social benefits and unionization vary widely among States and in view of the economic difficulties facing many of them, the search for consensus would probably produce wording that some would find inadequate and falling short of existing standards in some States. For others it would, by contrast, be very difficult to accept such an instrument for want of appropriate national legislation and the financial resources to meet the new international commitments. Some of these difficulties might be resolved by an instrument with a broader scope such as that described in paragraph (d) below.

**(c ) A new Protocol to the Florence Agreement**

22. A new instrument might also take the form of a new Protocol to the Florence Agreement which would govern the circulation of cultural goods and services. The purpose would be to extend to cultural services (or even educational, scientific and cultural services) the scope of the Florence Agreement, adopted by UNESCO in 1950 and ratified by 92 Member States. The Florence Agreement governs the importation of educational, scientific and cultural materials thereby encouraging the free circulation of books, newspapers, periodicals and printed material, works of art, visual and auditory material, scientific instruments and equipment for educational purposes and articles for the blind. Nevertheless, the reservation entered by one Member State and providing for the possibility of “suspend(ing), in whole or in part, any obligation under this Agreement ... if (...) any product covered by this Agreement is being imported into the territory of a contracting State in such relatively increased quantities and under such conditions as to cause or threaten serious injury to the domestic industry in that territory producing like or directly competitive products” is an integral part of the Agreement and may be invoked by any State Party in regard to that State. The Florence Agreement has already been updated by the Nairobi Protocol (1976), which, in response to the concerns of the developing countries and to their needs for access to education, science and culture, removed some forms of discrimination inherent in the Florence Agreement with respect to the content, nature or purpose of films, works of art and collectors’ pieces, scientific equipment and articles for the blind. The Protocol also extended the scope to other cultural goods and materials including sports equipment, musical instruments, and material and machines used for the production of books. At the time of accession, a State may declare its refusal to be bound by particular annexes and such a declaration may be withdrawn at any time. The Nairobi Protocol limits exclusively to the developing countries the possibility of entering a reservation to protect national industry (Protocol, Article VIII). Disputes could be settled by recourse to a flexible procedure such as that already established in the Florence Agreement, or by the use of another mechanism to be determined within UNESCO, or by establishing a link which would permit recourse to an existing WTO mechanism, with the option of adopting the model already used in the field of intellectual property, that in which the WTO TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) takes as a reference the fundamental obligations of the principal WIPO conventions (those of the Berne Convention for copyright and those of the Paris Convention for industrial property) and of the 1961 Rome Convention (administered jointly by ILO, UNESCO and WIPO). While not without interest, this normative solution nevertheless seems to rein in cultural diversity too much. Besides which, it would be rather cumbersome because of the variety of cultural goods and services (or even educational, scientific and cultural services) which would have to be included.

**(d) Protection of the diversity of cultural contents and artistic expressions**

23. A new standard-setting instrument could also deal with protection of the diversity of cultural contents and artistic expressions reflected in cultural industries (essentially Articles 8 to 11 of the Declaration), which aspects appear to be particularly threatened by globalization. Such an instrument would thus be able to guarantee protection for cultural diversity within a variety of forms of expression of cultural activity. Such an instrument should promote a dynamic interaction among the different cultural contents and artistic expressions and between them and other closely related domains (multilingualism in relation to cultural expression, development of local contents, participation in cultural life, opportunities for access to multiple source cultures and through a variety of media, digital included). It should also ensure respect for the individual rights of creators and artists and facilitate the circulation of individuals, goods, services and knowledge linked to cultural activity while preserving stable areas of identity and creativity. The preservation of cultural diversity would thus be linked to the objectives of sustainable development and intercultural dialogue through the promotion of creative activity and artistic expression. Such an instrument should also ensure that each State is free to define its cultural policies, its cooperation agreements

and its partnership initiatives in a global world. An effort should be made to avoid reopening the debate on the principles of cultural diversity, which are already set forth in the UNESCO Universal Declaration on Cultural Diversity, and to specify clearly the scope of the instrument, the elaboration of which should be undertaken in close cooperation with artistic circles and the prime movers of civil society. The main difficulties will arise from the nature of the commitment required of the States Parties and the degree to which they are constrained. It will also be vital to define precisely the relationship between this new instrument and the commitments assumed by States within other bodies and the choice of the mechanism for arbitration or the settlement of any difference which may arise. Without playing down the complexity of such a process, it may be said that the work already carried out on a substantial number of the topics to be addressed under this option would enable such an instrument to be prepared within a reasonable period of time.

#### **IV. PROCEDURE FOR THE ADOPTION OF SUCH AN INSTRUMENT BY THE GENERAL CONFERENCE**

24. In accordance with the relevant provisions of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution, the Board is invited to make observations on this preliminary study and to consider the desirability of placing on the agenda of the 32nd session of the General Conference an item concerning the proposal to regulate the question of cultural diversity internationally by means of an international convention or a recommendation. Should the Executive Board decide to include the question in the provisional agenda of the General Conference, the Director-General, in accordance with Article 5 of the above-mentioned Rules of Procedure, will communicate to Member States a copy of the preliminary study and the text of the Executive Board's observations and decisions thereon 70 days before the opening of the 32nd session of the General Conference, that is by mid-July 2003.

25. Pursuant to Article 6 of the above-mentioned Rules of Procedure, the General Conference will be invited, after examining this study and the Executive Board's observations thereon, to decide whether the question should be regulated internationally and, if so, whether that regulation should take the form of a convention or a recommendation. Should the General Conference at its 32nd session (October 2003) decide that the question of cultural diversity must be regulated by an international convention, a preliminary report, possibly accompanied by a preliminary draft convention, could be submitted to the General Conference at its 33rd session in the autumn of 2005. The Rules of Procedure stipulate in fact that the General Conference shall not vote on the adoption of a draft convention or recommendation before the ordinary session following that at which it has taken the decisions on the desirability and nature of the instrument. The General Conference may also decide at its 32nd session to defer such decisions to a future session and to instruct the Director-General to report to it on the desirability of regulating on an international basis the question dealt with in the proposal (Article 7 of the Rules of Procedure).

26. In the light of the foregoing, the Executive Board may wish to adopt a decision along the following lines:

The Executive Board,

1. Recalling the adoption of the UNESCO Universal Declaration on Cultural Diversity by the General Conference at its 31st session (31 C/Resolution 25, Annexes I and II),
2. Recalling also the Main Lines of the Action Plan for the implementation of the Declaration in which Member States committed themselves to "deepening the

international debate on questions relating to cultural diversity, particularly in respect of its links with development and its impact on policy-making, at both national and international level; taking forward notably consideration of the advisability of an international legal instrument on cultural diversity” (Annex II, paragraph 1),

3. Having examined the preliminary study of the technical and legal aspects of the desirability of a standard-setting instrument on cultural diversity contained in document 166 EX/28,
4. Decides to place this item on the provisional agenda of the 32nd session of the General Conference;
5. Invites the Director-General to submit to the General Conference at its 32nd session the above-mentioned report relating to the preliminary study on the desirability of a new standard-setting instrument on cultural diversity and the Executive Board’s observations and decisions thereon;
6. Recommends to the General Conference that it take a decision to continue action aimed at drawing up a new standard-setting instrument on cultural diversity and to determine the nature of that instrument.

## ANNEX

### INTERNATIONAL INSTRUMENTS RELATING TO CULTURAL DIVERSITY\*

#### 1. INTERNATIONAL INSTRUMENTS RELATING TO HUMAN RIGHTS AND TO PLURALISM

##### 1.1 Instruments adopted by the United Nations (N.B. The United Nations are States, as distinct from the United Nations Secretariat)

Universal Declaration of Human Rights (1948)

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

International Convention on the Elimination of All Forms of Racial Discrimination (1966)

International Convention on the Elimination of All Forms of Discrimination Against Women (1979)

Recommendation on Participation by the People at Large in Cultural Life and Contribution to It (1976)

Algiers Declaration on the Rights of Peoples (1976)

Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion and Belief (1981)

Declaration on the Human Rights of Persons who are not Nationals of the Country in which they Live (1985)

Universal Declaration on the Right to Development (1986)

International Convention on the Rights of the Child (1989)

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

Vienna Declaration and Programme of Action (1993)

Beijing Declaration and Platform for Action (1995)

Durban Declaration and Programmes of Action (2001)

##### 1.2 Instrument being drawn up by the United Nations

Declaration on the Rights of Indigenous People (1994)

##### 1.3 Instruments adopted by UNESCO

Convention against Discrimination in Education (1960)

---

\* The international instruments below have been listed in chronological order for ease of reading.

Declaration of the Principles of International Cultural Cooperation (1966)

Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (1974)

Recommendation on Participation by the People at Large in Cultural Life and Contribution to It (1976)

Recommendation on the Development of Adult Education (1976)

Declaration on Race and Racial Prejudice (1978)

Recommendation on Cultural Identity (1982)

Convention on Technical and Vocational Education (1989)

Delhi Declaration and Framework for Action (1993)

Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy (1994)

Hamburg Declaration on Adult Learning (1997)

Declaration of Principles on Tolerance (1997)

Declaration on the Responsibilities of the Present Generations Towards Future Generations (1997)

UNESCO declarations on the promotion of independent and pluralistic media (1991-1997)<sup>3</sup>

World Declaration on Higher Education for the Twenty-First Century (1998)

#### **1.4 Instrument being drawn up by UNESCO**

Recommendation on the Promotion and Use of Multilingualism and Universal Access to Cyberspace

### **2. INTERNATIONAL INSTRUMENTS RELATING TO CULTURAL DIVERSITY AND CREATIVITY**

Universal Copyright Convention (1952, revised in 1971)

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)<sup>4</sup>

<sup>3</sup> Declaration of Windhoek (1991), Declaration of Alma Ata (1995), Declaration of Santiago (1995), Declaration of Sana'a (1997) and Declaration of Sofia (1997).

<sup>4</sup> The scope of these two conventions, to which there are 98 (1952 Universal Convention), 64 (revised Universal Convention) and 70 (Rome Convention, jointly administered by WIPO and ILO) States Parties respectively, was updated recently when the World Trade Organization (WTO) adopted the 1994 Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) and when the World Intellectual Property Organization adopted the Internet Treaties (1996).

Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 and Protocols of 1954 and 1999)

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)

Convention for the Protection of the World Cultural and Natural Heritage (1972)

Florence Agreement on the Importation of Educational, Scientific and Cultural Materials (1950) and the annexed Nairobi Protocol (1976)<sup>5</sup>

Recommendation concerning the Status of the Artist (1980)

Recommendation on the Safeguarding of Traditional Culture and Folklore (1989)

Recommendations of the Charter of Courmayeur (1992)

Convention on the Protection of the Underwater Cultural Heritage (2001)

## 2.1 Instruments being drawn up by UNESCO

Convention on the safeguarding of the intangible cultural heritage

Charter on the preservation of the digital heritage

Declaration concerning the Intentional Destruction of Cultural Heritage

---

<sup>5</sup> Accessions to this binding standard-setting instrument are being received regularly and there are now 97 States Parties. Under this Agreement, contracting States undertake not to levy customs duties or other taxes on imported books, newspapers, magazines and other printed publications (Annex A). This also applies to cultural property listed in Annexes B (works of art), C (visual and auditory materials), D (scientific instruments or apparatus for use in education) and E (educational material for the blind). Although there is no discriminatory treatment whatever as to the content and end use of books and printed publications, the cultural items listed in Annexes B to E are required to be educational, scientific or cultural in character to be eligible for the advantages granted under the Agreement. An advisory opinion may be sought from the Director-General of UNESCO in that regard in the event of a dispute or differences of interpretation. Annexes A, B, C, D and E, together with the annexed Protocol containing the text of the reservation entered by the United States as a condition of its accession to the treaty, are an integral part of the Agreement in accordance with its Article XVII. (That reservation concerns the option of suspending in whole or in part the commitments undertaken by that State under the Agreement if the rise in imports of those cultural items into its territory causes or threatens to cause serious prejudice to national producers of similar or directly competing products.) The Florence Agreement was updated 26 years later through the adoption of the Nairobi Protocol (1976), which, in response to the concerns of the developing countries and their need to have access to education, science and culture, removed the discrimination established in the Florence Agreement in respect of works of art and collectors' pieces (Annex B), scientific equipment (Annex D) and articles for the blind (Annex E) on the grounds of content, nature and end use. Discrimination in respect of the educational, scientific or cultural character or end use of films and sound or audiovisual recordings (Annex C) is also ruled out by the Protocol, although reservations may be expressed in respect of such cultural property and the new items listed in the Nairobi Protocol, such as sports equipment (Annex F), musical instruments (Annex G) and material and machines used for the production of books (Annex H), at the time of accession. Reservations may nonetheless be revoked at any time. On the other hand, the option of formulating a reservation in order to protect national industries, along the lines expressed by the United States of America, which is a Party to the Florence Agreement, is, as previously indicated, open only to the developing countries. Both the Florence Agreement and its Nairobi Protocol refer implicitly to the most favoured nation (MFN) concept, since contracting States are required to respect this obligation vis-à-vis other contracting States.