



**7th General Assembly  
of the Parliamentary Confederation of the Americas (COPA)**

**FOLLOWUP REPORT ON HEMISPHERIC IMPLEMENTATION OF THE CONVENTION ON  
THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS  
AND INTERNATIONAL TRADE NEGOTIATIONS**

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## **1. INTRODUCTION**

On October 19, 2005, the 33rd UNESCO General Conference in Paris approved the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* by a vote of 151 to two (plus two abstentions). After five years of effort and mobilization by the various actors involved, the international legal instrument on cultural diversity they had sought was created.

The Convention will come into effect three months after it has been ratified by 30 countries. Since the Convention specifies that the *Conference of Parties* will meet six months before the UNESCO General Conference in fall 2007, the goal for implementation is to have it ratified by at least 30 countries by June 2007. If this deadline is not met, it will delay the Convention's coming into effect until 2009 at the following UNESCO General Conference, an event held every two years. Mobilization has already begun to have the Convention ratified—a mobilization made all the more important by the fact that the 6th World Trade Organization (WTO) Ministerial Conference held in Hong Kong in December 2005 revived Doha Round negotiations on the service sector.

This report covers the adoption of the Convention and upcoming steps to implement it. It looks at developments in international trade negotiations and stresses the need to quickly ratify the Convention so that it can be implemented. It points out how important it is for countries not to include cultural products and services in bilateral or multilateral trade negotiations until the Convention is implemented. In conclusion, it sets out courses of action for parliamentarians from COPA and throughout the Americas to promote the ratification of the convention by their respective governments.

## **2. DEVELOPMENTS IN INTERNATIONAL TRADE NEGOTIATIONS**

Firstly, negotiations for international trade liberalization are expanding to cover a growing number of fields. Some, such as services, investment, intellectual property, and electronic trade, are closely tied to the cultural sector, increasing pressure to further liberalize trade in this area.<sup>1</sup> In future, defenders of special status for culture in international treaties will need to closely monitor all sectors subject to negotiation and evaluate the potential impact of these negotiations on the ability of countries to adopt and maintain support measures for culture.

Secondly, FTAA negotiations have been stagnating for a number of months, encouraging countries in the Americas to negotiate and sign bilateral agreements.<sup>2</sup> The current popularity of bilateralism should not be underestimated in terms of its effect on preserving the cultural levers countries already possess. It must be stressed that the recent signing of bilateral treaties—notably by the United States—has already opened up a breach in the right of countries to legislate in certain areas that can affect culture. For example, certain recent bilateral agreements contain no exemptions for electronic trade, which makes all digital products subject to the same basic obligations as other commercial products.<sup>3</sup> By signing such agreements, the

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<sup>1</sup> It is important to remember that cultural goods and services represent a critical economic issue, notably for the U.S., where cultural products are the leading export.

<sup>2</sup> The failure of WTO negotiations in Cancun in September 2003 is another reason for the current “success” of the bilateral strategy.

<sup>3</sup> For an in-depth analysis of the impact of U.S. bilateral agreements on cultural diversity, see Gilbert Gagné et al., *Les récents accords de libre-échange conclus par les États-Unis : une menace à la diversité culturelle*, report submitted to the Intergovernmental Agency of the Francophonie, Institut d'études internationales de Montréal, June 18, 2004, 69 p.

future ability of countries to take part in the new communications economy is thrown into question. These agreements create precedents that chart the course for the ratification of new bilateral treaties and could set the tone for negotiations on the future FTAA agreement. To date, a number of countries in the Americas have already signed such agreements or are in the midst of negotiations.

These last examples illustrate the limits of cultural exceptions.<sup>4</sup> This measure remains a “defensive” strategy that hinders genuine support for the principle of cultural diversity. That is why a number of actors—governments, parliamentarians, and civil society—have fervently campaigned in recent years to stop cultural diversity protection from being viewed exclusively as an exception to trade agreements and have it considered instead as a goal in itself.<sup>5</sup> To counterbalance the commercial logic underlying international trade negotiations, the cultural sector must have the support of an international legal agreement.

### **3. ADOPTION OF THE CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS BY UNESCO (PARIS, OCTOBER 19, 2005)**

Firstly, it is important to bear in mind that the Convention covers the protection of cultural expressions and not the protection of cultural diversity in a general perspective. Its focus is cultural goods and services, i.e. mainly books, film, music, and visual arts. In terms of the Convention, therefore, the definition of “cultural diversity” does not refer to the general notion of promoting multiculturalism. According to Part III of the Convention—

*“Cultural diversity” refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies.*

*Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented, and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution, and enjoyment, whatever the means and technologies used.*

You will find a copy of the Convention in Appendix III. Below are the highlights:

- The Convention establishes international recognition of the sovereign right of states and governments to draw up and implement cultural policies allowing the development of strong cultural sectors which may contribute to a genuine cultural diversity nationally and internationally.

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[[http://agence.francophonie.org/diversiteculturelle/fichiers/aif\\_etude\\_deblock\\_gagne\\_cote\\_2004.pdf](http://agence.francophonie.org/diversiteculturelle/fichiers/aif_etude_deblock_gagne_cote_2004.pdf)].

<sup>4</sup> It is important to remember that the cultural exemption strategy has proven ineffective in the past, notably in the dispute between the U.S. and Canada over magazines. The WTO dispute settlement body handed down a ruling that favored the U.S. trade argument over Canada’s “cultural” perspective.

<sup>5</sup> Ivan Bernier, *A UNESCO International Convention on Cultural Diversity*, March 2003. Text available on the website of Ministère de la Culture et des Communications du Québec, [<http://www.mcc.gouv.qc.ca/international/diversite-culturelle/pdf/chronique03-03.pdf>].

- The Convention recognizes the distinctive nature of cultural goods and services. As soon as it takes effect, the Convention will serve as a reference instrument for countries undergoing pressure to liberalize their cultural sectors.
- The Convention will serve as an international forum to debate the challenges facing the diversity of cultural expressions and the cultural policy sector. It provides for the establishment of two monitoring and implementation bodies, namely the *Conference of Parties* and the *Intergovernmental Committee*.
- The Convention will become a lever for cooperation with developing countries striving to create durable cultural industries within their territory.

#### **4. IMPLEMENTATION OF THE CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS**

The Convention will come into effect three months after the thirtieth ratification instrument is deposited. In order for the first *Conference of Parties* to meet at the next UNESCO General Conference in fall 2007, the thirtieth ratification instrument should be deposited no later than June 30, 2007, thus allowing the Convention to come into effect on September 30.

Canada was the first country to ratify the Convention, on November 23, 2005. The Québec National Assembly also moved rapidly to study, debate, and ratify the international agreement on the protection of cultural diversity on November 10, 2005. In Québec, the law calls for the National Assembly to approve any major international commitment the government intends to make, whether it involves a Québec international agreement or an international agreement concerning a matter under Québec's constitutional jurisdiction.

The Republic of Mauritius was the second country to ratify the Convention, on March 29, 2006. Other countries have also begun the ratification process and it will be worth monitoring the situation in the months ahead.

For the Convention to have real impact, it should ideally be ratified by a broad spectrum of countries from all regions of the world, including the Americas. COPA could, as a parliamentary forum, work to promote ratification in the Americas.

#### **5. PROMOTION OF CULTURAL DIVERSITY IN THE AMERICAS**

Here is a brief overview of measures to promote cultural diversity in the Americas:

The Inter-American Committee on Culture, whose goal is to coordinate the implementation of inter-American ministerial dialogue on matters of culture and fulfill the mandates of the Summit of the Americas and inter-American meetings of ministers of culture and highest appropriate authorities, held its first meeting in Mexico in September 2003.

Subsequently, at the conclusion of the Special Summit of the Americas in Monterrey in 2004, heads of state and government of the Americas reasserted that the cultural diversity characteristic of the hemisphere greatly enriches our societies and that our countries' cultural development and social cohesion are enhanced through respect for and appreciation of our cultural diversity.

Lastly, the Declaration of Mexico released at the Second Inter-American Meeting of Ministers of Culture and Highest Appropriate Authorities in August 2004, commended UNESCO's efforts in support of cultural diversity. The ministers singled out the Universal Declaration on Cultural Diversity and the resolution adopted unanimously at UNESCO's 32nd General Conference to draw up a preliminary draft convention on the protection of cultural diversity, and they have undertaken to foster dialogue in this regard.

## **6. THE ISSUE OF CULTURAL DIVERSITY AT COPA**

The issue of cultural diversity was addressed at the 1st COPA General Assembly in 1997, where parliamentarians agreed "to ensure the preservation and promotion of cultural and linguistic diversity, to act to reinforce the institutions concerned, and to ensure that linguistic plurality is respected within inter-American organizations, agencies, and institutions." They also agreed "to promote exchanges and closer ties between educational institutions, cultural institutions, and individuals as a means of promoting cultural diversity and contributing towards mutual understanding between the societies within our Hemisphere."<sup>6</sup>

At the first work session of the Committee on Education, Culture, Science, and Technology, held in Ixtapan de la Sal, Mexico, in November 2002, members discussed the issue of cultural diversity. They reiterated "the right of states to freely define and implement their own cultural policies and to undertake measures of support in the cultural domain" and called on heads of state and government of the Americas to refrain from "committing to trade liberalization agreements affecting the cultural sector in negotiations concerning the creation of a Free Trade Area of the Americas."<sup>7</sup>

The COPA General Assembly held in Foz do Iguacu, Brazil, in May 2005 also adopted a recommendation on this issue based on the proposal of the Committee on Education, Culture, Science, and Technology. In this recommendation, we parliamentarians urged the heads of state and government in the Americas to

- "...abstain under the current conditions from all World Trade Organization (WTO) committees to liberalize cultural goods and services in order to avoid compromising cultural diversity promotion and support instruments"
- "...abstain from trade liberalization agreements affecting culture in negotiations for the Free Trade Area of the Americas"

We also undertook to

- "...participate in the activities of inter-American cultural institutions, namely the Inter-American Committee on Culture and the Inter-American Cultural Policy Observatory"
- "...ensure that the commitments made at Inter-American meetings on culture and education have tangible results and that all initiatives by inter-American government bodies respect the state's prerogative to legislate in the fields of culture and education"

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<sup>6</sup> Québec National Assembly (1998), Proceedings. Parliamentary Conference of the Americas, Québec City, Québec National Assembly, p.19.

<sup>7</sup> Québec National Assembly (2003), Proceedings. 4th General Assembly of the Parliamentary Confederation of the Americas (COPA), Québec National Assembly, p. 599.

## **7. CONCLUSION**

### **Mobilization to ratify and implement the Convention in the Americas**

The issues at stake in trade negotiations on culture are important. The pressure exerted on countries to surrender their right to establish cultural policy is mounting in the context of WTO negotiations and bilateral and regional free trade agreements, especially in the Americas.

The Convention will serve as a counterbalance to these trade agreements by recognizing the distinctive nature of cultural goods and services as vehicles of values, identity, and meaning.

As both parliamentarians and legislators, it is extremely important that we follow up politically on the commitments our governments have made to the Convention. Parliaments and parliamentarians have a crucial role to play in ratification and implementation.

The countries of the Americas should deal with the issue of protecting and promoting cultural expressions and ratify the Convention as soon as possible.

In the meantime, we, the parliamentarians of the Americas, must remain determined and vigilant. We must urge our governments to ratify the Convention and remind them to abstain from any commitments to culture sector trade liberalization in trade negotiations.

We therefore recommend that COPA take the following actions to promote ratification of the Convention:

- We propose that the COPA president send COPA's recommendation regarding ratification of UNESCO's Convention on cultural diversity (see Appendix I) to all heads of state and government in the Americas.
- We also urge all COPA regional vice presidents to agree to follow up on this recommendation with parliaments within their jurisdiction, mainly through the parliamentary committees responsible for trade negotiations and cultural issues.
- On an individual basis, we suggest that all parliamentarians on the COPA Executive Committee make a commitment to approach the speakers of their respective parliaments to have this issue put on the agenda and exert pressure on their governments to ratify the Convention.

At the next COPA General Assembly, a report on interventions and progress toward ratification of the Convention could be presented to the Committee on Education, Culture, Science, and Technology by each of our parliamentary delegations.

## **APPENDIX I**



### **COPA EXECUTIVE COMMITTEE MEETING Mexico City, Mexico March 2, 2006**

#### **Recommendation on ratification of the UNESCO convention on cultural diversity**

*CONVINCED* that cultural products and services play an essential role in the identity and plurality of a society and the wellbeing of its members;

*NOTING* that the COPA General Assembly adopted a recommendation on cultural diversity in the Americas at its meeting in Foz do Iguaçu, Brazil, in May 2005;

*WHEREAS* the Convention on the Protection and Promotion of the Diversity of Cultural Expressions was adopted by UNESCO in October 2005, and thirty states must ratify it for it to be implemented;

*WHEREAS* parliaments and parliamentarians must play a key role in ensuring that this Convention enters into force and is implemented;

*WHEREAS* a single state of the Americas, Canada, has ratified it to date;

***We, the members of the Executive Committee of the Parliamentary Confederation of the Americas meeting in Mexico City, Mexico, on March 2, 2006,***

*REITERATE* that cultural diversity is a source of great wealth for our societies and that respect for and value of this diversity contributes to social cohesion and the development of our nations;

*NOTE* that each people has a right to ensure that no trade liberalization rules jeopardize its ability to promote its own culture and identity;

*CALL ON* the states of the Americas to ratify, accept, and approve this Convention, or abide by it as soon as possible in accordance with their respective constitutional procedures.

## **APPENDIX II**



### **PERMANENT COPA COMMITTEE ON EDUCATION, CULTURE, SCIENCE AND TECHNOLOGY**

#### **RECOMMENDATION**

**Foz do Iguaçu, Brazil  
May 10, 2005**

*WHEREAS* the heads of state and government of the Americas, at the conclusion of the Québec Summit in 2001, declared that they considered cultural diversity to be a source of great wealth for our societies and that respect for and value of this diversity must be a cohesive factor that strengthens the social fabric and development of our nations;

*WHEREAS* the Declaration of Cartagena de Indias, the product of the First Inter-American Meeting of Ministers of Culture and Highest Appropriate Authorities in July 2002, recognized the need for greater inter-American cooperation to maximize the benefits of globalization and mitigate its negative effects on the preservation and promotion of cultural diversity in the Americas, and proposed the creation of an Inter-American Committee on Culture and an Inter-American Cultural Policy Observatory;

*WHEREAS* the Inter-American Committee on Culture, whose goal is to coordinate the implementation of inter-American ministerial dialogue on matters of culture and fulfill the mandates of the Summit of the Americas and inter-American meetings of ministers of culture and highest appropriate authorities, held its first meeting in Mexico in September 2003;

*WHEREAS* the heads of state and government of the Americas reasserted at the conclusion of the Special Summit in Monterrey in 2004 that the cultural diversity that characterizes the Americas greatly enriches our societies and that the cultural development and social cohesion of our countries are enhanced through respect for and appreciation of our cultural diversity;

*WHEREAS* the Declaration of Mexico, the product of the Second Inter-American Meeting of Ministers of Culture and Highest Appropriate Authorities in August 2004, commended UNESCO's efforts in support of cultural diversity, notably the Universal Declaration on Cultural Diversity and the resolution adopted unanimously at UNESCO's 32nd General Conference to draw up a preliminary draft of an international convention on the protection of cultural diversity, and that the ministers have undertaken to foster dialog in this regard;

*WHEREAS* cultural goods and services play an essential role in the identity and plurality of a society and the wellbeing of its members;

*WHEREAS* bilateral inter-American agreements have been negotiated and signed since FTAA negotiations have slowed down and the 5th Ministerial Conference of the World Trade Organization (WTO) in Cancún ended in failure, and these agreements compromise the ability of states to adopt measures to support their cultural policies and national cultural industries;

*WHEREAS* bilateral inter-American agreements have been negotiated and signed since FTAA negotiations geared down and the 5th Ministerial Conference of the World Trade Organization (WTO) in Cancún ended in failure, and these agreements compromise the ability of states to adopt measures to support their cultural policies and national cultural industries;

*WHEREAS* including exemption clauses for the cultural sector in certain trade agreements remains a valid “defense” strategy but is not enough to support the principles of respect and preservation of cultural diversity;

***WE, the representatives of the congresses and parliamentary assemblies of unitary, federal, federated, and associated states, regional parliaments, and interparliamentary organizations, gathered in Foz do Iguaçu, Brazil, for the Sixth General Assembly of the Parliamentary Confederation of the Americas:***

*REITERATE* that cultural diversity is a source of great wealth for our societies and that respect for and value of this diversity contribute to social cohesion and the development of our nations;

*REASSERT* the right of states and governments to maintain, establish, and develop culture and cultural diversity support policies, in respect of the Universal Declaration of Human Rights and the International Pact on Economic, Social and Cultural Rights, and in a spirit of openness to other cultures around the world;

*INVITE* the heads of state and government of the Americas to promote initiatives that foster cultural exchange between all their peoples with respect for their individual identities;

*URGE* the heads of state and government of the Americas to abstain under the current conditions from all World Trade Organization (WTO) commitments to liberalize cultural goods and services in order to avoid compromising cultural diversity promotion and support instruments;

*URGE* the heads of state and government of the Americas once again to abstain from trade liberalization agreements affecting culture in negotiations for the Free Trade Area of the Americas;

*APPLAUD* the United Nations’ (UN) initiative to declare May 21 the “World Day for Cultural Diversity for Dialog and Development”;

*UNDERTAKE* to participate in the activities of inter-American cultural institutions, namely the Inter-American Committee on Culture and the Inter-American Cultural Policy Observatory;

*UNDERTAKE* to ensure that the commitments made at inter-American meetings on culture and education have tangible results and that all initiatives by inter-American government bodies respect the state's prerogative to legislate in the fields of culture and education;

*ASK* the COPA president to forward this recommendation to UNESCO and all national and international organizations involved or interested in the issue of cultural diversity.

***APPENDIX III***

**CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF  
CULTURAL EXPRESSIONS**

**UNESCO, OCTOBER 2005**