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DIRECTOR'S GENERAL PRELIMINARY REPORT
ON THE SITUATION CALLING FOR STANDARD-SETTING
AND ON THE POSSIBLE SCOPE OF SUCH STANDARD-SETTING

I. Introduction

1. At its 31st session, the General Conference invited the Director-General “to submit to it at its 32nd session a report on the situation calling for standard-setting and on the possible scope of such standard-setting, together with a preliminary draft international convention”. (31 C/Resolution 30, October 2001).
2. The Executive Board at its 164th session decided to “invite the Director-General to convene one or more category II intergovernmental meetings of experts, the first of which could take place in September 2002, to define the scope and to take forward the work on the preliminary draft of an international convention, participation in such meetings to be in accordance with Article 21 of the Regulations for the general classification of the various categories of meetings convened by UNESCO;” (164 EX/Decisions, 3.5.2., May 2002).

II. Historical Background

3. The preliminary draft Convention for the safeguarding of intangible cultural heritage which is attached to this preliminary report is the result of three decades of growing consideration for this heritage within UNESCO. This new normative initiative aims to satisfy social and cultural needs not yet adequately met by international law. From an historic standpoint, UNESCO normative standard-setting activity concentrated on the protection of “tangible” cultural heritage, as well reflected in all the UNESCO Cultural Heritage Conventions (1954, 1970, 1972, 2001) and generally in its Recommendations relating to Cultural Heritage. Consequently, “Intangible” cultural heritage long remained outside normative standard-setting activity. However, the safeguarding of intangible cultural heritage has been a concern of the Organization, especially since a proposal presented to the Director-General of UNESCO in 1973 by the Bolivian Government to regulate the conservation, promotion and diffusion of folklore. UNESCO provided studies on this field, undertook in collaboration with WIPO (World Intellectual Property Organization) the elaboration of Model Provisions for National Laws on the Expressions of Folklore Against Illicit and Other Prejudicial Actions (1982) and achieved the universal standard-setting level, though not of a binding character (“soft law”), through the adoption by the General Conference in 1989 of the ‘Recommendation on the Safeguarding of Traditional Culture and Folklore’. Though this Recommendation is still currently the only international legal instrument concerning intangible cultural heritage, its impact was lower than expected, mostly due to its soft law nature and lack of incentives which could stimulate Member States.

4. In order to evaluate the application of the 1989 Recommendation, eight regional seminars were held between 1995 and 1999 by UNESCO throughout the world. During the International Conference “A Global Assessment of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore : Local Empowerment and International Co-operation” held in Washington in 1999 (jointly organized by UNESCO and Smithsonian Institution), the need of a new or revised instrument regarding at least some aspects as the scope and the definition of the intangible cultural heritage was strongly expressed, as well as the central role of bearers of intangible cultural heritage (creators and practitioners) was emphasized. Following this Conference, the General Conference invited at its 30th session the Director-General "to carry out a preliminary study on the advisability of regulating internationally, through a new standard-setting instrument, the protection of traditional culture and folklore".

5. While waiting for this time-consuming normative process, the General Conference launched in parallel (1997) a project entitled the ‘Proclamation of the Masterpieces of the Oral and Intangible Heritage of Humanity’, a list of selected manifestations of oral and intangible heritage recognized as being of outstanding value and threatened with disappearance, and accompanied by solid action plans for its safeguarding and examples of " best practices ". First nineteen masterpieces selected by an International Jury consisting of 18 members were proclaimed by the Director-General in 2001.

III. On-going consultations and activities

6. Pursuant to the resolution adopted by the General Conference at its 30th session, the Director-General presented the report on the preliminary study to the 161st session of the Executive Board (May 2001) which recommended that the General Conference “continue action aimed at advancing the international regulation, through a new standard-setting instrument, of the safeguarding of the intangible cultural heritage”. To this end several expert meetings have been held : an international round table in Turin (March 2001) which identified a working definition of intangible cultural heritage and the objectives for a normative instrument, followed by a second meeting in Rio de Janeiro (Brazil) in January 2002.

7. Meanwhile, at its 31st session the General Conference recalled the specific mandate of UNESCO for the safeguarding of intangible cultural heritage and decided that it should be regulated by means of an international convention whose preliminary draft is to be submitted to its 32nd session together with the present report (31C/Resolution 30). The final draft of the convention is to be submitted to the 33rd session of the General Conference. The views expressed by the majority of Member States at the time of the General Conference indicated the model of the 1972 World Heritage Convention wishing a similar success for the new instrument, and underlined the need to avoid any overlapping with activities undertaken by other organizations such as WIPO. During the different expert meetings (Turin, Rio, Paris HQ) the majority of experts agreed on the principle of a “list” of intangible cultural heritage, for its driving force for States Parties as proved by the 1972 Convention experience, underlying however that adopting a list does not mean that the heritage not on the list is not to be safeguarded. They also stressed the importance for civil society and local communities to be associated with the safeguarding of intangible cultural heritage.

IV. Legal drafting

8. The legal drafting of the new instrument started with two sessions (March 20-22; June 13-15) of a small drafting group at UNESCO Headquarters under the presidency of Mr. Mohammed Bedjaoui. One more meeting of experts was held to elaborate the glossary for the preparatory work of the new instrument (June 10-12). All these meetings were attended by representatives of Permanent Delegations invited as observers. Member States have been informed on the on-going

progress by the Assistant Director General for Culture and Mr. Mohammed Bedjaoui during seven informative sessions addressed to the regional groups.

9. Following the decision of the Executive Board at its 164th session inviting the Director-General “to convene one or more category II intergovernmental meetings of experts, the first of which could take place in September 2002, to define the scope and to take forward the work on the preliminary draft of an international convention” for the safeguarding of intangible cultural heritage, the on-going process evolves from consultations of experts acting in their personal capacities at the drafting stage, into the stage of intergovernmental meetings of experts appointed by, and representing, their governments.

V. Conclusions

10. The September meeting will provide to all Member States and observers invited the possibility of expressing their views on the future UNESCO Convention. More intergovernmental meetings of experts for further discussions are to be expected. The preliminary draft provides the content of the provisions agreed upon so far by the experts and this important information enables a synthesis rather than an analytical report. Comments and observations of Member States to this report are to be forwarded to Director-General before the end of November 2002, whether or not they have been expressed by the governmental experts at the aforementioned meeting in September 2002.