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IN BRIEF

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UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions

ISSUE

On 20 October 2005, the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) approved the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The Convention, a product of years of intensive negotiation, was sponsored by both Canada and France. The Government of Quebec enthusiastically supported Canada's efforts. The Convention received widespread support: 148 countries voted in favour. The United States and Israel voted against, and Australia, Honduras, Liberia and Nicaragua abstained.

BACKGROUND

In many countries, governments play an important role in preserving and promoting their cultural traditions by providing direct and indirect forms of financial support to artists and cultural agencies, as well as through various regulatory measures. Canada is no exception in this regard (e.g., Canada Council for the Arts grants, the CBC/Radio-Canada, Canadian content regulations).

Efforts by individual countries exist within a context of increasing global economic and cultural integration. Cultural products and services flow across borders more freely than ever before. People in India can watch American movies, and Canadians can go to their local bookstore and buy books written by Japanese novelists. These conditions have exposed Canadians to a rich diversity of cultural expressions from abroad. They have also, however, created a situation where the continuing survival of Canada's own cultural traditions may be in jeopardy. Accordingly, Canada has long sought an international covenant on cultural diversity that will recognize the importance of cultural protection and promotion.

KEY ARTICLES OF THE CONVENTION

The Convention recognizes that "cultural diversity forms a common heritage of humanity" and considers that "the protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures." Furthermore, the Convention notes that "cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value." To these ends, the Convention reaffirms the rights of sovereign states to "maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory." Measures may include actions aimed at:

- protecting and promoting diversity of cultural expressions;
- providing opportunities for the creation, production, dissemination, distribution and enjoyment of domestic cultural activities, goods and services, including provisions relating to language used for such activities, goods and services;
- providing public financial assistance;
- establishing and supporting public institutions, as appropriate;
- enhancing diversity of the media, including through public broadcasting; and
- nurturing and supporting artists and others involved in the creation of cultural expressions.

The Convention also provides that any measures aimed at protecting and promoting the diversity of cultural expressions must be consistent with human rights and fundamental freedoms as enshrined in the United Nations Universal Declaration on Human Rights. It further provides for the establishment of an International Fund for Cultural Diversity to be funded by voluntary contributions made by its signatories. Finally, the Convention establishes an Intergovernmental Committee to promote the agreed-upon objectives and to monitor its implementation, as well as a non-binding dispute settlement mechanism.

COMING INTO FORCE

The Convention will come into force when it is ratified by the national legislatures of at least 30 UNESCO member countries. However, it is important to note that the dispute settlement mechanism provided for in the Convention is non-binding. The Convention establishes a forum for negotiation and mediation, but there is no basis or mechanism for imposing sanctions. Therefore, there is certainly no guarantee that countries will abide by the articles of the Convention.

In addition, the United States (by far the world's leading cultural exporter) does not recognize the Convention and is, in fact, vehemently opposed to it on the grounds that it could lead to arbitrary protectionism. Significantly, the various cultural support measures that Canada has adopted over the years stem, in large part, from a desire to preserve Canadian culture from the constant onslaught of American culture. The fact that the United States does not accept the Convention (and by extension the right of countries to adopt certain measures to protect their cultural traditions) calls into question the potential force of the Convention.

TRADE IMPLICATIONS

At this point, the specific effects of the Convention on trade (especially World Trade Organization (WTO) rules) are unclear. Article 20 of the Convention, which deals with its relationship to other treaties, states that "Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties." This same article also states that "when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention." Some observers have argued that the WTO could hardly ignore an international convention with the support of the vast majority of the international community behind it. Others have pointed out that no country can be bound by an international law to which it objects, meaning that the United States would not, in fact, be bound by the UNESCO Convention in a WTO dispute. The Convention's trade effects also depend on whether and how it is acknowledged in outcome documents emanating from the ongoing Doha round of WTO negotiations.

IMPLICATIONS FOR CANADA

Even if the adoption of the Convention is mostly a symbolic victory for Canada, it is a particularly strong symbolic victory. The near-unanimous support that the Convention has received shows that Canada is far from alone in its desire to ensure that its distinct and diverse cultural voices are preserved. The Convention places cultural preservation on the international agenda and confirms, in the eyes of the international community, the legitimacy of Canada's current and future policies aimed at preserving and promoting its cultural traditions.