

# CONCLUSIONS OF THE WORLD CONGRESS ON THE IMPLEMENTATION OF THE RECOMMENDATION CONCERNING THE STATUS OF THE ARTIST 16-20 June 1997 - UNESCO Headquarters

The World Congress on the Status of the Artist, organized by UNESCO in co-operation with the French Ministry for Culture and the French National Commission for UNESCO and with the collaboration of the Getty Conservation Institute, took place at UNESCO Headquarters in Paris from 16 to 20 June 1997. The Congress was attended by some 600 participants from the various geographical regions and cultures and by representatives of non-governmental organizations of artists such as the PEN Club, the International Theatre Institute, the International Federation of Actors, the International Music Council, the International Federation of Musicians, the International Dance Council, the International Association of Art, the International Confederation of Societies of Authors and Composers (CISAC) and a large number of royalties-collecting agencies for authors and performers. The Congress comprised an opening meeting and a closing meeting, three round tables and four commissions, which each held three working meetings. It produced a final declaration, which is annexed hereto. The following pages give an overview of the important issues debated.

## Opening

At the opening meeting the Director-General of UNESCO, Mr Federico Mayor, invited some of his official guests who were representing institutions or famous artists to take the floor. The following personalities spoke during this session: Ms Nadine Gordimer, Nobel Prize-Winner for Literature, and Ms Mallika Sarabhai, a dancer, Mr Jean Favier, President of the French National Commission for UNESCO, Mr Miguel Angel Corzo, Director of the Getty Conservation Institute, Javier Pérez de Cuéllar, President of UNESCO's World Commission on Culture and Development, Mr Valentine Klotz, representative of the International Labour Office, together with the poet Adonis, the artist Dani Karavan and the musician Lord Menuhin.

Three main themes were broached by most of the speakers at this first session: the artist and society, the role of art in society and art as a major challenge for the coming century. These themes are illustrated by extracts from the addresses delivered by the three main speakers. Full texts of speeches by participants may be obtained from the UNESCO Secretariat.

## 1. The artist and society

'I think we must not forget that the status of the artist is determined twofold: one, by the nature of the artist's engagement with society, on the one hand; and two, by the attitude of the state to the artist, on the other. The first is a matter of the artist's individual choice; the second is a condition imposed upon the artist from without. It is aleatory.

For the artist, integrity to his or her talent is the basic relation to society; your society, your country, is served best by your doing your work as best you can and thereby enriching the artistic and intellectual consciousness of that society. We must write, paint, sculpt, compose, perform; propaganda is not our medium, no matter how great a loyalty to a cause. Propaganda is not a medium to be recognized by the arts, at all. But the artist is also a citizen, a citizen at home, and of the world. He or she, I believe, has civic responsibilities, just like everyone else, towards the pursuit of justice, peace, freedom from want - and I emphasize want - in the form of the intellectual deprivation that exists among millions all over the world. For the artist, this specific civic responsibility means that the artist has an obligation to give time to nurture the latent talent in others whose circumstances have denied them the opportunity to develop, and to summon energy to assert an active part in a monitoring and innovative role in the structures and policies whereby states, cultural organizations, funding organizations, and financial institutions have the authority to create the status of the artist.

This status, as determined by the state, is first and foremost defined by two factors: censorship and funding. Where there is censorship, whether on political, religious, or other grounds, at worst the artist has been in a straitjacket, as in the old Soviet Union, lives now under a religious *fatwa* like Salman

Rushdie or a secular *fatwa* like Wole Soyinka, and at best writes, paints, makes films and performs under threat of works banned from publication, exhibition or performance.

Where there is no censorship, there may be artistic freedom, but no concomitant state funding for the development of that freedom.

The fact is: there are very few states where the artist has status; and a real status, for the arts, is the first condition for acquiring state funding. There is, one might safely say, worldwide concern for the spread of education as the spearhead of human advancement, particularly within the philosophy of democracy. What is not recognized, though plainly to be understood, is that the arts are education in the best sense, the most widely effective sense, since they open up the sensibilities, of everyone who has access to them, to every discipline of learning, to the exploration of human possibilities, the fullness of mind and senses, the stimulation of the imagination without which the present ruling deities of science and technology could not have come into existence.

As our century ends, organizations of the arts - those great educators - have to go with the begging bowl to the philanthropic foundations, and the conscience of big business, for funds.

For the arts to flourish in the twenty-first century, the state must recognize that the arts belong in the government budget along with the millions earmarked for Defence-, for the arts are themselves. Defence of a vital kind: defence of the human spirit, in all its terrors and marvels of complexity' ... (Extract from Nadine Gordimer's paper.)

## **2. Art and Society**

'Maybe the condition of the artist is the result of questions such as: Who needs the artist and his art? Does he give? To whom does he give? What does he give? Does he take? From whom does he take? Is he serving society? Whom does he serve? Should he be serving? Is he free in a society of marketing and media? The bombardment of Guernica gave birth to one of the most important paintings of our century, a painting by Pablo Picasso. Have I the right to ask you whether that marvellous painting saved one life? Other important painters continued to paint pastoral landscapes, portraits and "nature mortes" from the Côte d'Azur while transports to the gas chambers were leaving from Drancy.

My dream is Peace and Tolerance and I hope that those who have similar dreams will wake when a new dawn rises and that our dreams will become reality. I know it will not come by itself. I know that we will have to fight for it.

If so, what is the condition of the artist as a human being? Can he or she, should he or she, at least try to stop the destruction of the world and humanity?

This is my own personal situation as an artist today' .. (Extract from Dani Karavan's paper.)

## **3. Art: a major challenge for the coming century**

'The 1970s were a period of great upheaval which led to major reforms in the field of culture. As countries gained their national independence they spoke up for the cultural distinctiveness of their peoples and demanded support and recognition for the artists of developing countries, to which our Organization has tried to provide.

The Recommendation of 1980 suggested that the work and lives of authors and performers should be protected by stressing the public usefulness of artists and the importance of recognizing their rights and providing the social protection that they need. It stressed in particular the need to find a true national audience for creators from young nations as a means of promoting their country's identity and cultural development.

As we approach the year 2000 we must assess the new relationship between the artist and society and the challenges to creativity and the communication of cultural values posed by the technological revolution.

Although art has in fact always both celebrated and challenged the community, it seeks to utilize the changes in contemporary society to nourish reflection on the material and legal conditions of artistic creation.

Artists have sometimes been outcasts - they were banished by Plato - and sometimes excommunicated, which had serious implications for the status of actors in France up to the time of Molière. Sometimes they have simply been lone individuals asserting the autonomy of the creative act in opposition to the standards set by society, as did Baudelaire. Today they are independent and respected members of the community. The place of culture and art has steadily grown and taken on more importance in our societies, and appreciation of art is becoming increasingly widespread, as witness the huge numbers of people visiting museums, going to shows or films, and reading books. Even in countries where inequalities persist, the right to culture has now become a popular aspiration and demand.

The World Decade for Cultural Development, during which UNESCO has striven vigorously and successfully for recognition of the cultural component of human activity, is coming to an end this year, and we now see a new question arising: how to foster artistic experience so as to create the rich culture so vital to the fulfilment of both individuals and society. Art is attracting an ever-growing number of amateurs, connoisseurs and professionals and is becoming a more and more integral component of ethical and political life. It can also serve the cause of peace and mutual understanding and can throw light on spiritual responses to the crises sparked off by economic and political upheavals in today's world' ... (Extract from the address by Mr Federico Mayor.)

## **Roundtables**

Three themes of general interest - funding of the arts, art education and the new technologies for artistic creation - were debated during round tables bringing together experts and artists interested in these questions, of particular relevance as the twentieth century draws to an end.

### **4. Round table on funding of the arts**

With Ms Lourdes Arizpe, Assistant Director-General of UNESCO, in the chair, the following personalities took part in this round table: Mr Miguel Angel Corzo (Getty Conservation Institute), Mr José Luis Martínez (Mexican National Fund for Culture and the Arts), Mr Francis Lacloche (French Caisse des Dépôts et des Consignations), Mr Roberto Memmo (Memmo Foundation), Mr Jasper Parrot (Harrison-Parrot International Artists' Management), Mr Bill McAllister (Soros Foundation) and Mr François Hers (Fondation de France).

The general points made in the statements and exchanges with the audience may be summed up as follows.

(a) *Private sponsorship.* It appeared that the primary purpose of private sponsorship was to help artists in their work. The main objective of the foundations represented at the round table was to back creative initiatives.

In this connection people were gradually becoming aware of the role art could play in encouraging responsible citizenship. This factor was reflected above all in the desire of artists to team up to organize joint artistic ventures, to establish centres in which they could present their works to the public and to seek audiences for their work. Private funding institutions were very interested in such initiatives which, as Lord Menuhin observed, were fundamental to the humanist approach.

However, it was considered necessary for artists to participate in the selection of initiatives that might be funded by private companies and foundations in order to ensure that the most interesting projects benefited from such schemes.

Despite the growing importance of private funding for the arts, tax relief measures and other compensatory advantages that encouraged philanthropic support for the arts and artists were not, in most countries, clearly defined.

(b) Public *funding*. In conclusion, the irreplaceable role of public funding in promoting artistic creativity was reaffirmed. In a democratic system, creative freedom depended on the arts being funded from the national budget.

## **5. Round table on art education**

The following personalities took part: Ms Nadine Gordimer (writer), Ms Mallika Sarabhai (dancer), Ms Ana-Lucia Frega (International Society for Musical Education), Ms Rachel Mason (International Society for Education through Art), Ms Josephine Pullein Thompson (writer), Mr Salah Abada (UNESCO), Mr Ion Caramitru (theatre director and Romanian Minister for Culture), Mr Bernard Zadi-Zaourou (academic and Côte d'Ivoire Minister for Culture), Agam (painter and sculptor), Mr Jean-Pierre Guingané (actor and director) and Mr Jorge Orta (plastic artist). Lord Menuhin also spoke, exceptionally, during the debate.

The main ideas expressed were as follows:

Art education should be central to the education system, with the same status as scientific subjects and languages. Art was fundamental to the harmonious development of a human being.

In a large number of traditional societies, in Africa or in Asia for example, an artistic apprenticeship began in early childhood: artistic experience (singing, dance, mime or one of the plastic arts) became part of the child's everyday life. This experience was passed on by the mother and other members of the family, with the result that the child's artistic apprenticeship was closely bound up with their discovery of the world around them. The children discerned forms, smelt smells and heard sounds at the same time: in other words, they discovered the world of symbols through these three senses, developed from birth.

This was why art education in schools should strive less to encourage apprenticeship in the arts than to develop the innate aptitudes of children and adolescents for creation and the transformation of sounds, words and forms; it should be concerned less with teaching techniques than with developing the child's creative and speculative instincts.

## **6. Round table on new technologies applied to artistic creation**

This round table was attended by the following artists and experts: Ms Milagros del Corral (UNESCO), Mr Jim Bower (Getty Conservation Institute), Mr Jeffrey Shaw (multimedia artist), Mr Jon Ippolito (Guggenheim Museum), Mr Nils Aziosmanoff (Art 3000), Mr Benjamin Weil ('âdaweb' site), Mr Frank Popper (art historian), Mr Brice Pauset (composer), Mr Eric de Visscher (IRCAM) and Mr Claude Poliart (European Commission).

The following points were reaffirmed:

The use of new technologies in artistic creation had changed the relationship between the artist and society. Despite the technological advances of our century, as Jeffrey Shaw demonstrated, this new relationship was similar to that current in the middle ages, in which an artist had to collaborate with other people: in other words, he worked in a workshop. As a result, he remained to a certain extent anonymous, as could happen in the case of artists working together on a major multimedia project. Lastly, the work of a team was more likely to attract private sponsors.

Although creations relying on new technologies were relatively recent, their capacity to move was exemplary despite the apparent 'coldness' of the technique. In fact, such works demonstrated that behind each machine the whole of humanity was waiting for the chance to express its feelings.

## **Commissions**

The Congress continued its work in four interdisciplinary commissions. Under each theme, artists and their associations put forward their points of view. The main points of the discussions are summed up in the following paragraphs.

### **7. Relations of art and the artist with society and the state**

(a) It was emphasized that one of the major changes over the last 15 years was the disengagement of the state vis-à-vis the artistic professions in the former Socialist countries. This disengagement, a highly positive development in that it meant a return to freedom, had not been without negative consequences. Hence emphasis was laid on the capacity of the state to invest in culture and mobilize society. As regards the means of action open to artists to defend their rights, a number of speakers stressed that UNESCO's Recommendation had enabled them better to take their place as artists.

(b) It was important to be particularly attentive to political, social and economic processes that might marginalize art and artists and destroy national cultures under the impact of more powerful foreign cultures and, in so doing, encroach on the artist's freedom to create, which was a human right.

### **8. Cultural policies**

Many speakers stressed the need for the systematic development of national or international cultural policies in support of artistic creation and artists. It was generally agreed that artists themselves and their organizations should be given the leading role in framing such policies. One widely shared concern was the present tendency to favour private sponsorship in place of municipal, regional or national responsibilities towards the arts. The importance of private sponsorship was generally recognized but it should back up the cultural action initiated by cultural policy. Sponsorship could not take the place of cultural policy since, by its very nature, it was guided by criteria quite different from those of cultural policy in the full sense.

### **9. Role of professional organizations**

The framing of cultural policies for art and artists should therefore be left to artists themselves and their associations. At the same time, only such associations were capable of defending the interests of artists against their employers - if they had employers - or other contracting parties. It was also their job to safeguard values, both those inherited from the past and those arising from the creative process itself. Such continuity would make it possible to rise above the fragmentation of contemporary society. UNESCO was asked to encourage by all possible means the establishment and expansion of professional organizations for artists of that type and to urge governments to foster their development wherever they did not yet exist. It would then be up to such organizations to mobilize artists to defend their interests and promote artistic values.

### **10. Participation in artistic activities**

Attention was drawn to UNESCO's role in attracting a wider range of people to artistic activities and in particular to the need to encourage women to be active in the various branches of art. Although genuine progress had been achieved over the last decade, equality was still a distant prospect.

### **11. Relations with the public**

Stress was laid on the importance of training the public and encouraging it to support contemporary artistic creation. The media - in particular television services, especially those controlled in one way or another by governments - should reserve a considerable proportion of their broadcasting time for coverage of art and culture, which should be regarded as an integral part of the social fabric and hence an aspect of the government's responsibilities towards society.

## **12. Art and the new technologies**

(a) The artistic profession is on the whole fully aware of the new means of communication and dissemination opened up for it by the new technologies. A number of artists and artistic disciplines also see in these new technologies opportunities for new approaches to creativity. In this regard, it should be remembered that these tools are expensive and require extremely complex installation facilities.

(b) During the discussions, however, emphasis was laid on the vital need to safeguard the traditional means of artistic creation, such as oral traditions, as well as the artists who practise them and who need, especially where artistic property is concerned, to be defended against invasive new technologies. Participants stressed the need to enable traditional works, including elements of the cultural heritage which were essential to contemporary development, to be disseminated and communicated by means of the new technologies.

(c) The use of computers and the new means of virtual or participative creation raised the problem of the identity of works. Protection was needed in this field and involved broadening the very concept, modes of perception and identification of artistic property. It was also important to maintain and safeguard at the centre of these new modes of identification and perception (electronic legal experts) the notion of an actual human being, and to provide the necessary protection.

## **13. Training and information of artists in the new technologies**

(a) UNESCO was invited to encourage and take part in international conferences to inform artists of the new technologies, of the means available to them and of the means of defence they should set up to safeguard their rights in this field. Such training could be backed up by facilities to give artists and particularly young artists easier access to sophisticated and costly equipment not normally within their reach. In our information society, the corollary of freedom of creation is the right to communication. In order to preserve the plurality of approaches and cultures on the world market, it was recommended that Member States should aid professional training aimed at helping artists to master the new communication tools in order to guarantee equitable access to such instruments and the dissemination of works, with due regard to artists' rights.

(b) It was proposed that a parliament of artists should be set up under the auspices of UNESCO and remain permanently in session as a virtual forum, i.e. through the Internet, to look into all these questions (private or corporate status, collective or composite works, etc.).

(c) The debate set in motion within this framework should then move on to other essential questions: do the new technologies offer opportunities to the existing culture or, on the contrary, do they represent a cultural revolution whose consequences for art, for artists and for the new public thus attracted to their works, it was UNESCO's particular responsibility to assess?

## **14. Employees, social security and taxation**

(a) The right to social security is perhaps the most basic, but rarely achieved notion of the artist's right to live from his or her profession. At a time when artists in all disciplines are experiencing increasing difficulties in obtaining funding for their work, when secondary employment and short-term contracts are rapidly becoming standard practice, when artists routinely have to subsidize their own work, when employment is almost invariably insecure and for the vast and badly paid majority, the right to earn a decent living and to be socially protected needs reiterating and reconfirming by governments.

(b) The problems of self-employed status and permanent contracts, were discussed at length. Self-employed artists must be able to enjoy the same rights and freedoms as employed people - including the right to bargain collectively and to benefit from social security systems. This was far from being the case in far too many countries. An erosion was noted, where they existed, of permanent contracts, but participants, including some from countries in Eastern Europe and the CIS, as well as orchestral musicians and others, were at pains to point out that they were fighting this decline, and artists did not accept collectively that self-employed status for them was, or necessarily should be, the norm.

Nevertheless, so-called flexible, or atypical working conditions were a growing reality for all categories of workers and society at large must adapt itself to them.

(c) Specialized research and high-level discussion on artists' taxation and social security, as well as on health and safety, was required. The Commission stressed the need for action at international level by UNESCO and the ILO, and critically the participation of ministers not just of culture, but also of finance, social security, labour and education within governments and internationally. Too many of the artists' problems result from the fact that their work falls between a wide range of ministries; governments must be made to take account of the needs of artistic professions and to take what was called an inter-ministerial approach to the economics of culture.

(d) There was great potential for harmonization of systems - at the level of the 1980 Recommendation. This important work was essential because of the fact that artists and their work were increasingly mobile. Just as their employers had become more and more international in nature, so should artists be able to organize within huge multinational media conglomerates and so should systems of tax deductions, professional criteria, VAT, and health and safety and social security facilitate rather than penalize the artist as was frequently the case at present. Specific professional groups - dancers, visual artists, actors and others, had specific needs which governments should not ignore.

(e) Concrete, international action and standard setting was entirely achievable in these areas. The Latin American participants in the Congress met to discuss the possibilities of creating a regional committee for the social protection of performers.

(f) Finally, the committee called upon UNESCO to set up monitoring and legal mechanisms, in which NGOs would take part, to chase up governments and provide positive assistance and even model legal provisions to assist them in the adoption of measures. A good start would be for governments to sit down and actually re-read the Recommendation.

## **15. Art education**

(a) There was general agreement that in all societies art education from an early age was necessary to create the appropriate precondition for the development of professional artists. Artists from Latin America and Africa pointed out that, in spite of the long tradition of artistic expression in their societies, professional training for artists was needed also here, because no one was born an artist.

(b) Subsidizing the arts and art education was a major governmental duty and could not be left to private sponsorship. Governments bore the primary responsibility for financing the continuous professional development of artists along with major contributions from employers, artists' unions and associations, and institutes of advanced learning.

## **16. Training of artists**

(a) Mobility and exchanges of students and teachers were extremely important for the personal development of artistic abilities. Therefore they should be encouraged and funded appropriately. Some participants recommended that UNESCO create a worldwide exchange programme, similar to the European ERASMUS Programme. Other participants proposed that retired art teachers, upon request by other countries, could be used as additional teachers. Some participants disagreed with this because of its 'paternalistic' dimensions.

(b) The employment qualifications for art teachers should not be strictly linked to formal criteria. Artistic knowledge and pedagogical commitment should be more important in artistic disciplines.

## **17. New technologies and artistic creation**

(a) Most participants agreed that new technologies should be made available as extensively as possible in art training. However, new technologies could never replace human creativity and live performances. One participant demonstrated the big difference between a natural performance and one performed with technical assistance.

(b) Multimedia applications, although they encouraged the creativity of their users, were also limited because of the reduced number of choices available in the programmes. Nevertheless, long-distance education would be made possible through these new technologies.

(c) Some participants pointed out that one should differentiate between new technologies as a means for art education and new technologies as a final goal in themselves. General agreement was reached on the fact that the human being should always be the measure of everything.

(d) Although live performances could not be replaced by technical equipment, co-operation between artists and developers of new technology should be strengthened. In this connection, it was said that digital technology had already passed the experimental stage as an art form, but its use for educational purposes had not yet been institutionalized; it was recommended that artists watch the further development of new technologies.

## **18. Professional training and professional life**

(a) General agreement was expressed that the training of artists should include preparation for professional life (project management skills, basic copyright issues, etc.). Artists must be aware of the fact that, in the future, they would be forced to take more responsibility for their own careers.

(b) Artists were partners of employers and employees in every country. UNESCO should therefore encourage co-operation and communication between ministries for culture and ministries for labour and/or social welfare.

## **19. Dancers and their professional lives**

(a) Special groups of artists with short careers, especially dancers, should be provided possibilities for transition into other professions so as to enable them to continue a fruitful professional life. Due to the fugitive nature of dance, the preservation of choreographies on video and their use for educational purposes was fundamental.

(b) One participant stressed the need for an international guide or source which surveyed the jobs and market requirements in the different fields of art, including statistics. Another participant added that, where training facilities for dancers existed, the job market should be adapted accordingly.

(c) Many participants felt that real art was not always marketable and that therefore criteria for quality should not be related to quantity.

## **20. Protection of intellectual property rights: basic principles**

### *Rights of authors*

(a) Many speakers pointed out that the basic rights of authors, independently of the new problems arising from the new technologies, were not always respected. In this connection, reference was made to Article 27, paragraph 2, of the Universal Declaration of Human Rights, which states: 'Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'.

(b) It was stated that the basic principles of protection contained in international conventions and national legislation should be fully respected and put into practice in every country of the world, so that the rights of authors might be effectively guaranteed and protected.

(c) One of those principles was exclusive rights. A number of participants observed that authors' rights were exclusive rights and that each use of a work should require authorization by the author or authors and a corresponding remuneration. Several participants also stated that any person involved in the process of disseminating a work for commercial profit should be required to respect intellectual property rights and therefore to answer for their acts; that is to say (i) they must obtain the

authorization from the author(s), (ii) they must remunerate the author(s), and (iii) they were punishable for non-respect of authors' rights.

(d) Participants were reminded that the principle of remuneration for each exploitation of an exclusive right related to a strict interpretation of the principle of remuneration of transfers. Several speakers said that this principle should apply chronologically, i.e. that the new forms of exploitation of works based on a new technical invention could not be regarded as covered by the authorization granted by the author at a time when that invention did not yet exist. When an author concluded a contract with a producer or publisher, that transfer of rights could not be deemed to cover means that were unforeseen at the time the contract was concluded. Moreover, several participants stated that the presumption of transfer of rights should be forbidden or, in cases when such presumption was unavoidable, that any exploitation of the work in -such circumstances should at least give rise to remuneration for the author(s).

(e) Many observations were also made by participants on the moral rights of authors. These rights were even seen in a spiritual perspective - spiritual as opposed to material interests - or moral rights as against economic rights. Participants referred to moral rights not just as a legal standard to be respected in the same way as the right of reproduction or the right of representation, where economic rights were concerned; moral rights were regarded as the mark of the personality of the creative author.

(f) Lastly, in regard to the principle of the applicable law, several participants opposed applying the law of the place where the contract was concluded, which is what happens in principle in many cases, stating that preference must be given to the application of the law of the place in which the damage occurred, that is to say, where the work was exploited.

#### *Rights of performing artists*

A major issue raised by the Commission was recognition of the intellectual property rights of performing artists, particularly in the audiovisual field. All too many states, including a number of major producer states, have not yet enacted laws providing protection for the rights of performing artists.

The Commission was of the view that under the present circumstances, reforms were required:

- at the international level, through the adoption of a treaty guaranteeing the rights of performing artists in the audiovisual field, and a revision of the Rome Convention;
- at the national level, through the enactment of national laws providing effective protection to performing artists, including implementation measures and sanctions.

The members of the Commission stressed the importance of 'exclusive' rights (the right to authorize or prevent the use of a work by contract) in the new digital context, in order to ensure that performing artists may exercise proper control over the destination of recordings.

The transfer of rights must be freely negotiable, and this completely rules out all legal mechanisms whereby transfer is assumed.

The work of the Commission further highlighted the importance of guaranteeing that performing artists are able to engage in collective negotiations through their trade union organizations. It is only through collective negotiations that the exercise of rights can be properly ensured.

Remuneration must be proportional to the income generated by use, above and beyond the fee for the physical performance of the artist, except in those cases in which it is in the interest of the holders of rights to receive a lump-sum payment calculated from a fixed scale according to the type of use.

In respect of a contract which may be subject to more than one national legislation, the legislation to be applied must, allowing for exceptions, be that of the country in which protection is sought, or, if not, that which provides the highest level of protection.

The members of the Commission unanimously considered collective management to be indispensable for the implementation of rights, particularly in the new digital context.

The members of the Commission stressed the need to exempt collection agencies and trade unions from anti-trust laws and from all regulations governing commercial competition, given that collective management could not be deemed to be a 'market' in which there was a need to protect freedom of competition.

The Commission raised the issue of 'national treatment' (the extension to foreign nationals of the protection provided under national laws), in view of the need to protect the diversity of cultures and national or regional identities by restricting such treatment.

## **21. Means of establishing effective protection**

(a) Participants all agreed that collective management was the best way of guaranteeing the rights of authors and performers concerning both payments in return for an exclusive right and payments in connection with their simple right to remuneration. Collective management was regarded as an absolute necessity. It was also stated that collective management might, in some cases, have to be extended to non-members.

(b) The methods of collective management gave rise to a number of comments which brought out the need to improve methods of distribution. Several participants said that authors and artists, even though they could see that their works or performances were being exploited, often received no remuneration and that, in an age of new techniques, it was still common for collecting agencies to resort to the sampling method. The system of payment by bank card, which handled payments between banks automatically (thus enabling a user to withdraw money from any bank) and the payment system set up for pay-TV were cited as examples. Several participants regretted that methods of distribution did not make use of the most up-to date techniques. Others, however, pointed out that the introduction of technical equipment of that kind would require very substantial investment. They added that efforts were currently being made: the coding of works and performances, for example, was almost ready for use.

(c) The status of collecting agencies was also mentioned, in particular in the light of the obstacles they encountered under competition law. Participants observed that the rules of competition law, which had been devised for business concerns operating in a competitive market, could not be applied to collective management. If they were to be applied, they would have to be adapted to the specific nature of collective management. The same observation was made in regard to collective negotiations with trade unions, which should not be subjected to the rules of ordinary competition.

(d) Several participants hoped that states would help authors and artists to join forces for the purpose of organizing the management of their rights collectively. Authors and artists should be free to set up such collective management, though states should supervise the distribution of the sums paid into such agencies. The participants also hoped that UNESCO would encourage authors and artists to group together in or join such agencies.

(e) Lastly, in regard to contracts which authors and artists, as members of collecting agencies, concluded with producers, it was recalled that collecting agencies should ignore such contracts so as not to diminish their strength and bargaining power in regard to users and producers who, of course, would like to deal directly with right-holders as being weaker than collecting agencies.

(f) As a result of technical developments, especially broadcasting via digital networks, works and performances could circulate easily and be used without the authorization of the right-holder. Moreover, they were extremely simple to modify or transform, naturally without the authorization of the right-holder. Much was said about methods of identification in this connection.

(g) Lastly, the role of UNESCO was often emphasized as a means of increasing and improving the protection of authors and performers, for example by encouraging the adoption of new standards,

helping to make them efficient and effective and, as already stated, helping authors and artists to organize themselves more effectively, in particular by joining forces.

## Closing

The closing meeting, chaired by Ms Lourdes Arizpe, Assistant Director-General for Culture at UNESCO, approved the Final Declaration of the Congress (see text below). After reiterating UNESCO's thanks to all its partners who had made the Congress possible, Ms Arizpe gave the floor to representatives of the non-governmental organizations attending the Congress: Alexandre Blokh for the PEN Club, Una Walker for the AIAP, John Morton for the EFM, François Parrot for the EFA, Jean-Pierre Guingané for the ITI and Milorad Miskowich for the IDC.

The speech by Jean-Pierre Guingané, actor, theatre director and president of a cultural centre in Burkina Faso, accurately summarized the general feeling of participants in the Congress. Here is an extract:

'At a time when our television screens and radios are showing us nothing but images of a shattered world, at a time when we might well wonder in what state our civilization will enter the twenty-first century, the eminent artists and men of culture who have come from all over the world to attend this meeting have borne witness to their faith in UNESCO. And I can say, after all we have heard, that they have not been disappointed. Certainly, the Congress concentrated on the preoccupations of the year 2000, with lively debates on the new technologies, but its main concern was the renewed interest in the human dimension. Much was said about artists, about their living and working conditions, and about the conditions governing the production and protection of their works, etc. This Congress has rehabilitated the concrete issue of the creative artist and his or her creation. It has also affirmed the importance of art education. All these aspects of the discussions arc of concern to us promote art by taking account of local situations because we are trying in our own arcas to throughout the world. We were afraid that this Congress, like certain others, might fall into the trap of Euro-centredness. We are delighted to say that it has managed to avoid that trap ... ' (Extract from the address by Mr Jean-Pierre Guingané).