CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW:
INTERNATIONAL ECONOMIC LAW: United States Supports New UNESCO Instruments on Doping in Sports and on Bioethics; Votes Against New Convention on Cultural Diversity
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[229] At the October 2005 General Conference of UNESCO in Paris, the U.S. delegation supported the consensus adoption of a new International Convention Against Doping in Sport and a nonbinding Universal Declaration on Bioethics and Human Rights. However, the United States, joined by Israel, voted against the adoption of a new convention on "Protection and Promotion of the Diversity of Cultural Expressions." The vote in favor of adopting the convention was 148-2, with four abstentions. The United States (the world's largest exporter of films and other cultural property) expressed concern that the new convention could be used to sanction repressive state policies controlling citizens' access to information and media, as well as to impede trade in cultural property in violation of trade law obligations. The convention will enter into force following ratification by thirty countries.

[230] While the UNESCO General Conference was under way in October, the U.S. Department of State issued a fact sheet describing U.S. concerns. Excerpts follow:

The United States believes that the draft text of the Convention that has been submitted to the General Conference was hastily drafted and its final consideration has been unnecessarily rushed. . . .

Respect for Free Trade

The United States is concerned that Member States could misinterpret the Convention as a basis for impermissible new barriers to trade in goods, services, or agricultural products that might be viewed as being related to "cultural expressions." [This] is due to:

. vague definitions as to the scope of the Convention;
. potentially sweeping provisions as to measures that parties may take to defend ill-defined cultural objectives; and,
. an ambiguous provision on the relationship between the Convention and other international agreements, including those related to trade.

The Convention should be redrafted so that it cannot be misinterpreted to authorize governments to impose protectionist trade measures in the guise of protecting culture.

Respect for Human Rights and the Free Flow of Information

The draft is ambiguous and contradictory in its treatment of the flow of cultural information and goods. Some paragraphs emphasize freedom of expression, information, and communication, while other paragraphs imply that there are acceptable governmental controls on such freedoms. For example, Article 8 of the draft authorizes states party to the Convention to take "all appropriate measures" to protect and preserve cultural expres-
sions under serious threat. The U.S. believes that such an action-oriented provision needs to be carefully circumscribed to ensure that it could not be misinterpreted to justify measures that would interfere with human rights and fundamental freedoms. *At a minimum, the Convention should be redrafted so that it cannot be misinterpreted to authorize measures limiting freedom of expression or restricting the flow of information.*

The United States is a culturally diverse country and a vigorous proponent of cultural diversity, which is based on individuals' freedom to choose how to express themselves and how to interact with others. Governments deciding what citizens can read, hear, or see denies individuals the opportunity to make independent choices about what they value.

Following the adoption of the new convention, U.S. officials expressed disappointment that the negotiating process leading to the convention had been rushed and lacked transparency, and that supporters of the convention (notably Canada and France) refused to consider amendments addressing U.S. concerns. Louise Oliver, U.S. ambassador to UNESCO, commented that "the process . . . disturbed us as much as the substance because in this case, the process did not lead to negotiation." n6

**FOOTNOTES:**


