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**ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE
HIGH COMMISSIONER AND THE SECRETARY-GENERAL**

**Promotion of the enjoyment of the cultural rights of everyone
and respect for cultural diversity**

Report of the High Commissioner for Human Rights*

* Late submission.

Summary

The present report summarizes contributions and views expressed by Governments, intergovernmental and non-governmental organizations on the content and scope of a possible future mandate of an independent expert in the field of cultural rights. These contributions and views are summarized in the main body of the present report.

The wide variety of different approaches contained in the responses received only allowed to draw some very general conclusions at the end of the report. Fifteen out of the seventeen responses received supported the establishment of an independent expert in the field of cultural rights and cultural diversity. Two contributions considered that there was no need for a new special procedures mandate in this area. Submissions that favoured the establishment of an independent expert mechanism generally shared the opinion that it would enhance the understanding and protection of cultural rights, as well as help bridge a protection gap suffered by cultural rights. Those opposing the creation of a new mandate argued that existing norms and mechanisms within the United Nations system adequately addressed cultural rights or that cultural rights should be further mainstreamed and strengthened within existing human rights mechanisms.

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I. INTRODUCTION

1. The Human Rights Council, in its resolution 6/6 of 28 September 2007 entitled “Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity”, requested the United Nations High Commissioner for Human Rights “to consult States, intergovernmental and non-governmental organizations on the content and scope of the mandate of the independent expert in the field of cultural rights, the basis of which would be the comprehensive implementation of the present resolution, and to report on the results of those consultations to the Council in accordance with its annual programme of work”.

2. On 2 June 2008, the Office of the United Nations High Commissioner for Human Rights sent a request to Member States and intergovernmental organizations for their views and contributions. A letter inviting contributions from non-governmental organizations was also sent out.

3. Replies were received from the Governments of Algeria, Bosnia-Herzegovina, Burkina Faso, Cuba, Egypt, Guatemala, the Islamic Republic of Iran, Kuwait, Mexico, Portugal, Spain, Sweden, Switzerland, Syrian Arab Republic and Turkey. Contributions were also received from UNESCO and the Observatory for Cultural Diversity and Cultural Rights,¹ which is a network of institutes, non-governmental organizations and experts based at the Interdisciplinary Institute for Ethics and Human Rights, University of Fribourg, Switzerland.

4. The present report summarizes the submissions by Governments, UNESCO and by the coalition of non-governmental organizations and institutes, and makes some concluding remarks on the basis of the information and suggestions received.

II. RESPONSES FROM GOVERNMENTS

Algeria

5. The submission by Algeria underscored the importance of cultural rights and the lack of attention generally paid to them. Algeria described its efforts towards realizing cultural rights, and identified some challenges to the full enjoyment of cultural rights and the respect for cultural diversity. Algeria supported the establishment of an independent expert, underscoring that it would enhance the promotion of cultural rights. The reply also identified some thematic areas that the mandate of the independent expert could include: the issue of international cultural cooperation; the cultural gaps created by the unequal distribution of new information and

¹ The following non-governmental organizations associated themselves with this submission: ATD Fourth World; Points-Coeur; International Council of Women; Baha’i International Community; Catholic Child Bureau; Organisation internationale pour le droit à l’éducation et la liberté d’enseignement (OIDE). Experts from the “Groupe de Fribourg” also contributed.

communication technologies between North and South; and the issue of the repatriation of objects of cultural patrimony. Algeria held that the mandate of the independent expert should avoid any overlap with existing activities of UNESCO and other United Nations bodies.

[Original: French]
[12 September 2008]

Bosnia-Herzegovina

6. The reply received from Bosnia-Herzegovina contained a detailed overview of measures taken to realize cultural rights and respect for cultural diversity. These measures included, for example, the adoption of legislation, ratification of international human rights instruments, establishment of advisory bodies to strengthen multiculturalism and mutual respect of cultures and religions, and promotion of cultural activities.

[Original: English]
[29 July 2008]

Burkina Faso

7. In its response, Burkina Faso recalled the international foundations of cultural rights, and underscored the need to equip an independent expert in this field with the necessary competences to fulfil his or her mandate. The submission identified several tasks to be carried out by an independent expert, proposed conditions to be fulfilled by the mandate holder and suggested a time period for the mandate.

8. Burkina Faso proposed the following elements to be included in a mandate of an independent expert: manage and coordinate cultural actions in countries and to oversee respect for international instruments in this field; prepare reports on the manifestation of culture by different ethnic groups in countries; prepare projects for the development of culture; prepare and propose draft legislation on the manifestation of culture, in accordance with the International Covenant on Economic, Social and Cultural Rights; recommend norms and practices; liaise with the Committee on Economic, Social and Cultural Rights and with the Human Rights Council Advisory Committee; organize and participate in meetings, seminars, workshops in the field of cultural rights; collaborate with Governments and non-governmental organizations in the field of cultural rights.

9. The submission from Burkina Faso suggested that the period of the mandate of an independent expert on cultural rights should be for three years, with the possibility of renewal.

[Original: French]
[1 October 2008]

Cuba

10. The submission from Cuba underscored the importance of the establishment of an independent expert in the field of cultural rights and respect for cultural diversity. Cuba pointed out that the mandate would contribute to the objectives set out in the 1993 Vienna World

Conference on Human Rights, namely to give equal treatment to every category of human rights, whilst bearing in mind their interdependence, indivisibility and universality. According to the submission, the establishment of an independent expert would help to overcome the existing protection gap regarding cultural rights. Cuba noted that the establishment of a new mandate in this field would not be in contradiction with Human Rights Council resolution 5/1 on the rationalization of mandates, given that the resolution required the Council to pay equal attention to all human rights, and to the balance of thematic mandates between civil and political, economic, social and cultural rights. In the same vein, the resolution required the Council to identify and address thematic gaps in the promotion and protection of human rights.

11. While the contribution recognized the work of other United Nations institutions, such as UNESCO in the field of cultural rights, it noted that the establishment of an independent expert on cultural rights would help to address the issue from a human rights perspective, dealing with it in the framework of a specialized human rights body of the United Nations. The independent expert would follow-up the issue and on compliance with resolutions adopted by the Human Rights Council in the field.

12. Cuba proposed that the independent expert could also undertake studies on the global state of the promotion and protection of cultural rights, and of the respect and preservation of cultural diversity, and make recommendations to counter the increasing trend of cultural homogenization and the preservation of peoples' cultural patrimony.

[Original: Spanish]
[20 August 2008]

Egypt

13. Egypt's response offered a detailed account of issues and tasks that an independent expert should be mandated to do. Such a mandate should include the protection and promotion of cultural rights of all; respect for cultural diversity; guarantees of the exercise of these rights; the dissemination of a human rights culture in general and the consolidation of these values. The submission underscored the need to include in the mandate a framework for cooperation with UNESCO, other United Nations agencies and institutions, including the United Nations "Alliance of Civilizations" initiative; States, NGOs, international and regional cultural organizations and the Office of the High Commissioner for Human Rights, in order to avoid overlap with their activities.

14. Egypt identified, inter alia, the following tasks to be undertaken by an independent expert in this field: submitting proposals and recommendations to the Human Rights Council on the implementation of the Council's resolutions on the promotion of cultural rights; preparing, in conjunction with UNESCO, studies on the protection of cultural rights, including the protection of cultural property from destruction or damage, and on ways of including the cultural dimension in the educational system; commenting on studies, proposals or reports by the Human Rights Council on the protection of cultural rights and respect for cultural diversity; supporting the role of civil society institutions and civil organizations which develop cultural and educational concepts conducive to the advancement of understanding and dialogue between civilizations in

coordination and cooperation with their counterparts in the international arena, and encouraging dialogue with other civilizations; promoting cooperation with UNESCO, other international and regional cultural institutions and the Office of the High Commissioner for Human Rights in order to further cultural dialogue, establish joint programmes in this area and benefit from the capacities of these institutions in implementing joint programmes.

15. Furthermore, an independent expert should be mandated to safeguard the cultural rights of minorities, indigenous populations and peoples living under foreign occupation through: supporting cultural, media, language and heritage-based projects for members of minorities, indigenous populations and peoples living under foreign occupation; establishing educational institutions for all stages of education, in accordance with general national regulations, in order to develop knowledge of the history, philosophy, culture, arts and way of life of these groups and to encourage them to carry out their development projects to meet their real and legitimate needs, dealing with educational programmes in all Government institutions in the light of a comprehensive national vision, guaranteeing impartiality, multiculturalism and the respect for the cultural, ethnic and religious diversity of all; establishing self-administered, decentralized centres and institutions where these groups can perform their rituals and practise their traditions, heritage and culture in freedom and without intimidation or censorship; ensuring respect for the cultural specificity of all without discrimination; preserving the cultural heritage as a source of creativity, and protecting local languages, traditions and arts from erosion.

16. In addition, a mandate should focus on guaranteeing the cultural rights of persons with disabilities, in order to prevent exploitation, develop the creative and artistic capacities of persons with disabilities in all areas of traditional and contemporary literature, arts and thought; enhance their capacity to enjoy all forms of leisure, culture and sports and ensure that persons with disabilities have access to literary and other cultural materials.

17. In order to perform these tasks, an independent expert should conduct annual visits to States in order to examine, evaluate and provide feedback on the progress made in the exercise of cultural rights and respect for cultural diversity; and submit an annual report of activities to the Human Rights Council for consideration.

[Original: Arabic]
[2 August 2008]

Guatemala

18. In its contribution, Guatemala offered an account of the legal provisions and other measures it had adopted to realize cultural rights and promote the respect of cultural diversity.

19. The submission pointed out a number of areas that would merit consideration by an independent expert on cultural rights. These included: paying special attention to the field of education; and reviewing legislation addressing respect for cultural expressions, access to cultural goods and the preservation of cultural patrimony, in order to suggest improvements. Guatemala also considered that, while it was important to monitor the respect for cultural rights

of indigenous peoples, the true aspiration of every State was to realize the enjoyment of all rights for the whole population in order to strengthen a cultural identity respectful of diversity and of different cultural expressions existing in each country.

20. According to the submission, an independent expert should also take into account that the realization of cultural rights and the respect for cultural diversity entailed socio-economic aspects, and thus should not be considered in isolation. Guatemala considered the promotion of culture as a propeller of development. The reply also underscored that in countries where there existed broad cultural diversity, the independent expert should have an open-minded and objective vision to avoid leaning in favour of one group or another, and to ensure when assessing the measures adopted by Governments that they benefited the whole population and were directed to promoting intercultural understanding.

21. Guatemala also suggested that an important task for an independent expert would be to prepare a list of institutions and organizations addressing the promotion and preservation of culture at national levels. This would, in turn, facilitate the coordination and strengthen the institutional framework to realize cultural life and respect for cultural diversity.

[Original: Spanish]
[30 October 2008]

Islamic Republic of Iran

22. The contribution from the Islamic Republic of Iran proposed certain substantive elements that should be included in the mandate of an independent expert in the field of cultural rights, including: considering the role and impact of respect for cultural diversity in providing an equitable international order based on dialogue, cooperation, increasing interaction and avoiding uniformity and cultural domination; examining the political motivations and efforts made to equate a particular culture with terrorism, violence and human rights violations; calling attention to the fact that the world today was composed of nations with diverse political, social, cultural and religious systems, based on their history, traditions, values and diverse cultures, and that stability and peace would be possible through the worldwide recognition of the right of nations to freely determine their own approach towards prosperity; examining ways for preserving cultural identity as a human characteristic and an element for forming the human cultural heritage; enlightening about the significance of cultural diversity and its relevance to tolerance and respect for others to decide on their own directions towards further development, which was amongst the fundamental values in international relations; contributing to the recognition of cultural diversity and cultural development as the sources for mutual enrichment of cultures within the cultural background of human society; raising awareness about the relationship between cultural diversity and prosperity and welfare, and that attaching value to cultural diversity could empower human society.

23. The mandate of an independent expert should also: remind Governments of their collective obligations to listen to and learn from each other and to respect cultural diversity; play a role in facilitating dialogue, prosperity and cooperation; examine the role of tolerance, respect for cultural, religious and linguistic identity, as well as dialogue with mutual respect among

civilizations, cultures and religions for the realization of peace, understanding and friendship among individuals, peoples and States; examine the extent to which respect for cultural diversity affected the expansion of international cooperation, aiming at solving existing problems of the world community; examine the negative impact of the lack of respect for cultural diversity and its non-recognition on human rights, implementation of justice and the right to development; address efforts made and measures taken to instrumentally use economic and political power for imposing cultural domination on others; examine ways for preventing cultural uniformity and cultural exclusion in the globalization processes through the promotion of dialogue among civilizations and cultural interaction for strengthening respect for cultural diversity.

[Original: English]

[9 October 2008]

Kuwait

24. The submission from Kuwait included a description of measures taken to respect human rights in general, and cultural rights and cultural diversity in particular.

25. Kuwait proposed that the mandate of an independent expert in the field of cultural rights should include the following tasks and duties: assess measures taken at the national and international levels to promote the enjoyment of cultural rights and the respect for cultural diversity; identify obstacles to the enjoyment of cultural rights and the challenges to respect for cultural diversity; submit recommendations and proposals to promote the enjoyment of cultural rights nationally and internationally; submit an annual report to the Human Rights Council on the activities undertaken; follow-up and attend international conferences in the field of cultural rights; assess the relationship between the promotion and protection of human rights and the observance of human rights, identifying best practices; assess the extent to which women enjoy their cultural rights and are empowered to exercise them; conduct visits to States to determine the extent to which individuals enjoy cultural rights, the State respects cultural diversity and a culture of tolerance is promoted; conduct research, studies and statistical analysis and find appropriate solutions for cultural diversity issues and respect for national cultures.

[Original: Arabic]

[23 October 2008]

Mexico

26. The reply from Mexico suggested specific thematic areas that the mandate of an independent expert should cover. These areas included language, cultural and artistic production; author's rights; access of minorities to culture; access of persons and communities to different cultural manifestations; and participation in cultural manifestations in conditions of equality and respect.

[Original: Spanish]

[29 October 2008]

Portugal

27. According to the submission by Portugal, the mandate of an independent expert should be limited to the existing provisions of human rights instruments related to cultural rights - namely article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights. Portugal indicated that it would oppose any mandate focusing on issues related to cultural diversity in connection with the promotion and realization of human rights.

[Original: English]
[21 October 2008]

Spain

28. The contribution received from Spain pointed out that the mandate of an independent expert should underscore the changes that were taking place in the field of culture, with an approach aimed to protect access to culture by people. It also emphasized the need to focus on the legal and economic effects of the protection of cultural diversity, such as fostering inter-culturalism, dialogue between cultures and social cohesion, and access to public subsidies for culture and cultural industries. This aspect would demonstrate the value of culture as a factor for growth and employment. Spain noted the need to create synergies between the mandate of an independent expert and all relevant stakeholders working in the field of cultural rights, and to insist on the question of cultural diversity within the organs and agencies of the United Nations.

[Original: Spanish]
[22 July 2008]

Sweden

29. In its response, Sweden stressed the need to ensure that an independent expert would coordinate and cooperate with additional relevant intergovernmental organizations such as UNESCO, the Council of Europe and other regional bodies, as well as the research community.

[Original: English]
[26 September 2008]

Switzerland

30. The response received from Switzerland highlighted the present recognition of cultural rights and of cultural components of other human rights in existing international human rights treaties and its interpretation by treaty bodies. Switzerland pointed out that there were a number of international mechanisms in place to protect and implement these rights, such as treaty bodies, several special rapporteurs, the independent experts on minority issues and the Working Group on Indigenous Populations. Switzerland was not convinced that the establishment of an independent expert would not overlap with the existing mandates and experts.

31. The submission by Switzerland noted that issues related to cultural rights and cooperation and collaboration in the cultural field and the protection of cultural heritage were dealt with by UNESCO. Switzerland was not convinced that the activities of an independent expert in the field of cultural rights would not overlap with or duplicate those of UNESCO.

32. Therefore, Switzerland was of the opinion that it was not necessary to establish an independent expert in the field of cultural rights, while it accepted that a more systematic mainstreaming of cultural rights and the cultural dimension of human rights was desirable and could be achieved through already existing human rights mechanisms.

[Original: French]

[31 July 2008]

Syrian Arab Republic

33. The submission by the Syrian Arab Republic emphasized that the mandate of an independent expert should respect the specific nature of countries and take into consideration the cultural individual rights and respect of cultural diversity within the framework of the national cultural unity.

[Original: English]

[9 September 2008]

Turkey

34. Turkey recalled that resolution 5/1 of the Human Rights Council required the Council, when considering the establishment of new special procedures mandates, to avoid unnecessary duplication, identify thematic gaps and address them by means other than the creation of special procedures mandates, and define new mandates as clear and specific as possible, to avoid ambiguity. According to Turkey, cultural rights were effectively addressed and monitored by various mechanisms within the United Nations system. Examples provided included different special procedures mandates, the Committee on Economic, Social and Cultural Rights and other treaty bodies.

35. Turkey believed that UNESCO's mandate also covered cultural rights in many dimensions, and offered examples about instruments adopted by UNESCO relating to cultural rights, and about UNESCO's mechanisms to promote and protect cultural rights. The submission by Turkey concluded that there was no thematic gap in the United Nations system, and that the establishment of a new mechanism on cultural rights would lead to an unnecessary duplication among different United Nations mandates. Moreover, the submission indicated that it would be difficult to avoid ambiguity when creating a new mandate in such a broad field. Turkey suggested that thematic gaps, if any, could be overcome by making good use of the relevant existing United Nations mechanisms that were competent in this field.

[Original: English]

[4 August 2008]

III. RESPONSES FROM INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

36. The submission by **UNESCO** explains its understanding of the notion of culture and of the challenges of cultural diversity. It includes several annexes listing relevant UNESCO bibliography and key international standard-setting instruments and recommendations in the field of culture, and highlighting the existence of UNESCO Procedure 104, which allows for the reception of complaints on alleged violations of human rights related to its competence, including cultural rights.

37. Regarding the mandate of the independent expert, the submission suggests a number of topics that could be addressed in the mandate. One is the need to clarify the dual challenges of cultural diversity: on the one hand, to defend the creative diversity as each culture takes shape in its heritage or regenerates itself in creation and cultural expressions; and on the other hand, ensuring a harmonious coexistence and a readiness to live together in peace for individuals and groups who come from a variety of cultural horizons yet share the same living space. Other topics that, according to UNESCO, the independent expert could look upon are the body of relevant standard-setting instruments developed by UNESCO; intercultural dialogue as a key dimension in facilitating mutual appreciation and understanding of cultural differences; the potential tensions between the universality of human rights and the diversity of cultural practices and beliefs, in particular regarding gender equality, rights of minority groups and indigenous peoples, and linguistic diversity as a fundamental component of cultural rights. Finally, the submission suggests that a mechanism could be established for the independent expert to forward communications alleging violations of cultural rights to UNESCO, as a way to coordinate the expert's work with UNESCO Procedure 104.

[Original: English]
[22 December 2008]

38. The **Observatory of Cultural Diversity and Cultural Rights**, based at the Interdisciplinary Institute for Ethics and Human Rights, at the University of Fribourg, Switzerland, is a network including researchers, institutions and non-governmental organizations. Their submission addressed four main points: the need to clarify the definition and content of cultural rights, the opportunity for this clarification, and the content and scope of the mandate of an independent expert on cultural rights.

39. The submission maintained that the need for clarification of the definition, nature and consequences of violations of cultural rights, would prevent the mandate from being employed in favour of cultural relativism, or as a pretext for turning communities or peoples against each other. The contribution underscored that an independent expert should make clear that cultural rights were to be understood in a universal manner, and not linked solely with minorities or indigenous peoples' rights. The submission also pointed to the need to clarify the links of cultural diversity and human rights, and the cultural content of other human rights.

40. The contribution noted that cultural rights had not been granted the attention they deserved in the international sphere. While it was recognized that different treaty bodies had some competence on the matter, their actual practice had relegated cultural rights to a minor issue,

dealing with them randomly and selectively. The submission underscored the clarity of Human Rights Council Resolution 6/6, which placed cultural rights as the central subject, while cultural diversity was an element in their exercise. Therefore, according to this contribution, it was clear that cultural identities should be respected as long as they did not deny human rights.

41. Regarding the content of the mandate of an independent expert, it was felt that the establishment of such a mechanism could offer a more precise and more coherent definition of the content of cultural rights and of their protection. An independent expert should adopt a transversal and global approach to cultural rights, employing as a source all pertinent human rights instruments. This would be the first specific mechanism on cultural rights, allowing for better dissemination and awareness-raising about their content, their status, the obstacles for their application and the measures that should be adopted to ensure their implementation. Failures and violations of cultural rights could also be more easily identified.

42. The joint contribution from non-governmental organizations proposed that the mandate of an independent expert should include following objectives: contribute to the clarification of cultural rights on the basis of existing legal instruments; report on the state of the respect for, protection and fulfilment of cultural rights worldwide, and on the obstacles to their implementation, taking into account the information and observations received from concerned States, United Nations organizations, other international organizations, national human rights institutions and non-governmental organizations; prepare, on the basis of information and observations received, concrete recommendations regarding the promotion of the effective enjoyment of cultural rights for all.

43. The submission also underscored that the establishment of an independent expert mechanism would not duplicate the work of treaty bodies. Rather, it could offer inputs to treaty bodies in a field which, up until the present, had scarcely been explored. Experience had shown that it was not sufficient to rely on treaty bodies, which were already overburdened, to develop the content of cultural rights. It was believed that an independent expert would not duplicate the competences of the UNESCO mechanisms in the field of cultural rights. An independent expert should develop a constructive and continuous dialogue and examine potential areas for collaboration with specialized United Nations organs and institutions, and international organizations competent in the field of cultural rights, such as UNESCO, as well as with other organizations whose activities could have important indirect effects on the respect of cultural rights. An independent expert mechanism should also collaborate with other special procedures, by underscoring the importance of including the cultural dimension of every human right in their reports and recommendations, and cooperate closely with those special procedures whose mandates specifically comprise cultural right issues, including the possibility of undertaking joint studies and making joint recommendations.

[Original: French]
[24 November 2008]

IV. CONCLUSIONS

44. The wide variety of different approaches contained in the responses received only allowed to draw some very general conclusions. Fifteen out of the seventeen responses received supported the establishment of an independent expert in the field of cultural rights and cultural diversity. Two contributions considered that there was no need for a new special procedures mandate in this area. Submissions that favoured the establishment of an independent expert mechanism generally shared the opinion that it would enhance the understanding and protection of cultural rights, as well as help bridge a protection gap suffered by cultural rights. Those opposing the creation of a new mandate argued that existing norms and mechanisms within the United Nations system adequately addressed cultural rights or that cultural rights should be further mainstreamed and strengthened within existing human rights mechanisms.

45. Several submissions shared the view that the mandate of an independent expert should include the capacity to assist in the implementation of cultural rights, by reviewing or assessing legislation, projects, policies and other measures taken to realize these rights. Some submissions suggested that an independent expert mechanism should be enabled to conduct studies about existing measures adopted to promote and protect cultural rights, respect for cultural diversity and the preservation of cultural heritage.

46. Some contributions noted that the mandate of an independent expert mechanism should also focus on the enjoyment of cultural rights by indigenous groups and ethnic, religious and national minorities, as well as by women and persons with disabilities.

47. The international dimensions of cultural rights were also raised by several contributors as meriting attention, including international respect for cultural diversity, cooperation in the area of access to new information and communication technologies and the repatriation of cultural heritage. Others, however, emphasized that a new mandate on cultural rights should not be an excuse to weaken human rights obligations in the name of cultural diversity. Some responses noted the relations between culture, development, growth and employment to be addressed by an independent expert.

48. Several submissions emphasized that an independent expert should coordinate closely and cooperate with UNESCO, other relevant international organizations and bodies, treaty bodies, special procedures mandates, non-governmental organizations, civil society groups and institutions working in the field of cultural rights and cultural diversity. Others, however, felt that an independent expert would duplicate existing activities and mandates in the field of cultural rights.

49. Other more specific issues were also raised in various submissions. In some cases, some of the issues were only raised in some of the submissions, and in other cases opposing viewpoints were expressed on the same issue. For example, whilst some submissions underscored that an independent expert should explore different dimensions of cultural diversity, one of the replies clearly opposed the inclusion of cultural diversity in such a mandate.
