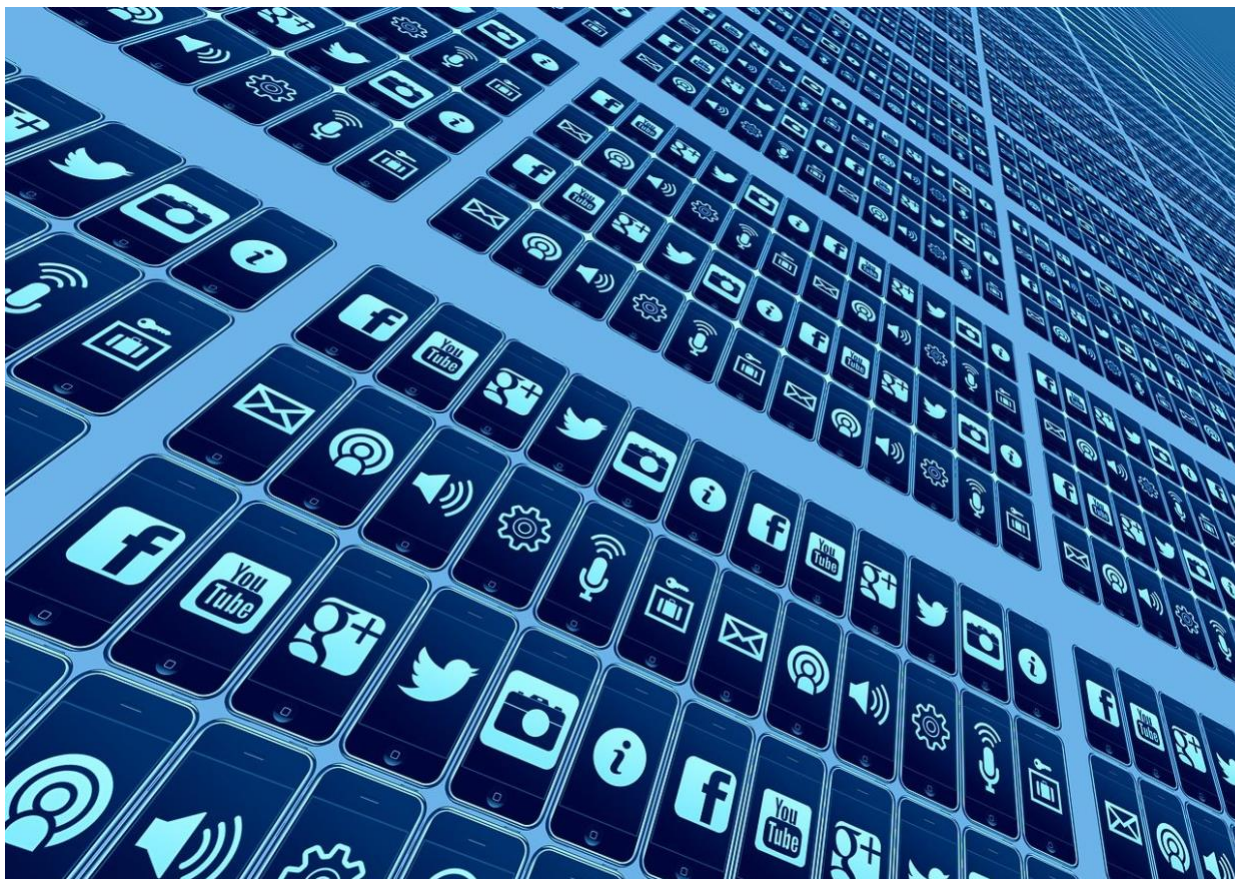


PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

A look back at arguments already made in favour of the
preservation of cultural diversity in a text published in 2000
by Ivan Bernier and Dave Atkinson



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December 2020



Organisation
des Nations Unies
pour l'éducation,
la science et la culture



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Foreword

The adoption in 2005 of the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* brought to a close a difficult negotiation that, by tackling head-on the issue of the trade/culture interface, touched on a very sensitive issue. While the course of this negotiation is relatively well documented, the same cannot be said of the debates on the trade/culture interface that preceded this negotiation, which took place over a longer period of time and drew on knowledge as diverse as economics, political science, law, history, sociology and anthropology. Yet it was precisely these debates that provided the language and ideas that would later inform the negotiation of the convention itself.

The Convention, which was finally adopted in 2005 and entered into force in 2007, quickly gained momentum but was confronted with a new understanding of the trade/culture issues related to the arrival of digital giants in the cultural and creative industries sector. Thanks to the work carried out by its governing bodies and the particularly proactive role of the Secretariat of the 2005 Convention, digital technology issues have been placed at the heart of the implementation of this treaty. The priority given to the digital environment in the *Monitoring Framework* proposed by the Secretariat in 2015, the *Operational guidelines on the implementation of the Convention in the digital environment* adopted in 2017, as well as the *Open Roadmap for the implementation of the 2005 Convention in the digital environment* developed by the Secretariat in 2018 are valuable tools that have been made available to Parties to help them adapt to the challenges of the digital environment.

Despite this significant progress, the question arises as to whether the language and ideas that led to the birth of the 2005 Convention are still relevant in the digital age. This paper seeks to answer this question.

PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

A look back at arguments already made in favour of the preservation of cultural diversity in 2000

20 October 2020 marked the fifteenth anniversary of the adoption of the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. The negotiation of the Convention has not been easy. Already in 1999, four years before the launch of the negotiations, Catherine Trautmann, then French Minister of Culture, described the undertaking as a “cultural battle.”¹ Understandably, the success of this endeavour required extensive reflection on the sociological, political, economic and legal aspects of the project. Unfortunately, the passage of time has somewhat erased the traces of this reflection. This is why, at a time when major international bodies (UN, UNESCO, WHO, WTO) are regularly under attack these days, when a growing number of states openly display their economic nationalism, when large corporations themselves act as if states did not exist, and when democracy, as the fundamental value and ultimate reference point for judging government action, is increasingly being called into question, it seemed appropriate to revisit a discussion paper that Dave Atkinson and I published in December 2000 to justify the adoption of an international instrument on cultural diversity.² Together with Atkinson, it was decided that this text should ideally be presented without amendments, but preceded by a short introduction highlighting both the mark of time that characterizes it and illustrating its current relevance.

At the outset, the reader who is somewhat familiar with the *Convention* will be struck by two elements that clearly show the context in which this document was written.

¹ “Entretien, Catherine Trautmann, La diversité, mise en œuvre de l’exception culturelle”, Interview by Claude Baudry and Jacques Moran, *l’Humanité*, 2 November 1999, <https://www.humanite.fr/node/216662> (26-11-2020).

² The text in question, which is much more elaborate, was written in collaboration with Dave Atkinson, who also read and commented on this text. For this reason, I use the “we” when referring to the 2000 text in this introduction. Dave Atkinson served as Government Coordinator for cultural diversity for the Quebec government from 2006 to 2011. He also set up the *Secrétariat gouvernemental à la diversité culturelle* of the Ministère de la Culture et des Communications du Québec in 2001, which played a major role in informing and raising awareness of the issues involved in the Convention, both for its adoption and its implementation. Our collaboration on the interface between economic globalization and the evolution of cultural policies dates back to the second half of the 1980s.

On the one hand, it talks mainly about the importance of preserving “cultural diversity.” However, the concept of “cultural diversity,” during the subsequent work leading up to the development and adoption of the Convention, was reduced to a more restricted concept, that of the “diversity of cultural expressions.”³ However, on reading our text, it is clear that we are talking about the protection and promotion of the diversity of cultural expressions, since the democratic nature of state intervention, through public policy, is judged in terms of its ability to recognize the various cultural communities within it and to allow them to express themselves.

On the other hand, precisely because it was a question of convincing people of the importance of working on the possible elaboration of an international legal instrument on “cultural diversity,” one will note the numerous reminders to culture, and more specifically to cultural rights, in the various legal instruments existing at the time. Now that the *Convention* has been adopted and is part of international law, such insistence would no longer be necessary, but at the time, it was important for us to demonstrate that a possible legal instrument was part of a well-established historical logic and process and that it did not come out of nowhere.

For the rest, however, it seems to us that not only do the ideas developed in the document remain relevant twenty years later, but that they have even become increasingly important over time. In order to demonstrate this, we thought it would be useful to briefly examine how they could be applied to a highly topical issue, that of the future of cultural diversity in the age of the Web giants.

The term “Web giants,” taken in its broadest sense, refers to a number of Internet players whose main characteristics are their international scope in terms of users and data storage, their huge revenues and also the fact that they are headquartered in the United States,⁴ such as Amazon, Apple, Facebook, Google, Microsoft, Netflix, Twitter, Yahoo, Airbnb, Uber, LinkedIn. In addition to these, there are other important players that are based in China⁵ but have relatively little presence in the West, such as Baidu, Huawei, Alibaba, Tencent and Xiaomi, as well as another of Swedish origin but headquartered in Luxembourg, Spotify. A relatively small number of these players,

³ *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, Article 3(1) and 3(3).

⁴ Wikipedia, “Géants du Web”, https://fr.wikipedia.org/wiki/Géants_du_Web (13/11/2020).

⁵ Grouped under the acronym BHATX.

however, operate in sectors directly related to culture and media. They are grouped together under the acronym GAFA (Google, Apple, Facebook and Amazon), GAFAM (if we add Microsoft) or GAFAN (if we add Netflix instead of Microsoft). Spotify is not included in these groupings but is also active in the cultural field.

The threats posed by the Web giants to the diversity of cultural expressions are directly related to their economic power and their will to dominate. In concrete terms, this translates into their ignorance of state borders and often also of national regulations.

A first example of this type of behaviour of the Web giants is their tendency to shelter themselves from taxes on broadcasting or advertising revenues in the countries where they operate by relocating profits to tax havens to the detriment of local producers of online content who have to pay this tax. For culture and the diversity of cultural expressions, such circumvention of laws can have major consequences. As one Canadian commentator recently pointed out, “[o]ur industries operate within local and national markets, meeting their tax obligations, while the Web giants take a world without constraints and borders as their playground [...]. When cultural and media flagships falter and flounder, Canada’s cultural sovereignty is at stake.”⁶

Faced with this threat, a number of states (France, Germany, Italy, Spain) have reacted by asking the European Commission to draw up a proposal for a tax on digital services. The proposal was unveiled on 21 March 2018 but was unfortunately not endorsed by the Council of the European Union due to resistance from a number of member states’ economic ministers. Those states that were in favour had no choice but to turn to the OECD in the hope of reaching an international agreement on the subject. The OECD welcomed the request and on 21 January 2019, an agreement in principle was reached by 127 states, including the United States, to reform the taxation system of the digital economy. Unfortunately, the hope raised by this agreement in principle was somewhat dashed when on 17 June 2019, the United States, using the Covid-19 pandemic as a pretext, announced a pause in the negotiations.

France reacted immediately by adopting its own tax on digital services (known as the “GAFA Tax”) on 11 July but hinted that it would suspend its application until the end of 2020 in order to reach

⁶ Brian Myles, ed., *Le Devoir*, 19-20 September 2020, p. B 10.

an agreement on the issue. Judging this law to be discriminatory because it applies mainly to American companies, the United States announced on 10 July 2020 that it would impose, in retaliation, additional customs duties on French products with a commercial value of \$1.3 billion, applicable within 6 months. Since then, the OECD has continued its technical work in the hope that it will be endorsed at a session of G-20 Finance Ministers scheduled for 14 October 2020. Unfortunately, discussions on the subject were to prove a failure due to a blockage by the United States. In the meantime, a number of European countries have embarked on a legislative process to tax the digital giants, but these giants, backed by strong support from the US government, have made it clear that the amount of such a tax would be passed on to consumers in full. In other words, the Web giants do not intend to cede any of their power.

A second example of the dominant behaviour of the Web giants (Google and Facebook in particular) is their refusal to negotiate with foreign publishers for the distribution of their journalistic content that appears on their search engines. Two countries, Australia and France, have undertaken to force Google and Facebook to pay their country's press groups for their content. In France, in 2018, Google and Facebook held 70% of the market at the expense of publishers in economic difficulty. To counter the losses incurred, France adopted the *Law on the Creation of Neighbouring Rights for the Benefit of Press Agencies and Publishers* in October 2019, which was to pave the way for negotiations on the base and terms of remuneration for publishers. Subsequently, Google totally refused to engage in such negotiations and Facebook, for its part, agreed to remunerate publishers but only for a fraction of the platform's activities, the one concerning news, an offer that was immediately refused. The French press unions reacted by filing a complaint with the Competition Authority for abuse of a dominant position. In its decision of 9 April 2020, the Competition Authority upheld the argument of abuse of dominant position and ordered Google to negotiate with the news agencies, granting the latter a three-month period. To date, negotiations have made little progress. In the case of Australia, a rather similar scenario has unfolded. Faced with a situation that has become untenable for news agencies, the Australian government announced on 31 July 2020 its intention to oblige platforms to pay the media for content shared with users. Both Facebook and Google retaliated by threatening to terminate their services. For the time being, negotiations continue, and the Australian government is still determined to go ahead with its bill, while not excluding some amendments concerning the control of algorithms. In addition to France and Australia, it should be noted that other states such as the United Kingdom, Canada, Spain and

Ireland have adopted or are in the process of adopting regulations to force a redistribution of revenues between news agencies and digital platforms.

The behaviour of the Web giants, in the situations described above, is clearly perceived by the states concerned as a threat to their culture. This threat does not at first sight concern culture. But by seeking to maximize their share of the news publishing market by all means at their disposal, the Web giants end up depriving national news agencies of revenue, often dramatically. Furthermore, consumers, in such a context, are increasingly disconnecting from local cable operators, which leads, for traditional broadcasters, to a significant decrease in the advertising base to the benefit of the Web giants. But beyond these financial implications, it is indeed the national production of cultural content that is threatened and, ultimately, the cultural identity of the state and cultural diversity itself.⁷ This is what Alain Saulnier expressed in 2018 when he wrote: “There is currently no protected space for a distinct people in this borderless digital universe whose only owners are the American Web giants.”⁸

There is nothing, however, to prevent threatened states from enacting legislation or regulations to establish a level playing field between domestic news organizations and foreign digital platforms, as France, Australia and a number of other countries are seeking to do. But as we saw earlier, the battle with the Web giants is far from won. In such a context, it becomes important to have solid arguments to support a convincing demonstration. This is where the concept paper we published in December 2000 becomes relevant.

The paper begins by examining the arguments that can be made in favour of preserving cultural diversity in a context of economic globalization. After examining the meaning and scope of the concepts of culture and cultural diversity, it proposes two arguments – one political and the other economic – that argue for a vigorous defence of cultural diversity.

⁷ It must be understood that the state is at the heart of the defence and promotion of cultural diversity in that it is through it that the demand of the various groups and communities for their recognition and expression passes, and that it is in its capacity to respond adequately to this demand that it can in turn hope for the adhesion of these same groups and communities to its national cultural project. As we said, politics and culture attract each other.

⁸ Alain Saulnier, La Presse +, Section « Débats », Screen 6, 23 January 2018.

The first argument is based on the fundamental right of every individual to participate in the cultural life of his or her community and the right of every cultural community to preserve its identity. These rights, recognized in the Universal Declaration of Human Rights as well as in various other fundamental human rights texts, are closely linked to the democratic process itself. So much so that states that refuse to recognize them risk having their legitimacy challenged. Similarly, at the international level, dialogue between cultures and mutual respect are seen as indispensable conditions for peaceful coexistence. In return for this recognition of cultural diversity within and outside their territory, states benefit from the adherence of the individuals and cultural groups they form to the democratic values that underpin the legitimacy of the political order.

The second argument in favour of preserving the diversity of cultural expressions is based on the strong contribution of cultural identity and creativity to the economic development of states. As underlined in one of the recitals of the Culture 2000 programme adopted by the European Parliament and the Council in February 2000,

*[c]ulture is both an economic factor and a factor in social integration and citizenship; for that reason, it has an important role to play in meeting the new challenges facing the Community, such as globalisation, the information society, social cohesion and the creation of employment.*⁹

Not only does cultural identity constitute an essential factor of autonomy in any process of economic development, but thanks to the creativity that it generates through dynamic contact with other cultures, it becomes essential to the very pursuit of this development, and thanks to the works to which it gives rise, it often becomes a very important source of economic income. But this recognition of the contribution of cultural production to economic development does not fail to raise questions about the long-term impact of such development on the preservation of cultural diversity itself. In the fields of music, books, cinema and television, it raises in particular the problem of the marginalization of culture in the digital universe.¹⁰

⁹ Official Journal, no L 063 (10/03/2000).

¹⁰ Saulnier, Alain, *supra* note 8.

The two arguments put forward in the 2000 document, as can be seen, establish a close link between the economic and cultural aspects of development. This link can be found in Article 2.5 of the 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, which sets out the principle of complementarity between the economic and cultural aspects of development. It reads as follows: “Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy.” Yet it is precisely this recognition of the complementarity of the economic and cultural aspects of development that is lacking in the relationship between the Web giants and the states in which they operate. Until now, the major digital players have been reluctant to share the benefits generated by their activities on the territory of other states. But as we have seen, a growing number of these states have undertaken in recent years to defend their right to cultural expression by claiming a fair share of revenues and demanding compliance with their cultural laws and regulations. In this regard, they can rely on Article 5 of the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, which reaffirms the sovereign right of Parties to “formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expression.” Some states, such as France, have even recently announced that, in the absence of an agreement on reforming the taxation system of the digital economy within the framework of the OECD, they would be ready to tax the digital giants as early as 2021 despite threats of reprisals from the United States.¹¹ It remains to be seen which solution will ultimately prevail.

While we have focused in this introduction on the dominant behaviour of the Web giants in the fields of culture and communications, we should not lose sight of the fact that many states nevertheless wish to continue to benefit from the visibility that these digital platforms offer to their cultural goods and services. From there to seeking an international legal framework guaranteeing the free circulation of cultural data is only a step away.¹² This explains why, in the most recent international trade agreements, these cultural goods and services become, for all practical purposes, mere commercial data whose exchange must not be subject to any restrictions. But it

¹¹ Agence France-Presse, 25 November 2020.

¹² See on this subject the excellent text produced in 2019 by the United Nations Conference on Trade and Development (Trade and Development Board, Intergovernmental Group of Experts on E-Commerce and the Digital Economy) entitled “The value and role of data in electronic commerce and the digital economy and its implications for inclusive trade and development”. Online: https://unctad.org/system/files/official-document/tdb_ed3d2_en.pdf (26-11-2020).

must be understood that in such a context, foreign cultural productions can enter the national territory without any possibility of control. The danger, if we are not careful, is that the most economically powerful states will end up imposing their cultural goods and services on the rest of the world. The possibility of this happening is not a mere hypothesis. U.S. News, which annually offers its ranking of world powers, describes the United States as “the world’s most dominant economic and military power” and notes that its “cultural imprint spans the world, led in large part by its popular culture expressed in music, movies and television.”¹³ In other words, economic power goes hand in hand with cultural power. If this is what the future holds, then what will be left of cultural diversity? We will not have been able to meet the challenge that the former Director General of the WTO launched in 1997, that of “managing a world of converging economies, peoples and civilizations, each one preserving its own identity and culture.”¹⁴

¹³ <https://www.usnews.com/news/best-countries/power-rankings> (26/11/2020).

¹⁴ See the quotation at the top of the text immediately following. It should be noted that some footnotes contain hyperlinks that are no longer active and for which it has not been possible to trace the original source. These are notes 25, 28, 35, 37, 40, 42, 52, 53. Finally, note 32 refers to a lecture given by Bernard Beaudreau in 1999, the text of which was published in 2006. See on this subject: Bernard Beaudreau, *Journal of Economic Psychology*, vol. 27, no. 2, 2006, pp. 205-223.

TEXT PUBLISHED IN 2000

ECONOMIC GLOBALIZATION AND CULTURAL DIVERSITY: THE CASE FOR PRESERVING CULTURAL DIVERSITY

Ivan BERNIER and Dave ATKINSON

“Managing a world of converging economies, peoples and civilizations, each one preserving its own identity and culture, represents the great challenge and the great promise of our age.”

Renato Ruggiero, Director-General of the WTO,
WTO, Press/74, 19 June 1997

INTRODUCTION

Hardly a day goes by now without hearing about the globalization of the economy and the globalization of markets. Behind this language, which has become commonplace, lies a development which, while beneficial in certain respects, nevertheless presents a serious risk for the preservation of cultural diversity. As underlined in the Action Plan adopted by the Stockholm Conference on Cultural Policies for Development, a conference organized in April 1998 by UNESCO:

New trends, particularly globalization, link cultures ever more closely and enrich the interaction between them, but they may also be detrimental to our creative diversity and to cultural pluralism; they make mutual respect all the more imperative.¹

Such development is based on a complex and varied set of norms of international law, the purpose of which is to liberalize international economic exchanges as far as possible, with the inevitable consequence of progressively restricting the capacity of states to adopt policies that directly or indirectly impede the movement of goods, services and factors of production. But precisely because it restricts the capacity of governments to intervene, globalization places them in a sometimes difficult situation

¹ UNESCO, Stockholm Conference on Cultural Policies for Development: Action Plan, 30 March-2 April 1998. See: https://unesdoc.unesco.org/ark:/48223/pf0000113935?fbclid=IwAR2vLsy6Q76pZ4b3QAoFn_FgCw8JhpyAs3hNGY7L2I8HMR0BGrabNbuL15Q.

when it comes to putting in place the mechanisms necessary for the cultural development of their population. The threat posed by globalization in this regard is becoming increasingly clear.

It is manifested first of all in the imposition of an essentially commercial model of development that has already begun to profoundly modify existing cultural entities' way of being and acting, as well as their values, without these entities having the feeling that they have usually been involved in these choices. The failure of the third ministerial conference of the WTO in Seattle in December 1999 marks a turning point in the perception of this threat. Although the failure of the meeting was due to reasons beyond the demonstrations surrounding the meeting, the magnitude of those demonstrations clearly indicated that there is a real concern in society about the impact of globalization. Beyond the divergent interests of the many interest groups involved in the demonstrations in question, indeed, there was a common theme which was the questioning of a globalization that is exclusively based on commercial considerations and seems to escape real democratic control. Although cultural considerations per se made little headlines in Seattle, unlike in the final months of the Uruguay Round negotiations in 1993 and the MAI negotiations in 1998, the fact remains that for many observers it was the scale and pace of the changes imposed on society by such trade arrangements and the consequent sense of loss of cultural references that fuelled much of the anti-globalization discourse.

The threat to cultural diversity is also felt more concretely in terms of national production of cultural goods and services, where it takes a dual form. The first, older form is that of an invasion of foreign cultural products (films, records, books, etc.) which somehow stifles domestic cultural production. The second, more recent, is that of exclusion from the international cultural space as it is currently being constructed with the new information technologies (Internet, etc.). In both cases, it is not only the right to cultural expression that is at stake, but also the right to economic development, because it is now more openly recognized that there can be no real economic development without cultural development.

But what importance should be attached to the preservation of cultural diversity in such a context of economic globalization? To ask this is to question the arguments in

favour of the preservation of cultural diversity. For just as economic globalization, with its procession of international trade agreements, cannot be imposed on political judgment solely on the basis of the economic benefits that are supposed to flow from it, the preservation of cultural diversity must be able to justify itself in the face of political and economic concerns. This is precisely what this study intends to do.

In the first section, the meaning and scope of the concept of cultural diversity will be discussed. Next, the arguments in favour of preserving cultural diversity will be examined, considering it first as an expression of a fundamental political right and then as a factor of economic development.

SECTION 1: Cultural diversity as a concept: meaning and scope

1.1 The dimensions of culture

In the Mexico City Declaration on Cultural Policies, which dates from 1982, but whose principles were reaffirmed at the Intergovernmental Conference on Cultural Policies for Development held in Stockholm in 1998, it is emphasized “that in its widest sense, culture may now be said to be the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs [...]”

Ambitious, if not very broad, this definition takes up different facets of the more specific definitions that are usually given of culture. These will present culture sometimes as “the development of certain faculties of the mind through appropriate intellectual exercises,” sometimes as “the body of knowledge acquired which enables the development of the critical sense, taste and judgment,” sometimes also as “all the intellectual aspects of a civilization,” and again, as, “all the acquired forms of behavior in human societies.”²

² Le Petit Robert, Dictionnaire de la langue française [our translation].

For the eminent British sociologist Raymond Williams, the term “culture” has historically been used in one of three senses: 1) a general process of intellectual, spiritual, aesthetic development; 2) a particular way of life, whether of a people or a group, in a specific place or at a specific time; 3) artistic and intellectual activity in a given society.³

These definitions are not mutually exclusive, but rather reveal the various dimensions that characterize culture: its dynamic character (it is a process; it not frozen in time), its symbolic components (references to knowledge, values, beliefs, etc. that appeal to the faculties of the mind or the intellect), its collective or social dimension that singularizes human groupings (culture attributed to a group, an environment, a nation, or a civilization, for example), and its manifestations (from the most general, such as ways of life or social organization, to the most particular, such as artistic or intellectual production).

These dimensions make us aware of the importance of culture: it is the very expression of a relationship with the world, of the conception and understanding we have of it, of the work we do to appropriate and master it, and of the way we imagine and express it. But this presence in the world begins first and foremost with a presence in a particular world. Culture is a whole composed of parts...

1.2 *Culture and cultural diversity*

If we can speak of a universal culture in the sense of the body of knowledge, beliefs and practices that exist here and there throughout the world, or of the sharing of certain values that are sufficiently widespread and recognized to be qualified as universal, the cultural reality, or what could be called the “cultural experience,” is however very different.

The acquisition of culture for individuals takes place first of all in a particular context, in a singular environment, through a process of socialization that begins with one’s family, one’s close relations, a given education (which provides not only access to so-

³ R. Williams, *Keywords: A Vocabulary of Culture and Society*, London, Fontana, 1983, p. 90-91.

called universal knowledge, but also information about the particular environment in which one lives), an understanding and interpretation of one's situation in a particular social grouping endowed with its own organization, rules, norms, symbolic landmarks, and even cultural "tools" such as a language, for example. The process of acquiring culture is always the acquisition of a particular culture. Just as education is a cumulative process that requires the prior acquisition of certain knowledge to others, access to a general and most universal culture begins with the learning of "a culture." It is within a particular "culture" that the individual develops and can eventually open up and situate himself in relation to other cultures with their differences and similarities. It is first of all through a knowledge of one's own environment that it will be possible for the individual to participate fully in it and to become a "cultural agent" himself.

Thus, recognizing cultural diversity does not mean denying the existence or development of a universal culture, but rather recognizing that the very history or evolution of this culture is an accumulation resulting from the interaction of several cultures. Ultimately, it means recognizing that there is no single way of conceiving the world, of living in it, and of expressing it.

Considering both the dimensions of culture discussed above and the recognition of the existence of several cultures around the world, we could summarize the apprehensions that many share regarding the ongoing globalization and its effects on cultural diversity in the following way: there are communities (peoples, communities, groups, etc.) with particular characteristics (subjective, such as values, beliefs, history, or objective, such as language, practices, institutions, for example), which are at risk of being destroyed by globalization in that the conditions that allow them to be maintained, expressed and developed may disappear.

This concern, which links a process of economic integration on a global scale on the one hand, and the evolution of various cultures throughout the world on the other, cannot be understood if we do not use the median term by which this relationship emerges: the state, or more broadly, politics.

1.3 *The state and cultural diversity*

It is not possible to draw a world map on which each culture can be clearly identified, as is the case with the states to which a clearly identifiable territory, population, and political organization corresponds. Cultures are more difficult to distinguish because they share, with varying degrees of intensity, several features; a language here, a religion there, a territory spread over more than one state, and so on.

But there is a close connection between the state and the various cultures because the two “attract” one another. All states claim, some successfully and some less so, to represent a “culture.” Historically, all states have claimed to represent a population and cover a territory on the basis of a certain homogeneity of one and the other. Even the most heterogeneous states in terms of the composition of their population have affirmed, claimed and promoted this idea of a unity that legitimizes their existence. And this idea has never been better expressed than in the concept of the nation-state, where the state is seen as intersecting with the culture of the community that make it up, the nation. Of course, as we have just suggested, not all states appear to have such a “cultural homogeneity,” and often the reality seems to be one of coexistence between different cultural communities within them.⁴ The fact is that even in these cases, the legitimacy (as well as the lack of legitimacy) of the state stems in large part from its ability (or inability) to get the cultural communities that make it up to accept an allegiance to the general values that form the basis of their union. And this brings us back, in one way or another, to an attachment to common values, symbols or ideals that in these cases form the “community of communities” that is the state, in other words, to a kind of culture shared among the members of the whole. From this point of view, and we will explain below the democratic importance of preserving cultural diversity, democratic values and practices have played an essential role in enabling communities or groups that are very different from one another to “negotiate” or

⁴ The heterogeneous nature of most “nations” is increasingly recognized in practice, to the extent that in the Stockholm Action Plan, member states endorsed the statement that “cultural policies should aim to create a sense of the nation as a multifaceted community within the framework of national unity – a community rooted in values that can be shared by all men and women and give access, space and voice to all its members.”

See:

https://unesdoc.unesco.org/ark:/48223/pf0000113935?fbclid=IwAR2vLsy6Q76pZ4b3QAoFn_FgCw8JhpyAs3hNGY7L2I8HMR0BGrabNbuL15Q.

accept their coexistence within the same state by accepting, beyond their differences, common values and norms.⁵

This link between politics and culture explains why political and cultural identities can sometimes coincide (particularly strong in the context of states that are close to the purest definition of the nation-state), sometimes overlap (particular cultural identity within the state, but coupled with a strong and sincere identification with the state) or sometimes be the subject of a real fracture (particular cultural identity within the state and refusal of any identification with the state).

In the same way that the state needs the unity that “culture” confers on it, which it claims and which provides cohesion and legitimacy, cultures see the state as a stake, since the state has the capacity to recognize them, grant them rights, and promote their maintenance and development. As we pointed out earlier, cultures are based on the sharing of symbolic data (ideas, knowledge, etc.) but are expressed in concrete practices, use of a common language, particular ways of life, explicit norms, artistic and intellectual manifestations. No culture can be perpetuated unless the conditions necessary for its maintenance are recognized and assured. And it is through the organization of the state that these conditions are claimed. Particularly strong in some cases, this claim can go as far as the will to constitute a state in due form and here again we find the idea of the nation-state mentioned earlier. In other cases, it will take the form of a particular recognition within the state and the attribution of powers allowing control over the essential conditions for the maintenance of the culture in question. In other cases, it will be a demand for the state to adopt certain specific policies.

In short, as a place of affirmation of the “national culture,” or a place of negotiation of the various cultures within it, and which in any case requires identification with a “culture” at least described as “national,” the state and the preservation of the various cultures are intimately linked. And it is not our intention to present an idyllic vision of

⁵ This ability to transcend different cultures by means of general norms and values that are culturally consensual is one of the strengths of democratic states. The establishment of a political framework and a representation process seen as legitimate can avoid conflicts between cultural communities that could not be avoided other than through coercion, the latter solution being only temporary and dependent on the vagaries of power relations between communities.

the relationship between the state and cultural diversity, since the state is a form of political organization through which both cultural homogenization and the maintenance and development of cultural diversity have historically taken place. Homogenization because many states have sought to eradicate cultures by merging them into a single culture through the imposition of a single religion and language on the entire population, and the prohibition of certain practices where there was diversity of languages, religions, and practices. But also, the maintenance and development of cultures because in other cases states have been able, through their policies, to promote the maintenance and respect of this diversity.

What is important to note is that it is with respect to this capacity of states, through appropriate policies, to foster the maintenance and development of “cultures” or “the culture” within them that globalization seems to be a problem. And the state measures that are the primary targets of the international trade agreements that drive globalization are, of course, those that have a strong impact on trade. These measures, for the moment, relate particularly to the production and dissemination of culture and cultural goods, especially those concerning mass cultural production and dissemination.

1.4 Cultural diversity and cultural industries

As noted earlier, culture is acquired and transmitted. Beyond the direct contact that individuals have with each other and the important role played in this regard by the family and the immediate environment, particularly in the early years of life, individuals today acquire a large part of their culture through education, but it is increasingly marked by what is now commonly referred to as the cultural industries.

The role of education does not require lengthy elaboration. From literacy to science, education is so important to the development of individuals and societies that there is no place where it has not been developed into a system, been the focus of policy or dedicated resources. Needless to say, it is important from a cultural standpoint, both in terms of the acquisition of knowledge that can be described as universal, and in terms of the acquisition of knowledge that is more focused on understanding and representing the society in which these individuals live.

But education is not the only means by which culture is transmitted and developed. The present century has seen the accelerated development of mass cultural production and dissemination, which uses the same techniques as other mass industries to produce and disseminate cultural goods.⁶ The role of “cultural industries” in the process of acquiring and transmitting culture is increasingly recognized, just as their absence, or lack of development, or their all too often restricted role as transmitters of foreign culture, in many countries, are increasingly recognized as factors hindering development in general. For by cultural industries, we mean here industries whose fundamental characteristic is to produce and disseminate meaning, information – in the general sense of the term – and this, contrary to the playful character attributed to them in discourses that seek to minimize their importance. The latter in fact present them as “entertainment” industries as if these industries did not use a language, ideas, values, norms, to address the public and that, in doing so, they were already part of a particular cultural logic.

These industries are important players in culture in that they produce, distribute, or disseminate cultural goods. And what is a “cultural good”? The epithet “cultural” attached to a good means that it is recognized as conveying information, ideas, values, and a message that speaks to the intellectual, aesthetic, and emotional faculties of individuals. Cultural goods differ from other goods in that their material and symbolic dimensions can be clearly distinguished. These goods, which can also be described as symbolic goods, contain an added value, one might say, which is irreducible to their material dimension.⁷

Artisanal, in the past, and sometimes still in some countries, a good part of cultural production has been transformed under the impulse of technological advances. If we

⁶ For the purposes of this document, we understand cultural goods to include both cultural products and cultural services.

⁷ The most banal of television programs or the most trivial of magazines contain symbols, speech, images and words that refer, relate, represent and interpret reality. It is because they are carriers of meaning, of messages, that we will always have the reflex, with regard to cultural goods, to dissociate their content from their container. The book will never be more than a sum of leaves, a painting, a frame and a canvas, a film, a filmstrip, and a daily newspaper, a mass of paper soaked in ink. Moreover, for the vast majority of cultural goods, rights, copyrights or intellectual property rights will

put aside the traditional arts,⁸ we can see that an important part of cultural production has become the business of cultural industries. These industries (cinema, television, radio, sound recording, print, and now the Internet), if they borrow from the traditional arts the same symbols (language, music, words, images, etc.) and require from individuals the same faculties (hearing, sight, intellect, intuition, etc.) can be, for the development of various cultures, as much a factor of emancipation and enrichment as a factor of enslavement and impoverishment.

An emancipating factor, on the one hand, because their mass production techniques can make accessible to the greatest number of people what was previously only accessible to some. Emancipation because in addition to the mass production of cultural goods, this century has seen the emergence of various media and modes of communication that have further increased the visibility, accessibility, dissemination and distribution of these goods. Emancipation because the media and technical advances in communication have broadened the possibility for a greater number of people to participate in cultural production in what is now called the information society. Enrichment because cultural industries can also help multiply contacts between different cultures and foster a better understanding of their similarities and differences, and even promote the development of a universal culture respectful of otherness. As cultures are not inert, contacts with other cultures can enable a given culture to appropriate knowledge or techniques drawn from another culture and another context and adapt them to the needs and realities of that culture.

But these cultural industries can also be a factor of alienation or impoverishment for cultures. Alienation if these industries only serve to disseminate a cultural reality “foreign” to that of a given culture, if these industries do not serve in any way to express this culture or to promote exchange within this culture. An analogy could be drawn with an education system, in a particular society, in which no instruction is given on the cultural reality of that society. Impoverishment if this culture cannot

also be recognized, meaning ownership not of a container, but of an idea, a concept, in short, of a content.

⁸ And being an artist today, a creator, with all the advantages and disadvantages that this implies, means having a creditor, a producer, a distributor and all the help that a cultural production that aspires to be accessible to the general public requires. Except for handicrafts, the image of the isolated artist, in the industrial context of the culture that marks our time, is a memory.

have access to such industries both to take advantage of other cultures and to express itself. Impoverishment because the unequal development of cultural industries, depending on the country, reinforces the cultural identity of some and diminishes that of others. Further impoverishment because, in the end, everyone can lose from seeing cultural production and dissemination no longer allow exchange between cultures, but rather the imposition of a single fixed culture for some, foreign for others.

But how can we ensure that cultural industries play a positive role in the maintenance and development of cultures? How can we ensure that a culture can develop or have access to such industries and can see them giving it access to other cultures as well as ensuring its own expression and presence in other cultures?

In the countries where they have developed, cultural industries have sometimes been developed according to a market model, sometimes under the auspices of the state, and in several cases according to a “mixed model” borrowing both from the market and from state intervention. In fact, with the exception of the United States, where a trading system has been adopted in which state policies have remained minimal, most countries have seen the state play a significant role in cultural industries. While the “authoritarian” model of the former Eastern Bloc countries – where the state was omnipresent in cultural production and dissemination, in controlling cultural industries, less to let culture express itself than to dictate it – is now less prevalent than in the past, it appears that most countries are now opting for a “mixed model” that takes into account the market, but where the state uses a variety of measures to ensure that cultural industries play the positive role that we have outlined above with respect to cultural diversity.

These measures (subsidies for creation and production, broadcasting quotas for radio or television, ownership rules, tax incentives to encourage production, etc.) may have helped to ensure that specific cultural production is promoted at the national level for the benefit of the population and the various cultures found within the state. Such measures could also be taken because the market, the interplay of supply and demand, seemed unable on its own to ensure an allocation of resources and distribution of cultural goods that meets the expectations and needs identified within the state. For example, just as individuals are not all equal in the market because of their different

purchasing power, cultures do not all benefit from the same opportunities and resources to acquire or access cultural industries. In several countries, cultural industries may have been required to develop according to certain policies that were contrary to what their development would have been if they had been guided solely by the logic of profitability. There are many examples of this, and there are few countries where radio and television, for example, have not been subject to policies that do not respond to commercial logic alone.

1.5 The establishment of a large unified market for culture: the road to diversity?

Culture, and all cultural events are not limited to the world of cultural industries. But it is essential to highlight the growing role of these industries in the transmission of culture and in their capacity to promote or hinder the preservation of cultural diversity in order to understand that questioning the policies that states and governments adopt with respect to them has implications that go far beyond the commercial considerations to which the discourse in favour of globalization attempts to reduce them.

For the time being, the liberalization of markets and global economic integration, seen as a factor of enrichment for all on a global scale, requires that the same logic be applied to cultural industries and cultural goods as to other industries and other goods: that of the withdrawal of the state and its policies of support or reorientation of cultural industries towards objectives relating to the preservation of “its” culture and/or cultures. In order not to distort free competition on a global scale, the state should not subsidize cultural production for its own population, in order not to interfere with the free circulation of cultural goods, the state should not impose quotas, in order not to impede the circulation of investments, the state should abandon all ownership policies concerning cultural industries, etc.

The ongoing globalization calls for a purely commercial development of cultural production and dissemination, which could be the first step towards total cultural homogenization. The questioning of state measures with respect to cultural industries is, in our opinion, only the tip of the iceberg, and as has already been pointed out, these measures are the most apparent because this is where the most important trade

issues are at stake at the moment. This may also explain why the issues of cultural diversity, which were expressed for a time in debates such as the one surrounding “cultural exception,” whose main focus seemed to be the audiovisual sector, are so poorly understood in certain circles, which see them as mere commercial battles between mass culture giants through the intermediary of states, or in some countries, which see them as quarrels between rich countries.

Yet the logic of globalization, which sees state support for national cultural producers or broadcasters as impediments to free international competition, applies no differently to support for individual creators or for traditional arts, which tend to think of themselves as sheltered under the pretext of not being an “industry.” Similarly, to believe that globalization is only relevant to countries with important cultural industries would be tantamount to giving up the opportunity to have and reap the same benefits as those countries. Moreover, it would be forgetting that the “free competition” that calls for and applauds the disappearance of the least performing cultural industries on the international market could well call for and welcome tomorrow the disappearance of the least “performing” or least in-demand cultures on the “international cultural market”!

For the commercial logic that presides over globalization ignores cultural reality, let alone the diversity of cultures. In a conceptual universe where only producers and consumers exist, the concepts of culture or cultural identity are foreign. There exists only the market, and at best, if there is cultural diversity, it will be expressed through the market. And this is what it is all about, the establishment of a large market “free” from state intervention where culture will be produced and consumed according to an almost perfect functioning of supply and demand.

Yet it is this great unified market of culture that is at the root of the denunciations made from the perspective of the imposition of a single culture, cultural homogenization and the disappearance of various cultures. This disappearance, as we shall now see, would have both political and economic repercussions.

SECTION 2: Cultural diversity as an expression of a fundamental political right and a democratic requirement⁹

We have insisted on the close link between politics and culture. To this end, we have emphasized the ambiguous relationship between the state and cultures in terms of their “mutual attraction,” in that all states claim to represent a certain “national culture” that provides them with legitimacy (or their own personality), and in that all cultures claim political recognition to varying degrees (ranging from the claim to the right to a formal state, to the claim to the state for the minimum means to ensure their preservation and development). However, by stressing that the state has, in some cases, been a factor of cultural homogenization, to the detriment of cultural diversity, and by recalling that cultures have been – and can still be – claiming their right to form a state, we have been able to see that the relationship between politics and culture has not been historically without problems (the fragility of certain states where many ethnic conflicts persist has reminded us of this in recent years). But where the mediation between politics and culture has been and still is done with the least problems is where mechanisms and norms have been established to “manage” this relationship. These mechanisms and norms, for the state, have taken the form of a concession of cultural rights or rights to culture, and for cultures, an adherence to those mechanisms and norms considered democratic. The development and

⁹ In the following pages, we will discuss the link between cultural diversity and democracy. We have already had the opportunity to raise the intimate link between the right and duty of states to support culture for their citizens and the preservation of a dynamic and democratic public space within them in other writings. See RABOY, Marc, BERNIER, Ivan, SAUVAGEAU, Florian, ATKINSON, Dave, *Développement culturel et mondialisation de l'économie, Un enjeu démocratique*, Institut québécois de recherche sur la culture, Quebec, 1994, and more recently, Dave Atkinson, “Culture et accords internationaux de nature économique : un enjeu démocratique” in Bellavance, Guy (ed.), *Démocratisation culturelle ou démocratie culturelle ? Deux logiques d'action publique*, Actes du colloque *Culture et Communications* tenu dans le cadre du 67ème Congrès annuel de l'ACFAS, 12 and 13 May 1999, University of Ottawa; Les éditions de l'IQRC, Quebec, 2000. In these writings, generally speaking, concepts such as the state, public space, civil society, and citizenship were used to show that globalization, when it denies state support for culture, tends to destroy the public space, independent of the market and at a distance from the state itself, necessary for citizens to “exchange” among themselves the information (culture in the broad sense) needed to determine their needs and defend their interests. In these writings, the concept of cultural diversity was not used, but rather an approach that somehow takes for granted that identity and cultural diversity are part of the “information” that citizens exchange in this public space. In this text, we take up the democracy argument by giving a large place to cultural diversity, being aware that there is no detailed literature in which a systematic attempt has been made to integrate the concept of cultural diversity, the democratic functioning of states, economic development, and the evolution of international trade rules into a single text.

recognition of the right to culture or cultural rights, as well as adherence to democratic values, are intimately linked to cultural diversity.

2.1 *Cultural rights*

The *Universal Declaration of Human Rights* emphasizes that “everyone, as a member of society [...] is entitled to realization [...] of the economic, social and cultural rights indispensable for his dignity and the free development of his personality” (Article 22). The *International Covenant on Economic, Social and Cultural Rights* echoes ideas expressed in this Declaration, emphasizing that « States Parties to the present Covenant recognize the right of everyone: a) to take part in cultural life; b) to enjoy the benefits of scientific progress and its applications [...]” (Article 15, para. 1). The *International Covenant on Civil and Political Rights*, in turn, states that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (Article 1, para. 1). Furthermore, “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language” (Article 27).

Examples of texts relating to cultural rights as fundamental rights – international or national texts – as well as countless other texts dealing with more specific issues related to certain dimensions of culture (heritage, copyright, circulation of cultural goods, linguistic rights, etc.) could be blithely enumerated. The multiplication of such texts in which culture is seen as a fundamental right both illustrates the importance accorded to it in the development of individuals and societies, and demonstrates the special relationship between politics and culture, as we have already pointed out. The conquest of the right to culture or cultural rights, and the recognition of these rights by states, is part of the claim of individuals as cultural groups to obtain the resources and means necessary for their flourishing and development, and even their recognition as full members within the state.

It is also interesting to note that in the two International Covenants cited above, these rights refer sometimes to individual rights and sometimes to collective rights.

At the individual level, the various texts referring to it will often deal with cultural rights in various forms ranging from the right of individuals to receive basic education to the right to participate in cultural life. As for us, it seems necessary to get to the bottom of things by arguing that in its very essence the right to culture is inseparable from freedom of expression and the right to information. It seems indeed difficult to participate in cultural life without freedom of expression, opinion or creation. In fact, to be sure not to see the right to participate in cultural life being interpreted too restrictively, it must be seen as a right to participate more broadly in public life. In the same way, the right to information should not be reduced to the right to a basic education but should be broadened to include the fundamental right to have access to all the information necessary to be able to participate in the most enlightened way in the affairs of the city and the world in general. From this point of view, ignorance is contrary to culture, and impediments to information are constraints on the right of individuals to access culture.

At the collective level, texts on cultural rights will never ignore the importance of recognizing the existence of groups with their own personality according to the specificities that define them (language, religion, ethnicity, territory, etc.). This recognition will take the form of equivalent rights ensuring the use of a language in some cases, particular practices in others. But more than that, cultural rights, applied to communities, mean that they are recognized as having the right to cultivate their own personality, their difference within the state.

These rights are usually granted taking into account both individual and collective rights. Care must be taken to ensure that collective rights do not alter individual rights, and this is all the more important, as we shall see in the next section, because it forms the basis of the democratic edifice of the state where citizens are equal in law and are collectively the custodians of sovereignty. However, this primacy of individual rights in no way negates the collective character of culture in that it ensures the possibility for all to display their identity and adhere to the values they want, to gather with others to develop their culture, or even to assume their dissent from their

own culture of reference if this is the case. This primacy means that neither the state nor a particular cultural grouping, as a last resort, can prevent individuals from accessing culture in general, adhering to a specific culture, displaying it and participating in it.

Cultural rights, like other rights, are only truly recognized when they are implemented, sanctioned, and even more so, when policies support them. The right to education is very poor without schools, the right to expression very weak if it is not accompanied by the means to be heard, the right to information non-existent without sources of information, and collective rights inoperative without recognition of the communities involved (these problems, of course, are modulated according to the existing resources to realize them). These policies, including but not limited to cultural policies, therefore consist for example of channelling the resources needed to provide the most adequate education possible, to support cultural creation and production, to provide channels of communication so that everyone can express themselves and be heard, to ensure that as much information as possible is available to citizens, and to ensure that communities are identified and concretely supported.

In this way, the state “concedes” to individuals, as well as to the cultural groupings they constitute, the rights and means necessary for their acceptance of the political order it proposes. This “concession” allows these individuals and groups to adhere to the state, its institutions and its norms. And this adherence, for individuals as well as for the communities that make up the state, is acceptable because it is considered democratic.

2.2 *Diversity as a support and condition for democracy*

It is difficult for a modern state to be said to be democratic in the absence of recognition of fundamental human rights. And cultural rights are among those rights. This is why we maintain that democracy wins where cultural rights are most recognized, where these rights are translated into actions and policies that support the rights of individuals to access culture and to jointly develop their own culture. In short, no rights, no democracy. And in the relationship between politics and culture, the granting of rights through politics accentuates the adherence by individuals, and

by the cultural groups they form, to the democratic values that support the legitimacy of the political order. There is concomitance between these two sides of the relationship between politics and culture.

By supporting the equality of citizens and guaranteeing their fundamental rights, democracy establishes the equality of cultures in their most basic component: the individual. Although the rights of individuals are always protected in a democracy with respect to those that may be granted to particular communities, they do not prevent the existence of the latter, and they also mean the possibility for each individual to have his or her own cultural identity and to participate in the development of his or her culture of reference. In practice, this means that if the recognition of individual rights did not have the effect of allowing everyone to assume their cultural identity and participate fully in their culture of reference, these rights would be virtually useless.

It is also interesting to note in this regard that most modern democratic states rely on pluralism to distinguish themselves from totalitarian states. The affirmation of pluralism means that most of the time one can find in these states several streams of thought, several movements with different values and interests from each other, for example, which are not limited to a kind of pluralism of individuals. This invocation of pluralism is all the easier to understand because democracy is meant to respect differences, divergent interests, and the most heterogeneous expressions. This is so because the strength of democracy lies precisely in its capacity to overcome and even modulate differences, and this capacity can only be affirmed through the recognition of these differences, this diversity! The democratic state is therefore in this situation where, to deserve this epithet, it must itself invoke diversity! The democratic state is therefore in this situation where, to deserve this epithet, it must itself invoke diversity. To invoke it, shall we say, and to test it. For it is no longer a question of signing international agreements recognizing the importance of human rights, or, as far as we are concerned, cultural rights, but also of showing their scope, of showing the efforts that are being made to enforce them in practice. With regard more specifically to culture, for example, it will sometimes be a demonstration of its efforts to protect heritage, sometimes a presentation of its cultural policy, and sometimes a demonstration of its efforts to curb racism or to promote cultural diversity.

And in this relationship between politics and culture, it is not only politics that concedes something, individuals and cultures too. Adherence to democracy, for individuals as for diverse cultures, also means accepting the difference of other individuals and other cultures. And that too is not self-evident. History is full of conflicts rooted in the negation of the Other in who he is and what he believes. The democratic experience is a long, unfinished march towards the recognition of “other” cultures and the mediation of all their differences by means of their minimal similarities. From this point of view, the democratic state is the most complete and effective political order allowing this mediation where disappointment and criticism do not necessarily and automatically mean its overthrow or abolition. This is so because the equality of individuals and the recognition of their rights to unite to claim their cultural, economic or social interests, are made according to rules that seem fair to all. Because everyone believes that, ultimately, they have access to the instruments that allow them to express themselves, and because everyone believes that they have a fair chance to express their views and interests and to obtain satisfaction. But should we remove the concrete elements that maintain these beliefs, this situation would be profoundly disrupted. For example, if a state were to argue that it would continue to recognize cultural rights, yet decided to abandon all policies that embody them, this could have very strong consequences on these beliefs in democracy.

The same is true of the international political order, which is still under construction. Because they are the depositories of the claims of both individuals and cultural groups, states remain the point of reference for both the former and the latter. And in the construction of the world political order, and this is not at all the globalization that is taking place, which is first and foremost commercial and economic, the adhesion of individuals and cultural groups will only be gained through the recognition and support of their cultural rights confirmed by the power of their state to enforce them. Should this construction deny them this power and make them lose their belief in a democracy on a global scale, it would be doomed to failure. This construction, to be viable, therefore needs to be considered democratic itself.

For while we have insisted on the close link between cultural diversity, cultural rights and democracy from the point of view of the internal dynamics of states, we cannot

overlook the fact that at the international level, democracy, at least in its conceptualization, is strongly dependent on the belief that each state has the right to the expression of its “personality” and its “culture,” whether each state presents itself in the forum of nations as an “individual” or as a “culture.” At the international level, each state, whether it represents a relatively homogeneous culture or a happy and peaceful (because democratic) amalgamation of several cultures, is seen as the ultimate representative of the culture or cultures it represents.

It is therefore important that each of these states be able to preserve its capacity to take appropriate measures that support its “personality,” its “culture.” For just as individuals and the cultural groups they form adhere to “their” state, which they recognize as democratic, because it provides them with the means to express themselves and to advance their legitimate demands within it, each state adheres to the international political order, and to the democratic order it represents, because the latter recognizes that they have the same capacity to express themselves and to promote their “personality” and their “culture.” But it also means that if this capacity is denied, this order can be challenged.

Since each state is confronted with its own problems in both political and economic terms (one could say, in short, in cultural terms!), it appears that the recognition of cultural diversity, at the international level, also lies in the capacity of the international political order to recognize the difference in these realities experienced by each state. In the same way that individuals and cultural groups with very different economic means, for example, agree to participate in the same political system (their state of reference) because the rules that prevail there recognize their equal rights and the hope of preserving or improving their living conditions, the international political order can only count on the support of the individuals and cultures that make it up, represented by the different states, if it provides these states, despite their economic differences, with the hope of preserving and improving their conditions of development.

Ultimately, shall we say, the preservation of cultural diversity, first within states and then at the international level, is strongly linked to democracy and to what many

today consider to be a problem of governance related to peace and security.¹⁰ National and global governance, because one implies the other from the point of view of cultural diversity, these two levels of governance resting on a delicate fabric, but effective as long as the adherence of individuals and cultures to the democracy on which they are both based is preserved. And to do so, both at the level of states and at the level of the international order, the recognition of individual and collective cultural rights is necessary.

In conclusion, it is important to emphasize that in the complex relationship between politics and culture, adherence to democracy is closely linked to the recognition and strengthening of cultural rights for individuals and cultural groups alike, and that cultural diversity is therefore both one of the important guarantees for the maintenance of democracy and one of its most fundamental expressions. If politics and culture attract each other, as we have mentioned, the state and cultures come together in democracy through the cultural rights granted by the former and the adherence to the democratic values of the latter. This logic also prevails at the international level, where the world political order and cultures (which here have become states) come together in democracy through the capacity that the former leaves to the latter to support “their” culture.

Current concerns about the future of cultural diversity in the face of globalization do not always express such concerns clearly, but it seems to us that the whole questioning that raises the right to culture here, the right to preserve and express one’s cultural identity there, and again the right to develop “one’s” culture, addresses a problem that goes to the heart of the contemporary political order: Will the current globalization create a break in the precarious balance that has developed between politics and culture and which is expressed both in the recognition of cultural rights and in adherence to democracy, or will it ignore this balance that is still being constructed? And with what consequences?

¹⁰ It is no exaggeration to speak of peace and security in this context. In the Stockholm Action Plan, the member states themselves subscribed to the idea that “[t]he dialogue between cultures appears to be one of the fundamental cultural and political challenges for the world today; it is an essential condition of peaceful coexistence.” See: http://www.unesco.sweden.org/Conference/Fra\F_Action_Plan.htm.

We maintain, for our part, that cultural diversity reveals an eminently political problem and that we cannot talk about its future without raising the political consequences. We maintain that any discourse on cultural diversity must take into account its democratic dimension and that the current globalization process, while it calls into question the role of states in the field of culture, cannot avoid being evaluated in light of its cultural, of course, but also political repercussions.

SECTION 3: Cultural diversity as a factor of economic development

In the preceding pages, we have seen how the preservation of cultural diversity finds a first major justification, from a political point of view, in the fact that this diversity is both an important guarantee of the maintenance of democracy and one of its most fundamental expressions. But culture, understood both in the broad sense of a community's way of being and acting and in the narrower sense of cultural goods and services, can also be analyzed from an economic point of view. As underlined in one of the recitals of the Culture 2000 programme adopted by the European Parliament and the Council in February 2000:

Culture is both an economic factor and a factor in social integration and citizenship; for that reason, it has an important role to play in meeting the new challenges facing the Community, such as globalisation, the information society, social cohesion and the creation of employment.¹¹

We must therefore now consider whether the preservation of cultural diversity is not also justified by the role that culture, understood in the broad sense of the Mexico City Declaration, plays as a factor of economic development. Our analysis will be based on the main theses put forward in support of public interventions in the cultural field, each of which raises, in its own way, the problem of preserving cultural diversity.

Curiously enough, culture itself, as a sector of activity, did not really begin to attract the attention of economists until the mid-1960s, when cultural production in

¹¹ Decision of the European Parliament and the Council, of 14 February 2000, establishing the Culture 2000 programme, *Official Journal* no L 063 (of 10/03/2000): <https://eur-lex.europa.eu/legal->

developed countries became increasingly organized on an industrial basis and government interventions in the field of culture multiplied. In a context increasingly dominated at the theoretical level by liberal ideas, it was almost inevitable that one of the questions most frequently addressed by economists in relation to this new sector was the justification for government intervention in the sector.

It was initially in response to the observation of the apparently chronic insolvency of cultural production in the performing arts sector that the first arguments seeking to justify such intervention developed.¹² Subsequently, new arguments related to the characteristics of cultural products themselves or to market failures in the cultural field were put forward to explain the need for government intervention in the cultural sector in general. These are still used today to justify special treatment for cultural goods in international trade agreements, but with rather relative success, as if they did not touch the essence of the problem.¹³

Starting in the 1970s, a new type of argument to justify government intervention in the cultural sector began to emerge, first within UNESCO, and then within the World Bank and the Inter-American Development Bank. This argument, moving away from product and market-based approaches to culture, emphasizes the importance of cultural capital (built, natural or living heritage, as well as cultural production) as a source of economic growth for developing countries and the importance, in this context, of cultural identity and creativity as factors in the development process itself. It finds theoretical support in recent studies that tend to demonstrate the shortcomings of existing economic models with regard to the consideration of identity and cultural preferences. For too long overshadowed by its close association with development issues, this argument takes on a new meaning with the advent of the so-called information economy.

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¹² William Baumol and William Bowen, *Performing arts, the economic dilemma; a study of problems common to theater, opera, music, and dance*, New York: Twentieth Century Fund, 1966. For them, the performing arts suffer from a “congenital disease” because, being essentially labor-intensive, they have to bear costs related to the general economy without the possibility of increasing their productivity per unit.

¹³ See C. Edwin Baker’s study on this subject, “An economic Critique of Free Trade in Media Products”, 78 *North Carolina Law Review*, 2000, p. 1357.

In the late 1980s, in the wake of theoretical developments that gave rise to the “new theory of international trade,” or “strategic approach to international trade,” a new justification for public intervention in the cultural sector emerged among the most economically developed countries, primarily the United States. The United States, noting the leading role that cultural production seemed destined to play in this new information economy, did not hesitate to intervene directly and indirectly in order to secure a strategic place for itself in the field of cultural industries. Public aid, the relaxation of competition requirements and the tightening of intellectual property requirements provided a framework for this new development. Thus, “[b]y a curious turn of events, the analysis of the intervention no longer refers today to the insolvency of high culture but, on the contrary, to the importance of the economic stakes represented by the commercial sector of cultural industries.”¹⁴ However, this new interest in cultural industries did not go without raising certain problems with regard to the preservation of cultural and linguistic diversity, particularly for developing countries whose prospects for entering the new information economy were still uncertain.

This evolution in the analysis of government intervention in the cultural sector reflects a radical shift in perception regarding the role of culture in economic development. This is why it is important to revisit these three types of approaches in order to highlight their significance in terms of preserving cultural diversity.

Approaches oriented towards the recognition of special treatment for cultural products

The approaches in question, as we have seen previously, are based on arguments that are linked either to the characteristics of cultural goods or to market failures in the cultural sector. Because they seek to preserve a space for cultural production specific to each cultural community, they can be seen as a defence of cultural diversity, even if they do not directly refer to the latter concept, which, for that matter, is subsequent to them.

¹⁴ FARCHY, Joëlle, *La fin de l'exception culturelle ?* Paris, CNRS Éditions, 1999, p. 187.

- Arguments related to product characteristics

A first argument related to the characteristics of cultural products is that certain categories of goods and services deserve to be encouraged and supported, both in terms of their production and consumption, regardless of the functioning of the market, because they have too much intrinsic value in the eyes of society. Among the reasons for giving special importance to cultural products are the prestige associated with a high level of cultural production, or the benefits for future generations who will continue to enjoy the cultural production of the past, often for many years to come.¹⁵ The main criticism of this approach is that it is based on a judgment about the importance of cultural products that is, more often than not, that of an elite that decides according to its own interests.¹⁶

A second argument related to the characteristics of cultural products is that they should be considered differently from other products because they are “public goods” rather than “private goods.” In its most common definition, a “public good” is a good that is accessible to all without its use by any agent calling into question its availability to others, such as roads or defence. Such a good, when provided to some, is available to all, whether they want it or not. In the case of a pure public good, it is considered economically justified for the state to take responsibility for the provision of the good and then to pass on the cost to the whole population through a tax. A “private” good, in contrast, is one whose production cost is directly related to the number of people who consume the good. Applied to the cultural products sector, this distinction leads to considering audiovisual products, television in particular, as mixed products, but closer to public goods than to private goods, because the addition of an extra viewer leads to practically no increase in production costs. But the distinction loses some of its interest when we consider the concrete consequences of classifying audiovisual products as “mixed” or “public” goods. It is difficult to envisage setting up a public system responsible for the supply of these products with the cost being

¹⁵ See on this subject Kresl, Peter K., (1990) “Cultural Goods as a Trade Irritant Between the European Community and the United States”, Paper presented at the 6th International Conference on Cultural Economics, Umeå.

¹⁶ See David Cwi, “Public Support of the Arts: Three Arguments Examined”, (1980) 4 *Journal of Cultural Economics*, p. 39 to 43-52. He highlights in particular, based on surveys, the very relative support given to cultural activities in the general population.

passed on to the entire population. There remains the possibility that the state may compensate producers financially for the increased consumption of their products, which may justify, among other things, the granting of subsidies. The main difficulty in this respect is to determine the optimal size of the subsidy to be granted.

- Arguments related to market failures

Various arguments related to market failures have been put forward to justify government intervention in favour of their industries. Two of these arguments that are particularly relevant to the study of the cultural sector, namely the existence of externalities and abuse of dominant position, will be discussed here.

The economic argument based on the existence of externalities justifies state intervention in favour of cultural industries by the fact that producers of cultural goods bring benefits to the community that go beyond the remuneration they themselves receive. These unpaid benefits or “externalities” can be found, for example, in the fact that dynamic cultural production enhances the sense of national identity and pride and international prestige, influences investment decisions and attracts consumers as well as tourists, in the fact that cultural products play an important role in the integration of individuals within a society, etc.¹⁷

The argument based on the existence of externalities has been accepted as valid by many authors who are somewhat critical of government intervention in the cultural sector.¹⁸ At the same time, however, they argue that the argument is based on assumptions that are difficult to verify and that it could be extended to many other products without difficulty. In particular, these critics emphasize the difficulty of implementing responsible and effective policies on the sole basis of such imprecise considerations. This explains why the externalities argument is often invoked in conjunction with arguments related to product characteristics, to which it is very similar.

¹⁷ Cwi, *supra*, note 16, pp. 40-43.

¹⁸ See for example Sapir, André, “Le commerce international des services audiovisuels. Une source de conflits entre la Communauté européenne et les États-Unis” in *L'espace audiovisuel européen*, Bruxelles, Éditions de l'Université de Bruxelles, 1991, p. 168; Globerman, Steven, *Cultural regulation in Canada*, Montréal: Institut de recherches politiques, 1983, p. 60.

Abuse of a dominant position is an argument that has often been mentioned, particularly in relation to the film industry, to justify cultural exception clauses.¹⁹ It is then argued that such measures are necessary to counter unfair practices by large producers who abuse their dominant position in the distribution sector to impose conditions that favour their producers to the detriment of foreign producers. It must be recognized that the control of distribution networks by the American majors in certain countries is such that it is difficult to speak of real competition in this area.

The abuse of dominant position argument is not without force. When we consider the highly integrated nature of the U.S. film industry, when we know that, at the end of the Second World War, the courts had forced the majors to divest their interests in U.S. theatres in order to restore some competition, which immediately led them to turn their backs on investing in foreign theatre networks until they were given the opportunity,²⁰ when we consider their strong position in distribution in several foreign countries, it is somewhat surprising to see the small number of abuse of dominant position lawsuits brought against the majors in recent years, both in the United States and abroad. But as we shall see later, the desire to strengthen national leaders may be a factor in this inaction.

Finally, when we take a closer look at the various arguments put forward to justify from an economic point of view a special treatment for cultural products, it is clear that, when they are not outright contested at the theoretical level, they very often lead to difficulties of application that discourage their consideration in international, multilateral trade agreements. The preservation of culture and cultural diversity on the basis of such arguments therefore seems a rather random undertaking. Furthermore, it is an undertaking that leads to minimizing the very importance of cultural diversity by relegating it to the rank of an exception.

¹⁹ See in particular on this subject Farchy, Joëlle, *La fin de l'exception culturelle ?* Paris, CNRS Editions, 1999, p. 200; Ming Shao, W., "Is There No Business Like Show Business? Free Trade and Cultural Protectionism", (1995), 20 *Yale Journal of International Law*, p. 105 to 131; Sapir, André, "Le commerce international des services audiovisuels. Une source de conflits entre la Communauté européenne et les États-Unis" in *L'espace audiovisuel européen*, Bruxelles, Éditions de l'Université de Bruxelles, 1991, p. 165.

²⁰ Ser Fox, Craig G. "Paramount Revisited: The Resurgence of Vertical Integration in the Motion Picture Industry", (1992) 21(2) *Hofstra Law Review* 505.

Cultural identity and creativity as factors of economic development

In 1970, UNESCO organized in Venice an Intergovernmental Conference on the Institutional, Administrative and Financial Aspects of Cultural Policies, which was the first in a series of regional meetings to initiate a process of reflection on the question of how cultural policies could be integrated into development strategies. All this activity subsequently led to the proclamation by the United Nations of the World Decade for Cultural Development 1988-1997, the main achievement of which was the establishment of the independent World Commission on Culture and Development and the publication of its report, *Our Creative Diversity*.²¹ At the end of the World Decade for Cultural Development, UNESCO organized a major conference in Stockholm in 1998 on the theme “Cultural Policies for Development,” the main objective of which was to transform the new ideas contained in the Report of the World Commission on Culture and Development into policy and practice.²² The ideas expressed on this occasion were taken up at a conference organized jointly by the World Bank and UNESCO in Florence in October 1999, entitled *Culture Counts: Financing, Resources, and the Economics of Culture in Sustainable Development*,²³ and are now also part of the discourse of the Inter-American Development Bank.²⁴ Finally, in November 1999, a Round Table of Ministers of Culture organized on the occasion of the 30th session of the General Conference of UNESCO addressed the general theme of *Culture and Creativity in a Globalized World*.²⁵

From this process of reflection on the relationship between culture and development, which has spanned three decades, two key ideas in particular stand out. The first goes back to the very beginning of the process. It is expressed in a condensed form in the

²¹ UNESCO, World Commission on Culture and Development, Report: *Our Creative Diversity*, 1995.

²² See: http://www.unesco.org/culture/development/policies/conference/html_fr/index_fr.htm.

²³ See: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/302131468739317900/culture-counts-financing-resources-and-the-economics-of-culture-in-sustainable-development-proceedings-of-the-conference-held-in-florence-italy-october-4-7-1999>.

²⁴ See Inter-American Development Bank, *Press release* NR-60/99, “Forum on Development and Culture Stresses Role of Citizen Participation”, 13 March 1999: <https://www.iadb.org/en/news/news-releases/1999-03-13/forum-on-development-and-culture-stresses-role-of-citizen-participation%2C1593.html>.

²⁵ See: http://www.lacult.unesco.org/lacult_en/docc/IRoundTable1999.pdf.

words of René Maheu, then Director-General of UNESCO, who declared at the 1970 Venice Conference:

Man is the means and the end of development; he is not the one-dimensional abstraction of *homo economicus*, but a living reality, a human person, in the infinite variety of his needs, his potentialities and his aspirations [...] In the concept of development the centre of gravity has thus shifted from the economic to the social, and we have reached a point where the shift begins to approach the cultural.²⁶

In this conception of the relationship between culture and development, culture encompasses economics in a way. The cultural perspective, which is broader and wider than the economic perspective, frames the latter by reformulating its objectives according to values that promote the building of a truly humane society. Throughout the 1970s and 1980s, this conception of the relationship between culture and development prevailed and is still part of the public discourse of organizations and agencies working in the cultural sector today.²⁷ However, another way of thinking about the relationship between culture and development began to emerge in the mid-1990s: this new view is not opposed to the first, but complements it by arguing that cultural diversity, both within the state and at the international level, is a powerful lever for economic development. Although there is still some mistrust of this new conception,²⁸ it is becoming increasingly important in the discourse on culture and development, an importance that seems to be explained first and foremost by the interest that developing countries themselves have in this perspective.²⁹ It is more particularly on this perspective that we will focus in the following pages. Three distinct arguments underlie it.

²⁶ See: <https://unesdoc.unesco.org/ark:/48223/pf0000092837>.

²⁷ In the Executive Summary of the Report of the World Commission on Culture and Development (*Our Creative Diversity*) it states: “Development divorced from its human or cultural context is growth without a soul. Economic development in its full flowering Is part of a people’s culture.”

²⁸ In an article published in the Canadian International Development Agency’s magazine *Express*, Rajkumari Shanker writes: “Development can be examined from two different angles: a process of economic growth, a rapid and sustained increase in production, productivity and per capita income, or a process that promotes the freedom of the individuals involved to pursue the goals they feel are best. The role of culture is not the same in the two cases. The vision that favours economic growth gives culture a purely instrumental role. [...] In this analysis, culture is not a valuable element in itself, but a means of promoting and sustaining economic progress. Whatever its importance as an agent of development, culture cannot be confined to its role as a mere engine of, or brake on, economic growth. It is not merely an instrument at the service of objectives, but the social basis of those objectives.” See: <http://www.acdi-cida.ca/xpress/exd9804.htm>.

- Cultural identity as a factor of trust and autonomy

The first argument is based on the fact that cultural identity is a connecting and autonomous factor essential to the development of a community in all areas, including economic development. This argument is explicitly mentioned, for example, in the World Bank report entitled “Culture and Sustainable Development. A Framework for Action,” dated 1998.³⁰ Conversely, the weakening of cultural identity – the loss of contact with the traditions, values and perspectives that gave meaning to life – as it happens quite often in today’s globalized economy, can lead to a sense of alienation that jeopardizes economic development itself. One only has to look at the current situation in Russia and several developing countries to be convinced of this.

Largely ignored until now in theory, identity, as an economic factor, has recently been the subject of a number of studies that tend to show that when integrated into a general model of economic behaviour, identity very clearly influences outcomes.³¹ More specifically, Bernard Beaudreau argues that a weakening of cultural identity in a context of rapid change such as that generated by the globalization of the economy, or even in a situation characterized by a massive influx of foreign cultural products, leads to a decrease in well-being that may justify the implementation of compensatory cultural policies,³² thereby echoing some of K. Lancaster’s theses.³³

But long before economists considered the place of cultural identity in models for analyzing consumer preferences, the GATT negotiators themselves understood that cultural identity, as manifested in national heritage (or, in the words of Article XX (f) of the GATT, in “national treasures of artistic, historic or archaeological value”), could be an exception to the due process of the agreement’s rules. It is thanks to this

²⁹ See for example the Government of South Africa’s White Paper on Arts, Culture and Heritage of 1996, in Chapter 1: <https://www.gov.za/documents/arts-and-culture-white-paper>.

³⁰ World Bank, *Culture and Sustainable Development: A Framework for Action*, Washington, 1998, Chapter 1: “But for development to be inclusive and sustainable, it must nurture diversity of belief systems and traditions that enhance people’s self images and give them confidence to act in their own interests while respecting and supporting the traditions of other groups”.

³¹ George A. Akerlof and Rachel E. Kranton, *Economics and Identity*, 1999.

³² Bernard Beaudreau, *Identity, Entropy and Culture*, Quebec, Université Laval, 1999, p. 20.

exception that the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* was adopted by UNESCO in 1970,³⁴ a convention that has now been transposed into the domestic law of many states.

- Cultural diversity as a source of creativity

A second motive for considering cultural diversity as a factor in economic development lies in its contribution to the development of creativity, not only in the cultural sector but also in other sectors, including the economic sector. Already in 1995, the World Commission on Culture and Development highlighted the key role that creativity could play, “beyond the artistic sector, in the economy, technological innovation, private life, civil society initiatives, and development in general.”³⁵ In 1998, the Stockholm Conference on Cultural Policies for Development stated in its Action Plan that “one of the functions of cultural policies is to ensure sufficient scope for the flourishing of creative capacities.”³⁶ In 1999, at the Round Table of Ministers of Culture organized during the 30th session of the UNESCO General Conference, one of the topics for discussion was “[...] increasingly important contribution that creation can make to economic development, particularly through the growth of cultural industries.”³⁷ To sum up, as Gabriel Nestor Canclini rightly points out, “creativity is now gaining recognition in a wider sense, not only as the production of innovative objects or forms but also as the ability to solve problems on a level that is not strictly ‘cultural’.”³⁸ What explains this contribution of culture to the development of creative faculties is nothing other than cultural diversity itself.

To understand how this can be so, it is first necessary to specify that cultural identity, the basic component of cultural diversity, never refers to something fixed in time. On

³³ K. Lancaster, “The Product Variety case for Protection”, 1991, *Journal of International Economics*, 10, pp. 151-175.

³⁴ <https://unesdoc.unesco.org/ark:/48223/pf0000133378>.

³⁵ http://www.unesco.org/culture/development/highlights/activities/html_fr/roundtable1.htm.

³⁶ https://unesdoc.unesco.org/ark:/48223/pf0000113935?fbclid=IwAR2vLsy6Q76pZ4b3QAoFn_FgCw8JhpyAs3hNGY7L2I8HMR0BGrabNbuL15Q.

³⁷ http://www.unesco.org/culture/development/highlights/activities/html_fr/roundtable3.htm.

the contrary, any culture, if it is to survive, must adapt over time to a variety of internal and external changes. Cultural diversity plays a key role in this adaptation process by promoting comparison between the ways of being and acting of different cultures. Creators and cultural intermediaries also play an important role in this respect, as they create a space for critical confrontation between national and foreign values, between past values and behaviours and future perspectives.³⁹ It is precisely this confrontation that drives creativity. This suggests that the challenges facing the preservation of cultural diversity also affect the possibilities for creativity to flourish, and ultimately, economic development itself.⁴⁰

- Heritage and cultural production as a form of capital

A final reason for considering cultural diversity as a factor in economic development is that a community's heritage and its cultural production constitute an important asset – cultural capital, if you will – that can be used to create employment, generate revenue and mobilize citizens. The most obvious example of the contribution of a community's cultural heritage to its economic development is cultural tourism. In fact, for many developing countries, this activity is the main source of foreign currency. The challenge, as the World Bank points out, is to develop a tourism industry that does not damage the culture on which it is based but rather contributes to making it known internationally in all its facets.⁴¹

The production of cultural goods and services also contributes to economic development. As UNESCO points out:

creativity, an important part of people's cultural identity, is expressed in different ways. These means of expression are copied and boosted by industrial processes and worldwide distribution. Cultural industries consist of books, magazines, music records, film

³⁸ Néstor García Canclini, "Policies for Cultural Creativity", UNESCO, Preparatory document 3, Stockholm Conference on The Power of Culture, p. 5.

³⁹ As Mr. Fulvio Massard of the Swiss Agency for Development and Cooperation stated during the Florence Conference in 1988.

⁴⁰ http://www.unesco.org/culture/development/highlights/activities/html_fr/roundtable3.htm.

⁴¹ World Bank, *Culture and Sustainable Development: A Framework for Action*, 1998, Chapter 1. But see more specifically on this subject The Nordic World Heritage Office, *Sustainable Tourism and Cultural Heritage*, in collaboration with UNESCO, Oslo, 1999.

and videos, multimedia products and other new industries that are being created. It constitutes a very important economic resource for a country.⁴²

This holds true not only for developed countries, first and foremost the United States, for which cultural industries represent one of the most important sources of foreign currency, but also for developing countries, such as Brazil and Mexico, which are major exporters of audiovisual products. Even developing countries that are less advanced and less important economically can benefit from them. Focusing specifically on the music sector, David Throsby, in a study entitled *The Role of Music in International Trade and Economic Development*, writes:

Interpreting music as a commodity opens up the possibilities for extending music from being simply a form of cultural expression to being also a vehicle for economic empowerment, and thus provides us the key to understanding its potential role for music in the economic development process.⁴³

As an example of the potential of music as a factor in economic development, Throsby points to the emergence on the international scene of “World Music,” which encompasses a large portion of popular and folk music from the developing world. Here again, however, it must be recognized that while national music can contribute to the economic life of developing countries, it is also subject to the influence of the global music industry, which, once it has reached a certain stage of development, is quick to influence both the styles of music available and the production conditions of local individuals and groups.⁴⁴

In short, as regards the approaches related to cultural identity and creativity as factors of economic development, we can see that they adopt a vision of the relationship between culture and the economy that goes well beyond the traditional liberal vision. In particular, they emphasize the dynamic contribution of cultural identity and creativity to economic development, both at the national and international levels. But

⁴² <http://www.unesco.org/culture/industries/>.

⁴³ Throsby, David, “The Role of Music in International Trade and Economic Development”, UNESCO, *World Culture Report*, UNESCO Publishing, Paris, 1998, p. 202.

⁴⁴ Ibid, p. 206.

it is a vision that remains too exclusively tied to developing countries, whereas it is valid in general terms. Proof of this is that developed countries themselves, increasingly aware of the importance of cultural identity and creativity in the context of the new information economy, no longer hesitate to intervene now in favour of their cultural industries when this appears essential to the defence of their interests, supported by the theses of the “new international trade economy.”

Strategic approaches to trade policy and the new information economy

Since the turn of the 1980s, various research studies have converged towards a “new theory of international trade” which, without totally questioning classical theory, takes a certain distance from it. It recognizes that the difference in endowment of the various states offers a valid explanation of international trade, but it adds another, equally important one, which is that states trade among themselves to take advantage of the increasing returns that go hand-in-hand with specialization. In the latter case, the location of production does not matter; what matters is that production leads to increasing returns. From this to suggesting that the use of industrial and trade policies in favour of domestic firms, in some cases, can effectively contribute to ensuring their international competitiveness and thus maximize social welfare, is only a short step. The new theory of international trade particularly favours investment-oriented approaches, control of distribution channels, enforcement of intellectual property rights, and tax policies to influence international trade in the national interest.⁴⁵

Serious criticisms have been raised against this theory, the most important of which, according to André Sapir,⁴⁶ is that the use of trade policy to increase national welfare at the expense of welfare abroad is a dangerous game that can easily degenerate into

⁴⁵ See Scherrer, F. M. and Belous, R. S., *Unfinished Tasks: Trade Theory and the Post-Uruguay Round Challenges*, British-North American Committee, Issue Paper No 3, 1994, p. xj. This new theory of international trade, commonly described as “strategic trade policy,” goes back more precisely to the writings of Dixit and Norman, de Krugman and Lancaster in the late 1970s and early 1980s. From 1985 to the present, the most prolific author on the subject is undoubtedly Krugman, who, alone or in collaboration, has published various works, including *Empirical Studies of Strategic Trade Policy*, published in 1994. In 1993, the new theory of international trade received strong support with the appointment of Laura Tyson, closely identified with the theses of “strategic trade policy,” as Chair of President Clintons Council of Economic Advisors.

⁴⁶ “Regionalism and the New Theory of International Trade: Do the Bells Toll for the GATT? A European Outlook”, (1994) *The World Economy*, vol. 17, p. 423-434.

trade war. Well-known authors such as J.N. Bhagwati⁴⁷ and R. E. Baldwin⁴⁸ have gone so far as to speak of a threat to the international trading system. Nevertheless, it must be acknowledged that this “new theory of international trade,” notwithstanding the criticisms levelled at it, still seems to inspire to varying degrees the behaviour of a number of states in the cultural field.

In fact, when we consider the close relationship between the U.S. government and the U.S. film industry (highlighted by Thomas Guback⁴⁹ and Laurent Burin des Roziers⁵⁰), when we observe the behaviour of the U.S. majors with their strategy of direct or indirect control of distribution networks, and when we take into account the fact that the film industry is precisely one of those industries where economies of scale are generally considered to play an important role because of the size of the market,⁵¹ it may be justified to see, in the current situation of the industry in question, a concrete application of the tenets underlying this new theory of international trade, also described as a “strategic trade policy.”

But it is with respect to the measures put in place by the United States and the European Community to facilitate entry into the new information economy that the influence of the strategic approach to trade policy is most clearly discernible at present. As far as the United States is concerned, one need only look at the report presented by the President of the United States to Congress on the US trade policy objectives for the year 2000⁵² to realize the extent of the US government’s involvement. The report in question presents “as one of the most important strategic objectives of the United States in terms of trade policy” the achievement of “the economy of the 21st century”.⁵³ The explanations provided in this regard state that the

⁴⁷ Bhagwati, J.N., “The Threats to the World Trading System”, (1992) *The World Economy*, vol. 15, 433-456.

⁴⁸ Baldwin, R.E., “Are Economists Traditional Trade Policy Views Still Valid?”, (1992) *Journal of Economic Literature*, vol. 30, 804-829.

⁴⁹ T. Guback, Non-Market Factors in the International Distribution of American Films (in Gerbner, George, Mass media policies in changing cultures, New York, John Wiley&Sons, 1997, p. 921-40.

⁵⁰ Laurent Burin des Roziers, *Du cinéma au multimédia. Une brève histoire de l’exception culturelle*, Institut français des relations internationales, Notes de l’IFRI No 5, 1998.

⁵¹ This is confirmed, as far as the film industry is concerned, by A. Marvasti’s study entitled “International Trade in Cultural Goods: A Cross-Sectional Analysis”, 1994, *Journal of Cultural Economics*, p. 135.

⁵² http://www.ustr.gov/html/2000tpa_index.html.

⁵³ Ibid, p. 4.

dominant position of the United States in the high-tech industries sector and the importance of this sector to the country's future competitiveness have led the Clinton administration to intervene in various ways to preserve the investments in research and development already made in this area.⁵⁴ Among the interventions in question, the report mentions, at the international level, the efforts made to enforce intellectual property rights, the conclusion of the Agreement on Basic Telecommunications and its entry into force in 1998, the President's initiative on electronic commerce, and the conclusion of bilateral agreements with Japan to facilitate market access in areas such as telecommunications, direct broadcasting via satellite and cable television.

While it does not report on domestic actions per se, the report does note that the U.S. government has taken a number of actions to facilitate the achievement of this strategic objective. For example, the new *Telecommunications Act of 1996*, the cornerstone of the U.S. strategy in this regard, in addition to substantially eliminating restrictions on concentration of ownership in the audiovisual field, effectively ceded space on the frequency spectrum to large U.S. broadcasting companies to allow them to more easily switch from analog to digital transmission, without any monetary compensation, thus depriving the U.S. government of revenues estimated at several billion dollars.⁵⁵ Another example of internal intervention is the adoption, in 1998, under pressure from Disney and Time Warner among others and with the active support of the Motion Picture Association of America, of a law extending the term of copyright protection from 75 to 95 years for businesses,⁵⁶ as well as the adoption of the *Digital Millennium Copyright Act*, at the request of the software and entertainment industry in particular, which aims, among other things, to prevent the circumvention of anti-piracy measures.⁵⁷ Finally, with regard to competition, the Clinton administration has sought to facilitate mergers when they appear beneficial to the economy and likely to ensure greater international competitiveness, but has not

⁵⁴ Ibid, p. 15.

⁵⁵ These revenues, obtained by auctioning off the spaces in question, could have reached between \$11 and \$70 billion, according to Dean Alger, *Megamedia: How Giant Corporations Dominate Mass Media, Distort Competition and Endanger Democracy*, Lanham: Rowman & Littlefield, c1998, p. 103

⁵⁶ *Sonny Bono Copyright Term Extension Act*, Public Law 105-298, 105th Congress, 1998.

⁵⁷ H.R. 2281, 105th Congress: <https://www.congress.gov/105/plaws/publ304/PLAW-105publ304.pdf>.

hesitated to intervene, when they result in the creation of overly dominant companies, by prohibiting them or subjecting them to conditions.⁵⁸

But the United States is not alone in seeking to intervene strategically to secure its position in the new information economy. The European Community did not wait until it was overtaken before reacting. In 1994, the Bangemann Report entitled *Europe and the Global Information Society*⁵⁹ was published, which really launched the debate on the issue, insisting in particular on the need for rapid deregulation of the telecommunications sector. In 1996, Community initiatives for the information society multiplied and led in 1997 to the publication of the *Green Paper on the convergence of the telecommunications, media and information technology sectors and the implications for regulation*.⁶⁰ The importance of convergence for the economic and industrial competitiveness of the European Community is underlined in the following terms:

The convergence debate which this Green Paper raises, is much more than an academic or theoretical exercise. The ability of the European Community to use convergence, whilst tailoring it to the European version of an Information Society, will be at the heart of growth, competitiveness and job creation in the years to come. The danger is that if Europe fails to take advantage of the opportunities provided by convergence, it could be left behind as other major trading blocks reap the benefits of a more positive approach.⁶¹

Finally, in December 1999, a Commission communication entitled “Principles and guidelines for the Community’s audiovisual policy in the digital age”⁶² defined the priorities of the Community in the more specific field of the audiovisual sector. After first recalling the economic importance of the audiovisual sector and its repercussions in the social, cultural and educational fields, and then mentioning the principles underlying its action, the Commission explained in detail the various actions it intended to undertake.

⁵⁸ See on this subject Jonathan Weber, “Just Right on Antitrust”, *The Standard*, 25 September 2000: <http://www.thestandard.com/article/display/0,1151,18753,00.html>.

⁵⁹ *Europe and the Global Information Society*, Recommendations of the Bangemann Group to the European Council, 26 May 1994.

⁶⁰ To read the Green Paper, see <https://ec.europa.eu/digital-single-market/en/news/green-paper-convergence-telecommunications-media-and-information-technology-sectors-and>.

⁶¹ *Ibid*, p. 9.

Some of these actions are reminiscent of those undertaken in the United States, such as interventions aimed at the protection of intellectual property rights and state aid, although in the latter case the United States' approach is generally much less transparent in this respect. As in the United States, the same ambiguity also exists in the competition between the desire to strengthen national leaders and respect for the equality of all actors in cultural activities. Where a major difference can be seen is in sensitivity to the issue of preserving cultural and linguistic diversity. While the United States completely ignores this concern,⁶³ the Commission makes it a fundamental objective of Community policy by stating "Europe's cultural and linguistic diversity must be assured, and as such must be a component of the development of the Information Society."⁶⁴ The Commission then transposes this objective to the level of actions by specifying that "existing support mechanisms at both national and Community level have a crucial role to play in preserving the diversity of European creation and improving the competitiveness of the industry."⁶⁵

This significant difference also has implications at the international normative level. For the European Commission, it remains imperative to separate the regulation of the transport of information from that of content in order to allow regulation that meets the policy objectives associated with given content services.⁶⁶ For the United States, on the contrary, international liberalization of transport must lead to full liberalization of content.

To sum up, it can be stated in general terms that both the United States and the European Community, in their strategy for access to the new information economy, give a leading role to the cultural industries, which are considered a major source of content and creativity, and both do not hesitate to act proactively to achieve their

⁶² Commission of the European Communities, doc. COM(1999) 657 final, 14.12.99.

⁶³ In fact, for several American observers, the United States must take advantage of its dominant position in telecommunications and communications to export as much of its way of life and culture abroad as possible. See in this respect Joseph S. Nye, Jr., and William A. Owens, "America's Information Edge", *Foreign Affairs*, March-April 1996, Vol. 75, No2, p. 20. For a more radical vision, see David Rothkopf, "In Praise of Cultural Imperialism?", *Foreign Policy*, Summer 1997, p. 38.

⁶⁴ Supra, note 62, p. 20.

⁶⁵ Ibid, p. 18.

⁶⁶ Ibid, p. 11.

objectives. But this concrete recognition of the contribution of cultural production to economic development does not fail to raise questions about the long-term impact of such development on the preservation of cultural diversity itself, and consequently on economic development. Even the OECD recognized in this regard that “[m]aintaining and enhancing cultural and linguistic diversity will also continue to be an important policy goal for governments” and that “[c]urrent mechanisms may need to be progressively adapted for the [Global Information Infrastructure-Global Information Society] environment.”⁶⁷

The countries most at risk from this point of view are clearly the developing countries. Even if the emergence of the information society is likely to broaden their access to information and constitute an opportunity to develop a program industry whose content takes into account the richness and diversity of their cultures, the fact remains that for many of them, the only real question raised by this new society is whether it will simply be possible for them to participate in it. For the time being, the Okinawa Charter on the Global Information Society, adopted at the last G-8 meeting, will not do much to alleviate their concerns.⁶⁸

CONCLUSION

This study began by examining the arguments in favour of preserving cultural diversity in a context of economic globalization. After examining the meaning and scope of the concept of cultural diversity, it proposed two arguments, one political and the other economic, for a vigorous defence of cultural diversity.

The first argument is based on the fundamental right of every individual to participate in the cultural life of his or her community and the right of every cultural community to preserve its identity. These rights, recognized in the Universal Declaration of Human Rights as well as in various other fundamental human rights texts, are closely linked to the democratic process itself. So much so that states that refuse to recognize

⁶⁷ OECD, Committee for Information, Computers and Communications Policy, “Global Information Infrastructure-Global Information Society (GII-GIS). Policy Recommendations for Action, p. 17. OECD/GD (97) 138.

⁶⁸ <https://www.mofa.go.jp/policy/economy/summit/2000/pdfs/charter.pdf>

them risk having their legitimacy challenged. Likewise, at the international level, dialogue between cultures and mutual respect is seen as an indispensable condition for peaceful coexistence. In return for this recognition of cultural diversity within and outside their territory, states benefit from the adherence of the individuals and cultural groups they form to the democratic values that support the legitimacy of the political order.

The second argument in favour of preserving cultural diversity is based on the strong contribution of cultural identity and creativity to the economic development of states. Not only does cultural identity constitute an essential factor of autonomy in any process of economic development, but thanks to the creativity that it generates through dynamic contact with other cultures, it becomes essential to the very pursuit of that development, and thanks to the works to which it gives rise, it often becomes a very important source of economic income. This argument clearly distances itself from the traditional theses that defend state intervention in favour of cultural industries on the basis of considerations relating to their structural fragility, the characteristics of the cultural products themselves or market failures in the cultural field; these inevitably lead to the sacrifice of cultural diversity for economic development. The very validity of the argument is further confirmed by the fact that developed countries themselves, increasingly aware of the importance of cultural identity and creativity in the new information economy, no longer hesitate to intervene on behalf of their cultural industries in order to ensure a dynamic presence in this new economy.

Ultimately, however, the relevance of these two arguments will be judged on the basis of their political impact. In other words, it is only when concrete steps have been taken to put in place a mechanism to ensure the preservation of cultural diversity that their real usefulness can be judged. At this time, the only serious initiative in this regard is the one put forward by Canada and a number of other states that are considering the conclusion of an international instrument on cultural diversity.

Biographical notes on the authors

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Ivan Bernier holds a Ph.D. in law from the London School of Economics (1969) and is an honorary Doctor of international economic law from McGill University. He is professor emeritus at the Faculty of Law of Université Laval. He was Dean of the same Faculty from 1981 to 1985 and Executive Director of the Quebec Center for International Relations from 1986 to 1993. He is author, co-author and editor of numerous articles and books in the field of international economic law and has been particularly interested, for the past twenty years, in the issue of the relationship between trade and culture. In November 2003, he was invited by the Director-General of UNESCO to be part of a group of independent experts for the preparation of a preliminary draft international convention on the protection of the diversity of cultural contents and artistic expressions. In 2012, he was awarded the Prix d'honneur of the Société des relations internationales du Québec for his entire career in the field of international relations.

Dave ATKINSON



Dave Atkinson served as Government Coordinator for cultural diversity for the Quebec government from 2006 to 2011. He also set up the *Secrétariat gouvernemental à la diversité culturelle* of the Ministère de la Culture et des Communications du Québec in 2001, which played a major role in informing and raising awareness of the issues involved in the Convention, both for its adoption and its implementation.

