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A New International Instrument on Cultural Diversity
Questions and Answers

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In order for a large number of countries to agree to begin negotiating an international instrument on cultural diversity, this instrument must meet a clearly identified need, fill a legal void, pursue clear objectives, and provide appropriate, achievable solutions through the norms it sets. It is important, therefore, to make sure that these requirements are met. The purpose of this paper is to suggest some answers to these questions, answers that are not intended to be definitive but rather to stimulate discussion on the topics raised.

The Starting Point: The Impact of Globalization on Cultural Diversity

Although globalization is first and foremost an economic process, it is also a cultural process in the effects that it has. By engendering a new economic structure that is based largely on competition and tends to impose a single commercial mould on all the expectations that citizens have in various realms of activity, globalization fosters new forms of social organization that call into question traditional ways of doing things and existing loyalties. If these changes upset people, economic globalization itself could suffer the consequences. The economic and cultural globalization processes can therefore be considered interdependent, with the success of one depending on the success of the other.

Unfortunately, there are many signs that these two processes are not advancing hand in hand and that globalization is currently being achieved to the detriment of cultural diversity. The failure of the third ministerial meeting of the WTO in Seattle in December 1999 marked a turning point in the perception of this danger. Although the meeting failed for reasons that go well beyond the demonstrations that surrounded it, the size of these demonstrations clearly highlighted the very real concerns in society over the effects of globalization. Although the numerous interest groups taking part in the demonstrations had divergent views and interests, they were animated by a common desire to ques-

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tion a globalization process based exclusively on commercial considerations that seems to escape real democratic control. Even though cultural considerations *per se* were not centre stage in the events in Seattle (in contrast to the final months of the negotiation of the Uruguay Round in 1993 and the negotiation of the Multilateral Agreement on Investment by the OECD in 1998), much of the anti-globalization discourse was still fuelled for many observers by the pace and extent of the changes imposed on society by globalization and the consequent feeling that cultural references are being lost. Far from dying down after Seattle, this discourse has only increased in intensity. Which gives pause to think, as suggested by Faouzia Zouari, that "[translation] the precedence that economic imperatives take over social and political values, backed by the prodigious expansion of the information highway, is challenging national identities, sometimes driving them into retreat and even into aggressively asserting counter-models."[1]

It is important to add, though, that even if globalization is changing national cultures in the anthropological and sociological sense, this does not mean that any political initiative that might influence these cultures in one way or another should be rejected. To assert the contrary would be to attempt to freeze culture and national identity and lend them a meaning that would only benefit those people who hope to turn them into instruments of political control. Any national culture that is to remain vibrant and alive must adapt over time to a variety of changes, both internal and external. The real problem that globalization poses for national cultures is whether the changes that it brings about in values, lifestyles, and ways of doing things detract from the opportunity to "[translate] promote and maintain a pluralistic public space where citizens can access and participate in cultural life, which is itself necessary for public life."[2] In other words, it is not so much a question of whether the liberalization of trade, with its underlying commercial mindset, affects values and traditional lifestyles, but whether this liberalization is understood and wanted by the citizens and whether it leaves enough space beyond the simple producer-consumer relationship for the democratic expression of the cultural choices that these citizens wish to make.[3]

Here, too, it is far from clear that globalization is having a positive effect, on balance, on the exercise of the right to cultural expression if this issue is considered from the standpoint of the national production of cultural goods and services. There are at least three good reasons for concern. The first, somewhat

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1   See: http://confculture.francophonie.org/TrvxPrep/pdf/Synthese.pdf

2   See Marc Raboy, Ivan Bernier, Florian Sauvageau and Dave Atkinson, Développement culturel et mondialisation de l'économie, Québec, Institut québécois de recherche sur la culture, 1994, p. 77.

3   See in this regard the excellent study by Jeffrey L. Dunoff entitled "The Death of the Trade Regime," (1998), *European Journal of International Law*, Vol. 10, no. 4, p. 733.

older but still very present concern is related to the massive influx of foreign cultural products (films, records or CDs, books, etc.), which to some extent stifle domestic cultural production, thereby depriving the affected communities of the symbolic discourse essential for their own development. This is all the more alarming in that the creators of culture and cultural intermediaries play a key role in adapting cultures to change since they create a space where national values and foreign values can confront one another, as can the values and behaviours of the past and those of the future. The second concern has to do with the concentration of production and marketing of cultural products by large industrial groups, and the consequent standardization of cultural expression under the influence of basically commercial imperatives. The third, more recent concern is with exclusion from the international cultural space as it is currently being constructed with the new information technologies (the Internet, etc.). Despite all the opportunities that these new technologies provide to express the diversity of cultures, there is a very real danger of a deep digital divide between countries that have access to these technologies and those that do not. In all three cases, it is the basic right to cultural expression that is at stake.

Deficiencies in the Existing Instruments

As can be seen in the *Catalogue of International Instruments Pertaining to Culture*,[1] there are already an impressive number of multilateral, bilateral and regional instruments dealing with culture. However, the vast majority ignore the problem of preserving the diversity of cultural expression in the face of mounting globalization of the economy. Five deficiencies in particular should be pointed out in this regard.

○ **Lack of a comprehensive vision of the effect of globalization on cultural diversity**. The most serious and obvious deficiency lies in the fact that the existing instruments take a fragmented approach to the problem of preserving cultural diversity, coming at it from various distinct standpoints such as human rights, intellectual property rights, heritage protection, cultural policies, language rights, cultural pluralism, cultural development, international cultural cooperation, etc. What is lacking is an instrument like that on bio-diversity, which would clearly identify the nature of the threat that globalization poses to cultural diversity and would establish principles and rules for ensuring that this diversity is preserved. Even though globalization has some potential in this regard, it also clearly poses some serious dangers that need to be considered.

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1   See: http://www.pch.gc.ca/network-reseau/cdg-gdc/catalogue-e.pdf

- ○ **Difficulty of addressing the commerce/culture issue head on**. Most of the instruments pertaining to this issue (and there are not very many) confine themselves to stating that cultural products are not products like any other. One could reply that if this situation exists, it is because of the lack of a consensus on this issue, and the actual challenge is to bring about a rapprochement between the commercial perspective and the cultural perspective. There is some truth to this, but in order to achieve such a rapprochement, the cultural perspective must first be expressed openly. It is still as if everyone is afraid to say that each state is entitled to determine from a cultural standpoint and on the basis of its own conditions and circumstances the policies that are needed to ensure the preservation and promotion of cultural diversity because of a concern that the liberalization of trade in the world would be hampered. As we saw earlier, though, cultural expression is a key factor in the ability of various cultures to adapt to the changes imposed on them by globalization. To address the question of the relationship between culture and commerce exclusively from the standpoint of commerce is to subject culture to commercial imperatives and thereby prevent it from playing its own role. The ultimate outcome of this approach will likely be the impairment of both cultural diversity and international trade.

- ○ **Insufficient consideration of the imbalance in international cultural exchanges**. This imbalance, which is especially pronounced in the audiovisual field, appears in the cultural exchanges of both developing and developed countries. Developing countries, for their part, generally have domestic markets with quite limited resources and are usually dependent for most of the cultural products they consume on imports from a few developed or developing countries. The same is true of the exchanges between developed countries, where the dominance that one or a few countries have in their domestic markets is generally achieved at the expense of foreign productions. Imports from developing countries are virtually non-existent in these cases. In both instances, cultural diversity suffers, not only in regard to the expression of national cultures but also in regard to openness to other foreign cultures.

- ○ **Insufficient consideration of local needs**. Cultural diversity is found not only on the national and international levels but also on the local level, and it is important to give more consideration to the mounting local problems. It might be interesting to pool the experiences of a number of countries in this regard (Greg Baeker, Inventory on Cultural Diversity Challenges and Opportunities).

- ○ **Basically declaratory texts**. The various kinds of international instruments that already exist in the cultural area can be regrouped, broadly speaking, into two distinct categories - those instruments that are not considered legally binding (declarations, resolutions, action plans, recom-

mendations, principles and guidelines) and those instruments that are legally binding (charters, protocols, conventions and treaties). In practice, the two categories of instruments have been used about equally, but when legally binding instruments are used, they often retain a largely declaratory character. If a new instrument is to be limited from a formal point of view to a simple declaration, it could end up in the same position as a large number of other instruments that, however useful they are, do not really respond to the challenge of globalization. What is needed, at a bare minimum, is an instrument that reflects the positive commitment of the signatory states to take action in favour of cultural diversity and that contains a mechanism for monitoring this commitment.

It is obvious that one international instrument on cultural diversity cannot address every deficiency. We will see below what choices must be made to meet the most urgent needs. It is important, though, for the proposed instrument to be capable of further development so that all the deficiencies can eventually be corrected.

The Objectives of the New Instrument

The objectives of an international instrument are generally laid out in the preamble. The primary and secondary objectives can be distinguished from one another. The former express the basic purpose of the instrument (e.g., the liberalization of trade in the case of the WTO), while the latter refer to the outcome expected from the achievement of the primary objectives (rising standards of living, full employment, and increased trade in the case of the WTO). In regard to the new instrument on cultural diversity, the following objectives are suggested in light of the observations formulated in the previous pages:

- Ensure that cultural diversity is preserved and promoted in the face of the challenge posed by globalization, on the understanding that cultural diversity implies both the preservation and promotion of existing cultures and the greatest possible openness to other cultures. This is the paramount objective of the new instrument. Since it is responding to a problem that is first and foremost cultural, this fact must be clearly reflected in its norm-setting contents.
- Provide a set of principles and disciplines that contribute to making cultural diversity an instrument of democratic expression, social cohesion and economic development. Although the primary objective of the new *instrument remains the preservation and promotion of cultural diversity,* it is nevertheless true that cultural diversity plays an important instrumental role in the achievement of other social objectives, such as democratic expression, social cohesion and economic development. This

role should also find expression in the new instrument, although it should not thereby be turned into an instrument of democratic governance or economic development as such.

○ Provide a mechanism for monitoring the commitments made by the signatory parties. This objective is intended as a partial response to critics who say that the existing cultural instruments are ineffective.

Priority Areas

While we recognize the importance of taking steps to preserve and promote cultural diversity everywhere (i.e., on the international as well as the national and local levels), it seems essential at this stage to take action primarily in the areas of most immediate need in the face of globalization. The following priority areas are therefore suggested.

○ A first priority area is governmental action to ensure vigorous, diverse cultural expression on the national level. In addition to meeting a basic right of individuals and communities, this action is essential for social cohesion and for democracy to function within the state. Insofar as the actions that can be taken are concerned, they will support the measures already adopted by various countries. The instrument will look at various policy choices that can be used by the state to achieve its cultural objectives, while insisting on the right of every state to choose the measures that it deems most appropriate in view of its own circumstances and conditions.

○ A second priority is openness to foreign cultural productions. This area naturally complements the first because cultures very often develop and evolve through contact with others. It is also widely admitted that contacts between cultures make a major contribution to the development of creativity "as the ability to solve problems in other than purely 'cultural' terms."[1] In this sense, it could be said that the problems that arise in regard to the preservation of cultural diversity also affect the opportunities for creativity to flourish and, in the end, economic development itself.[2] Among the types of action that might be considered, we could mention measures to facilitate exchanges, measures to foster the consumption of a variety of cultural products, cultural cooperation agreements, co-produc-

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1 Néstor García Canclini, "Policies for Cultural Creativity," UNESCO, Preparatory Paper 3, Stockholm Conference on the Power of Culture, p. 5.

2 http://www.unesco.org/culture/development/highlights/activities/html_eng/roundtable3.htm

tion and co-distribution agreements,[1] as well as increased monitoring of dominant positions on domestic markets.

° A third priority area is taking the particular needs of developing countries into account. These needs include both developing a capacity for cultural expression within these countries themselves and opening the markets of the developed countries to products from developing countries and to the creators of these products. These needs are particularly urgent in view of the new information society. Although the emergence of the information society will likely increase the access of developing countries to information and provide an opportunity for them to develop a programming industry whose products reflect the richness and diversity of their cultures, the real question that arises for a number of developing countries in view of their scanty communications and telecommunications infrastructures is simply whether they will be able to participate at all. Various kinds of intervention can be considered in this regard, ranging from positive discrimination in favour of cultural products from developing countries (as is already done under the Generalized System of Preference for developing countries) to the establishment of mechanisms for providing technical and financial assistance, without forgetting the recurring request from developing countries for steps to facilitate the international circulation of their creative people.

° A final priority area is the measures that are needed to ensure flexible, efficient monitoring of the commitments made by the parties. These measures respond to the clearly identified need for a binding instrument that would go beyond simple declarations. Even though the parties agree in good faith to uphold their commitments, it is apparently necessary to have a mechanism that will make it possible, at a bare minimum, to evaluate the progress made toward the implementation of the instrument. This mechanism could take the form, for instance, of periodic reports that the parties submit on the measures taken and the difficulties encountered in implementing their commitments. Other possibilities could be considered, such as a standing forum on cultural diversity or an agency to monitor cultural diversity.

Ideas about the Architecture of the Instrument

Besides the preamble describing the background of the new instrument and its objectives, the new instrument should also include, if one is to judge by the

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1   Such agreements, which are incompatible in principle with the most-favoured-nation treatment, are authorized exceptionally for a period of ten years under the General Agreement on Trade in Services (GATS). A decision about the future of escape clauses of this kind will be made during the current GATS negotiations.

discussions at the expert group meeting in Paris in December 2000, a first part that is educational and declaratory in nature and that explains in simple terms why action must be taken to preserve cultural diversity. (The main arguments are the cultural argument, referring in particular to basic cultural rights, especially the right to have access to one's own culture, the democratic argument, referring to the objectives of participation, social cohesion and peaceful coexistence, and finally the economic argument, referring to the contribution made by cultural capital and creative diversity to development.) This first part should also contain a series of definitions of the chief terms that are used, including culture, cultural diversity, cultural communities, and cultural industries.

The actual norm-setting contents of the instrument could be structured in various ways. They could be structured, first, on the basis of the subjects in the "baskets" developed at the last meeting of the working group (of the ministerial network) in Paris. As one will recall, these subjects dealt, among other things, with the preservation of cultural heritage, recognition of the role of artists and cultural creation, the protection of intellectual property, recognition of the special nature of cultural goods and services, cultural development, majority-minority relations, interculturalism and multiculturalism, and respect for human rights. However, there seem to be too many subjects here, and these subjects seem, at first glance, to be too disparate to serve as the basis of a coherent, effective text on cultural diversity.

The norm-setting contents could be structured, secondly, on the basis of the kinds of intervention needed to achieve the basic objective of the instrument, namely the promotion and preservation of cultural diversity. The proposed instrument could distinguish in this regard between intervention related to upholding individual rights in respect of culture (non-discrimination, freedom of cultural expression, right to participate in the cultural life of one's community), intervention related to the promotion and development of cultural identities (affirmative action in favour of cultural communities), and finally intervention related to the preservation of cultural diversity on the international level (affirmative action in favour of developing countries, the right of the state to intervene in order to preserve its own cultural identity when this identity is threatened).

Finally, the norm-setting contents could be structured on the basis of the priority areas suggested previously, which have the advantage of adhering more closely to the overall objective of the instrument, namely the preservation and promotion of cultural diversity in the face of globalization.

Whatever choice is made, it is essential that the instrument, in its normative part, should establish a direct link between the objectives, the principles that underlie the realization of those objectives, and finally the measures or actions necessary to realize those objectives.