A UNESCO INTERNATIONAL CONVENTION ON CULTURAL DIVERSITY

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On February 6, 2003, culture ministers from 16 member countries of the International Network on Cultural Policy (INCP) met with UNESCO Director-General, Mr. Koïchiro Matsuura. At the meeting, the culture ministers reaffirmed how important it was for UNESCO to develop a convention on cultural diversity—a binding instrument that would establish rights and responsibilities for all countries and legitimize their right to preserve or implement national cultural policies supporting the production and dissemination of cultural content. They also stressed the urgency of taking action to deal with the threats currently menacing cultural diversity. Thanking the ministers for their confidence in UNESCO, the Director-General declared that he was "well aware of the need to fill this void in the international legal system" and expressed his desire for "a broad consensus among UNESCO policy-making bodies in order to give this convention the best chance of rapidly coming to pass."[1]

However, this last statement, which at first glance reiterates an obvious truth—that it's up to UNESCO member countries to decide the outcome of this request—hides an important question: does a draft convention, as conceived by the project's backers, truly fall under the jurisdiction of UNESCO? Although not a member of UNESCO, the United States has admitted that it vigorously intervened during the discussions that lead to the adoption of the *UNESCO Universal Declaration on Cultural Diversity*, to counter "France and Canada's efforts to remove cultural issues from the WTO and obtain support for their draft of a 'new instrument,' possibly to be created within UNESCO."[2] If such a perception of the goal of an international convention on cultural diversity were to prevail, we would have good reason to fear that it would not receive the necessary support. It therefore seems important to return to the source of this confusion to clarify the link between the draft convention and UNESCO actions.

- The notion of cultural diversity

One source of confusion lies in the very notion of cultural diversity. To clarify this concept, we must first explore the notion of culture. The most widely accepted definition of culture is undoubtedly that adopted at the Mexico City MONDIACULT World Conference in 1982,

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[1] UNESCO, Directeur général, Flash Info, 07-02-2003 : « Diversité culturelle : 16 ministres de la culture reçus par le Directeur général de l'UNESCO ». Germany, Canada, France, Greece, Morocco, Mexico, Monaco, and Senegal then formally proposed that an item entitled "Development of an international convention on cultural diversity" (item 3.4.5 of the provisional agenda) be entered in the agenda of the hundred and sixty-sixth session of the UNESCO Executive Council, from March 31 to April 16, 2003. See: http://www.unesco.org/exboard/fr/166ex1provf.pdf.

[2] United States, International Trade Administration, "Impact of the Migration of U.S. Film and Television Production" January 18, 2001: http://www.ita.doc.gov/media/ filmreport.htm.

which reaffirmed that, in its broadest sense, culture can now be regarded as "the set of distinctive spiritual, material, intellectual, and emotional features of society or a social group. In addition to art and literature, it encompasses lifestyles, basic human rights, value systems, traditions, and beliefs." This set of distinctive features that characterize a society or social group falls under what we commonly call cultural identity. Literally, cultural diversity therefore would simply refer to the multiplicity of cultures or cultural identities. But the concept of cultural diversity, like that of biodiversity, goes even further in that it views the multiplicity of cultures from a systemic perspective, in which each culture develops and evolves in contact with other cultures. According to this definition, the preservation of cultural diversity thus implies maintaining and developing existing cultures while ensuring an openness to other cultures.

However, as soon as we transpose this relatively clear and simple notion into the framework of an international convention meant to protect and promote cultural diversity, it leaves room for a certain ambiguity as to the nature of the objective sought. This ambiguity is tied to the very definition of culture adopted by UNESCO in 1982. Careful analysis shows that this definition refers to two rather distinct realities. First, there is a conception centered on art and literature, which refers to the cultural expression of a community or group and encompasses cultural creation in all its forms, whether by individuals or cultural enterprises. Secondly, there are lifestyles, basic human rights, value systems, traditions, and beliefs, which refer to a more sociological and anthropological perspective on culture. The issue is to determine whether the proposed convention is intended to protect cultures in terms of a community's cultural expression (production of cultural goods and services), in a sociological and anthropological sense, or both. As we shall see later, both concepts have marked the evolution of the debate on preserving and promoting cultural diversity.

Before proceeding any further, however, it is important to stress that these two perspectives, although distinct, actually represent two sides of the same coin. There is a close link between the preservation of cultures in their sociological and anthropological sense and the preservation of cultures in terms of a community's cultural expression. We must understand that even though globalization and trade liberalization are bringing about substantial changes in national cultures in an anthropological and sociological sense, this does not necessarily mean that we must reject any political initiatives that may affect the content of the cultures in question. Claiming the contrary would impart a rigid meaning to the concepts of cultural and national identity, which would only serve those wishing to use them as instruments of political control. In reality, in order to survive, all national cultures, must adapt over time to a variety of internal and external changes. This is where cultural expression comes into play. It is a key element in the adaptation of various cultures to the transformations imposed on them by globalization and trade liberalization. In this way, creators and culture workers play a primordial role in that they create a critical forum for confrontation between domestic and foreign values and between past values and behaviors and future perspectives. In this way, one could argue that the preservation of cultural diversity depends on the preservation of cultural expression.

- **The objective and content of the convention on cultural diversity**

The second source of confusion involves the objective and content of the convention on cultural diversity that culture ministers from INCP member countries would like UNESCO to

adopt. For the United States, as we have seen, the convention is nothing less than a commercial instrument, which under the guise of more acceptable language, continues the fight for a cultural exception initiated during the Uruguay Round; an agreement whose ultimate objective is to exclude culture from the WTO, or, failing that, a way to obtain special treatment for the cultural sector. If such is the case, the WTO would clearly be the appropriate forum because, barring highly exceptional circumstances, an agreement negotiated outside of the WTO would be ineffective in challenging or modifying WTO regulations[3]. However, were we to assume that the cultural impacts of economic globalization and trade liberalization are important issues that fall entirely within UNESCO's jurisdiction, another concept would arise—that of an instrument that is essentially cultural in nature and whose ultimate goal would not be to modify WTO statutes, but rather to provide a frame of reference, a code of conduct, and a discussion forum for all countries that consider the preservation of distinct forms of cultural expression and of cultural diversity more generally as essential aspects of globalization. In such a case, linking the WTO to the process would no longer be necessary to achieve the objectives of the convention, which could be negotiated outside the WTO. UNESCO would be the obvious forum for this. Now, let us take a look at the objectives and content of the draft convention drawn up by INCP culture ministers.

To get a good idea of INCP's objective, it is important to understand that the network's initiatives are part of an ongoing effort with a long history. This effort actually began with the screen quotas a number of European countries imposed to counter the invasion of American films after the First World War. This early practice, which was centered on the preservation and development of cultural expression, led to the adoption in 1947 of article IV of the GATT, which specifically authorized screen quotas for domestic films, eventually sparking a debate that reached its culmination at the very end of the Uruguay Round. Until the creation of the WTO, the debate essentially focused on exempting cultural products from international trade agreements. Shortly after the WTO came into force, a paradigm shift occurred. This shift coincided with two events that were to have a crucial influence on subsequent events: the failure of OECD negotiations on the multilateral agreement on investment (MAI) in October 1998, and the failure of the Seattle WTO Ministerial Conference in December 1999.

The first event, the failure of MAI, confirmed beyond a shadow of a doubt a conclusion already evident at the end of the Uruguay Round—that it was unrealistic to believe that culture, in the sense of cultural expression, could be exempted from multilateral trade agreements. During these negotiations, which began at the OECD in 1996, France distributed a document arguing in favor of an exception for cultural industries and formally proposed a draft clause to that effect. It read as follows:

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3   Also on this topic, see Ivan Bernier and Hélène Ruiz-Fabri, Évaluation de la faisabilité juridique d'un instrument international sur la diversité culturelle, Groupe de travail franco-québécois sur la diversité culturelle, Québec, 2002 [http://www.mcc.gouv.qc.ca/international/diversite-culturelle/publications.htm]. In a recent work entitled *L'exception culturelle*, Serge Regourd added to this topic: "In the specific context […] of trade negotiations, the idea of cultural diversity is devoid of operational scope. It can be nothing more than a rhetorical statement, possibly expressing an anthropological ideal, but out of place amidst the terminological rigor of negotiations in which American lawyers play a key role." (trad.): Presses universitaires de France, « Que sais-je ? » no 3647, Paris, 2002, p. 98.

> «Nothing in this agreement shall be construed to prevent any Contracting Party to take any measure to regulate investment of foreign companies and the conditions of activity of those companies, in the framework of policies designed to preserve and promote cultural and linguistic diversity.»

In October 1998, however, France realized that its proposal did not seem to have enough support to be adopted. Convinced at the same time that the proposed agreement was inadequate on several levels, France withdrew from the negotiations, bringing them to an immediate halt, as they were already seriously compromised by widespread dissatisfaction among other participating countries unhappy with the proposed text.

The failure of the third WTO Ministerial Conference in Seattle, in 1999, marked a turning point in awareness of the impact globalization and trade liberalization have on cultures understood in a sociological and anthropological sense. Although the conference failed for reasons beyond the protests surrounding this meeting, the scope of the protests nonetheless clearly revealed genuine public concerns over the effects of globalization. Despite the disparate agendas of the many interest groups involved in the protests, a common theme did emerge—the questioning of a globalization exclusively focused on commercial considerations and apparently beyond any form of true democratic control. Even though the demands regarding the treatment of cultural products did not make many headlines during the events in Seattle, unlike the situation in the final months of the Uruguay Round in 1993 and during the MAI negotiations in 1998, a number of observers have stressed since then that it is the scope and pace of the changes imposed on society by globalization as well as the subsequent sense of lost cultural references that has fed a significant part of the anti-globalization movement.

Thus, in his speech before the Trilateral Commission in Tokyo in May 2001, Fred Bergsten, former Assistant Secretary for International Affairs of the US Treasury, referring to the protests in Seattle, Davos, Bangkok, and Washington, which he considered a superficial manifestation of a very real problem, went so far as to declare that "the world economy today faces a more fundamental set of challenges because the backlash against globalization is much more than economics. […] [T]here is also a huge cultural dimension which raises a mass of contentious and difficult issues of their own."[4] A few months later in a commentary published in the Los Angeles Times in the lead-up to the July 2001 G-8 summit in Genoa, Jeremy Rifkin wrote that "protests are becoming a familiar part of world political and economic forums. But, although the attention often goes to the relatively few violent protesters, there is a bigger message worth listening to. The fact is we are witnessing the first stirrings of a cultural backlash against globalization whose effects are likely to be significant and far-reaching."[5] There is only one step separating these conclusions from that of Faouzia Zouari, who suggests that "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."[6] In fact, what we have been

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[4] Institute for International Economics, http://www.iie.com/papers/bergsten0500.htm, accessed July 12, 2001

[5] RIFKIN, Jeremy, «World Culture Resists Bowing to Commerce», *Los Angeles Times*, July 2, 2001, reproduced in the *Montreal Gazette* under the title «Cultural Backlash against Globalization, July 4, 2001.

[6] See: http://confculture.francophonie.org/TrvxPrep/pdf/Synthese.pdf

witnessing since 1997–1998, is a redefinition of the problem of the trade-culture interface. The preservation of cultural identities, rather than being viewed essentially as a cultural exception issue in trade agreements, is gradually becoming a cultural objective in and of itself.

This was the context that sparked the idea of an international instrument on cultural diversity in February of 1999. The idea emerged from the *Cultural Industries Sectoral Advisory Group on International Trade (SAGIT)* put in place by the Canadian Department of Foreign Affairs and International Trade. Turning its back on the previous strategy of cultural exception, which consisted of excluding culture from international trade negotiations, it proposed a strategy involving the negotiation of a new international instrument that would focus specifically on cultural diversity and recognize the legitimate roles that national cultural policies play in ensuring cultural diversity. More specifically, the new international instrument would—

- Recognize the importance of cultural diversity

- Recognize that cultural goods and services are different from other products

- Recognize that measures and policies designed to guarantee access to a range of national cultural products are different from other policies

- Define rules applying to regulatory and other measures that countries may or may not implement to enhance cultural and linguistic diversity

- Determine how commercial disciplines would or would not apply to cultural measures that comply with the agreed upon rules

But if this change in approach clearly implies the end of attempts to take culture out of the WTO, the exact nature of the new instrument remains ambiguous, as it seems to vacillate between a cultural and a commercial instrument.

Plans for an international instrument on cultural diversity were subsequently refined further in three distinct bodies: the *Cultural Industries Sectoral Advisory Group on International Trade (SAGIT)*, where the idea first originated; the *International Network on Cultural Diversity* (INCD), a group set up by Canada to give civil society an opportunity to continue the debate on cultural diversity; and the *Working Group on Cultural Diversity and Globalization*, put in place by the *International Network on Cultural Policy* (INCP). INCP is still the only intergovernmental organization actively involved in this project. In 2002–2003, each of these bodies released their own versions of an international agreement on cultural diversity.[7] To the extent that these texts favor an agreement negotiated outside the WTO, they seem to indicate that cultural diversity advocates have definitely opted for an essentially cultural approach. But the language of these texts is not always as clear as one might like and still leaves room for certain doubts as to the nature of the objective being pursued. This is why it is now important to see how the draft international agreement on

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7   For the texts of these drafts, see: 1) The INCP project as accepted as an appropriate basis for supporting the development of an enforceable agreement on the protection and promotion of cultural diversity at the Cape Town ministerial meeting in October 2002: [http://206.191.7.19/meetings/2002/instrument_f.shtml] ; 2) For the final version of the INCP text released in February 2003: [http://www.incd.net/incdfr.html] ; 3) For the SAGIT text released in September 2002: [http://www.dfait-maeci.gc.ca/tna-nac/documents/SAGIT_fr.pdf]

cultural diversity as currently understood by its promoters, the INCP member countries, will tie in with UNESCO's vision of cultural diversity.

- **UNESCO and the issue of cultural diversity**

As was clearly demonstrated in a study entitled "UNESCO and the Issue of Cultural Diversity, 1946-2000,"[8] cultural diversity, in the general sense of multiplicity and diversity of cultural identities, is at the core of UNESCO's action in the cultural domain. Initially employed as a structuring concept to guide the development of artistic production in member states, the diversity of cultural identities rapidly became a political argument in favor of the liberation and independence of colonized countries during the period of decolonization. Beginning in the late 1960s, the idea emerged that cultural diversity could serve as a basis for endogenous development: For newly independent and developing countries, culture even became the only possible independent path toward progress that would be both politically liberating and a factor of economic independence. At the end of this third period, which lasted until the late 1970s, the logical conclusion seemed to be that "cultural diversity is a source of balance rather than division." Finally, during the 1980s and 1990s we witnessed both the strengthening of the relationship between culture and development and the appearance of a new link between culture and democracy, which gave priority to "the promotion of cultural expression of minorities within the framework of cultural pluralism."

However, it was not until 1999 that UNESCO started to take a concrete interest in the issue of preserving cultural diversity in the face of the pressures of economic globalization and trade liberalization. Confronted with a debate of utmost relevance but that had unfolded up to that point without any intervention on its part, UNESCO finally plunged into the fray by releasing a document entitled, *Culture, Trade and Globalization: Questions and Answers*[9] in 1999. In June of the same year, a first expert symposium was held in Paris on the theme "culture, the market and globalisation". At the end of this symposium, it was suggested that UNESCO get more involved in the debate on cultural diversity and actively participate in the decision-making process in this field. This first symposium was followed by a second, which was held in June–July 2002, in Warsaw, on the theme of " Cultural Diversity in the Light of Globalization. The Future of the Cultural Industries in East and Central Europe". It was decided at this symposium that UNESCO should continue or increase its efforts to "help develop a 'global framework' for the promotion of cultural diversity." On September 21 and 22, 2000, an Experts Committee on the strengthening of UNESCO's role in promoting cultural diversity in the context of globalization met at UNESCO headquarters. In the final declaration issued at the end of this meeting, the Director-General was invited

> «to envisage the preparation of a Declaration which would be submitted to the General Conference for approval in order to confer a solemn nature upon the text; the proposals of several members of the Experts Committee together with

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[8] Study conducted by the UNESCO Division of Cultural Policies, Paris, 2000. For the text, go to: http://www.unesco.org/culture/policies/diversity/html_fr/index_fr.shtml

[9] See: http://www.unesco.org/culture/industries/trade/index.shtml

work undertaken by other bodies like, for example, the Council of Europe, should be taken into account when this text is drafted.»

On December 11 and 12, 2000, the second round table of culture ministers, 2000–2010 Cultural Diversity: Challenges of the Marketplace was held in Paris. It brought together 59 ministers and their delegations and 57 delegations from other member countries and non-member countries not led by their ministers themselves. At this meeting, the Expert Committee's conclusions on "strengthening UNESCO's role in promoting cultural diversity in the context of globalization" were presented to the round table and "preliminary items" associated with a draft declaration on cultural diversity to be proposed for adoption at the 31st session of the General Conference were submitted for the ministers to examine. Less than a year later, on November 2, 2001, the 31st session of the General Conference adopted the UNESCO Universal Declaration on Cultural Diversity[10]. On this occasion, the Director-General of UNESCO declared the following:

> «This is the first time the international community has endowed itself with such a comprehensive standard-setting instrument, elevating cultural diversity to the rank of 'common heritage of humanity—as necessary for the human race as bio-diversity in the natural realm'—and makes its protection an ethical imperative, inseparable from respect for human dignity.[11]»

Even though the declaration does not make reference to the possibility of an international convention on cultural diversity, section 1 of the appended action plan stipulates that—

> «The member states commit themselves to taking appropriate steps to disseminate widely the UNESCO Universal Declaration on Cultural Diversity, in particular by cooperating with a view to achieving the following objectives:
> deepening the international debate on questions relating to cultural diversity, particularly in respect of its links with development and its impact on policy-making, at both national and international level; taking forward notably consideration of the opportunity of an international legal instrument on cultural diversity.»

Finally, on March 12, 2003, in response to the initiative by certain member states to add a point on the development of an international convention on cultural diversity to the agenda of the 166th session of the UNESCO Executive Council, the UNESCO Secretariat released a document entitled "Preliminary study on the technical and legal aspects relating to the desirability of a standard-setting instrument on cultural diversity."[12] This working document, drawn up by the Secretariat, appraises the most recent activities on this subject. It highlights the international standard-setting corpus that is currently applicable, or under preparation, relating to cultural diversity and explores lines of inquiry as to the desirability, nature and scope of a new instrument on cultural diversity. In conclusion, the document suggests that the Executive Council adopt a decision to place this item on the provisional

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[10]   Voir : http://www.unesco.org/culture/pluralism/diversity/html_fr/index_fr.shtml

[11]   Go to : http://www.unesco.org/bpi/fre/unescopresse/2001/01-120f.shtml

[12]   UNESCO, Executive Council, hundred and sixty-sixth session, doc. 166EX28, March 12, 2003.

agenda of the 32nd session of the General Conference; invites the Secretary general "to submit to the General Conference at its 32nd session the above-mentioned report relating to the preliminary study on the desirability of a new standard-setting instrument on cultural diversity and the Executive Board's observations and decisions thereon" ; and ultimately recommends "to the General Conference that it takes a decision to continue action aimed at drawing up a new standard-setting instrument on cultural diversity and to determine the nature of that instrument."

Such is the current thinking at UNESCO on cultural diversity in general and on cultural diversity in the face of the phenomenon of globalization and trade liberalization. It now remains to be seen if the INCP approach is compatible with that of UNESCO.

One obvious fact is immediately evident: the historic approach leading to the INCP international draft convention is not unrelated to the approach taken by UNESCO in its exploration of cultural diversity. In fact, in both cases, the underlying notion of culture was initially interpreted in terms of artistic production, or cultural expression, but then took on a more sociological and anthropological connotation. In both cases, the concrete concerns of members also steered the debate. And finally, in both cases, political and economic arguments were advanced in support of positive action in favor of cultural diversity.

But unlike the UNESCO approach, which addresses cultural diversity from an inclusive point of view incorporating all of its various manifestations, the international draft convention on cultural diversity addresses the unique and exclusive problem of preserving and promoting cultural diversity in a context of economic globalization and trade liberalization. Moreover, UNESCO's approach clearly has a longer term perspective than that of INCP, which is marked by a greater sense of urgency. Finally, contrary to UNESCO's approach, which remains hesitant about the idea of a legally binding instrument, INCP is actively pursuing an instrument that is not only binding but enforceable.

However, far from being incompatible, these two approaches actually seem to be complementary. Indeed, UNESCO's objectives regarding cultural diversity are in no way jeopardized by an international draft convention on cultural diversity like the one proposed by INCP. Quite to the contrary, INCP's approach can only help achieve these objectives by contributing to the preservation of the right of countries to maintain and adopt measures they deem appropriate for the development of their cultural expression, by offering a frame of reference for countries that consider the maintenance of various cultural expressions an essential element of globalization, and finally, by strengthening solidarity and collaboration on the international level to enable all countries—and specifically developing countries—to create and maintain cultural industries that convey their own vision on the national and international levels. A particularly revealing example of how a convention on cultural diversity could help support other UNESCO objectives is in the area of intangible heritage. Current efforts to launch new negotiations on cultural diversity have been contrasted with steps already undertaken to develop a convention on intangible heritage. But such a vision totally ignores the critical role played by cultural expression in the survival of intangible heritage. It is by taking responsibility for their own intangible heritage and by developing it that cultural creators can best guarantee its survival. The complementary relationship between the two approaches can also be observed in their approach to development. The close links established by UNESCO between cultural and economic development cannot

come into play unless developing countries and least advanced countries have a concrete chance to express themselves culturally. As the Senegalese Minister of Culture and Communications, Mr. Mamadou Diop, stressed at the second round table of culture ministers in December of 2000,

> "Cultural diversity pre-supposes presence. We have a proverb: you can't say 'present' if you are not there. How can we be present when there are fewer than 4% of individuals with telephone lines, fewer than 2% are linked to the Internet, and over 3% have no electricity ? When whole zones have no possibility of receiving television signals? These are very practical issues and we have to overcome them if we are to sit at the table and take part in the banquet of mankind. […] If [UNESCO] were to look at these aspects, developing countries could get more than a toe-hold when we talk about cultural goods and trade."

Here again, the INCP approach, with its objective of preserving cultural expression in a context of increased economic globalization and trade liberalization, will only support UNESCO's approach.

Conclusion:

More than ever, cultural diversity is at the heart of the debate on development, democratic governance of states, and global governance. But paradoxically, at the same time that new trends—particularly globalization and free trade—lead to closer ties and greater interaction between cultures, they may also harm the preservation of cultural identities and even cultural diversity itself. As such, there is a pressing need for a better understanding and management of cultural diversity on the national and international levels. The international draft convention on cultural diversity is one answer to this problem, an answer that can come only from UNESCO, and that will most definitely support UNESCO's efforts in this regard.