

CHRONIQUE 4

DEVELOPING COUNTRIES AND THE PLAN FOR AN INTERNATIONAL CONVENTION ON CULTURAL DIVERSITY

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At first glance, the issue of preserving cultural diversity in a time of economic globalization and liberalization of trade might appear to have little relation to the immediate concerns of developing countries. To the extent that these countries are interested in cultural diversity, this seems primarily because such diversity raises internal problems whose solution is perceived as linked to the improvement of their economic situation. From this we might easily conclude that for the countries in question, the need for an international convention on cultural diversity is not readily apparent. However, we must be careful not to draw this conclusion too hastily since, as we shall see in the following pages, it is based on a simplistic view of the interest of developing countries, which fails to take into account the contribution of culture to economic development and ignores the dangers posed to the cultural development of these countries by the accelerated liberalization of commercial trade.

I. The Contribution of Culture to Economic Development

In 1970, UNESCO organized an Intergovernmental Conference on Institutional, Administrative and Financial Aspects of Cultural Policies in Venice that was the first of a series of regional conferences aimed at developing ideas on the issue of determining how cultural policies might be integrated into development strategies¹. These activities led to the UN's declaration of the World Decade for Cultural Development 1988-1997, whose mission was to place culture at the center of development² and whose primary achievement was to create the independent World Commission on Culture and

¹ See *L'UNESCO et la question de la diversité culturelle : bilan et stratégies, 1946-2000* : http://www.unesco.org/culture/policies/diversity/html_fr/index_fr.shtml

² Unesco, *Guide pratique de la Décennie mondiale du développement Culturel 1988-1997*, Vendôme, Presses universitaires de France, 1987, Annex, pp. 17-18

Development and publish the Commission's report, entitled *Our Creative Diversity*³. At the end of the World Decade for Cultural Development, UNESCO organized an important conference on "Cultural Policies for Development" to be held in Stockholm in 1998. The primary objective of the conference was to transform the new ideas in the World Commission on Culture and Development⁴ report into policies and practices. The ideas expressed at this conference were further discussed during a conference jointly held by the World Bank and UNESCO in October 1999 in Florence, entitled *Culture Counts: Financing, Resources and the Economics of Culture in Sustainable Development*⁵, and were also discussed by the Inter-American Development Bank⁶. Finally, in November 1999, a Round Table of Ministers of Culture organized for the 30th session of the UNESCO General Conference examined the general theme of *Culture and Creativity in a Globalized World*⁷.

What has been the result of this investigation of the link between culture and development that has spanned more than three decades? Two main ideas seem to dominate. The first goes back to the beginning of the process and is summarized in the following words by René Maheu, then Director-General of UNESCO, who stated during 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 this shift begins to approach the cultural."⁸

In this particular view of the link between culture and development, which one might deem idealist, culture encompasses so to speak the economy. The cultural perspective, which is larger and broader than the economic perspective, includes the latter by reformulating its objectives according to values that favor building a truly humane society. Throughout the 1970s and 1980s, this perspective of the relationship between culture and development prevailed. However, a decidedly more pragmatic way of perceiving this relationship began to emerge in the early 1990s. This new perspective asserts that cultural diversity, both domestically and internationally, is a powerful lever for economic

³ UNESCO, World Commission on Culture and Development, Report: *Our Creative Diversity*, 1995

⁴ See : <http://www.unesco-sweden.org/Conference/Gamla%20Conference/index.htm>

⁵ See : http://www.unesco.org/culture/development/highlights/activities/html_fr/florence.htm

⁶ See Inter-American Development Bank, Press release NR-60/99, "Forum on Development and Culture Stresses Role of Citizen Participation", 13 mars 1999. Also : <http://www.iadb.org/exr/am1999/ENSEM1.htm>

⁷ See : http://www.unesco.org/culture/development/highlights/activities/html_fr/roundtable1.htm

development. It is this view in particular that interests us here. Two fundamental arguments underlie it and deserve a closer examination.

- *Cultural diversity: a source of creativity*

A first 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 emphasized the key role that creativity could play “beyond the artistic sector, in the economy, technological innovation, private life, initiatives of civil society, and development in general.”⁹ 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.”¹⁰ In 1999, during the Round Table of Ministers of Culture organized for the 30th session of the UNESCO General Conference, one of the proposed topics of discussion was “... the growing importance of the contribution that creativity can bring to economic development, particularly through the rise in cultural industries.”¹¹ As Gabriel Nestor Canclini rightly pointed out, “creativity is now gaining recognition in a wider sense, not only as the production of new objects or forms but also as the ability to solve problems in other than purely ‘cultural’ terms.”¹² But what can explain the contribution of culture to the development of creative abilities but cultural diversity itself ?

To understand how this can be so, one must realize that cultural identity, the basic ingredient in cultural diversity, does not refer to something that is fixed in time. In reality, every 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 process of adaptation by inviting comparison between its own ways of being and acting and those of other cultures. Cultural creators and intermediaries themselves often play an important role in this regard by creating a space for critical confrontation between national and foreign values, and between values and behaviors of the past and future perspectives.¹³ It is precisely this confrontation that drives creativity. Thus, the problems encountered in preserving cultural

⁸ Voir : http://www.unesco.org/culture/development/highlights/background/html_fr/index_fr.htm

⁹ http://www.unesco.org/culture/development/highlights/activities/html_fr/roundtable1.htm

¹⁰ http://www.unesco-sweden.org/Conference/Action_Plan.htm

¹¹ http://www.unesco.org/culture/development/highlights/activities/html_fr/roundtable3.htm

¹² Néstor García Canclini, « Policies for Cultural Diversity », UNESCO, Preparatory Paper 3, Stockholm Conference on The Power of Culture, p. 5 : <http://www.unesco-sweden.org/Conference/Papers/garcia.htm>

¹³ As Mr. Fulvio Massard of the Swiss Agency for Development and Cooperation stated during the Florence Conference in 1988.

diversity also affect the possibilities for creativity to flourish, and ultimately, the prospects for economic development.¹⁴

- *Cultural heritage and production viewed as a form of capital*

A second reason to consider cultural diversity as a factor in economic development lies in the fact that a community's heritage and its cultural realizations represent an important asset —cultural capital, if you will — which can be used to create jobs, generate revenue and rally 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 is a major source of foreign currency. The challenge emphasizes the World Bank, lies in developing a tourist industry that does not damage the culture on which it is based, but rather helps make it known internationally in all its facets.¹⁵ But even more so than heritage, because it is continually renewed over time, the production of cultural goods and services is a powerful factor in 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, newspapers, music records, film and videos, multimedia products and other new industries that are being created. It constitutes a very important economic resource for a country.¹⁶

This assertion holds particularly true for developed countries, most specifically for the United States with its powerful cultural industries that are one of its largest sources of foreign currency. It also very much applies to developing countries, such as India, Brazil, and Mexico, which are major exporters of audiovisual products. However, all developing countries could profit from their production of cultural goods and services if they were given the opportunity to develop such production. In this regard, music is particularly interesting. 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

¹⁴ http://www.unesco.org/culture/development/highlights/activities/html_fr/roundtable3.html

¹⁵ World Bank, *Culture and Sustainable Development : A Framework for Action*, 1998, chapter 1. For more particular information on this subject, see The Nordic World Heritage Office, *Sustainable Tourism and Cultural Heritage*, in collaboration with UNESCO, Oslo, 1999

¹⁶ See: <http://www.unesco.org/culture/industries/>

economic empowerment, which provides us a key to understanding its potential role in the economic development process.¹⁷

To provide an example of music's potential as a factor in economic development, Throsby cites the emergence on the international scene of “World Music,” which encompasses a large part of popular and folklore music from the developing world. As with music, this is also the case for other forms or cultural expression.

In fact, the link between cultural expression, in the sense of the production of cultural goods and services, and economic development has never been clearer than it is today. One need only observe how developed countries, convinced of the importance of cultural industries to their future economic development, are now putting forth detailed strategies to ensure their place in the new international economy of communications, which is largely based on the continual cultural contribution of the industries in question.¹⁸ Developing countries, for the most part, may not have the capabilities to implement such strategies at the moment. However, they can still encourage, to the extent that they are able, the production of cultural content adapted to their own experience, as long as they are not prevented from doing so.

II. The Impact of the Liberalization of Trade on Cultural Diversity

Unfortunately, the process of multilateral trade liberalization, as it is now being pursued within the framework of the WTO, puts developing countries in a delicate situation when the time comes to make commitments in the cultural sector, since it is often difficult, if not impossible—given their situation—to predict the measures they will need to adopt in the short and long term to ensure the development of their cultural production. Even for developed countries, as we will see later, such an undertaking can prove risky. Nonetheless, developing countries are asked to make agreements in the audiovisual sector, which not only results in a reduction in their ability to implement solutions already used in developed countries, but which may also, in some cases, amount to a total opening of their cultural market, even if they are barely present on that market. To understand this situation, we will briefly examine in the following pages the three main modes of intervention available to

¹⁷ Throsby, David, “The Role of Music in International Trade and Economic Development », UNESCO, *World Culture Report 1998*, UNESCO, Paris, 1998.

¹⁸ See: Ivan Bernier et Dave Atkinson, *Mondialisation de l'économie et diversité culturelle : les arguments en faveur de la préservation de la diversité culturelle*, Etudes de l'Agence intergouvernementale de la Francophonie, Paris, 2000 : http://agence.francophonie.org/diversiteculturelle/fichiers/aif_mondialisation_eco.pdf

developing countries in order to stimulate their cultural production. We will see that without an international agreement dealing with the problems emerging between trade and culture from a specifically cultural standpoint, it may prove extremely difficult to resist commercial pressures applied by countries seeking to export their own cultural products from industries solidly established on the market.

- Subsidies

Almost all countries use subsidies in one way or another to help their cultural industries. Even the United States, which sometimes claims the contrary, does so.¹⁹ However, unlike developed countries, most of which have substantial support programs for their cultural sector, developing countries, and in particular, the least advanced countries, often only have very limited budgets to promote the development of their cultural industries. Nevertheless, as they acquire the means, it is conceivable that these countries will want to become more financially involved in the development of these industries. It is then that the agreements made within the multilateral framework of the WTO, and the framework of other bilateral and regional agreements, could have important consequences on their ability to act.

The experience resulting from the negotiation and implementation of the General Agreement on Trades and Services (GATS) is particularly relevant in this regard. During the negotiations, all of the participating states, both developed and developing, were urged to make specific commitments regarding market access and national treatment in service sectors of their choosing. However, when GATS entered into force on January 1, 1995, only thirteen member countries—four developed countries (United States, Japan, Israel, and New Zealand) and 9 developing countries (Hong Kong, India, Kenya, Korea, Malaysia, Mexico, Nicaragua, Singapore, Thailand)—had made commitments in the audiovisual sector. Since that time, 10 developing countries (Albania, Central African Republic, Dominican Republic, El Salvador, Gambia, Jordan, Lesotho, Oman, Panama, China) and 3 transition-economy countries (Georgia, Kyrgyzstan, and Armenia) have made commitments in the audiovisual sector at the time of their accession. Few developed countries, as one can see, have made commitments in the audiovisual sector, as if they were hesitant to do so. Among those who have, three out of four included in their national treatment a reservation concerning the granting

subsidies. This was the case with the United States, which made a reservation concerning the granting of subsidies exclusively to American citizens through the National Endowment for the Arts, with New Zealand, which acted in the same manner regarding subsidies to films made in New Zealand, and with Israel regarding Israeli films. A number of developing and transition-economy countries also included in their specific commitments in the audiovisual sector reservations concerning the granting of subsidies exclusively to national producers and distributors (China, for example), but unfortunately, most did not do so. For these countries, this means that in the future, any subsidy granted by them in the audiovisual sector must also be granted to foreign producers and distributors present on their territory, including those from developed countries. Such a contradictory result cannot have been intended; it can only be the consequence of a lack of appreciation of the implications of their commitments in the cultural sector.

With regard to films more specifically, an interesting example to consider is that of film co-production agreements, which are particularly favorable to developing countries as they allow them access to subsidy programs in developed countries. These arrangements, since they go against Article II (1) of the GATS (the obligation to grant most favored nation treatment) would normally be forbidden because the advantages they grant only benefit signatory States rather than all Members. However, according to Paragraph 2 of the same article, a Member can maintain a measure that is incompatible with Paragraph 1 if the request is made before the entering into force of the WTO (January 1, 1995) and if the measure is included in their list of exemptions to Article II. The Members having already signed co-production agreements (most of the developed countries and a number of developing countries) were careful to include this type of arrangement in their list of exemptions to Article II. Many developing countries, unfortunately, did not, for the good reason that they had not signed such agreements by January 1, 1995. As a result, they cannot do so in the future unless they request a special dispensation according to the procedure stated in Paragraph 3, Article IX of the WTO Agreement, requiring approval by three-quarters of the members. This is how Korea recently found itself in the unfortunate situation of being unable to sign a film co-production agreement with France, since it had not requested an exemption from its obligations under Article II for that specific purpose. The same problem has occurred with regard to regional funding arrangements designed to assist the film industry, a type of arrangement that is incompatible with

¹⁹ See Martha Jones, "Motion Picture Production in California", California State Library, California Research Bureau, CRB 02-001 (2002). This study shows that, in one way or another, almost every American state supports the production of films on its territory.

the most favored nation treatment as it benefits only Member States. In theory, only members that have requested an exemption to maintain this type of intervention, such as the European Union (Media Program) and Nordic countries (Nordic Film and Television Fund), can do so. Here again, it is evident that developing countries will be at a disadvantage compared to developed countries if they ever want to implement such a mechanism.

Quotas

Quotas and quantitative restrictions, which are seen as more damaging than subsidies as a form of government intervention in the economy, are forbidden in the trade of goods (except in the film sector, where screen quotas are exempt under Article IV of the GATT) and are the subject of negotiations aimed at eliminating them from trade in services in the context of GATS. In practice, quotas are used by several developed countries and a number of developing countries in the television sectors and used by a few countries in the radio sector. Although less frequent than they used to be in the film sector, screen quotas are still used by some countries. The main objective of audiovisual quotas is to reserve a minimum percentage of time for nationally produced programs (or programs with local content) as these play an essential role in the democratic functioning of the country while contributing to its economic growth. In some cases, they are also used to ensure the preservation of linguistic diversity. The use of quotas as a means of preserving a minimum amount of local content in the audiovisual sector is well illustrated in the following two case studies.

At the close of the Uruguay Round Negotiations in 1993, New Zealand had agreed to refrain from using quotas and quantitative restrictions in the audiovisual sector. However, a study made public in 1999 showed that local content on New Zealand television made up only 24% of total airtime, placing New Zealand at the bottom of the list in a comparative study including 10 other countries (United States, United Kingdom, Canada, Australia, Finland, South Africa, Ireland, Netherlands, Singapore).²⁰ In 2001, the government of New Zealand announced its intention to use quotas for local content on television and the radio, as the sole use of subsidies had not proven sufficiently effective.²¹ However, soon after, the United States Trade Representative made it known that in its

²⁰ New Zealand On Air, "Broadcasting And Cultural Issues At The Start Of The New Millennium": <http://www.nzonair.govt.nz/media/policyandresearch/otherpublications/issues.pdf>. A similar study dated 2001 showed that the amount of local content had not increased since 1999: <http://www.nzonair.govt.nz/media/television/tvpdfs/Local%20Content%202001.pdf>

²¹ New Zealand, Ministry for Culture and Heritage, Department Forecast Report 2001, p. 9: [http://www.mch.govt.nz/publications/dfr2001/MCH 2001 DFR.pdf](http://www.mch.govt.nz/publications/dfr2001/MCH%202001%20DFR.pdf) .

view such a measure violated New Zealand's commitment.²² The project was subsequently abandoned and replaced with a simple good faith agreement between the New Zealand government and television station owners in which the latter promised to do their utmost to increase local content on their stations. It is interesting to note that New Zealand's closest neighbor, Australia, was able to maintain 55% local content during the same period using its quota system.²³

The second case involves the screen quota system implemented by Korea in an effort to develop its production of films. This approach, which was in total compliance with the requirements of Article IV of the GATT, did provide a boost to Korean film production over time. However, in 1998, the United States, taking advantage of the launching of negotiations with Korea for a bilateral agreement on investment, requested the gradual elimination of this quota system. This did not prevent them from citing Article IV of the GATT as an example of the ability of the multilateral trade system to adjust to the demands of preserving cultural diversity in a December 2000 paper on audiovisual services presented to the WTO Council for Trade in Services.²⁴ This request, which was immediately perceived as a serious threat to the survival of the Korean film industry, gave rise to a vigorous debate in Korea²⁵, a debate that continues today.

Controlling investments

Another mechanism currently used to encourage local cultural production is controlling foreign investments. Two arguments underlie this type of intervention. The first is that cultural enterprises controlled by local investors are more likely to be interested in local cultural production than those controlled by foreign investors. The second is that the media, in general, play too large a role in the democratic functioning of the state to allow foreign interests to acquire complete ownership. In practice, there are investment control measures in place in the cultural sector in several countries, particularly in the sectors of radio and television. Currently, pressures to eliminate these control measures remain limited in the absence of an actual multilateral agreement on the subject²⁶. Within the context of the GATS, however, countries that have made commitments in the audiovisual sector regarding market access and national treatment (essentially developing or transition-economy

²² Office of the United States Trade Representative, *National Trade Estimate Report on Foreign Trade Barriers 2001*.

²³ For statistics on this subject, see: <http://www.pc.gov.au/inquiry/broadcast/finalreport/chapter11.pdf>

²⁴ WTO, Council for Trade in Services, Communication from the United States, Audiovisual and Related Services, Paragraph 9, 18 December 2000: Doc. S/CSS/W/21.

²⁵ See: "Korean Film industry's plea for screen quota turns emotional", *Korea Herald*, June 18, 1999.

²⁶ In this regard, we should remember the failure of OECD negotiations for a multilateral agreement on investment.

countries as we have already seen) without specifying limits, restrictions, or conditions concerning the establishment of a foreign commercial presence on their territory, now can no longer restrict market access to foreign investors in this sector. It is quite possible that these countries have sought to attract precious foreign investments this way. What is less clear is to what extent the short and long term repercussions of such a choice on cultural production were taken into account. If, for example, these foreign investments were essentially intended to create a bridgehead for the importation of foreign audiovisual products, there would be reason to worry about the repercussions of such a choice on preserving a minimum amount of local content. It is also interesting to note that most developed countries have not made any commitments in the audiovisual sector and that among those who have, some, such as the United States, have made reservations concerning access of foreign investors to their radio and television markets.

Conclusion:

In of the preamble of the *Culture 2000* program adopted by the European Parliament and Council in February 2000, one can read the following statement, which seems valid not only for the European Community and for developed countries in general, but even more so for developing countries whose infrastructures in the cultural sector often remain fragile and incomplete:

Culture is both an economic factor and a factor of social integration and citizenship; for that reason, it has an important role to play in meeting the new challenges facing the Community, such as globalization, the information society, social cohesion and the creation of employment.²⁷

Our intention at the outset was to show that, contrary to the too easily accepted notion that cultural development must come after economic development in the list of priorities of developing countries, they are in fact closely linked to one another. As we have seen, a new analysis, which emerged in the 1990s, tends to support this last point of view. However, we have also seen in recent examples that between this perspective and the very concrete reality of international trade negotiations, there was a gap in this regard and that often, under the pretext of economic development, developing countries were asked to enter into agreements that could greatly compromise their cultural development. The only way to close this gap, we have suggested, is to implement an international instrument that would serve as framework of reference and a place for dialogue for all countries

²⁷ *Official Journal* no L 063 (10/03/2000) : http://europa.eu.int/eur-lex/fr/lif/dat/2000/fr_300D0508.html

concerned about maintaining the diversity of cultural expression that is essential for achieving globalization with a human face and that would also take into account the specific problems encountered by developing countries in this regard.

The urgent need for action in this area is becoming more evident as the multilateral trade negotiations on services progress. In that context, one can only worry about the United States' basic claim in the audiovisual sector. It has requested, in its *Proposal to Liberalize Trade in Services* dated July 2002, that member states commit themselves to maintain current levels of market access in the sectors of film and videotape production and distribution services, radio and television services, and sound recording services.²⁸ In the case of developing countries, which now maintain few restrictions to trade in the audiovisual sector, such an agreement would prevent them from adopting measures in the future that they may deem necessary to their cultural development, but which would violate their commitment, while developed countries that have already adopted these measures would see them validated.

²⁸ See : <http://www.ustr.gov/sectors/services/2002-07-01-proposal-execsumm.PDF>