



**UK Coalition for Cultural Diversity**

## Who's afraid of WTO? Cultural trade and diversity

By Dr Carole Tongue

### Introduction

Can film and television, the most powerful cultural medium, just be treated as commodities? This question has always exercised governments and has led to intervention - particularly in the regulation of television - to protect and stimulate production and broadcast of home grown programming. Some countries, notably France, Canada and South Korea have deployed a significant and complex range of special measures to support and sustain the production and exhibition of their national films, drama and documentary.

"Two main conditions for the preservation of cultural diversity are hereby put forward: the ability of governments to protect and stimulate domestic production and the subsequent circulation and exchange of these local productions."<sup>1</sup>

This is out of concern that the medium of the screen plays a significant part in a nation's culture, the formation of its values and in the common conversation necessary to underpin and develop democracy and cultural identity.

"For as distinct from the priorities of trans-national entertainment and profit-driven television, the 'broadness' of broadcasting suggests a potential for dialogue across otherwise embattled cultural, experiential and faith boundaries."<sup>2</sup>

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<sup>1</sup> Pauwels, De Vinck and Van Rompuy. Can State Aid in the film sector stand the proof of EU and WTO liberalisation efforts? *European Studies* 24 (2007) 23-43

<sup>2</sup> Indigenous Culture and the politics of place: regulation for regionalism in British Broadcasting." P.48 Sylvia Harvey "Trading Culture", Edited by S Harvey. John Libbey Publishing.2006.

For France, film is the seventh “art” and viewed as central to the nation’s culture. It would be unthinkable for the French if a majority of films on television and cinema came from outside France. Thus, France has developed a cultural policy “toolkit” to support and protect the production, distribution and exhibition of its own and European films, television programmes and other services.

In the 1990’s ministers, parliamentarians and creators (particularly from Canada and across Europe) in favour of defending and promoting cultural diversity, began to express disquiet about the application of world trade rules to the audiovisual sector for example, for fear that they could be used to undermine cultural sovereignty of nations to adopt specific measures to support their audiovisual industry and other cultural forms of expression. If the WTO rules about trade liberalisation such as “national treatment” applied to cultural industries, they argued, this could outlaw the wide variety of cultural policies used by countries around the world to support local expression in film, television and music.

This is to be contrasted with the American view as expounded by US trade representative Robert Zoellick that trade liberalisation and open markets, including for all audiovisual goods and services, is

“a vision of a world in which free trade opens minds as it opens markets, encouraging democracy and greater tolerance.” (USTR, 2004:8).

In April 08 at a discussion in Washington on the export of US film to “billions of people around the globe who both welcome and resent them”,<sup>3</sup> Dan Glickman, the powerful President of the Motion Picture Association of America dismissed the idea that movies have anything to do with culture insisting that they are mere commodities.

These are arguments that have been constantly deployed by the US in world trade talks and elsewhere, where US representatives never mention the cultural role of audiovisual works outside of a US economic imperative, seeking through world trade negotiations to make all audiovisual works and services subject to free trade rules. Hollywood and Washington cooperate closely to defend the export of film, “creating a balance of trade more favourable than

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<sup>3</sup> “Risky business for Hollywood”, article in Herald Tribune by Martha Bayles, 8 May, 2008

that of any other industry save aerospace."<sup>4</sup> The US trade surplus in audiovisual goods and services now stands at over \$8 billion. Dan Glickmann, Director of the MPAA at his recent speech to the National Press Club made it clear how high the economic stakes are for the US:

"Of course, I also recognize that it's easy for the chairman of the MPAA to be pro-trade when approximately 60% of our box office and home video receipts come from outside the U.S. American movies run a trade surplus with virtually every country in the world that we do business. Fifty years ago, the global box office was largely an afterthought. Today, the U.S. is one important market among many for our movies."

It must also be remembered that world trade talks are conducted largely by unelected civil servants from ministries of trade and industry who have no cultural diversity brief, and have focused on extending market share for large and powerful countries with smaller nations seeking to enter new markets. Until this year there has been little or no room for:

"reflecting upon the importance of film and television as distinct means of human expression and communication, reflecting the values and beliefs of their culture of origin."<sup>5</sup>

### Other challenges

Culture is now transmitted at the speed of light across frontiers in our global economy. Alongside concerns about the drive to include audiovisual goods and services in world trade talks, has been an increase in the myriad of satellite and cable channels facilitated by this digitalisation. Broadcasting across borders where one country can beam its audiovisual culture unhindered into other has been perceived as a threat by some to their own television regulation and support for their own culture. In 1989, the European Union television legislation, known as the Television Without Frontiers directive, contained provision for cultural and linguistic diversity and the broadcast of a majority of national/EU audiovisual works. It also contained a major loophole. This would continue to allow a significant dominance of US film on all screens and enable many channels to sidestep the broadcast quota for 51% of screen time for fiction to be devoted to national and European drama, fiction and documentary.

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<sup>4</sup> Ibid.

<sup>5</sup> Afterword by Carole Tongue and Sylvia Harvey. P.222 in "Trading Culture", Edited by S Harvey. John Libbey Publishing, 2006.

In addition, mergers in the last two decades, such as DreamWorks SKG acquired by Viacom Inc.'s Paramount Pictures; News International takeover of the Wall St Journal or the Google and YouTube merger, have only served to confirm the constant danger that an oligopoly of media owners will increasingly decide the vast majority of our culture. In the 1990s, cultural producers and a range of politicians underlined the extent of the trade deficit between US and EU in audiovisual programmes/films. The specific economics of the sector, denied by neo-liberal economic adherents, has led to a deficit now standing at over \$8 billion. This imbalance in the trade in film and television increasingly has been seen as a risk to the diversity of other national cultures, in which film and television, and the screen in general, are the dominant form of cultural expression, central to the democracy, values and cultural identity of our different societies.

Furthermore cultural production and exchange between nations is limited, particularly North - South. Many developing countries have no indigenous film or television production industry to speak of, where people are thus denied access to their own stories and voices on the screen with all the attendant implications for national culture, identity and democracy. This is coupled with the decline in coverage of the wider world in certain countries like Britain.<sup>6</sup> This concerns many who believe that out of cultural exchange can grow mutual understanding and long lasting peace much needed where cultural misunderstanding continues to fuel conflict unnecessarily.

This chapter will look at some of the background to how these competing visions and challenges and desired responses to them have played out from the end of the 1990s until the present day resulting in the adoption of a UNESCO convention for the protection and promotion of the diversity of cultural expressions in November 2005.

Who's afraid of the WTO ?

Principles of the trading system

A number of simple, fundamental principles run throughout all the WTO agreements. The one deemed to be the most threatening to national and European audiovisual support measure was the principle of non-discrimination: the application of national treatment and most favoured nation status rules. National Treatment (NT) means exactly what it says: that Member States agree to apply the same rules to companies of any WTO member as its does to its own nationals. The implications of the application of NT status to the

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<sup>6</sup> "Screening the World", report by the International Broadcasting Trust, June 2008

audiovisual sector is that for example, a nations' film funds could be accessed by any WTO member without discrimination. Special support for public service broadcasting (e.g. the BBC) could also be open to challenge. Special rules on broadcasting requiring certain broadcast and investment obligations could be open to challenge. Application of Most Favoured Nation (MFN) status reinforces this position by obliging a Member State to apply the same special provisions it might have regarding certain countries to all WTO Member States.

## GATS in relation to audiovisual and cultural services

The General Agreement on Trade in Services (GATS) was concluded during the Uruguay Round 1984 - 1994 which also established the WTO (the 1947 GATT on customs tariffs for commodities was only an international agreement and was not incorporated in any international organisation). However, in the 1990s it became increasingly clear that there was an inherent tension between the basic premise of the GATS – progressive liberalisation of trade in services– and policy objectives not driven by purely economic factors, such as the promotion of environmentalism or cultural diversity.

This is resolved in some cases by the list of general exceptions in Article XIV, which serves to exempt certain objectives (e.g. those related to the environment and health) from the GATS disciplines. The French campaign for a “cultural exception” in the Uruguay Round, whereby audiovisual services would also have been included as a general exception, was an attempt to address cultural objectives in the same way under the GATS. However, no such exception was negotiated. Instead, GATS was made applicable only to those service sectors for which countries made commitments, and most countries did not make such commitments in regard to audiovisual or broadcasting services in 1995 to avoid being subject to rules that could undermine national cultural policies that protect and support these services, be it through public service broadcasting or film subsidies. The next section explains this further.

It should be noted that the Most Favoured Nation clause (MFN), which requires that preferential treatment granted to certain nations be applied to all members of the WTO, applies to all sectors. Nevertheless, it is possible to make certain reservations with regard to this clause by submitting a list of exemptions to cover specific agreements (for example, agreements governing cinematographic co-production).

Nevertheless, such flexibility, which appears to grant the states a certain degree of freedom, serves in fact to permit certain steps towards liberalisation. Even if some States did not initially make any undertaking to introduce liberalisation in the course of the Uruguay Round, (for example in the

audiovisual sector, including the 15 EU Member States), the undertaking to introduce progressive liberalisation as contained in Article XIX of the GATS puts pressure on them to go even further in their undertakings for liberalisation during each round of negotiations. In this way they are able to abandon their MFN exemptions in the long run.

Footnote?

## The impact of GATS disciplines on the cultural sector

The disciplines of the GATS bring into question all regulations governing these audiovisual sectors. Actually, all regulations which endeavour to counteract the radical effects of the free reign of market forces are considered to be an obstacle to trade, which must be abolished.

Media ownership regulations requiring, for example, a certain percentage of national ownership for specific media, are considered to restrict market access by foreign operators. The British government responded to this provision in its 2003 Communications Act by a provision to allow non-national ownership of terrestrial commercial channels for the first time.

National audiovisual rules guaranteeing specific financial resources or specific facilities to national operators are considered to be contrary to national treatment. This represents a potential significant threat to public service broadcasting.

Quotas - quantitative restrictions, present in many national and European audiovisual laws would be forbidden if they had to comply with international trading regulations. This could threaten the TV Without Frontiers Directive, (now Audiovisual Media Services Directive), which provides that 51% of our screen time should be indigenous drama/film/documentary.

## Government positions at the GATS

In 2000 and 2001, a range of governments submitted papers for discussion on the issue of audiovisual services and their treatment in GATS. The issue of a nation's cultural sovereignty was put firmly on the table by the Canadian government.

## Against a Convention -

### United States

In 2000 the US put forward a paper pointing to the impact of new technologies on the audiovisual sector, providing opportunities for lower-cost distribution. It argued against an "all or nothing" approach and asked nations to agree to

“negotiated commitments for the audiovisual sector that establish clear, dependable, and predictable trade rules with due account taken of the sector’s specific sensitivities.” The last 3 words are interesting. At no time would any US government representative use the word “culture” in connection with audiovisual works and services. The US government had already mandated their spokespeople way back, even during the negotiations on the EU Television Without Frontiers Directive from 1994 – 1996 never to use the word “culture” in connection with film and television services. The US clearly wanted all audiovisual products and services included in GATS negotiations and subject to free world trade rules which would further benefit their most successful audiovisual industry, second only in importance to aerospace in terms of positive balance of trade. Acknowledging this was about culture would sabotage these efforts.

### Switzerland

The Swiss argued that the “digital revolution” has led to “important structural changes” in the audiovisual sector, with new technologies bringing about lower-cost forms of digital production and distribution, and convergence blurring the boundaries with telecommunications services. In line with the US submission, it also argued that the “all-or-nothing” debate needed to be overcome in order to address the treatment of audiovisual services under the GATS, calling for “a balanced solution that satisfies both [cultural and commercial] sensibilities”.

### Brazil

Took a position between European and the USA arguing against both extremes saying that neither side of the debate recognised that audiovisual products have both cultural and economic importance. The Brazilian government wanted progressive liberalisation while ensuring governments’ autonomy to preserve and promote cultural identity and cultural diversity; to contribute to increasing the participation of developing countries in trade in services, in particular by creating opportunities for effective market access for their exports. One driving force for the Brazilians was the desire to export freely their own brand of particularly successful soap operas to the rest of the world. The Brazilians proposed that Members “make specific commitments in audiovisual services taking into account the objectives of Article IV of the GATS (Increasing Participation of Developing Countries). In that regard, special attention should be given to audiovisual services in which developing countries have greater potential such as (but not exclusively) television services”.

### Japan

The Japanese government made a communication on “The Negotiations on Trade in Services” proposing that “all registered MFN exemptions should be eliminated by the end of 2004. Regarding audiovisual services, their paper

argued that liberalisation “is important for respecting the right of the citizens of each Member to free access to a variety of cultures and information. Audio-visual services have become remarkably important with the recent progress of information technology.”<sup>7</sup>

## For a Convention

Unlike the US and Japan in particular, the Canadian and French governments argued in favour of a framework that could be counter posed to the regulatory principles of GATS.<sup>8</sup> This was despite an earlier two-fold concern by the French government that a new framework outside the WTO might not be an effective counterbalance to WTO rules and secondly, might be used as an alibi for new demands inside the WTO for further audiovisual liberalisation.

### Canada

In February 1999, a blue-ribbon trade advisory panel in Canada published a report recommending that in lieu of a “cultural exception,” in world trade talks, a legally binding international convention on cultural diversity should be adopted which would protect the ability of countries to maintain cultural policies without fear of trade retaliation. This recommendation was then adopted by the Canadian government in October 1999.

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<sup>7</sup>. 2001 A Briefing Paper prepared by the British Screen Advisory Council on behalf of the European GATS Steering Group

<sup>8</sup> Trading Culture. Edited by S Harvey. 2006 John Libbey Publishing. Chapter 2. By Des Freedman. “Media Policy-making in the free trade era.”

The Canadian government communication of 2001 put forward to GATS in "Initial Canadian Negotiating Proposals", makes two references to the audiovisual sector. Firstly it notes (in paragraph 3) that the GATS respects national policy objectives, and emphasises the right of Members to regulate the supply of services within their territories in order to meet such objectives. It states that these are important GATS principles "as they ensure that each Member's ability to implement social and cultural policies is maintained". The communication went on to say "Canada will also not make any commitment that restricts [its] ability to achieve [its] cultural policy objectives until a new international instrument, designed specifically to safeguard the right of countries to promote and preserve their cultural diversity, can be established". Canada was thus giving support to the proposal, discussed above (see "Cultural diversity"), to establish a legal cultural instrument.

## The European Union

The EU Commission, through its Trade Commissioner is delegated by the EU Treaties to negotiate in world trade talks on behalf of all EU Member States. The Trade Commissioner does so in consultation with a special committee consisting of members from the 27 member States, 'the Article 133 Committee', as required by Article 133 EC. The Committee consists entirely of civil servants, as appointed by the Council of Ministers, leaving out, in effect, only parliaments and civil society.

Since the establishment of the Article 133 Committee, the process has been heavily criticised as the Committee's work is undertaken largely in secrecy and without any reports on which other interests are presented and balanced alongside commercial ones in determining the external common commercial policy.

The role to be played by this Committee is that of coordinating trade policies and ensuring consistency in Community policies.

As all Community actions taken under the Treaty, the Committee is however under the obligation of taking into consideration cultural aspects as required by Article 151(4) EC.

This obligation must undoubtedly be interpreted as a response to the negative effects of market liberalization and as an attempt to afford greater weight to cultural issues in the balancing of commercial and cultural interests, but nevertheless Article 151(4) EC remained a political statement rather than a legal obligation due to its vague wording requiring cultural aspects only to be taken into consideration. What this duty implied beyond respecting and promoting the cultural diversity of the member States, as listed in the provision, was unclear until the ratification of the UNESCO Convention. With this however, the Community has added significant substance to this political statement by recognizing the rights and obligations listed in the Convention.

That has not prevented the individual institutions, governments and particularly the Council of Cultural Ministers from influencing those negotiations.

In Art 151 of the Nice Treaty, the EU is committed to linguistic and cultural diversity and to contributing to the flowering of the cultures of Member States. However, action under this article is subject to unanimous voting in the Council of Ministers and is considered a weak legal base for action.

### The European Parliament (EP)

Throughout the 1984-1999 session of the EP there was a strong majority of MEPs on the Committee for Culture, Media, Sport and Education in favour of an EU set of audiovisual rules and measures to guarantee cultural diversity through the TVWF directive; the MEDIA programme and support for public service broadcasting. MEPs, led by Committee Chair Luciana Castellina, backed the creation of a European Investment Fund for cinema, that failed however to win backing from EU ministers. The Parliament as a whole did however support the continuation of the EU Media programme to support the production, distribution and exhibition of European films across frontiers. In 1996 The EP voted overwhelmingly for the Tongue report on the future of public service broadcasting in the digital age, which was seen by virtually all MEPs as a prime guarantor of cultural diversity. This report led on to the insertion of a protocol in the Amsterdam Treaty of 1997 underlining the essential place of public service broadcasting in a democratic society.

Simultaneously MEPs, after 1994, informed constantly by cultural producer organisations, grew more and more concerned about the potential effects on such policies from the GATS regime and the WTO. As an MEP spokesperson on media and culture I took the opportunity to speak directly with Labour Trade and Culture ministers during the UK Presidency as to why no commitments on audiovisual policy should be made within the WTO. In 1999, a cross section of MEPs from different political groups lobbied EU Culture Ministers and the European Commission not to make commitments in the audiovisual field in any trade negotiations Both the Council of Culture Ministers and the EU Commission responded favourably (as detailed in the section below).

### EU Commission

Pressure from the European Parliament, certain EU governments and cultural producer organisations came to bear on EU Culture Ministers in 1999, to lobby EU Trade Commissioner Pascal Lamy who was negotiating for all EU countries in the WTO. It worked. He received a mandate from the 15 EU Culture Ministers not to make any undertaking on audiovisual goods and services in

the GATS. In Autumn 1999 these Ministers issued a statement underlining the right of every Member State to cultural sovereignty and support measures which might flow from that right. This statement has never been overturned. Interestingly, this did not stop the British government expressing a desire to discuss media ownership within the WTO.

This illustrates the divide between the vision and values of culture and industry ministers, even within the same country and coming from the same government.

### Council of Europe

Upholding, promoting and sustaining cultural diversity and cooperation has always been central to the work of the Council of Europe

In December 2000, the Committee of Ministers of the Council of Europe adopted a declaration on cultural diversity. This declaration importantly declares:

“Convinced that all member states and other States Party to the European Cultural Convention must confront this challenge from a culturally distinct perspective, but that the shared global context for development requires the elaboration of a set of principles which will provide a coherent framework for sustaining and enabling cultural diversity at all levels;”

which was an invaluable contribution to the growing lobby for an international convention on cultural diversity. Interestingly audiovisual policies, and public service broadcasting in particular, are singled out in this Declaration, as important tools for safeguarding cultural diversity and as a necessary adjunct to trade policies.

Affirming the legitimacy of cultural policies on an international level - Pressures mount towards an instrument for CD

### Cultural Producers mobilise

Many actors from both the political and creative spheres would raise their voices to assert the special nature of film and television programmes.

At international festivals from the late 1990s onwards, such as the influential Cinematographic “Rencontres” in Beaune, France, organised by l’ARP (French Association of Directors and Producers) voices from across Europe, North Africa and beyond articulated concerns about the dangers of world trade rules

compromising both national and EU cultural diversity policies in the audiovisual sector in particular. In 2002 ARP supported Prime Minister Lionel Jospin in affirming a cultural exception in world trade.<sup>9</sup>

ARP called for the EU to maintain the unanimous voting provision for cultural diversity matters in any future EU Treaty change and importantly said that, "The introduction of the notion of cultural diversity in the provisions relating to a common commercial policy would represent a major advance"

In 2004 at a further ARP meeting in Beaune, the EU Commission Director of audiovisual policy Gregory Paulger reiterated as regards any Treaty changes that "in the domain of international trade, the text stipulates that the Council of Ministers must be unanimous in any negotiation and conclusion of any agreement in audiovisual and cultural services."<sup>10</sup>

## FERA and SACD

In the late 1990s and early 2000 support grew, particularly from French and Italian audiovisual industry representatives, for an international declaration to be developed under the auspices of UNESCO, building on the "Charter of Cultural Identities and Rights to Cultural Diversity" that was prepared by the Federation of European Film Directors (FERA). This charter was proclaimed at the Versailles Assembly and recognised by UNESCO on 17 June 2000.

In addition to FERA, a number of bodies like the French authors' rights society SACD, and their Vigilance Committee continued to pursue three objectives in 2002 in relation to issues of cultural diversity:

- To sensitise and bring together all cultural professionals in France, in Europe and throughout the world regarding the need to preserve the ability of states to maintain and develop cultural policies.
- To convince our governments and the European Union not to ask the other states to liberalise cultural and audiovisual sectors in June 2002 and not to undertake any commitment for liberalisation in these very same sectors in March 2003.

Thirdly, and most importantly they spelt out the need for an international instrument on cultural diversity:

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<sup>9</sup> Press Release. L'ARP. 16 January 2002

<sup>10</sup> Minutes of discussion Cultural diversity in Europe and the World. ARP Rencontres Cinématographiques de Beaune 2004

- o "To create a consensus with professionals and in governments for development outside the context of the WTO of an international instrument on cultural diversity, which would act as a counterweight to the WTO and would include cultural commodities and services in both their cultural and commercial aspects and their own specific features."<sup>11</sup>

FERA pointed out however, that despite the mandate for negotiation, which the Member States of the European Union granted the Commission in October 1999<sup>12</sup>, the United Kingdom, with the support of Germany and the Netherlands, asked the European Commission that music should be liberalised. Even in Europe, which nevertheless fought so consistently during the Uruguay Round to preserve its policies, the barriers are weak and may give way at any time, if governments do not sense pressure from professionals.

FERA went on to argue consistently from this point on for a new international instrument for cultural diversity saying, on one occasion,

"Today more than ever before, it is essential to act as a counterbalance to the WTO. As states express their demands for liberalisation, we are aware that the United States are preparing their own demands to open up all audiovisual sectors in all countries that they consider to be protectionist. These demands will be expressed around the negotiation table and we will then have to refuse to give into them. There is nothing to force a country to undertake a commitment for liberalisation in the cultural and audiovisual sector. However, to do so, it will be necessary to resist pressure. To resist pressure, an international instrument upholding the right of States to enhance cultural diversity would legitimise cultural policies supporting creativity within a country and would guarantee opening up to all other culture. This would help to demonstrate that the WTO is not an appropriate stage on which to discuss these problems. Such an international convention would also help create another environment, for

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<sup>11</sup> Statement of FERA (European Federation of Film Directors) in Seoul Korea, A French and European view of Cultural Diversity, 13-15 May 2002, by Cecile Despringre, European Advisor.

<sup>12</sup> In the course of the next WTO negotiations the Union will make sure to guarantee, as in the Uruguay Round, the possibility for the Community and its Member States to preserve and develop their cultural and audiovisual policies in order to preserve their cultural diversity.

questions of cultural policy which is more appropriate because it is a specialised and global matter.”<sup>13</sup>

In 2000 in Valencia, filmmakers and parliamentarians gathered from every continent, under the auspices of the city and of the European Commission and UNESCO. In the absence of eminent UK screenwriter and producer John McGrath, I gave his speech which contained the memorable words: “If we imported 90% of our rice from one culture we would not be overly concerned, but to import that level of our audiovisual culture would be of the gravest concern.” John McGrath was a rare UK audiovisual player who believed in the need for strong autonomous local, regional and national audiovisual strategies and would speak out in their defence. He always urged those with shared concerns on these issues to make their voices heard inside our government and alongside other creators, viewers and listeners in the world.

Representatives from the Motion Picture Association of America (MPAA) held separate talks with other Anglophone representatives to reiterate the US government against a separate international instrument guaranteeing cultural diversity and national sovereignty in cultural policy. Astute politics by a number of participants ensured that participants remained united in calls for a UNESCO international convention. An invaluable role was played by Peter Grant, a Canadian communications lawyer who had been a key member of the Canadian government’s advisory panel, which had previously advocated an international instrument. He acted as rapporteur for the Valencia conference and made everyone aware of this initiative.

The Valencia meeting concluded with a declaration calling for a UNESCO Convention on cultural diversity to counterbalance WTO rules stating that

“Governments should be invited to consider policies necessary to support the diversity of cultural expression. At the international level, there is an urgent need for the negotiation of a new international instrument on cultural diversity to address issues related to cultural products in all their aspects.”<sup>14</sup>

In 2001 The British Screen Advisory Council (BSAC) formed a European GATS Group co-hosted with Eurocinema, represented by Yvon Thiec, its long time active Director (representing French audiovisual producers). A priority of this

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<sup>13</sup> Statement of FERA (European Federation of Film Directors) in Seoul Korea, A French and European view of Cultural Diversity, 13-15 May 2002, by Cecile Despringre, European Advisor.

<sup>14</sup> Forum on Globalisation and Cultural Diversity- The Challenge to the Audiovisual Industry - Valencia, Spain, 22-24 May 2000 Organised by Fondation Valencia Tercer Milenio and ADC Nouveau Millenaire, under the patronage of UNESCO and with the support of the European Commission and the Valencia City Council

group was to develop a negotiating position on the GATS on behalf of the EC's national film industries.

This Group looked into this issue looking at the impact of new technologies on the audiovisual sector, the recognition of cultural diversity in the GATS, and a WTO agreement on competition law.

The first step towards a common European position was taken at the first meeting of the European GATS Group in Cannes in May 2000. A Statement of Principles<sup>15</sup> was endorsed by the participants at that meeting (representing nine Member States), and submitted to the Commission. That document comprised a series of general statements, primarily asserting the need for the EC to maintain its ability to promote cultural diversity.

BSAC maintained in its document on GATS principles in 2001 that: "The negotiating stance of the EU should be based on the measures necessary for the achievement of the cultural and economic objectives of European audiovisual policies. The EU should, during the GATS negotiations, maintain the freedom for the Community and its Member States to retain and develop these measures."<sup>16</sup>

Other organisations added their voice. In 2002 at the International Forum of Directors Organisations (IFDO) in Montreal they reaffirmed the fundamental principles of a cultural ecology based on the need for diversity and asserted the right of all individuals and all peoples to choose their own modes of expression.

#### Public Service Broadcasters

ARD, the German public service broadcaster with a regional and a national mission, was particularly active in calling for an instrument to protect and promote cultural diversity which would highlight public service broadcasting as central to that aim. According to Harcourt, in 2002, a report on cultural diversity was sent to the European Parliament submitted by interest groups and public service broadcasters. This was strongly supported by the German public service broadcaster ARD and its Head of European Affairs, Verena Wiedemann in particular".<sup>17</sup>

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<sup>15</sup> "Statement of Principles on GATS 2000 following European meeting in Cannes", 13 July 2000. European GATS Steering Group

<sup>16</sup>.Ibid

<sup>17</sup> Harcourt, Alison " Case study findings from the international level" paper presented at the ESRC Workshop on Regulatory Competition in audiovisual markets University of Exeter June 20, 2008.  
<http://www.ex.ac.uk/research/networks/information/documents/harcourtgovernance2008.pdf>

## Politicians past and present join the fray

On 19 January 1995 Francois Mitterrand gave his last speech to the European Parliament before he died, The French President devoted most of his speech to insisting on greater investment in our cultural diversity particularly in film. Listening on that day were MEPS – myself amongst them - who had supported strong EU policies for cultural diversity in film and television. The President's words were most welcome. Some colleagues even suggested we had written half his speech.

At the 5<sup>th</sup> meeting of the International Network on Cultural Policy on 15<sup>th</sup> October 2002 in Cape Town, Minister of Canadian Heritage Sheila Copps, said

"As ministers of culture, we have launched a serious discussion of the best means to ensure that we can preserve and promote cultural diversity around the globe. We have also helped promote understanding and respect for cultures. And Canada, together with all the participating countries, worked hard to prepare a draft international instrument with the main objective of protecting cultural diversity, just as the Rio Convention protects global biodiversity. I am confident that the Working Group on Cultural Diversity and Globalization, which is chaired by Canada and whose mandate ends next year, will successfully complete its work of considering the nature and scope of such an instrument, now in the draft stage."

South Africa's Minister of Arts, Culture, Science and Technology Baldwin Ben Ngubane expressed his gratitude to Minister Copps for all her efforts to create an International Network of Ministers of Culture, whose main purpose is to promote cultural expression throughout the world in the context of globalization.

At a 2002 meeting to discuss European cultural policy in Paris, the then French Europe Minister Pierre Moscovici declared:

"we are all aware that monopoly kills diversity. In spite of the arguments and assurances put forward by certain champions of globalisation, I must say I would feel uncomfortable in a world where the printed Bible were merely the spin-off of an animation film. To reduce creative works to the status of a mere 'product' is clearly unacceptable and runs counter to what should be one of our guiding principles: cultural assets

are not just commodities like any other commodity." On the other hand, Mr Moscovici went on to say, "globalisation also represents a formidable boost. European culture is a synonym of openness to the world because it always had a universal outlook. We discovered the world and travelled to its remotest regions. Aware of our heritage, steeled by our unique cultural tradition, we should not reject or fear trade and the laws of the market, but we should not submit to them blindly and naïvely either."

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At the same meeting EU Trade Commissioner Pascal Lamy hinted at progress towards a UNESCO Convention when he assured participants that the international debate on cultural diversity and cultural policies – quite apart from the WTO negotiations – was being followed by the Commission "with a great deal of goodwill":

"Any development in connection with the idea of creating a specific legal and institutional framework at international level is monitored with interest. I am thinking, in particular, of the work done by UNESCO, even though we are still far from being able to establish mandatory provisions for international governance in this area."

In conclusion he said,

"we must reconcile the 22 regulation of cultural exchanges with the preservation of diversity, which means regulating the sector and creating possibilities for specific subsidies, while at the same time keeping in mind the need to promote exchanges." This, argued Mr Lamy, "also applies to the developing countries, particularly large countries like India, which play a leading role in the sector."

Luciana Castellina, former MEP and chair of the European Parliament's Culture Committee from 1994 – 1996 and a staunch campaigner for audiovisual cultural diversity sounded a note of caution:

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What future for European cultural policy? Summary of Debates..A seminar jointly organised by Friends of Europe and Eurocinema with the support of the French Ministry of European Affairs and the Culture 2000 Programme of the European Union in co-operation with Vivendi Universal Paris, Centre des Conférences Internationales Kléber. 12 February 2002

“The problem is not how to protect the rights of each culture as a self-contained world with its own parochial products and creators. This is why I have some reservations about the UNESCO Alliance for Cultural Diversity, for I believe the essence of cultural development is exchange, the specific contribution of different cultures to a common collective imagination – openness to the universal. I am not interested in protecting my own culture if this culture does not contribute to defining a universal ethos. The danger lies in allowing European cultures to become fossilised: if they are not ready for exchange they will perish.”<sup>19</sup>

Her ideas were to find expression in the final UNESCO Convention which was to focus heavily on the promotion of diversity and exchange between cultures. I continued to campaign after leaving the EP for a UNESCO convention. In a speech prepared for the Ottawa Conference on new developments in Communications Law and Policy in April 2000, I wrote:

“We need to develop an instrument for securing cultural diversity in world trade. A first step could be the adoption of a UNESCO Code of Conduct on cultural diversity. Another idea is to go for a flexible instrument binding on all parties but justiciable per se, similar to OECD codes. This would be more acceptable at the political level while awaiting a future embodiment of the principles, terms and conditions in a WTO instrument (akin to the WTO Agreement on Agriculture). The instrument should recognise the two-fold nature of cultural products, being both trade commodities and means of social communication and transmitters of values.”

Speaker after speaker at conferences on strengthening cultural diversity policies worldwide would refer to a “Proposal for an International Instrument on Culture Diversity by Professor Ivan Bernier, Associate Professor at the Faculty of Law, Laval University, Quebec. Bernier was and continues to be one of the great driving forces behind the Convention and now its effective implementation. Commenting with Dr Helene Ruiz on a possible convention in 2002, they said:

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<sup>19</sup> What future for European cultural policy? Summary of Debates..A seminar jointly organised by Friends of Europe and Eurocinema with the support of the French Ministry of European Affairs and the Culture 2000 Programme of the European Union in co-operation with Vivendi Universal Paris, Centre des Conférences Internationales Kléber.12 February 2002

"A comparison of cultural and commercial approaches suggests in fact that their preferences are often reversed. The preference of the commercial approach is for complete liberalization (although progressive and ordered) of exchanges as well as the elimination of obstacles to the investment, and cultural concerns would not be able to withstand this liberalization. A true cultural exchange assumes the existence of distinct cultures by definition. The same difference of perspective is central in the ongoing debate on culture and trade. It explains the growing concerns which express themselves about the treatment of property and cultural services in trade agreements and the feeling of indisputable insecurity provoked last year by the liberalization of exchanges and investment and, in a more general way, by globalization. There is good reason to think that the mediation of inherent tensions between trade and culture could effectively be made by means of the development of an international instrument on cultural diversity. "<sup>20</sup>

Speaking in 2003 to students in London, I continued to campaign saying, "When the WTO adjudicates on the rules of free trade it is culturally blind. It assumes that cultural products are like any other and therefore one nation's culture is substitutable for another. It can override the cultural policies of nations. Developing and sustaining regional and national audiovisual cultures are essential to developing our creative talent so our creators come from every part of our society with all the rich diversity that can bring. Ensuring every region and nation has its own unique audiovisual culture is about democracy and the right to participate culturally and creatively in one's own society in arguably the most influential cultural medium. We must have an international convention to uphold nation's sovereignty to develop cultural policies for cultural diversity"<sup>21</sup>

## The International Movement Of Coalitions For Cultural Diversity And The Civil Society

Given this background, it is no wonder that concerns about cultural diversity led to demands from grassroots organisations around the world for an

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<sup>20</sup> Evaluation of the legal feasibility of an international instrument on cultural diversity by

M. Ivan Bernier, Associate Professor, Faculty of Law, Laval University, Quebec and Helen Ruiz, Pantheon Sorbonne University Paris. 2002 National Library of Quebec

<sup>21</sup> Speech by Carole Tongue to BA and MA journalism students at the London College of Communication (University of the Arts, London), 30<sup>th</sup> January 2003

international instrument to protect and enhance cultural diversity of expression and exchange.

These grassroots organisations developed in the new millennium into national coalitions for cultural diversity under the umbrella of the International Federation of Coalitions for Cultural Diversity. They represent civil society, which in one definition, is independent NGOs with a mandate to organise and represent a constituency from the wider community. In this case the coalitions, although different in each country, bring together cultural institutions and cultural producer organisations.

Those supporting a new international instrument for cultural diversity (NIICD) (to become the UNESCO Convention on the protection and promotion of the diversity of cultural expressions), argued long and hard asserting the importance of balance between economic and technological developments and the preservation of cultural identities, the lifeblood of diversity and difference that so enriches the human condition.

In 1998 Minister of Canadian Heritage Sheila Copps hosted a meeting of 16 Culture Ministers sympathetic to an international instrument for cultural diversity. Out of this was born the International Coalition for Cultural Diversity (INCP).

In addition, grassroots coalitions for cultural diversity bringing together cultural producers and other cultural organisations started to form in 1999 with the Canadian Coalition for Cultural Diversity (CCD) leading the way. The Coalition brought together the country's 34 leading cultural organisations from the sectors of books, films, television, music, performing and visual arts and new media. Its mission is to uphold the right of countries to apply cultural policies in support of their domestic cultural sectors. The CCD's work is made possible by the financial support of its member organizations, and by funding from the federal Department of Canadian Heritage and the Government of Quebec.

From 1999 onwards, through its Vice Presidents, Pierre Curzi, Robert Pilon and Scott McIntyre and through to its present director Jim McKee, the Canadian Coalition for Cultural Diversity together with the International Network for Cultural Diversity INCD have played a leading role in mobilizing civil society in advocating a NIICD. Their organisation of international conferences to discuss this have been invaluable in moving from ideas to political reality. They have also been tireless in their work around the world helping other countries develop their own coalitions for cultural diversity. Their articles, talks, and speeches which have reached out across the world to opinion formers; decision makers and cultural practitioners have played a significant role in stimulating the drafting, adoption and ratification of an NIICD which became the UNESCO Convention on the protection and promotion of the diversity of cultural

expression in October 2005.

The civil society movement of Coalitions for Cultural Diversity also owe a debt of intellectual gratitude to two Canadians, Peter Grant and Professor Ivan Bernier who have provided much of the intellectual clout for the Coalitions for Cultural Diversity with their detailed work on a NIICD within UNESCO.

Adroitly, Grant always argued for such an instrument even if the United States would ultimately refuse to endorse such an initiative. He always also favoured rapprochement with the forces of trade liberalization, not resistance against them. "The perfect ought not to become the enemy of the good."<sup>22</sup> This is in keeping with the approach of the Canadian government's Sectoral Advisory Group on International Trade (SAGIT) representing cultural industries, of which Grant is a member. This approach will prove important in the future if the aims of the Convention are to be fulfilled.

Today the coalitions movement is genuinely international in nature, bringing together CCDs in 45 countries representing more than 600 cultural organisations, all dedicated to upholding the right of countries to apply cultural policies.

Last year, at a founding Congress held in Seville, Spain, the coalitions unanimously agreed to create the International Federation of Coalitions for Cultural Diversity (IFCCD), with its headquarters based in Montreal. The Coalitions derive much of their power from speaking with one unified voice. Outreach work continues to mobilize civil society in Asia, the Arab world, the Caribbean and the African Commonwealth. Also an important role for the new Federation will be to ensure that cultural professional organizations have a strong voice in the process for implementing the UNESCO convention.

These grass roots coalitions - working in solidarity with each other - were one of the principal driving forces behind the Convention and continue to drive its further ratification and implementation. -

## The Role of UNESCO

Remarkably within 6 years of the initiation of the idea, the UNESCO Convention on the protection and promotion of the diversity of cultural expressions was adopted in October 2005. Despite the US rejoining UNESCO in 2003 and campaigning against such a Convention, it was passed with only US and Israel voting against and 148 countries voting in favour. It has since been

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<sup>22</sup>Peter S. Grant and Chris Wood : "Blockbusters and Trade Wars: Popular Culture in a Globalized World," (Vancouver, Douglas & McIntyre, 2004)

ratified by over 80 countries, including the UK, and the European Union as a regional entity. The result is that a fourth pillar, in addition to social, environmental and development ones, has been added to what the exponents of unfettered free trade within the WTO have to take on board.

This UNESCO Convention is of great political significance. It is a binding international legal instrument with the goal to protect and promote the diversity of cultural expressions, particularly as embodied and conveyed in cultural activities, goods and services which are the vehicles of contemporary culture.

It is a public statement of respect and recognition for the culture of others. It represents a major shift in thinking that which recognises that human rights are mediated by culture. We can infer from this that the promotion of cultural diversity (along with economic development and the search for non-violent solutions) can become one of the basic grounds for peaceful co-existence both locally and globally.

Importantly the UNESCO convention recognises that cultural works are not just commodities, but transmitters of values, meaning and identity. It recognises the cultural sovereignty of nations to develop their own cultural policies. And it recognizes the economic specificity of cultural goods and services that do not conform to traditional free market principles. This is especially applicable to the economics of audiovisual works where the notion of free and fair competition between companies; products; services and countries does not prevail.

Beyond this the Convention gives preferential treatment for developing countries to develop their various means of cultural expression and UNESCO will house an International Fund for Cultural Diversity of which they should be the main beneficiaries.

“The Convention can be seen as “cultural peace treaty” which enables the growth of dignity and self-confidence for individuals and communities amidst genuine cooperation between states,” said Kevin Brennan, Permanent Delegation of South Africa to UNESCO at a recent meeting in London.<sup>23</sup>

It is too early to say what real teeth the Convention will have, but certain political developments show a promising shift in the re-balancing of free trade and cultural policy priorities, particularly at the EU level. The Convention is not legally subordinate to any other international agreement but political will is crucial if real measures are to be undertaken to make a reality of the Convention.

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<sup>23</sup> Report from the Commonwealth Foundation Seminar: Sharing Strengths: Commonwealth and Francophone Engagement with the UNESCO 2005, Convention, Tuesday 11<sup>th</sup> March 2008

## The Future

As Holly Aylett, Director of the UK Coalition for Cultural Diversity<sup>24</sup> has said of the Convention,

“The achievement was a huge act of political will, advanced between governments and between civil society and governments in a complimentary approach which has come to inform one of the distinctive features of the Convention – the active role which is ascribed to civil society in achieving its goals, (Clause 11).”<sup>25</sup>

Discussions are underway both within governments, civil society and UNESCO itself as to the implementation of the Convention. At a recent Commonwealth Foundation seminar in London the meeting recommended:

“Parties to the Convention should develop institutionalised and formal mechanisms for the involvement of civil society in the implementation of the Convention.”<sup>26</sup>

The civil society coalitions for cultural diversity will continue to press for more countries to ratify; for proper involvement of civil society in the implementation of the Convention and for greater contributions to the International Fund for Cultural Diversity (IFCD). As Jim McKee, Secretary General of the IFCCD has said,

“Civil society must take centre stage in Convention processes if the Convention’s aspirations are to be come meaningfully realised. Civil society may be in a unique position not only to

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The UK Coalition for Cultural Diversity was established in November 2006 to facilitate co-operation and the development of joint positions and actions among cultural organisations from the sectors of books, film and television, music, live performance and the visual arts. The Coalition includes organizations representing actors, authors, composers, directors, musicians, technicians and visual artists as well as independent producers of film, television and music, publishers, broadcasters and distributors.

The objectives of the UK Coalition for Cultural Diversity:

- Supporting the ratification and implementation of UNESCO’s convention on the protection and the promotion of the diversity of cultural expressions, which recognizes the distinctive nature of cultural goods and services and affirms in international law the sovereign right of states and governments to freely determine their own cultural policies; while
- Opposing liberalization commitments relating to cultural goods and services in the context of bilateral, regional or international trade negotiations.

<sup>25</sup> The UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expression 2005: Magna Carta for International Cultural Policy by H Aylett, Senior Research Fellow, Global Policy Institute, London Metropolitan University. May 2008

<sup>26</sup> Report from the Commonwealth Foundation Seminar: Sharing Strengths: Commonwealth and Francophone Engagement with the UNESCO 2005, Convention, Tuesday 11<sup>th</sup> March 2008. P.21

ensure that countries affirm the right to cultural diversity, but to carry through the realisation of these rights within national policy frameworks."<sup>27</sup>

## The role of the European Union

President Barroso is to be congratulated for leading the EU ratification of the 2005 UNESCO Convention on the protection and promotion of the diversity of cultural expressions. Coupled with this, the newly revised EU Lisbon Treaty also spells out constitutionally the responsibility of the EU to safeguard and promote cultural and linguistic diversity. Importantly the Lisbon Treaty commits the EU to "promote" cultural and linguistic diversity, an emphasis and basis for action that could be lost if the Treaty is not ratified by all EU countries.

With this dual constitutional underpinning of the principle of cultural diversity, the EU role will be crucial as a regional integrated body with real political clout. The EU could be one of the key global players in making a reality of the aims and objectives of the Convention given its power of supranational policy making in the relevant sectors; its joint negotiating position within the WTO and its relationships with neighbouring and developing countries.

The EU Commission, with pressure from the European Parliament and agreement from national ministers must pursue a multi track approach: internally mainstream cultural diversity across all policies; rebalance trade and cultural policies; encourage more joint working across departments to ensure a more balanced policy approach; defend the cultural sovereignty of itself and its Members to define and implement their own cultural policies, particularly in the audiovisual field and encourage culture and trade ministers to discuss policy together.

The Convention should help achieve a different balance of interests when EU policies are being developed inside the EU Commission. In addition civil society must be meaningfully involved at every turn. Civil society consultees must also be non-profit making organisations, such as the European coalitions for cultural diversity, not just commercial enterprises which, in some cases are classed by the EU Commission as civil society consultees.<sup>28</sup>

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<sup>27</sup> Ibid Footnote 24. P.13

<sup>28</sup> Alison Harcourt. Institutionalising Soft Governance in the European Information Society, in David Ward (ed) The European union and the Culture Industries: Regulation and the Public Interest, London: Ashgate Law Series, 2008. Pages 17-20

It is therefore welcome that DG Education and Culture is in the process of setting up groups with Member States and representatives of civil society to exchange views on the mainstreaming of the Convention across all EU policies.

Furthermore it will be particularly important that the Article 133 committee<sup>29</sup> in its role of coordinating EU trade policy, also broadens its membership and mandate to take on board the need to mainstream cultural diversity in trade policy. This has already become apparent in a proposed trade agreement between the EU and Ukraine in July 08 where the Art 133 committee has sought to include audiovisual services contrary to the Commission's mandate within the WTO not to include such services. The European Coalitions for Cultural Diversity have objected strongly to the inclusion of audiovisual services in this trade agreement to EU Trade Commissioner Mandelson. The Commission's response is awaited and will indicate how seriously Art 151 of the EU Treaties and the EU's ratification of the Unesco Convention is balancing free trade with cultural diversity requirements.

Nevertheless, one begins to detect a new sense of purpose in the EU Commission to use all possible channels to implement the Convention. When the Commission's DG for Competition policy is studying cases on the compatibility of public service broadcasting with EU state aids policy, for example, the views of DG Education and Culture, which is responsible inside the Commission for applying the Convention, are being taken into account. It is an optimistic sign that there is already pressure for more cultural analysis to be carried out, especially where competition policy is concerned. Relevant amendments to the 2007 Audiovisual Media Services directive to allow for co-production agreements with developing countries, are being considered as the EU begins to apply the Convention to its external development policy, particularly with the African, Caribbean and Pacific nations.

In this sense, we must welcome the EU's signing of the first ever, cultural protocol accompanying a trade agreement with the 15 Cariforum nations in October 2007. This is a new formula for cultural capacity building in trade

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The legal basis for the EU's trade policy is Article 133 of the European Community Treaty. On this basis, the Commission negotiates on behalf of the Member States, in consultation with a special committee, "the Article 133 Committee". The 133 Committee is composed of representatives from the 27 Member States and the European Commission. Its main function is to coordinate EU trade policy. The Committee meets on a weekly basis, usually on a Friday in Brussels at the headquarters of the Council of Ministers. It discusses the full range of trade policy issues affecting the Community, from the strategic issues surrounding the launch of rounds of trade negotiations at the WTO to specific difficulties with the export of individual products, and considers the trade aspects of wider Community policies in order to ensure consistency of policy. In this Committee, the Commission presents and secures endorsement of the Member States on all trade policy issues. The major formal decisions (for example agreement to launch or conclude negotiations) are then confirmed by the Council of Ministers.  
[http://ec.europa.eu/trade/issues/newround/index\\_en.htm](http://ec.europa.eu/trade/issues/newround/index_en.htm)

agreements and the audiovisual dimension is included. The protocol provides new means to encourage cultural developments and exchange between the EU and the ACP countries.

Further cultural protocols with other trading partners are planned. Each will be negotiated on a case-by-case basis. This is a very promising development. Further discussion with all relevant players will be needed to flesh out what these protocols mean and how they might be implemented. Key will be whether the EU can put extra resources behind their implementation within existing or new budgets. Optimistically, a new EU: ACP mechanism with 30 meuro earmarked for the distribution of cultural goods from ACP countries to the EU should emerge soon. Cultural protocols with India and Korea will come into force soon. These cultural protocols should be an inspiration for all developing countries.

Beyond cultural protocols, the second part of EU policy to cooperate and support third party countries was explored at a French Centre for National Cinema (CNC) seminar on the 7<sup>th</sup> - 8<sup>th</sup> of July 2008. The debate took place within the context of the implementation of the UNESCO convention on cultural diversity. It aimed at defining how the EU could develop a cooperation policy in cinema that would complement existing national actions undertaken by Member States and meet the expectations of third countries. The event started an important process of developing actions and partnerships between the EU and third countries. This second strand of EU policy will include the preparatory action Media International, which should clear the way for the MEDIA Mundus program beginning in 2011.

Also the EU Commission has formed a working group bringing together 7 Directorate Generals that now meet to discuss the possible conflicts between, inter alia, trade, internal market and cultural diversity policies. This could be read as a welcome sign of the Commission's recognition of its multiple obligations under international trade regimes, its own Treaties and the UNESCO Convention. Christine Merkel, Head of Culture and Communication at German UNESCO argues that beyond this, the EU Commission should create an automatic early information system to all relevant players, including civil society to guarantee early discussions on any proposed EU policies that could have implications for cultural and linguistic diversity.

Even with such a mechanism, the Convention alone cannot resolve the tensions between EU commercial and cultural initiatives and the dominance of free trade and neo-liberal economics within the Commission. It will depend on leadership and whether the Commission President makes it clear that there should be a rebalancing of policy more in favour of cultural diversity policy than in the past.

Also important, as in the pressure for a convention, will be grassroots civil society pressure for change in this direction.

On whether state aids to the film sector can withstand the application of WTO rules, Pauwels, De Vinck and Van Rompuy detail the tension between EU trade and cultural policies with the EU Commission displaying inconsistencies in its statements and policy approaches to upholding free trade and internal market principles on the one hand and cultural and linguistic diversity on the other.

“The eventual outcome is greatly dependent on the interplay between the different actors in the global arena, but often this negotiational process results in a move towards more liberalisation. Very recently, another international organisation, UNESCO, has positioned itself in the middle of the battleground as well, with the adoption of its Convention on the Protection and Promotion of the Diversity of Cultural Expressions. It remains however to be seen what the input and impact of this actor will be, since no clear hierarchy between the different instruments has been established.”<sup>30</sup>

### The Role of the Commonwealth and the International Organisation of the Francophonie

Much will depend on the political will of other regional bodies like the Commonwealth and the International Organisation of the Francophonie. They are committed to encouraging far wider ratification; the development of a significant International Fund for Cultural Diversity; and developing mechanisms whereby cultural organisations and creators are able to use the spaces opened up by the Convention’s provisions. They will need to work with a wide range of governments to also convince their membership, largely developing countries, to put cultural policy frameworks in place that open up avenues for greater cultural production and exchange. There are many strategies for development cooperation envisaged in the Convention including facilitating wider access to the global market and international distribution networks for their cultural activities, goods and services. Yvon Thiec, Director of Eurocinema and INCD member, has alerted African, Caribbean and Pacific (ACP) Culture Ministers to the myriad of possibilities under the Convention.<sup>31</sup>

Through greater global awareness, Member countries will now possibly be emboldened to negotiate differently both with the EU, individual nation states and within the WTO.

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<sup>30</sup> Media and Cultural policy in the EU. Edited by K Sarakakis. No 24. “Can State Aid in the Film Sector stand the proof of EU ad WTO liberalisation efforts?” P.23-39 by Pauwels, De Vinck and Van Rompuy.

<sup>31</sup> Yvon Thiec. The UNESCO Convention and the ACP. Address to the Culture Ministers of the ACP countries, San Domingo.....

Once again civil society, through the international Coalition movement will play an important role. Members from various Coalitions for Cultural Diversity joined with more than 1500 delegates from 600 organisations in 59 countries at the Commonwealth People's Forum in Kampala in November 2007 to bring pressure on Commonwealth leaders meeting there. Their statement called upon all Commonwealth countries to ratify the Convention; involve civil society seriously in its implementation; and that Commonwealth governments should engage in discussions with civil society on cultural policy issues.

This in turn led to the Commonwealth Foundation to host a London seminar in March 2008 in London to study the Convention and propose ways forward for greater cultural autonomy, cooperation and exchange. You've already quoted this. It will need reconciling with this citation. The Francophonie nations were represented and described the many mutually beneficial cultural activities within their organisation. Again such exchange of information can hopefully lend inspiration to other countries to develop cultural policies where virtually none exist at present.

Beyond this Andrew Firmin, noted importantly that new innovative steps have to be taken:

"The Commonwealth has well established mechanisms for bringing civil society and government ministers together, but there have not yet been deployed with respect to Culture Ministers....there would be clear benefits in bringing Commonwealth Culture and Trade Ministers to the same table, with civil society participation."<sup>32</sup>

The output of such meetings could lead to different stances within regional and global trade negotiations. More Commonwealth countries may be supportive of the EU position regarding audiovisual services in the WTO.

## Conclusion

A most optimistic sign of a new inclusiveness was the first meeting of the UNESCO States Parties and civil society In Paris, on 23 June 2008 prior to the UNESCO Intergovernmental Committee the following day. Over 100 NGO delegates, (representing many thousands of artists; authors; cultural industry

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<sup>32</sup> Concluding Remarks, Sharing Strengths: Commonwealth and Francophone Engagement with the UNESCO 2005 Convention, seminar hosted by the Commonwealth Foundation with support from the Quebec Government Office in London, 11 March 2008

professional; cultural and media institutions; development organisations and academics), met with States representatives for a four hour exchange session. Such a meeting had never taken place before within UNESCO. NGOs made a number of recommendations to ensure their full and ongoing participation in the implementation of the Convention.<sup>33</sup> It remains to be seen whether UNESCO structures can accommodate these new demands. Certain is that pressure from civil society will be relentless to achieve that and there will now be formalised ongoing dialogue between institutional and NGO players within the UNESCO organisation itself,

Within the EU and bodies like the Commonwealth, whilst there is some discussion between economic, political and cultural actors, there is still too little positive dialogue between the supporters of globalisation and economic liberalisation and those committed to the enhancement of cultural diversity. If free international trade and relations between countries is to be more balanced, reflecting the cultural diversity of humankind, then talks to relieve the tensions between purely free market and public interest concerns must advance apace.

Once again, civil society must be part of this dialogue

The UNESCO Convention should help underpin this dialogue; inspiring trade negotiations which are more balanced between free market and cultural diversity concerns. It should also empower and embolden countries to defend and develop domestic policies in favour of strong public service broadcasting or support for their indigenous film and music industries.

Furthermore, the richer countries of the world, particularly the EU, must also make a significant contribution to the International Fund for Cultural Diversity provided for in the Convention as well as creating or amending new EU budget lines with additional funding to support cultural capacity building in developing countries. Funds must be available for greater exchange and co-production, particularly in film, between the EU and the ACP for example. In this respect the adoption of a 2<sup>nd</sup> EU support programme for ACP films is most welcome.<sup>34</sup>

In addition, civil society must be eligible for funds to carry out projects if the provisions in the Convention are to be translated into reality, particularly in the

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<sup>33</sup> "States Parties and Civil Society Partnerships", NGO recommendations to the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions - 1<sup>st</sup> Extraordinary Session - 24-27 June, 2008, Paris.

<sup>34</sup> ACPFILMS is the second support programme for ACP cinema and audiovisual sectors, in the framework of ACP-EU cooperation. It is open to the 79 member states of the African, Caribbean and Pacific Group of States, and to the 15 European Union member states having contributed to the 9th European Development Fund (EDF) in the framework of the Cotonou Agreement.

developing world. There must be this kind of solidarity across frontiers, to enable countries to exploit positively all the possibilities of cultural protection and expression in the Convention.

Additional meetings at all levels are required, where parliamentarians, ministers and civil servants meet across frontiers and disciplines thus providing opportunities to build solidarity and understanding. These meetings must include all relevant civil society organisations, especially the European and International Federations of Coalitions for Cultural Diversity. Only then will grassroots views from creators and cultural practitioners across the world inform and guarantee a bold, imaginative and practical implementation of the Convention to:

“encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace”.<sup>35</sup>

This is imperative if our world is to survive in peace and harmony in all its great diversity.

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<sup>35</sup> The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Paris, 20 October 2005