



**International Network for Cultural Diversity
Réseau International pour la Diversité Culturelle
Red Internacional para la Diversidad Cultural**

Garry Neil, Executive Director

*Globalization and Diversity, UNESCO and Cultural Policy-Making:
Imperatives for U.S. Arts and Culture Practitioners and Organizations*

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Background of the INCD

At the 1998 UNESCO Conference on Trade and Development in Stockholm, representatives from a wide range of non-governmental organizations discovered they had similar concerns about how some aspects of economic globalization were eroding local cultures and making it more difficult to hear the voices of local artists.

At a follow-up meeting in Ottawa in June 1998, delegates from more than 20 countries asked the Canadian Conference of the Arts and the Swedish Association of Literary and Artistic Professionals to launch what has now become the International Network for Cultural Diversity – a worldwide network of NGOs working to counter these adverse affects of globalization on world cultures.

In six years, the INCD has grown to having members in all regions of the world and all parts of the cultural community. Organizations of artists and cultural producers from every media, cultural academics and heritage institutions are joined together around fundamental principles which motivate and guide INCD's campaigns. INCD has more than 300 members from 70 countries and international organizations with a presence in others. We are a democratic organization with a Steering Committee of 15 people from 15 countries.

Canadian literary scholar Northrop Frye has said there are three aspects of a nation's culture. 1. Lifestyle – the way a society lives, clothes itself, eats and carries on its daily social rituals 2. A shared sense of historical experience transmitted through a common language – including values, beliefs and traditions. 3. The creative output of a society – its arts, culture, scholarship, architecture and so on. INCD's place in the cultural spectrum is about that third aspect of culture.

Why do countries have cultural policies?

The first reason is that cultural producers from some countries enjoy a competitive advantage over others, arising primarily from having a larger domestic market.

Example of what an independent television producer receives as a TV drama broadcast license fees:

- Canada – 12-25% of budget from broadcaster
- Australia – 35% or more of production budget from broadcaster
- U.S. – broadcaster pays 70% + of budget – larger market for advertisers

Cultural policies thus respond to the importation of cheaper foreign products. Because Canada is an entirely open market and has always had access to all the latest U.S. shows, the government needed to respond to this challenge by supporting Canadian television producers. To try to close the financing gap, Canada has implemented a range of policies such as content rules, subsidies, broadcast regulations, and so on. Australia did not have to respond as early, because it had enjoyed the protection of physical distance from UK and US suppliers, but it has moved aggressively in the past 15 years as technology has removed this advantage of physical separation previously enjoyed by their producers.

A similar situation occurs in book publishing. The average print run for first time fiction authors are:

- Canada – 1,500 copies
- Australia – 1,500 copies
- U.S. – 10,000 copies, so the unit cost of the U.S. work is lower

The second reason we have cultural policies of course is to overcome internal inequities where producers from dominant cultures within states have also generally enjoyed competitive advantages.

Some internal cultural policy initiatives have been:

- in exchange for the right to use the public airwaves for private profit, many governments require broadcasters to contribute in some way to the public good, by providing access to the airwaves
- there may also be a public will to financially support domestic artists

U.S. governments at a local, state and national level intervene in the marketplace as well. In other countries, these would be known as cultural policies.

Some of these interventions have been:

- limits on foreign ownership of broadcasters
- limits on cross-media ownership – to ensure diversity of editorial opinion – there has been major public battle arising from the attempt of the Federal Communications Commission (FCC) to eliminate these rules
- rules on children's programming and advertising to children
- subsidy of artists through the National Endowment for the Arts (NEA)
- previous anti-trust rules prohibiting networks from broadcasting programs which they owned
- Special city, state and national incentives to encourage film producers to shoot in the U.S.

In my experience, these policies are really not protectionist, but are about promoting choice and alternatives for the consumers; and about promoting democratic discourse; about diversity in other words.

Put another way, the lack of openness to foreign cultures is, with only a few exceptions globally, not brought about by restrictive government policies.

Cultural Policy and Trade Agreements

Whatever might be their motive or outcome, when you intervene in the marketplace with public policies, increasingly these policies run afoul of trade rules, because they are seen by some to be barriers to the free movement of goods, services and investment.

Examples of the problems of this intersection between cultural policies and trade can be seen in:

- The Canadian periodicals case – the successful U.S. challenge at the WTO which brought an end to all of the measures Canada had previously used to support Canadian magazines
- General Agreement on Trade in Services – covers audiovisual and other cultural services – while no requirement to make commitments, there is no “cultural exemption” – indeed, many countries have committed cultural services
- New Zealand broadcasting services – despite falling levels of domestic television content, New Zealand is unable to withdraw from its liberalization commitment in broadcasting service
- Certain other elements of GATS are problematic – “horizontal commitments”
- The draft requests from the EU to the U.S. in the context of the current GATS negotiations included elimination of the media ownership restrictions
- Chile, Morocco, Singapore, Central America – while they preserved their television and film support measures, they have agreed to complete Market Access for all digital products in the electronic commerce chapter.
- Australian agreement constrains Australia’s ability to develop policies on digital broadcasting.

Free trade theory is contradictory to cultural diversity theory – comparative advantage does not make any sense in the cultural field

Why the Convention?

The cultural sector in many countries has been fighting a rearguard action in the face of the pressures of the trade negotiations: lobbying governments to refrain from making commitments, working for “l’exception culturelle” at the WTO, and trying to limit the extent of trade agreements. These strategies, however, have already proven ineffective.

With technological developments, convergence of media, continuing process of digitization, these strategies will prove useless – for example:

- Canada has a “cultural exemption” from NAFTA, but the definitions of the cultural industries were those that we knew in 1989, and did not include new media.
- If telephone companies are now providing entertainment services, how can you argue that the telecom rules should not apply?
- With the Internet, how do you distinguish between its use as a straightforward tool for business or education and its use as a distributor of cultural products?

A New Legal Instrument

It is for these reasons that a number of civil society organizations and an increasing number of governments have concluded that what we need is a Convention on Cultural Diversity, a binding treaty that will:

1. Provide a legal foundation for government measures that support cultural diversity.
2. Include rules appropriate for the cultural sector and encourage more balanced trade in cultural goods and services.
3. Be prospective and allow definitions of culture to change as artists create in newer media, and allow new measures to be implemented as they are required.
4. Ensure that disputes about the trade in cultural goods and services are adjudicated by cultural experts, under its terms, rather than by trade experts, under trade agreements.

The concept of the Convention emerged internationally in 2000 and, from the beginning, INCED has been in the forefront. The delegates at the first annual meeting of the INCED in Santorini, Greece supported the concept in September 2000 and we published the first text of what such a treaty could look like in 2002.

The move among governments to support such a treaty has been led by the International Network on Cultural Policy (INCP), a global network of culture ministers brought together by the ministers of France and Canada in 1998. There are now 65 or so countries which belong to INCP. At least in part on the urging of the INCED, the ministers also adopted the concept and began to develop their own draft in 2003.

Meanwhile, UNESCO had been considering the whole issue of cultural diversity and adopted a Declaration on the topic in October 2001. The culture ministers organized in the INCP decided that the appropriate forum to develop the legally-binding treaty would be UNESCO, since it is the official UN cultural forum and had expressed an interest in the topic. In 2003, UNESCO agreed to take on the task and to put before member states a draft treaty at the next General Conference meeting in fall 2005.

UNESCO created an Expert Panel which worked in Spring 2004 to develop a draft, the secretariat did some additional work and 133 governments began the negotiation of the terms of the Convention this past September in Paris. A Drafting Committee met in December and the full complement of states will meet again in early February to continue the work.

And there is much work ahead if we are to end up with a timely and effective Convention. While there is little consensus around any of the provisions, the basic structure of the agreement is in place. It will contain a basic preamble which will outline the antecedents to the Convention; it will obviously contain definitions and will acknowledge that cultural goods and services have both an economic component and a cultural one. It will provide for the right of state parties to take measures that promote cultural diversity, providing they do not violate fundamental human rights. It will provide some measures through which the countries of the North will support the development of creative capacity in the South. It will establish some governance mechanism for the Convention itself.

Beyond that there is considerable uncertainty, although I believe governments will agree to the following kinds of provisions:

- The obligation to ensure that “vulnerable” forms of cultural expressions are supported.
- Government policies must be transparent and must respect the principle of balancing support for domestic artists and cultural producers with being open to foreign cultures.
- As a result of having these limits on governmental authority, there will need to be a dispute settlement system of some kind.
- A cultural diversity “observatory” will become the focal point of discussions about the impact of economic globalization on cultures, the effects of the Convention and will monitor vulnerable forms of cultural expressions.

However, there are areas of concern for the INCD and major issues remain open. There has been little consensus developed to date and the convention must be concluded on a timely basis because of the pressure of the trade negotiations – each successive agreement brings a further erosion of cultural sovereignty.

To be truly effective, INCD believes the following three principles are essential:

1. The status of the Convention must be equivalent to the trade and investment treaties and must prevail where the issue concerns cultural policies and cultural diversity.

Since the INCD first put forward its own draft of a potential treaty in 2002, we have been warning against a provision which prohibits derogation from existing rights and obligations. The UNESCO draft puts forward two options in an important Article addressing the relationship of the Convention to other international legal instruments, and both options would effectively make the Convention subordinate to the WTO and other trade and investment treaties. Discussion on this topic is ongoing in UNESCO.

2. The Convention must be an effective tool for poorer countries to develop their creative capacity and cultural industries.

Also from the beginning, INCD has stated bluntly that the Convention must be about more than a fight for audiovisual market share between rich countries of the north. To have true cultural diversity we need more balanced global exchanges of cultural goods and services. This requires that the least developed countries, developing nations and the countries in transition must be assisted to develop their music, stories and arts capacity and must have access for their artists and cultural producers to the richer markets of the world. We all gain from improved exchanges.

While the draft Convention contains some positive measures in this respect, INCD believes:

- A) There must be mandatory contributions to the proposed Cultural Development Fund by the parties to the convention, rather than purely voluntary ones; and
- B) There must be guaranteed market access for cultural goods and services from the poorer countries. This objective can be achieved through quotas, financial support or other measures.

- C) The Convention must acknowledge the broad scope of policy tools used to promote cultural diversity and preserve the right of governments to adapt and adopt new ones in coming years to respond to technological developments and changing circumstances and needs.

Given that the U.S. does have cultural policies and there is considerable interest in developing and amending these to meet legitimate public policy objectives, the U.S. needs an effective Convention as much as anyone.

Other INCD Campaigns and Issues

For INCD, the Convention is only a tool. By itself, an effective Convention, even if it is widely ratified, will not bring about more cultural diversity, it will merely provide a critical framework for action. Even the strongest clauses about “vulnerable forms of cultural expressions” are unlikely to stop the disappearance of languages.

These concerns motivate INCD’s other campaigns and efforts, which include:

- INCD advocates that all public and private development agencies should allocate an appropriate and fixed percentage of their resources to the development of cultural projects.
- INCD believes that international legal cultural rights should be strengthened.
- INCD urges special actions to preserve threatened languages and cultures, including those of indigenous peoples as a dynamic part of our shared future.

“I do not want my house to be walled in on all sides and my windows to be stuffed. I want the cultures of all lands to be blown about my house as freely as possible. But I refuse to be blown off my feet by any.” Mahatma Gandhi