

Internal/external interactions and international norms: Empirical evidence and theoretical clarification about cultural diversity

Norms and rules are at the core of international relations, as they are at the core of every social relation. The essential component of international activity is regulation, i.e., definition, maintenance, change and modification of rules and norms. Nowadays, cultural diversity emerges as a new rule of international society, a norm of international behaviour, a global public good to be preserved, as well as a foreign policy doctrine.

The objective of this paper is to provide an introduction to the issue of cultural diversity. The study aim is to illuminate the conditions of an international norm's production, its genesis, its history, as well as its construction. While being interested in the reasons and the factors of a norm's appearance within the international scene, this study examines the contents of the norm, its various interpretations, as well as its re-translations by several actors. It is articulated in two parts. Firstly, it seeks to offer empirical evidence in the game of cultural diversity, on the one hand, by presenting significant steps of the history of cultural diversity and, on the other hand, by emphasizing in practices of implicated actors. Secondly, it aims to develop a research *problématique*, specifying core assumptions and appropriate theoretical frameworks.

1. Empirical evidences: From cultural exception to cultural diversity, the history of the appearance of an international norm.

Trade of cultural goods and services is a perennial source of conflict at both domestic and regional/international levels. Culture is both a valuable field of commercial interest, with a multi-billion dollar market, and a profoundly important expression of national heritage and artistic dynamism. The interface between trade and culture is conceived as an issue that has divided some of the largest countries in the trading system. The disputes surrounding cultural trade has accelerated with the increasing development of new technologies and the expansion of trading system's rules. Cultural diversity is transformed in one of the most important issues of the international scene, a fact we could hardly imagine in the beginning of the 80's. According to Renato Ruggiero (WTO's ex-general director), culture constitutes one of the issues (next to environment and labour) exerting an enormous pressure on the international trade system, as well as one of the most significant concerns for the general public¹. Indeed, the basic problem,

¹ WTO, Focus N°31, June 1998, n°2.

which is raised, is about the treatment of cultural products within the international trade agreements.

It is not recently that states, societal groups and international organizations work and struggle on the question of cultural defence and promotion. However, it is necessary to await the end of the 90's, before a real pressure is exerted in order to protect cultural diversity, and an International Convention is set up, offering the capacity to protect the diversity of cultural expressions. In the context of liberalization of services and products markets, various governments and societal groups battle in order to maintain their rights to preserve their own cultural policies. Henceforth, the controversy takes up international dimensions, and it is reformulated around the principle of cultural diversity that intends to place culture in the international agenda, and to restrain WTO's actions about liberalization of the cultural sector.

Cultural exception at the regional level²

In France, political actors and audiovisual interest groups support the view that a so-called 'cultural specificity' justifies the exemption of the cultural sector from market mechanisms. France assumes to have played a leading role in the development of European audiovisual and cultural policy. The French government has initiated major developments – such as meetings of European cultural ministers, the creation of European support mechanisms and the harmonization on national legislation in various areas – which led to the creation of a new policy space at the European level.

In order to "export" national policy structures on cinema and audiovisual sector, French government elaborates the term of cultural exception. According to Jack Lang³, the invention of this term seeks to legitimate an original cultural policy, indicating the specificity of cinema and the fragility of cultural goods. The term of cultural exception argues that cultural goods cannot be financed by market, unless they lose their character. Cultural goods need rules in order to avoid standardisation. In France, on the one hand, cultural exception is developed as a platform

² In fact, before the battle around cultural exception in GATT negotiations, the culture has appeared as an issue of tension at the regional level, in the end of 80's, during the Canada – US Free Trade Agreement and within the pale of the European Union. Canada requires an exemption of cultural products in the negotiations of Canada – US Free Trade Agreement (1989), and then, in NAFTA (1994). Canadian authorities claim that culture reflects a country's identity and national character, thus it is not possible to be assimilated to other trade sectors nor to be considered as merchandise. Also, the cultural groups demand cultural industries to be protected, in order to attenuate the enormous advantage of US cultural industries on Canadian market, as well as to preserve cultural state sovereignty. Therefore, despite the US objections, Canada obtained the exemption of cultural industries. A similar exemption was later incorporated into the North American Free Trade Agreement (NAFTA). However, this exemption is limited because since one of the parties uses it to establish measures that would otherwise be inconsistent with the Agreement, the other party may retaliate with measures of equivalent commercial effect.

³ Roche (F.), *Que reste-t-il de l'exception culturelle après Seattle ?*, Regards sur l'actualité, Février 2000.

to justify the imperative need to establish cinema and cultural policies and programmes in European Union. On the other, cultural exception aims to perpetuate and defend french audiovisual model within the European Community.

France was the principal instigator of cinema policies, and more generally audiovisual, in the European Union. Facing pressures from cinema groups at the domestic level, the French government decided to enter the game and transform Community level intervention into a tool designed to achieve national policy objectives⁴. In the beginning, the European Commission was reticent on the French claims. The principal objection against French cultural exception comes from the United Kingdom and the big communication companies, who consider culture and audiovisual as an exclusively commercial sector. However, France – principally with Belgium and Germany's support – has succeeded to modify Commission's reticence and has made acceptable its vision on EU members. Thus, after strong negotiations, in 1989, the European Commission adopts the “Television without Frontiers” directive, which assumes to reinforce national television programmes, as well as European audiovisual circulation. In 1991, the MEDIA programme (Mesures pour Encourager le Developpement de l'Industrie Audiovisuelle) is greenlighted, with a budget of 200 million euros over five years. MEDIA's main objectives are to strengthen European film and audiovisual industry and to promote European movies⁵.

GATT negotiations and cultural exception

The Uruguay Round multilateral negotiations bearing on deregulation of international trade, began in 1986. In the beginning of the 90's, the audiovisual issue is appeared as a major game for the US, the European Union and Canada within the GATT negotiations. Washington – supported by Japan – approaches the European Community, and particularly France, applying protectionist measures in order to limit the diffusion of audiovisual US programmes and create “fortress Europe”. Therefore, the United States propose the audiovisual sector to be - for the first time in the GATT history – included in the GATT agenda. The European Union – incited by France – Canada, and other members adopt the position of cultural specificity, according to which the audiovisual sector has to be excluded by the negotiations.

⁴ Littiz-Monnet (Annabelle), *European Cultural Policy: A French Creation?*, French Politics, 2003, 1, pp. 255-278.

⁵ See also the PhD dissertations, Fraser (Matthew), *Télévision sans frontières : Décryptage d'un grand projet européen*, Thèse de science politique, IEP de Paris, 1996 ; Polo (Jean -Francois), *La Commission européenne : un espace de compromis, le cas de la politique audiovisuelle européenne*, Thèse de science politique, IEP d'Aix – Marseille, 2000 ; Depetris (Frederic), *L'Etat et le cinéma en France : le moment de l'exception culturelle*, Thèse de science politique, CEVIPOF, IEP de Paris, 2006.

The US proposal rises up an enormous debate, notably in France, accompanied by strong polemical against cultural US imperialism. France - supported by Belgium, Spain, and Greece - requires the cultural exception clause.

According to this position, countries have the right to conduct national policies, aiming to support domestic cultural industries. Financially, France and Canada consider that the global audiovisual market is a market dominated by a small number of multinational companies steered by the United States and the United Kingdom. Culturally, they are also against the perception that cinema (and the audiovisual sector) is a simple entertainment industry, seeing it instead as an art, a heritage. French and Canadian approach argues that cultural goods could not be compared to simple products, because they express and reflect representations, and traditions. This standpoint considers cultural products as goods of *industries de l'imaginaire*⁶ that convey values, ideas, and meaning. They are tools of symbolic communication, shaping cultural identity of social groups, as well as essential elements for democratic order. The argument that it is also used is that cultural goods are destined to the citizens of a country with the given right to participate in cultural expressions. Thus, they prefer that cultural industries were excluded altogether from the trade rules. This perspective is based on the proposition that culture cannot be left to the uncertain tastes of the invisible hand. This implies a greater role for the state for the preservation and promotion of national and local culture, and may also entail the use of subsidies and other measures, which will encourage artistic expressions and cultural manifestations.

The US position is principally commercially oriented, based on the view that cultural trade – or entertainment – is a financially significant business. The US viewpoint is simple and categorical. Considering culture as entertainment, they conclude to the non-specificity of cultural products and to the non-threat of cultural diversity. In other words, cultural exchanges are economic transactions between producers and consumers. This implies a small role of the state and few restrictions on the cross-border movement of cultural services and goods⁷.

The principal US objection is concentrated on the European audiovisual mechanisms and broadcasting quotas as “Television without frontiers” directive. Indeed, this case is extremely important for the US government and Majors, since the audiovisual sector is the second most profitable product of the US exports, after aeronautics. Also, the European market represents the 52% on the total benefits of Hollywood movies. Hollywood industry attains 20 milliards dollars turnover – 5 milliards export –, controls the 70% of the European movie market, and employs

⁶ Flichy (Patrice), *Les industries de l'imaginaire*, Grenoble, PUG, 1980.

⁷ There is indeed no ministry in the United States responsible for these sectors, which are instead regrouped under the Ministry of Economy and Trade.

700.000 people within the US territory. Patrick Cox, NBC director, describes the situation with the following: “if we don’t have a market outside the United States, we will have problems”⁸.

The implacability of the French positions on cultural exception – associated with the strong mobilisation of French cinema groups – leads the EU to claim an exceptional and separated treatment for the audiovisual sector on December 11th of 1993. The GATT negotiations are celebrated as a great French victory – by extension European – and as a defeat of the US hegemony.

Nevertheless, the outcomes of the negotiations do not result in the obtention of cultural exception. By contrast, they permit the States to commit according to their will. At the conclusion of the negotiations, the GATS was applied to audiovisual services as to any other services sector. The agreement did not contain any special provisions or exceptions related to cultural policy or to audiovisual services. Hence, the cultural exception means the exclusion of the EU and Canada from obligations on the audiovisual sector. In other words, the EC, Canada and many other Members chose not to undertake specific commitments in relation to audiovisual services. Eighteen Members⁹ had undertaken some commitments in regard to audiovisual services, however most of them are developing economies. None of these 18 Members are European countries.

To summarize, the victory is not total for the EU, Canada and the other GATT members. Cultural products and services are not excluded from the GATT agenda in a permanent way. It concerns a *de facto* exemption mechanism, which can regularly be putted in question, when it comes to alliances, power relations and opposite interests in international level¹⁰.

MAI, Seattle and cultural diversity

After the GATT agreements, the fragility of this compromise enters the context of the Organisation for Economic Cooperation and Development (OECD). New conflicts emerge with respect to the Multilateral Agreement on Investments (MAI). The MAI proposal is less global than GATT but still as liberal: it allows companies from different Member States to freely invest in other member countries, without preferential treatment for local companies. All sectors of a country’s economy, without exception, are supposed to be opened to investors. The MAI norms

⁸ The Economist, 25/09/1993.

⁹ Central African Republic, Dominican Republic, El Salvador, Gambia, Hong-Kong, China, India, Israel, Japan, Kenya, South Korea, Lesotho, Malaysia, New Zealand, Nicaragua, Singapore, Thailand, and the United States. Roy (Martin), *Audiovisual Services in the Doha Round « Dialogue de sourds, The sequel »?*, The Journal of world investment and trade, vol.6, n°6, dec.2005.

¹⁰ See Pisar (Leah), *L’exception culturelle, un défi français : l’interprétation d’un discours de politique étrangère*, Mémoire de science politique, IEP de Paris, 1995.

would have spelt the end of different cultural policies and state aid mechanisms in European countries and Canada. Some countries have opposed strong resistance (especially France and Canada) about the exclusion of cultural products from the agreement. Also, cinema and cultural groups exert to French and Canadian policymakers strong pressure. Finally, because of its disagreement on audiovisual inclusion in MAI agenda, France opts out from the negotiations, resulting in their unexpected end.

At the WTO's ministerial conference in Seattle (1999), the US government claims (again) a reconsideration of the EU protectionist policies on the audiovisual sector. Months before the WTO conference, an argumentation has aroused from France and EC. Their representatives replace the notion of cultural exception to cultural diversity, in accordance with the French position. Apparently, this terminology change seeks to provide a European consensus, as long as Great Britain and Germany were openly opposite to cultural exception. According to Ivan Bernier, "since 1997-1998, we see a redefinition process of the problem about trade-culture interface: the preservation of cultural identities stops being envisaged exclusively as a problem of cultural exception and it becomes gradually an objective itself"¹¹.

International Networks and Cultural Diversity's promoting

France and Canada were the principal motors of cultural diversity within the States and the international institutions. Since 1999, they claim the need for the adoption of a Convention on cultural diversity as a counterbalance to partisans of world economic liberalization. Intergovernmental networks are created and professional cinema and cultural groups are mobilized, in order to ensure the survival of world cultural diversity, qualified as "common heritage of humanity" by UNESCO, in 2001.

In the course of years, Canada – supported by France – establishes two international networks in order to contribute to emerging and consolidating cultural diversity in international arenas: International Network on Cultural Policy (INCP) and International Network on Cultural Diversity (INCD). In June 1998, the Minister of Canadian Heritage Sheila Copps invites responsible ministers from about 20 countries to participate in a forum, to discuss the importance of sustaining national cultures in an increasingly globalized world and to promote cooperation on common cultural objectives. The Ottawa meeting is a follow-up to the UNESCO – sponsored Intergovernmental Conference on Cultural Policies for Development, held in Stockholm on March 1998, where Minister Copps headed the Canadian Delegation. During the

¹¹Bernier (Ivan), *Une convention internationale sur la diversité culturelle à l'Unesco*, 2000, www.mcc.gouv.qc.ca/international/diversite-culturelle/pdf/chronique03-03.pdf.

Conference, on Sheila Copps' initiative, the participants elaborate an action project, composed by three sorting-boards: intercultural comprehension, raising the challenges of globalisation, as well as the specificity of cultural products.

In the end of the forum works, the Ministers of Culture from the 20 countries launch a new international network – International Network on cultural policy - to promote and protect cultural diversity. During the third annual meeting (Santorin, 2000), the Ministers of Culture agree that an international tool on cultural diversity must be a point of world convergence, endeavouring to promote cultural identities and expressions diversity. Also, they ratify a preliminary framework concerning cultural diversity. However, the ministers estimate that on the one hand, the outline of an international tool constitutes an appropriate base, in order to rely on the elaboration of an accord for the protection and the preservation on cultural diversity and on the other hand, UNESCO is the appropriate international institution to establish such a tool.

In support of the meeting of the ministers of culture in June 1998, the Canadian Conference of the Arts (CCA) – in collaboration with the Swedish Joint Committees of Literary and Artistic Professionnals (KLYS) - holds a one-day companion conference of non-governmental arts, cultural and developmental organisations from around the world. In September 2000, in collaboration with the ministerial meeting, 70 cultural representatives from 21 countries decide to establish the International Network on Cultural Diversity, a world network of artists and cultural groups. Henceforth, the INDC's reunions take place in parallel with each INPC's ministerial meeting, trying to promote the cultural diversity norm in the world scene. In November 2001, the INCD sends a representative to the WTO ministerial to monitor the ongoing trade negotiations. In October 2003, 187 delegates from 36 countries meet to discuss “Fostering Cultural Diversity and Development” during the INCD's third annual conference, in Cape Town. Presently, the INCD has 500 members from 70 countries¹².

Moreover, another network of cultural groups is constituted in order to organize international meetings. In fact, Canadian/Quebec Coalition for cultural diversity and French Cultural Watchdog Committee were at the core of this initiative, creating a second international cultural network. Canadian Coalition is established in the spring of 1998 by leading Quebec's professional associations of the cultural milieu in the midst of the growing opposition to the Multilateral Agreement of Investment. The French Cultural Watchdog Committee, renamed Coalition for cultural diversity in 2002, is created in 1997 to combat also the Multilateral

¹² An important part of INCD's financing comes from the Department of Canadian Heritage, the Ford Foundation, and the Swedish International Development Agency.

Agreement of Investment, and federates professional associations from the cultural milieu (cinema, performing arts, publishing, music, plastic arts).

The First International meeting of professional cultural associations is held in Montreal, from September 10 to 13 in 2001. This Montreal International Meeting will bring together the Coalition's member associations and about 40 professional organizations from the cultural milieu in the following 10 countries: Argentina, Australia, Brazil, Chile, Denmark, France, Korea, Mexico, Poland and Spain. The meeting takes place under the title "Cultural Diversity, Cultural Policies and International Trade Agreements". Since 2003, a meeting is organised every year: Paris, 2-4 February 2003, Seoul, 1-4 June 2004, Madrid, 9-11 Mai 2005.

In the Final Declaration (September 2001, Montreal), associations argue that states and governments have both the right and the duty to preserve, develop and implement their own cultural policies, which are essential to cultural development and to support the diversity of cultural expression in every society and worldwide¹³. In March 2003, the Coalitions for Cultural Diversity decide to establish an International Liaison Committee of Coalitions for Cultural Diversity (ILC-CCD) in order to facilitate the co-operation and the development of joint positions and actions among the existing national coalitions for cultural diversity. The ILC-CCD now brings together 33 coalitions¹⁴ representing about 400 cultural professional organizations. The Canadian and the French Coalitions for Cultural Diversity jointly carry out the role of Secretariat for the ICC-CCD. Moreover, a European Committee, composed by Coalitions of Europe, is constituted in January 2005 to defend cultural diversity at the European level. At the April 2004 meeting of UNESCO's Executive Board, the ILC-CCD has accorded an observer status for the convention development process. On May 9th - 11th, leaders of 170 cultural organizations from 60 countries, gathered in Madrid, Spain for discussions focusing on the theme "Cultural Diversity: A new pillar of the international legal system". The Final Declaration of Madrid asserts the sovereign right and the capacity of states and governments to set up and develop their cultural policies in all sectors, as well as the importance of keeping culture outside

¹³During the debates and the works of International meetings, a plurality of personages – having different institutional status – participates such Ivan Bernier (juror, member of Committee of experts for the elaboration of preliminary draft International on Cultural Diversity), Sheila Copps (minister of Canadian Heritage), Jacques Chirac (President of French Republic), Viviane Reding (Member of the European Commission, responsible for education and culture), Evangelos Venizelos (Culture Minister, Greece), Pierre Curzi (President of the Union of Artists, Quebec), Bernard Miyet (President of SACEM, France), Ghassan Salamé (Minister of Culture (Lebannon), President of the Ministerial Conference of the Francophonie), Pascal Lamy (Member of the European Commission, responsible for Trade), Nemesion Juarez (President, Directores Argentinos Cinematografico), Yvon Thiec (association, Eurocinema). I must note that the financing for international meeting of cultural organisations comes principally from French, Canadian and Quebec governments.

¹⁴ Argentina, Australia, Belgium, Benin, Brazil, Burkina Faso, Cameroon, Canada, Chile, Colombia, Congo, Ecuador, France, Germany, Guinea, Hungary, Ireland, Italy, Ivory Coast, Republic of Korea, Mali, Mexico, Morocco, New Zealand, Peru, Senegal, Slovakia, Spain, Switzerland, Togo, Tunisia, Uruguay, and Venezuela.

the scope of international commercial agreements and trade liberalising commitments within the WTO framework.

International Arenas and Cultural Diversity

Confronted with a debate – like trade and culture –, which is one of its long-term principal priorities, UNESCO¹⁵ stays as an observer, without any intervention. However, since 1998, UNESCO starts to be interested especially in the question of cultural diversity preservation, and initiates to organize a symposium of experts, as well as a ministerial conference on this issue: on July 1999, – in collaboration with the French National Commission for UNESCO with the support of the Canadian and French Governments – a symposium of experts is held with the theme “Culture, the Market, and Globalization: Culture, a form of merchandise like no other”, and a second entitled “Strengthening of UNESCO’s role in promoting Cultural Diversity in the Context of Globalisation”, as well as two ministerial round tables, with the theme “Culture and Creativity in a Globalized World” (November 1999) and “2000-2010: Cultural diversity: of the marketplace” (December 2000).

The UNESCO General Conference adopts UNESCO Universal Declaration on Cultural Diversity unanimously at its 31st session, on November 2nd 2001. According to the Declaration, “seeing the events of 11 September 2001, the UNESCO General Conference is an opportunity for the States to reaffirm their conviction that intercultural dialogue is the best guarantee of peace and to reject outright the theory of the inevitable clash of cultures and civilizations”. The Declaration raises cultural diversity to the level of “the common heritage of humanity as necessary for humankind as biodiversity is for nature” and makes its defence an ethical imperative indissociable from respect for the dignity of the individual.

In a parallel direction, the norm of cultural diversity is included in the agenda of several regional and international organizations. Cultural diversity becomes the great game of the

¹⁵ In the beginning of the 80's, UNESCO focuses on the link between development and cultural diversity, on the one hand, at the negotiations on the New World Information and Communication Order (NWICO) and on the other hand, during the World Conference on Cultural policies (MONDIACULT). The MONDIACULT adopts the celebrated broad definition of culture that links culture to development: “Culture is the whole complex of distinctive spiritual, material, intellectual and emotional features that characterizes a society or a social group. It includes not only arts and letters, but also the aspects of life, the fundamental rights of the human being, value systems, traditions and beliefs”. Furthermore, the issues of cultural dialogue, harmonious development, as well as reciprocal respect, have inspired International Commission works for the study on communication problems. Sean McBride, Nobel Prize of peace, chaired the Commission. Also, it was composed by personalities like Hubert Beuve-Mery, founder of the daily newspaper *Le Monde*, and the novelist Gabriel Garcia Marquez. The MacBride report (1980) – entitled symbolically *Multiple voices, one world* - was the first official document on cultural exchange inequality, published by an international institution. Nevertheless, the United States and the United Kingdom withdraw themselves by UNESCO in 1984, in order to express their objection against non – aligned movement claims to make global media representation more equitable. After the failure of discussions about NWICO, the dynamic of debate and actions around intercultural dialogue, development and cultural industries became weak within UNESCO, with exception the drafting of World Commission on development and culture report, entitled “*Notre diversité créatrice*” in 1995.

21st century and the multiplication of international declarations is characteristic and spectacular, such as, the declaration on cultural diversity adopted by the Council of Europe, on December 7th 2000, the article 51 of the Amsterdam Treaty, the declaration of Cotonou on cultural diversity adopted by the ministers of culture of Organisation Internationale de la Francophonie (June 15th 2001), as well as the Declaration on cultural diversity, adopted at the 2nd Conference of Three Linguistic Spaces (Organisation internationale de la Francophonie, Union Latina, Organizacion de Estados Iberoamericanos) on April 4th 2003. On November 23rd 2003, the OIF, OEI, UL, as well as the Comidade dos Paises de Lingua Portugeasa (CPLP) grant their support for UNESCO efforts in favour of the adoption of a Convention on cultural diversity.

For International Organizations of Three Linguistic Spaces, Canada and France, UNESCO is the only institution that has at the same time legitimacy (as the United Nations's organization in charge of cultural affairs), universality (necessary for giving the effective strength on cultural diversity), competence (founded on the elaboration and the implementation of five conventions on the cultural field), in order to constitute the suitable forum for a future convention on cultural diversity.

In addition, the question of cultural diversity is discussed in other arenas of international negotiations. UNESCO sets cultural diversity as one of the priorities of World Summit on Sustainable Development (September 26th – October 4th 2002). Under the impulse of France, UNESCO organizes round tables in reference with biodiversity and cultural diversity, as an inseparable condition for sustainable development. The Organisation also imposes the culture as the fourth pillar of sustainable development, in parallel to environment, economy, and labour. During the World Summit works, Jacques Chirac launches the proposition for an International Convention within UNESCO. Lastly, the United Nations Conference on Trade and Development (UNCTAD) includes the issue of cultural diversity within the international agenda and the World Summit on the Information Society (December 10th -12th, 2003) proclaims the safeguarding of the diversity of cultural expressions as one of its primary priorities.

At the 32nd session (October 2003), under the initiative of several states¹⁶, the General Conference adopts by consensus a resolution inviting the General Director to submit at the 33rd session (2005), a preliminary draft on the protection of the diversity of cultural contents and artistic expressions. From now on, cultural diversity is at the core of the debate about sustainable development, democratic governance of states and global governance. In the convention preliminary draft on cultural diversity, the group of experts, formed by UNESCO and charged to

¹⁶ France, Canada, Greece, Senegal, Germany, Morocco, Mexico, Monaco, supported by UNESCO's Francophone group.

redact the treaty, mentions that “the cultural diversity, opened out within a framework of democracy, tolerance and social justice, is essential to the peace and safety at national and international scales”.

According to Dominique de Vabres, French Cultural Minister, “this project (on cultural diversity) is not only cultural. It is deeply political. Cultural diversity is not an arrogance, not a reflex of survival. It is a mark of respect. An urgency, in the world of today, to engage cultural diversity in peace and humanism”¹⁷.

In spite of fervent American opposition, UNESCO adopts the Convention on cultural diversity on October 20th 2005, in Paris. Among 154 countries represented, 148 voted for, 2 against (United States and Israel) and four abstained (Australia, Nicaragua, Honduras, Liberia).

According to the Article 2, states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory. The sovereignty principle is embodied by a corpus of other guiding principles: respect of human rights, democracy, peace, equal dignity of and respect for all cultures, international solidarity and cooperation, sustainable development, openness and equitable access. In order to ensure the principle of equitable access and solidarity, the Convention includes the preferential treatment for developing countries, as well as the establishment of the International Fund of Cultural Diversity, financed by voluntary contributions.

However, the United States, Japan, Australia, as well as the United Kingdom underline the contradictions of the text, which could be opposite to other international treaties. The Convention’s ambivalent points remain the article 20 about the relationship with the other treaties and international organizations (WTO, WIPO) and the article 25 about the questions of the sanctions and litigations.

¹⁷ Le Monde, 19 October 2005.

2. Theoretical clarifications and framework

In the last ten years, the norm of cultural diversity is considered as a global game, an object of social confrontation and political friction within regional and international organizations (WTO, UNESCO, OIF, EU, WIPO), as well as an international normative axiom. Since the ministerial conference of WTO in Seattle (1999) and until the adoption of the International Convention on cultural diversity by UNESCO (October 2005), a plurality of actors – having neither the same legitimacy nor the same capacities and resources – affirmed the need for the placement of an international legal tool, legitimating the state sovereignty regarding cultural affairs.

Progressively, cultural diversity emerges as a rule of the international law, building a new normative context relating to the cultural affairs and the artistic expressions, at the national, regional and international levels. A norm - like cultural diversity - shapes the orientations and the practices of international actors, structures a political context of action and speech exchanges, and engages – consciously and unconsciously – the actors within a deliberative process.

My research *problématique* is based on an affirmation: **The norm has not appeared naturally. It was created. Cultural diversity is not given *a priori*; actors build it in a specific context.** Consequently, a whole range of questions is put forth: **Where from does the norm of cultural diversity emanate, for which reasons, under which conditions, and how?** The core of these questions, on which our thesis rests, is the following: which are the determining factors, contributing to the emergence of a norm – like cultural diversity – within the international scene? Which are the major reasons of the consolidation of an international norm – and its appropriation by international actors? Which are the ways, the strategies, as well as the resources of the actors in order to diffuse and legitimate a norm?

The question, which inevitably arises, is the search of a theoretical framework appropriate to analyze our basic questions. Apparently, nowadays, in the discipline of International Relations, three theoretical cores tend to highlight the norms and the factors of their appearance, i.e., liberal institutionalism, the transnationalist perspective, as well as the constructivist vision. My paper seeks to offer an alternative viewpoint and theoretical framework to investigate the major reasons for the emergence and the consolidation of a norm within the international scene: the approach of Domestic Structure and the liberal theory of Andrew Moravcsik.

Approach of Domestic Structure

The state, as J.P.Nettl¹⁸ (1968) pointed out, is by its nature Janus-faced – it looks both to the domestic policy and to the external environment. It lends itself to the role of analytic link between domestic and international levels, especially when understood as a component of domestic structure. Domestic structure represents the relationship between state and society. It works in both directions, providing domestic political forces access to foreign policymaking and filtering the impact of the international environment into domestic politics. Domestic structure approaches deal with the nature of the political institutions (the ‘state’), basic features of the society and the institutional and organizational arrangements linking governments and society and canalizing societal demands into the political system. In other words, domestic structures determine how political systems respond to societal demands¹⁹.

The domestic structural approach seeks to reconcile two competing perspectives, a realist, state-as rational-actor approach as well as a liberal, domestic-interest group approach. One dominant approach of Domestic Structure focuses on state institutions and developed at the argument of strong and weak states. It emphasizes the degree of centralization of state institutions and the ability of political systems to control society and to overcome domestic resistance. Weak states have fragmented political institutions and are open to pressures by societal interest groups and political parties. Their ability to impose policies on society and to extract resources from, it is limited. Strong states, by contrast, consist of centralized political institutions with strong bureaucracies; they are able to resist public demands and to preserve a high degree of autonomy vis-à-vis society²⁰.

Nevertheless, the distinction “strong versus weak states” is simplistic in order to highlight the variations of domestic structures²¹. A weak State, like United States, is able to formulate efficient policies, whereas strong systems might not always pursue forceful foreign policies. Rather than emphasizing state structures, the second approach analyzes the coalition-building processes with societies and political systems. This approach focuses on the “policy networks”,

¹⁸ Nettl (J.P.), *The State as a conceptual variable*, World Politics, vol.20, n°4, July 1968.

¹⁹ See Evangelista (M.), *Domestic Structure and international change*, in Doyle and Ikenberry, *New Thinking in International Relations theory*, Boulding, Westview Press, 1997 et Gouveritch (P.), *Domestic Politics and International Relations* in Carlsneas (W.), Risso-Kappen (Th.), Simmons (B.), *Handbook of International Relations*, London, Sage, 2002.

²⁰ The concept “strong versus weak states” is originally developed by Katzenstein (Peter), *International Relations and Domestic structures: Foreign Economic Policies of Advanced Industrial States*, International Organization, 30, Winter 1976, pp. 1-45; See also Krasner (Stephen), *Defending the national interest: Raw Materials, Investments, and US Foreign Policy*, Princeton, Princeton University Press, 1978; Mastanduno (Michael), *Toward a Realist theory of State Action*, International Studies Quarterly, 33, December 1989, pp. 457-474; Ikenberry (John G.), *Conclusion: An Institutional Approach to American Foreign Economic Policy*, International Organization, 42, Winter 1988, pp. 219-243.

²¹ Risso-Kappen (Thomas), *Public Opinion, Domestic structure, and foreign policy in liberal democracies*, World Politics, 43, July 1991, pp. 479-512.

that is, the mechanisms and processes of interest representation by political parties and interest groups that link the societal environment to the political systems. This agency-based view in terms of which domestic structures act as intervening factors between societal actors and state, emphasizes the ability of political actors to build consensus among the relevant elite groups in support of their policies.

However, according to Thomas Risse²², the two approaches seem to be auxiliary and supplementary. On the one hand, state structures do not determine the direction or the specific character of policies. On the other, coalition building takes place in the framework of political and societal institutions. The structures of the society and the political system determine the size and strength of policy coalitions needed to create the support basis for specific policies.

Therefore, a “mixed” approach encompassing both institutional structures and coalition building processes seems to be more appropriate. This approach emphasizes three factors:

- A. The nature of the political institutions and the degree of their centralization.
- B. The structure of society regarding its polarization, the strength of social organization, and the degree to which societal pressure can be mobilized.
- C. Finally, the nature of the coalition – building processes in the policy networks linking state and society:
 - a. In countries with centralized political institutions but polarized societies and rather weak social organizations, the policy network is likely to be state-dominated. The policy-relevant coalition building would then be restricted to the political elites and would more or less exclude societal actors.
 - b. By contrast, societal control of the policy network is to be expected in countries with comparatively homogenous societies and a high degree of societal mobilization but weak state structures. The policy-relevant coalition building would take place among societal actors.
 - c. Countries with political institutions and social organizations of comparable strength are likely to have a policy network characterized by democratic corporatism. Political and societal actors would be engaged in continuous bargaining processes in search of policy compromises in an environment of give – and – take²³.

²² Risse-Kappen (Thomas), *Public Opinion, Domestic structure, and foreign policy in liberal democracies*, World Politics, 43, July 1991, pp. 479-512.

²³ For a synthesis on Domestic Structure approach, see also, Gourevitch (P.), *The second image reversed: the international sources of domestic politics*, International Organization, vol. 32, n°4, autumn, 1978; Neack (L.), *Foreign Policy Analysis: Continuity and change in its second generation*, Englewood Cliffs, Prentice Hall, 1995; Skidmore (D.), Hudson (V.), *The Limits of State autonomy: Societal Groups and Foreign Policy*, Boudler, Co Westview, 1993; Katzenstein (Peter), *Corporatism and change*, Ithaca, NY, Cornell University Press, 1984; Putnam (Robert), *Diplomacy and Domestic Politics: The logic of two-*

Liberal theory of Andrew Moravcsik

Andrew Moravcsik²⁴ argues that the basic liberal insight about the centrality of state-society relations to world politics can be restated in terms of three positive assumptions, concerning, respectively, the nature of fundamental social actors, the state, and the international system.

The fundamental actors in international politics are individuals and private groups, who are on the average rational and risk-averse and who organize exchange and collective action to promote differentiated interests under constraints imposed by material scarcity, conflicting values, and variations in societal influence. The demands of individuals and societal groups are treated as analytically prior to politics. Political action is embedded in domestic and transnational civil society, understood as an aggregation of rational individuals with differentiated tastes, social commitments, and resource endowments. Socially differentiated, individuals define their material and ideational interests independently of politics and then advance those interests through political exchange and collective action. Individuals and groups are assumed to act rationally in pursuit of material and ideal welfare.

Even if, in his ontological basis, Moravcsik focuses upon the rational individuals and groups, he also implicates the internal structure of states, as well as the institutions, which organize the links between societal groups and policymakers. Thus, states (or other political institutions) represent some subset of domestic society, on the basis of whose interests state officials define state preferences and act purposively in world politics. In the liberal conception of domestic politics, the state is not an actor but a representative institution constantly subject to capture and recapture, construction and reconstruction by coalitions of social actors. Government policy is therefore constrained by the underlying identities, interests, and power of individuals and groups (inside and outside the state apparatus) who constantly pressure the

level games, International Organization, n°42, summer 1988; Evans (P.B.), Jacobson (H.K.) and Putnam (R.D.), *Double-Edged Diplomacy: International bargaining and domestic politics*, Berkeley, University of California Press, 1994. Moreover, see Risse – Kappen (Thomas) (ed.), *Bringing transnational relations back in non – state actors, Domestic structures and international*, Cambridge University Press, 1995. This book seeks to illustrate the various practices of transnational actors relating to two variables: the domestic structures and the international institutionalization. Thus, on the one hand, the more the state dominates the domestic structure, the more difficult it should be for transnational actors to penetrate the social and political systems of the target country. On the other, the more fragmented the state and the better-organized civil society, the easier should be the access for transnational actors. Also, the more the respective issue-area is regulated by international norms of cooperation, the more permeable should state boundaries become for transnational activities.

²⁴ See Moravcsik (Andrew), *Taking Preferences seriously, A liberal theory of International Politics*, International Organization, 51(4), fall 1997, pp. 513-553; Moravcsik (Andrew), *Preferences and Power in the European Community, A liberal intergovernmentalist approach*, Journal of Common Market Studies, 31(4), December 1993, pp. 473-519; Moravcsik (Andrew), *Integrating International and Domestic theories of International Bargaining*, in Keohane (R.), Milner (H.), *Internationalization and Domestic Politics*, Cambridge University Press, 1996.

central decision makers to pursue policies consistent with their preferences. Groups articulate preferences; governments aggregate them. For liberals, the relationship between society and government is assumed to be one of principal – agent; societal principals delegate power to (or otherwise constrain) governmental agents.

This is not to adopt a pluralist view of domestic politics in which all individuals and groups have equal influence on state policy, nor one in which the structure of state institutions is irrelevant. Every government represents some individuals and groups more fully than others. Many representative institutions and practices exist, each of which privileges particular demands; hence, the nature of state institutions, alongside societal interests themselves, is a key determinant of what states do internationally.

In his third assumption, Moravcsik associates the societal actors and the state institutions to international level (Waltz's third image). Thus, the configuration of interdependent state preferences determines state behaviour. Each state seeks to realize its distinctive preferences under varying constraints imposed by the preferences of other states. Liberal theory rejects not just the realist assumption that state preferences must be treated as if naturally conflictual, but equally the institutionalist assumption that they should be treated as if they were partially convergent, compromising a collective action problem. Liberal theory assumes that the pattern of interdependent state preferences imposes a binding constraint on state behaviour.

Patterns of interdependence or externalities induced by efforts to realize state preferences can be divided into three broad categories. Where preferences are naturally compatible or harmonious, that is, where the externalities of unilateral policies are optimal for others (or insignificant), there are strong incentives for coexistence. Where, by contrast, underlying state preferences are zero-sum, that is, where an attempt by dominant social groups in one country to realize their preferences through state action necessarily imposes costs (negative externalities) on dominant social groups in other countries, governments face a bargaining game with few mutual gains and a high potential for interstate tension and conflict. Where, finally, motives are mixed such that an exchange of policy concessions through coordination or precommitment can improve the welfare of both parties relative to unilateral policy adjustment, states have an incentive to negotiate policy coordination. Thus, the expected behaviour of any single state reflects not simply its own preferences, but the configuration of preferences of all states linked by patterns of significant policy interdependence.

Synthesis and assumptions

There are several ways to illustrate the complex question of the link between the emergence of an international norm and the implication of the international actors. A body of three questions - assumptions tends to offer a credible theoretical hypothesis on the appearance of a norm, and the process of its construction and its legitimization within the international scene.

First question: Which are the components of an international norm and the factors of its construction?

The correlation between the production of a norm and the domestic structures, as well as the ideational and material interests of the actors, can offer an interesting answer. According to my perspective, the basis of the cultural diversity's construction must be sought in the French domestic structures and the interests of cinema groups and French policymakers. Thus, in the beginning, my research focuses upon the material and ideational interests both of the French cinema milieu and of the French governments, their correlation, as well as the institutional body. I seek to illustrate the character of the links between French policymakers and cinema groups. My research is based on the assumption according to which the French policymakers and cinema groups shape a network, built on reciprocity and interaction. In other words, this network constitutes a type of democratic corporatism embodied into political institutions (Centre national du Cinema, Unifrance).

My hypothesis rejects viewing state-society relations in terms of a ‘trade-off’ (that is, *either/or* logic); in contrast, I suggest that high state agential power implies strong social power and vice-versa. Thus, policymakers and cinema groups are engaged in permanent bargaining processes in search of policy compromises in an environment of material and ideational giving/taking. Contrary to Moravcsik's initial assumption, the policymakers are not simply representatives of interests and values of the dominant societal groups. They have a specific vision on cultural and cinema affairs. In my case, this vision is shared both by policymakers and cinema milieu. Our objective is to highlight the construction of this common vision – based on “exception culturelle” - and to explain why and how the material and ideational interests of French policymakers and cinema groups are identical.

Assumption: the components of an international norm, both material and ideational, are founded on the internal sphere of states. The beginnings of a norm should be sought in the body of interests of state policymakers and societal groups.

Second question: Why and how, does an internal norm – like “exception culturelle” appear within the international scene? Why and how, is an internal debate or a rule internationalized?

According to Moravcsik’s assumption, every State seeks to satisfy its own interests, under varying constraints imposed by the preferences of other States. The configuration of interdependent state preferences determines state behaviour. Thus, the configuration of divergent and opposite preferences produces negative externalities. Through the concept of externality, our research tries to understand why the cultural exception has appeared during the GATT negotiations in 1993.

In other words, the material and ideational interests of French policymakers and cinema groups confront the interests of other states. The opposition of interests produces negative externalities, and results in the emergence of the cultural exception within the international scene. The interests of the American government, and the Majors - based on liberalization of audiovisual sector – seem to impose costs on French policymakers and cinema milieu. In the beginning, the cultural exception and its appearance emanate from the interests of implied actors, specific political institutions and consequently the externalities produced within the international scene. In other words, the appearance of cultural exception seems to be the result of negative externalities, produced by the confrontation of opposite interests at international level. Moreover, vis-à-vis the permanence of negative externalities, affecting French interests (and Canadian), the involved actors decide to redefine and reformulate the internal norm of cultural exception in order to attenuate the international constraints and profit from eventual international opportunities.

Assumption: the continuous negative externalities, produced by the configuration of opposite state preferences at international level, are perceived as an explanatory factor of emergence and reformulation of an internal norm (cultural exception) within the international scene.

Third question: Why and how, does the majority of international actors adopt a norm – as cultural diversity? What is the process of its legitimization within the international scene?

My assumption starts by an affirmation: since the end of 1990 and the adoption of the cultural diversity by France and Canada, the actions and the discourses present a change. My aim is to qualify and illustrate this change, in order to understand its deeper reasons.

According to my hypothesis, in pursuit of legitimating and diffusing the norm of cultural diversity within the international scene, the implied actors (French and Canadian policymakers,

Quebec, cultural and cinema groups) acquire transnational ways and practices, which transcend national frontiers and the vertical canalization of societal interests toward policymakers. However, according to my viewpoint, the action of coalitions, cinema and cultural groups, as well as the Quebec government, is not totally autonomous. Rather than para-diplomatic or proto-diplomatic, their actions seem to be co-diplomatic²⁵. The policymakers and non-governmental actors are in continuous collaboration, having as principal objective the affirmation and the legitimization of the State sovereign right to adopt its own policies in the cultural field. In other words, the practices of transnational networks (like Coalitions for cultural diversity) do not constrain the action of French policymakers. On the contrary, they reinforce it, by establishing a new framework of action for states. Thus, rather than considering “decision makers versus cinema groups”, the hypothesis’ key is to recognize that the states enhance their governing capacity making synergetic linkages²⁶ with domestic social forces.

The link between state-society influences both the internationalization of a specific issue area and the transnational activities of American Majors. On the one hand, the strong correlation between French policymakers and cinema groups constitutes an essential factor of the internationalization of audiovisual issues. On the other, the internationalization may be transformed to an important barrier for transnational actions and an obstacle for Majors penetration in European cinema markets.

In a parallel direction, my research tends to illuminate the discourse changes of the actors, illustrating its terminology, its rhetoric, its contents, and its aim. Contrary to cultural exception, cultural diversity is transformed into a global public good to be preserved by the international actors, an ethical objective of universal and superior character. Thus, as a public good, it must be provided by a central authority (State), either directly or indirectly, i.e. by modified market mechanisms. Furthermore, the absence of cultural diversity or even its presence in insufficient quantity seems to be a public plague.

Once the norm is diffused within international scene, it is likely to be retranslated by international actors, as it could be subjected to varying interpretations. Each actor can legitimate particular or corporatist requirements, insofar as an international norm, like cultural diversity, has fuzzy, banal, as well as diluting components. Thus, it is forsaken by the patronage of some actors (France or Canada) and confiscated by a plethora of actors – having neither the same legitimacy,

²⁵ See Paquin (Stéphane), *La paradiplomatie identitaire, Le Québec et la Catalogne en relations internationales*, Thèse en science politique, IEP de Paris, 2002. The proto-diplomatie is defined as the foreign policy of a region, which seeks to undertake its succession.

²⁶ See Hobson (John), *The ‘second state debate’ in International Relations: theory turned upside – down*, Review of International Studies, 27, 2001, pp. 395-414.

nor the same institutional status. In other words, the norm loses its origin and its roots, and traverses various and autonomous ways. On the one hand, cultural diversity satisfies the material and ideational interests of French policymakers and cinema groups, which are also in evolution and change relating to continuous interstate interaction. On the other hand, the broad formulation of a norm allows the association of several actors, and contributes to create a new framework of global collective action, including the interests – sometimes contradictory – of multiple actors. Thus, the cultural diversity reflects not simply the preferences of French policymakers and cinema milieu, but the configuration of preferences of all states linked by patterns of significant policy interdependence.

Assumption: the factors of the appropriation of cultural diversity and its legitimization by the international society must be sought in the practices and the discourses of the actors. Cultural diversity is perceived as a ‘systemic’ outcome of interstate interaction.

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