

**Threats and Opportunities
for Cultural Diversity:
WSIS between WTO and UNESCO**

Gustavo Gómez

Document prepared for
Instituto del Tercer Mundo (ITeM)

July 2005

*ITeM gratefully acknowledges the funding support of the
International Development Research Centre*

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I. Introduction

The following study accounts for the different multilateral processes where agreements and policies on cultural diversity are being discussed and discloses facts and tendencies showing the existing threats to the achievement of an effective cultural diversity in the information society.

The hypotheses guiding this work can be summarized as follows:

1. The mere declaration and acknowledgement of cultural diversity in the WSIS is insufficient and, therefore, it is essential to define regulatory frameworks and active state policies that would ensure it;
2. It is necessary to review the implications on cultural diversity of other multilateral processes in the implementation of the Information Society, since they may render the principles agreed at the WSIS pointless, as well as the debates and definitions at national level.

As Plans of Action - both global and regional - have become defined within the process of the World Summit on the Information Society (WSIS), commitments to respect and foster cultural diversity have faded. Therefore, the future of cultural diversity depends on other multilateral processes that may turn both the general principles agreed at the WSIS – as well as the debates and definitions within countries - pointless or unfeasible. Negotiations within the framework of the World Trade Organization (WTO) and Free Trade Agreements (FTA) pose a threat in this sense, while UNESCO's Convention on Cultural Diversity (CCD) represents a major opportunity for Southern countries.

In a global context where the prevailing economic and social trends are resulting in an increased focus on production and dissemination of cultural goods and services - thus placing cultural diversity at global, regional and national level at risk - the mere declaration and acknowledgement of cultural diversity is not enough provided regulatory frameworks and active state policies aimed at defending and ensuring it are not defined.

In view of the processes of globalization, convergence and concentration being analyzed in this paper, it seems necessary to regulate market trends in terms of public interests if national possibilities are not to be left to the mercy of the threats encompassed in such processes.

II. Cultural diversity in the WSIS

From the Geneva Declaration of Principles to Regional Plans of Action

Setting and rules of the game

Strains faced regarding issues and approaches during the whole WSIS process are often strongly linked to early decisions that predefined – although not in a linear way – that which would be the central focal points in debate, the participation of the different actors and the possible extent and priorities of negotiations.

Among them, it can be mentioned the appointment of the International Telecommunication Union (ITU) as “key” organizer of the WSIS, thereby leaving UNESCO aside. ITU, an organization that precedes even the United Nations, has historically been an atypical institution within the system. It is hard to avoid mentioning the participation of telecommunication transnational companies in its consultative body, which are thus allowed a permanent lobbying activity in favour of their interests – and furthermore, have better resources available to this effect than most of the countries taking part in the Union’s discussions.

These companies, and particularly those related to media corporations, were doubly represented in the WSIS process since apart from participating as private sector members, their associations participated as “civil society”¹. It can even be stated that their positions were represented three-fold since some governments acted as advocates for their corporate interests².

The organization of the WSIS by ITU also defines the prevailing approach from the early beginning of discussions – expressed in the draft papers submitted within the framework of preparatory meetings. Those issues associated with cultural diversity are clearly more closely related to UNESCO, among other organizations within the United Nations system. ITU, on the contrary, lacks the experience, human resources and adequate training to address and promote these topics.

Marc Raboy argues that, for key issues such as the democratization of the media – traditional and new – a type of information and communication technology essential in information societies, particularly in those of Southern countries. Raboy states that, while within UNESCO’s logic, the media are a cultural institution and part of the human development process, within ITU’s logic, the media are a technical system for delivering information³.

The technology-based approach is not just a result of the WSIS process but rather represented one of its intrinsic components. This was a reality that had to be dealt with by several countries and organizations – such as UNESCO itself – and, especially by civil

¹ This is the case, among others of the International Association of Broadcasting (IAB) which gathers owners of radio and TV stations

² See, for example, the participation of El Salvador advocating for the interests of Latin American broadcasters. The country’s President, Elías Sacca, acts as regional leader of the International Association of Broadcasting (IAB).

³ Raboy, Marc (2004), *The World Summit on the Information Society and its Legacy for Global Governance in “Gazette: The International Journal for Communication Studies”,* vol. 66, nos. 3 -4, (June- July) 2004.

society organizations, as progress was being made in terms of definitions and specific plans that implied moving away from the declaration of principles.

The choice made by the UN Secretary-General in favour of the ITU to base de WSIS Executive Secretariat cannot be regarded, in the least, as naïve. Telecommunications in general and broadcasting, in particular, are considered almost exclusively as essentially technological or market-industrial issues and processes, especially in developing countries.

Experts such as Antonio Pasquali have made strong remarks in this respect: *“This attribution of authority to intrinsically incompetent technical bodies in terms of socio-cultural issues is obviously not naïve; it is a way of institutionalizing deafness upon social demands; of providing inadequate infrastructural responses to superstructural problems; of keeping decision-making within the sphere of power”*⁴.

Context: approach to problems and solutions

The first phase of the WSIS was marked by these tensions⁵, including even the definition and extent of the term “information society” as well as the nature of the “digital divide” it aims to face. These different approaches contributed to set up a context where cultural diversity aspects started being discussed and gradually faded away.

UNESCO has repeatedly insisted on the concept of knowledge society or societies as an evolutionary stage of the information society, stating that the “information” alone is not sufficient: the challenge would be to shape it in such a way that *“it may evolve until turning into knowledge societies that would respect the vast diversity of cultures and identities, as well as universality, indivisibility and interdependence of human rights”*. According to this perspective, emphasis should be laid on the contents of the information society, *“including its sociocultural and ethical dimensions and establishing a clear vision of the social goals to be met”*⁶.

Civil society involved in the WSIS has expressed in the same way in all its statements, attempting to change the direction of the original proposal and insisting on the consideration of multiple possible “information societies”⁷: *“The understanding of information societies cannot be reduced to only one model, only one vision, without taking into account that there are really multiple societies that should be respected in their cultural and historical peculiarities. To talk about the information society does not mean to talk about an automatic copy of one single knowledge, one single culture and the dominance of one single language”*⁸.

Including the concept of “communication”⁹, the global civil society states that *“Information and Communication Societies should be Societies in which everyone can freely create, access, utilise, share*

⁴ Antonio Pasquali, *Cumbre Mundial de la Sociedad de la Información: Dos precauciones a tomar*, published in the Web Community of Social Movements, June 10, 2002.

⁵ After Geneva 2003, it was agreed that the second phase would not step back with regards to the documents approved as Declaration of Principles (<http://www.itu.int/wsis/docs/geneva/official/dopes.html>) and Plan of Action (<http://www.itu.int/wsis/docs/geneva/official/poa-es.html>)

⁶ José Luis Exeni R., *Central American Consultation Meeting, Cuba, Mexico and Dominican Republic*, UNESCO, Tegucigalpa, October 29- 31, 2002

⁷ Intervention of the Latin American and Caribbean Caucus in WSIS, Geneva, 2003

⁸ CRIS Campaign has expressed in the same way: “There is no single model of Information Society, but many possible ‘information societies’”. Issue Paper N° 1, 2003

⁹ For Pasquali, efforts at the Summit should have been focused “on the substitution of the concept Information for the concept Communication, or at least on achieving an acceptably hierarchically arranged coexistence of both concepts. (...) To inform essentially implies causative and ordering unidirectional messages with a tendency to modify the behaviour of a passive receptor; to Communicate implies the

*and disseminate information and knowledge, so that individuals, communities and peoples are empowered to improve their quality of life and to achieve their full potential". Societies "where development is framed by fundamental human rights and oriented to achieving a more equitable distribution of resources, leading to the elimination of poverty in a way that is non-exploitative and environmentally sustainable"*¹⁰.

The views among the main stakeholders in the process – civil society, private sector, governments, academy – are so outstandingly different that it is inevitable that the expectations and results with regards to their meeting will leave at least some of them not satisfied¹¹. Civil society participants have noticed that the prevailing view endorsed by the ITU and many developed countries is driven by the needs of transnational corporations *"with little more than lip service to real human needs and ever growing inequities"*¹².

Let us see how the "problem" is posed with regards to the digital divide, taking into account the existing public consensus about facing and eliminating , or at least reducing it:

According to one of these views, the digital divide is just a problem of technology access, more precisely, *"between those with access to digital technologies and those without"*¹³. Therefore, its overcoming will be marked by an increase in the number of Internet connections per individual, school and others. Other definitions not only resort to a quantitative aspect but also to qualitative elements of this gap always understood as a technological problem – for example, by distinguishing between broadband and dial-up Internet access..

From another perspective with regards to the digital divide, it is stated that, besides connectivity, differences in terms of skills and capacity to use these technologies should be considered. For example, from the point of view of ALADI, the digital divide is *"the existing difference in the degree of massification of ICT use among countries"*¹⁴ and proposes to measure it through determinants such as telephone density, computer density and Internet users, among others¹⁵.

It should not go without saying that many statements, even that made by the ITU, acknowledge a broader approach in official discourse.

For ECLAC (Economic Commission for Latin America and the Caribbean), actively engaged in the WSIS preparatory process, *"the digital divide is, essentially, an outgrowth of pre-existing socioeconomic divides"* where *"income and Internet use are positively correlated with countries that have lower income levels tending to have lower Internet penetration rates as well"*¹⁶. It has even pointed

interrelation of relationship, dialogue and socializing messages among speakers that are equally empowered to engage in a free and simultaneous reception/emission".

¹⁰ Civil Society Statement at the WSIS "Shaping Information Societies for Human Needs". Unanimously adopted by the WSIS Civil Society Plenary, December 8, 2003.

¹¹ Actually, the first phase of the Summit left everybody unsatisfied. Apart from the fact that the participation of Heads of State and Government was very limited, the Summit was about to fail soon after it had started, before arriving at the solution to set up two new working groups to address the two most controversial issues – financing and Internet governance.

¹² CRIS Campaign, Issue Paper N° 1, 2003.

¹³ Hilbert, Martin (2001), *From industrial economics to digital economics*. ECLAC, Chile 2001.

<http://www.eclac.cl/publicaciones/DesarrolloProductivo/7/LCL1497P/LCL1497.pdf>

¹⁴ ALADI, *La brecha digital y sus repercusiones en los países miembros de la ALADI*. Estudio 157. Revista 1, July 30, 2003.

¹⁵ http://www.geocities.com/brecha_digital/

¹⁶ ECLAC (2003), *Road Maps towards an information society in Latin America and the Caribbean*.

Hilbert and Katz also state that "there is a direct correlation between income and Internet access with countries that have lower income levels tending to have lower Internet penetration rates", 2002. (<http://www.eclac.cl/publicaciones/DesarrolloProductivo/1/LCG2195Rev1P/lcg2195e2.pdf>)

out that the central lesson to be learnt from the discussion about the famous “productivity paradox” in the 1980s is that *“the focus on ICTs for development is shifting away from simply connecting to the ICT infrastructure and towards incorporating digital practices into all the various forms of social and production organization as soon as possible”*¹⁷.

Meanwhile, from the point of view of civil society, to bridge the digital divide implies using and appropriating new technologies and therefore, *“it should not be measured only in terms of the possibility of using the latest communication technologies but also in terms of the information processing capacities and skills to create mutual-benefit networks that may help to improve living standards”*¹⁸. Thus, education becomes the focal point of a policy aimed at promoting cultural diversity, in the sense of developing *“the skills needed for active citizenship, including the ability to find, appraise, use and create information and technology”*¹⁹.

The gradual fading away of cultural diversity

The WSIS Declaration of Principles (DP), agreed in December 2003 in Geneva, includes part of the proposals and language promoted by civil society within the WSIS process. The inclusion of definitions and lines of action on cultural diversity – not included in the initial drafts – was promoted by civil society and supported by academic sectors and organizations such as UNESCO. Issues such as the respect for the human rights framework, freedom of expression, gender perspective, access to services in rural areas or education underwent a similar development within the WSIS process.

In the DP, States affirm to be *“resolute in our quest to ensure that everyone can benefit from the opportunities that ICTs can offer”*, and agree that in order to meet those challenges, all stakeholders should work together to *“foster and respect cultural diversity”*. They also state that *“cultural diversity is the common heritage of humankind”* and that the information society should be *“founded”* on it - thus expressly referring to UNESCO’s Universal Declaration²⁰ on cultural diversity, which forms the basis for the discussion towards the respective Convention²¹.

The DP points out that not only is consumption or access to contents a *“high priority”* but also their creation and dissemination. It is *“essential”*, according to the Declaration, *“to promote the production of and accessibility to all content - educational, scientific, cultural or recreational - in diverse languages and formats”*²². It is particularly highlighted that *“the development of local content”* suited to domestic or regional needs *“will encourage social and economic development and will stimulate participation of all stakeholders, including people living in rural, remote and marginal areas”*²³.

The DP also stresses the role played by the traditional media - based both on analogical and digital technology. In view of their current and future role in Southern information

¹⁷ *Ibid.*

¹⁸ Virtual Community Mistica, 2002.

¹⁹ Civil Society Declaration to the WSIS. December 2003.

(http://www.worldsummit2003.de/download_en/WSIS-CS-Dec-121103-esp.pdf)

²⁰ With regards to cultural diversity, it is interesting to notice how that established in the DP goes far beyond the issues related to indigenous cultures or linguistic diversity, a necessary although much reduced perspective than the one established in UNESCO’s Declaration on cultural diversity and other documents.

²¹ Item 52, Declaration of Principles, Geneva, December 2003.

²² Item 53, Declaration of Principles, Geneva, December 2003.

²³ *Ibid.*

societies, this reference is of utmost importance. Together with reaffirming the principles of freedom of opinion and expression and making reference to Article 19 of the Universal Declaration of Human Rights²⁴ - not included in the first drafts - there is mention to the need of having a diversity of media available, while at the same time *“diversity of media ownership should be encouraged”*²⁵, thus reducing international imbalances as regards to infrastructure, technical resources and the development of human skills.

These good principles, however, have been gradually lost within those texts that refer to actions and policies aimed at implementing this Declaration. Although some references are kept, it is noticeable how the Plan of Action (PA) focuses on other priorities, where *“to connect”* and *“access”* for *“delivery of services”* are the key focal points of all the strategy aimed at building the information society. The definitions included in the PA focus on giving priority *“in the first place, to set up a regulatory framework for the new digital economy, with special emphasis on deregulation in order to favour competition, e-commerce and new mechanisms to control cybercrime and monitor the use of electronic networks for subversive purposes; and in the second place, incentives to promote private investment in technology infrastructure in the so-called developing countries”*²⁶.

This perspective turns the PA into a document where the importance given to access and passive reception of information is contrasted to the weak presence of goals aimed at the creation, production and dissemination of contents and cultural goods and services. Among the 10 targets included to *“be taken into account in the establishment of national targets”*, six talk about *“connecting”*²⁷. Other two points set the target that all people should have access to *“television and radio services”* and that *“more than half of the world’s inhabitants”* should have access to ICTs. Therefore, all the other issues included within the DP are limited to two weak targets in the PA (*“to adapt all primary and secondary school curricula to meet the challenges of the Information Society, taking into account national circumstances”* and *“to encourage the development of content and to put in place technical conditions in order to facilitate the presence and use of all world languages on the Internet”*).

Besides, the PA shows a reduced idea with regards to the concept of culture and cultural expressions: unlike the promising and broad definition set forth in the DP, the action line on cultural diversity is limited to the *“dialogue among cultures”* and the *“regional and international cooperation”*²⁸. The concept of *“cultural diversity”* starts to be dealt with as exclusively referred to indigenous peoples, religions, documenting historical heritage, traditional knowledge or issues related to languages and dialects. When the wording of the original version is maintained, actions start being referred to in the logic of *“affirmative actions”*, aimed at vulnerable sectors, specific ethnic groups, people from marginal areas or at disadvantage²⁹ or to services directed at people with different capacities. On the other hand, none of the measures proposed addresses the *“encouragement of diversity”* in terms of media ownership nor establishes the limits to concentration - a growing trend at national and international level

24 Which reads: *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*

25 Item 55 of Chapter 9 - Media, Declaration of Principles, December 2003

26 This position had already been outlined during the first phase of the WSIS. See Burch, S. (2003), *Cumbre Mundial sobre la Sociedad de la Información: Visiones enfrentadas*, March 18, 2003 (<http://www.iberamericana.de/articulos-pdf/10-Burch.pdf>)

27 Villages, universities, colleges, secondary and primary schools, scientific and research centres, hospitals and other health centres as well as local government departments.

28 Point 23 of line C8 of the Plan of Action - *“Cultural diversity and identity, linguistic diversity and local content”*.

29 *“Empower local communities, especially those in rural and underserved areas...”*. Item 11h of Chapter 4 - Capacity Building, Plan of Action, Geneva, December 2003.

that goes directly against the diversity of information and opinions. When the support to projects combining the use of traditional media and new technologies is acknowledged, for example, this is only regarded in terms of “*facilitating the use of local languages, for documenting and preserving local heritage, including landscape and biological diversity, and as a means to reach rural and isolated and nomadic communities*”³⁰.

A summary of the PA’s reductionist vision of the information society – which enhances access and passive reception of information – is evidenced in the contents of the chapter on the access to information and knowledge, where it is claimed that “*ICTs allow people, anywhere in the world, to access information and knowledge almost instantaneously. Individuals, organizations and communities should benefit from access to knowledge and information*”³¹. Throughout the chapter there are references to the “*promotion of public domain information*”, to encourage governments “*to provide adequate access to public official information*”, to establish “*community public access points*” in libraries, educational institutions, public administrations, post offices or other public places, to support “*the creation and development of a digital public library and archive services*”, and similar others. All these aspects, although fundamental, are also insufficient for an effective exercise of the freedom of information and expression – which not only implies the right to “*receive*” information but also the possibility of creating and disseminating it.

With respect to the drawing up of the PA, specific measures and commitments were also left aside in terms of the promotion of diversity at media level. Except for a reference to provide support to media “*based in local communities*”³² none of the measures put forward addresses the “*encouragement of diversity*”³³ in terms of media ownership nor establishes the limits to concentration - a growing trend at national and international level that goes directly against the diversity of information and opinions.

Regional Plans of Action

In the Regional Plans of Action and commitments, which followed the WSIS in Geneva, the same fading process regarding issues related to cultural diversity can be noticed. Except for a few cases, marked by specific regional needs - such as the demand for inclusion of African languages and the development of the Arab culture on the Internet - there is still a tendency to identify the following as priority issues: access and connectivity, setting up of infrastructure, creation of adequate environments for investment and capacity building for the use of new technologies.

Latin America and the Caribbean

This gradual fading process of definitions on cultural diversity following the first phase of the WSIS is clearly noticed in the drawing up of the Rio Commitment and the eLAC Regional Plan 2007, approved by Latin American and Caribbean countries at the Regional Preparatory Ministerial Conference of Latin America and the Caribbean for the Second Phase of the WSIS (Rio de Janeiro, June 2005).

³⁰ Item 23j of Chapter C8 – Cultural diversity and identity, linguistic diversity and local content, Plan of Action, Geneva, December 2003.

³¹ Introduction to Chapter 3 – Access to information and knowledge.

³² An euphemism which avoids explicit reference to “community media”.

³³ Item 55 of the Declaration.

The initial drafts of the Regional Plan³⁴ - prepared by the Economic Commission for Latin America and the Caribbean (ECLAC) – clearly reflect a strong technology-based and market-driven approach. The insistence of some countries in the region, together with the support by civil society organizations, managed to change at least in part – or supplement – the extent of the final version of the document.

Initially, the goals set forth in the chapter related to access and digital inclusion were only referred to quantitative goals – number of people or schools and local governments connected. These goals were basically referred to Internet access³⁵ and were put forward as a response to the “digital divide” understood as the “*discriminatory and heterogenous access to ICTs*”. As a result of the negotiation process, a note was included pointing out that universal access will not be sufficient and that it is necessary to supplement it with capacity building. However, the sense of the original statement seems clear in the light of the chapter referring to capacity-building and knowledge creation.³⁶ Such chapter states that the “*human capital*” would be an essential “*investment*” in the information society, promoting an “*increased competitiveness of companies*” and “*job creation*”. A brief final reference points out that it will also be useful for “*poverty reduction*” and the “*creation of possibilities for the progress and participation of all people*”.

From ECLAC’s perspective, training activities will be given priority within the next years since without “*the skills needed*”, “*investment in technology*” will not yield the productive results expected. Together with “*avoiding obstacles that may halt*” the transition to the information society and facilitating private investment, there is also marked reference to the need to have finance instruments, regulatory frameworks “*to enhance market effectiveness*” as well as legal provisions that would give “*confidence and security*”³⁷.

The political bias reflected in the first drafts proposed led civil society to strengthen its participation in the Rio Conference and previous discussions. One of the interventions³⁸ during the event emphasized “*the need to approach the information society from a perspective that transcends technological aspects and strategically incorporates aspects related to work, education, health and capacity building, generation of local content, community communication and all those that guarantee a dignified life for citizens in just and egalitarian societies*”³⁹.

Although civil society and several government delegations promoted the inclusion of different modifications, there was no reference to cultural diversity in the Rio Commitment, signed in June 2005. There was just some side-reference to protecting the “*heritage and cultural legacy*” of indigenous peoples⁴⁰ and a generic statement with regards to

³⁴ ECLAC (2005), Unofficial Document. *Hacia un Plan de Acción de América Latina y el Caribe para la Sociedad de la Información eLAC 2007*. (http://legislaciones.amarc.org/CSMI_Hacia%20eLAC%202007%20Esp.pdf)

³⁵ The exception is a proposal to create a regional working group to study the issue of Digital TV in the region. Item 5 of eLAC 2007 original draft.

³⁶ Capacity-building and knowledge creation - eLAC 2007 original draft.

³⁷ Thematic priorities and initial steps - eLAC 2007 original draft.

³⁸ Plou, D. (2005), *Civil Society Plenary Intervention at the Regional Conference on the Information Society*, Rio de Janeiro, June 8, 2005 (<http://www.choike.org/nuevo/informes/2965.html>)

³⁹ The main aspects put forward by civil society were: “Citizen’s participation in the definition of public policy and national information society strategies, democratize access to information and knowledge, generation and distribution of local information and content, adoption and production of appropriate technological platforms and financing ICTs for development”.

⁴⁰ “...to respect the right of indigenous peoples to freely pursue their social and economic development by creating, in close collaboration with them, government programmes for access to ICTs that attend to their special situation and protect their heritage and cultural legacy”, Item 6 of Rio Commitment, 2005

the fact that people are not just users but *“also agents of development and content production”*⁴¹.

Meanwhile, in the eLAC Plan of Action 2007, only four goals about issues related to the acknowledgement and promotion of cultural diversity were approved. These were incorporated in the negotiations that followed the presentation of the initial draft⁴².

One of the proposals ended up in the drawing up of a chapter on *“creative and content industries”* referred to strengthening the capacity for local production of contents that “respect” diversity and cultural identity, and go beyond new technologies and the Internet⁴³. Another article mentions the establishment of a Regional Working Group to *“research the development and challenges of creative industries and content-development industries”* for the purpose of *“forming regional cooperation mechanisms and seeking solutions for common problems, such as the financing of an economy of intangible goods, distribution of cultural goods and services and communication in the region, and perfecting the capacity for local production of content that respects diversity and cultural identity”*. Another article which is important given the extent of commercial media concentration in the region refers to the goal of *“supporting media based in local communities for the creation of original content that meets their information and development needs and that addresses their linguistic and cultural diversity and identity, taking into account social initiatives”*. A further chapter included refers to *“Community Centres”* and expressly mentions the support to *“media based in local communities”* and *“projects that combine the use of traditional media with new technologies to facilitate the use of local languages, to document and preserve local heritage, including the landscape and biodiversity, and as a means of reaching out to rural, isolated and nomadic communities”*. The latter, shows those restrictions already mentioned in the general review of the Plan of Action⁴⁴.

Africa

The Accra Commitments approved at the Second Regional Conference Preparatory to the WSIS, make almost no reference to cultural diversity. There is just a reference to cultural and linguistic diversity, mainly the latter: one of the agreed orientations states that *“the adoption of African languages as working languages is a requirement to the development of the continent and to the cultural and linguistic diversity in the Information Society”* and mentions the need to address vulnerable and illiterate populations through the development of specialized centres and relevant materials⁴⁵.

With respect to the generation of content, a statement referred to *“human resources”* – instead of citizens or communities entitled to create and produce – within a suggestive chapter addressing *“resource mobilisation”* states: *“to pay particular attention to human resources training and development, particularly teachers and students so as to promote content and infrastructure development with a view to facilitate the emergence of an inclusive information society in Africa”*⁴⁶.

⁴¹ “Our firm conviction that all individuals should take an active part in an information society based on shared knowledge, not only as users of new technologies, but also as agents of development and content production”, Item 20 of Rio Commitment, 2005.

⁴² Latin American and Caribbean Regional Technical Preparatory Meeting for the WSIS and the 10th Advising Meeting for the INFOLAC programme, Quito, Ecuador, May 4, 5 and 6, 2005 and the Regional Preparatory Ministerial Conference of Latin America and the Caribbean for the Second Phase of the WSIS, Rio de Janeiro, Brazil, June 8 to 10, 2005.

⁴³ Goals 13.1, 13.2 and 13.3 of eLAC 2007 Regional Plan.

⁴⁴ This item of the goal gathers textually item 23j of the Geneva Plan of Action.

⁴⁵ *Development orientations, Accra Commitments for WSIS Tunis 2005*, The Second WSIS Africa Regional Preparatory Conference, Accra, February 2 to 4, 2005 (<http://www.wsisaccra2005.gov.gh/>)

⁴⁶ *Resource mobilization including human resources, Accra Commitments for WSIS Tunis 2005*, The Second WSIS Africa Regional Preparatory Conference, Accra, February 2 to 4, 2005.

There are no specific references to the media as part of the information society in this document which is focused on new technologies, particularly the Internet.

Arab Countries

The Second Regional Conference of Arab Countries approved a Plan of Action which adopts the structure of the Geneva Plan⁴⁷. Among the objectives within the Plan the following is expressly stated: *“the development of a multilingual, diverse and culturally appropriate content on the Internet, as well as the independence and pluralism of the media were considered essential for a global and inclusive information society”*.

Ten issues are considered as main areas of focus within the Plan’s strategic framework. Among them, the *“Cultural, linguistic and local content”*, referring to the fact that *“digital content, particularly on the Internet, preserves the language, facilitates its evolution and promotes cultural diversity while sustaining socio-economic development. In addition, digital content development can play a major role in preserving national heritage”*⁴⁸.

Among the strategic action lines set forth there is the preservation and digital archive of the Arab cultural and historical heritage as well as the construction of portals to have access to it⁴⁹. The establishment of a regional Arab Content Group, among other mechanisms⁵⁰, is also proposed together with the identification of potential sources for the creation of content, the implementation and maintenance of Arabic domain names on the Internet to provide such information and the development of research studies to set technical specifications and adequate standards⁵¹.

The document also includes a chapter for the media in the Arab information society: *“The media plays an important role in promoting the information society and contributing to freedom of expression and plurality of information as it reaches wide audiences and disseminates information”*⁵².

It is surprising to find a strategic line of action within the Plan, proposing the need to *“take appropriate measures to encourage and maintain the plurality and free flow of information while increasing citizen participation”*⁵³, taking into account the alarming situation registered in some countries of the region with regards to the freedom of expression and human rights – such as for example in Tunisia, host country of the second phase of the WSIS, where media censorship, restricted access to Internet and the imprisonment of journalists have been repeatedly denounced⁵⁴.

⁴⁷ Second Regional Preparatory Conference for WSIS, Partnership for Building the Arab Information Society. Damascus, November 22 and 23 2004. (<http://www.escwa.org.lb/wsis/conference2/main.html>)

⁴⁸ Area N°8 - Main Areas of Focus, Strategy Framework, Regional Plan of Action for Building the Information Society (RPoA).

⁴⁹ Objective 1 of Area N°8: *“To preserve the rich and varied cultural heritage of the region”*.

⁵⁰ Objective 2 of Area N°8: *“To create favourable conditions for the production, processing, dissemination and protection of DAC”*.

⁵¹ Objective 3 of Area N°8: *“To build a sustainable digital Arabic content industry that produces content and applications suited to local needs”*.

⁵² Area N°9 - Main Areas of Focus, Strategy Framework, Regional Plan of Action for Building the Information Society (RPoA).

⁵³ Item 2.1.2. of Area N°9 on the Media.

⁵⁴ According to the International Freedom of Expression Exchange Tunisia Monitoring Group, freedom of expression is systematically violated in this country.

In general, the media are understood in the Plan as information society “promoters”, on account of which some strategic lines are referred “*to ensure dissemination of ICT information to reach wide audiences and to contribute to plurality of information*”⁵⁵. This functional concept of the media in terms of the dissemination of ICT information may also be pointing out to the fact that the term plurality is not certainly referring to a real plurality and media diversity – such as in the documents of the first phase of the WSIS – but rather to a plurality within the existing media⁵⁶.

Asia and the Pacific

A Regional Plan was also approved in the Asian and Pacific region⁵⁷. The same as in Geneva, chapters on “*Cultural diversity and identity, linguistic diversity and local content*” and “*Media*” were included.

Beyond language inclusion, the extent is not the same as that expressed in the DP. With regards to cultural diversity, the Regional Plan only makes reference to the preservation of cultural heritage and traditions: “*taking of measures aimed at preserving the cultural heritage and traditions by the development and broadening relevant local contents and application systems*”. Among the measures agreed there is reference to the formulation and implementation of policies in such respect⁵⁸ and to the creation of spaces where to share good practices among countries of the region⁵⁹.

The media chapter stands at significant distance from the increased media diversity and plurality approved in Geneva in order to end up representing a tool aimed at broadening and consolidating the existing commercial companies as well as at excluding other forms of media ownership. Nor are there any measures aimed at restricting media concentration.

Increased media coverage and transition to digital radio and TV will be promoted as one of the priority areas in terms of regional work, in order “*to encourage policies for private sector participation in Radio and TV broadcasting, particularly to cover hitherto unserved areas including remote and mountainous region and small islands*” and the setting-up of multimedia will be fostered to: “*support land-locked developing countries in the implementation of multimedia interactive broadcasting to remote and mountainous regions taking into account country's experience in development of telecommunication networks*”⁶⁰.

55 Expected accomplishment N°2.1 of Area N°9 on Media.

56 The indicators taken into account for this issue are the “number of countries with increased penetration rate for traditional and new forms of media” and the “number of media institutions with programmes on creating ICT awareness and maintaining the plurality and free flow of information”.

57 Regional Action Plan towards the Information Society in Asia and the Pacific, High Level Asia-Pacific Conference for the World Summit on the Information Society, Teheran, May 31 to June 2, 2005 . (<http://www.aprcwsis05.ir/Docs/Results/RAP.pdf>)

58 Objective 8.1 of Regional Plan: “To formulate, adopt and implement policies to respect and preserve cultural and linguistic diversity and identity”.

59 Objective 8.2 of Regional Plan: “To share experiences and best practices on policies and tools designed to promote cultural and linguistic diversity and identity at regional and subregional levels”.

60 Item 8 of the above-mentioned Regional Plan (in the section *Priorities/Thrust Areas*).

III. Cultural diversity in the WTO and FTAs

Free Trade Agreements: culture as a commodity

Free trade agreements promoted in recent years by developed countries have turned into a global threat against cultural diversity. This is due to the fact that they have tried to impose the perspective of broadcasting services, audiovisual productions and other cultural expressions as being commodities that should remain subject to trade liberalisation processes. The major corporations in the entertainment and telecommunication industry - supported by countries like the United States - promote the liberalisation of cultural, information and communication services in order to allow for the unrestricted introduction of large transnational capitals, as it has been done with other goods and services. These negotiations are generally carried out behind closed doors, with no transparency and least of all citizen participation⁶¹.

The vast system of sub-regional and regional bilateral trade agreements being established all over the world is regarded by civil society and international organizations as a regression “*to a sort of feudal or corporative law opposed to national and international public law that works in the exclusive interest of the big transnational capital and those of rich states and to the detriment of fundamental rights of the so-called peripheral states and their peoples*”⁶². This is further aggravated by the fact that they are attached to a strong coercive system to ensure their application: fines, economic sanctions, diplomatic, economic and military pressure, being disputes solved through mechanisms that fall outside the scope of the public state and international law system. The “*liberalisation and privatisation policies*” become thus consolidated “*as a legally binding system and it is a matter of making these policies non reverted through international agreements*”⁶³.

The situation in the WTO

The WTO is possibly the most influential among the multilateral institutions affecting cultural policies. Unlike agreements stemming from the WSIS, definitions at the WTO are binding so that any decision in favour of liberalising production and the exchange of cultural goods and services prevents the implementation of national policies for the promotion of cultural diversity, including the use of telecommunications as public goods.

The enforcement of WTO rules is ensured through the Dispute Settlement Understanding (DSU). Apart from that, the WTO Trade Policy Review Mechanism is the process that makes sure that national policies are consistent with WTO terms.

Within the framework of the WTO, the General Agreement on Trade in Services (GATS) regulated trade in services, including telecommunications and cultural services in general.

⁶¹ Khor, Martin (2003), *Transparencia y participación en el camino de Cancún*, Revista del Sur, No. 143/144. (http://www.redtercermundo.org.uy/revista_del_sur/texto_completo.php?id=63)

⁶² *Human Rights and bilateral treaties*. Joint statement submitted by the Europe Center - Third World, non-governmental organization with general consultative status and the American Association of Jurists. Commission on Human Rights, 56th period of sessions - July 26 to August 13, 2004.

⁶³ Idem

Following the GATS, two documents were signed: the Information Technology Agreement (ITA)⁶⁴ and the Basic Telecommunication Agreement (BTA)⁶⁵.

The central aim of the GATS is to open up processes of privatisation of public services, the gradual liberalisation of trade competitive terms and, in general, the deregulation of the economy in order to allow for the unrestricted access of foreign capital to the market – industries and service providers. Measures include the elimination of state monopolies and the possibility of implementing policies – legal or economic – that make public use of telecommunications and protect national interests against foreign interests.

Until now, cultural and media policies, such as the public policies for the support and promotion of non-profit media, setting of minimum local content production and support to national audiovisual production, as well as the limits to media ownership, fall outside the scope of WTO agreements, as a result of the inclusion of culture in the list of temporary exemptions of the GATS Uruguay round, under the so-called “*cultural exception*”⁶⁶.

However, this safeguard is being threatened by pressure exerted by the United States and multinational companies to make cultural services start being considered as any another commodity. This risk lies both within the WTO sphere - where such provision intends to be revised - and outside, given the fact that it is being constantly introduced in discussions and negotiations of regional and bilateral treaties, mainly promoted by the United States, but also by other developed countries such as Japan.

If this was to take place, those policies that protect and promote cultural diversity all over the world could be attacked through the DSU of the WTO. Countries might lose huge amounts of money under commercial sanctions in case they tried to maintain their national cultural policies.

The Doha round of negotiations – resumed this year following the failure of the Cancun Conference in 2003 – includes issues that could affect cultural diversity⁶⁷. According to the work programme and recommendations of the Council for Trade Services, the issue of services is completely open “*in order to provide effective market access to all Members and achieve a substantive result*”.

The objective initially set forth is “to achieve progressively higher levels of liberalisation with no a priori exclusion of any service sector” – and therefore, nor of cultural services. The United States have presented again proposals so that audiovisual services become thoroughly included within negotiations⁶⁸ and, according to some experts, the cultural sector is still at risk in spite of the approved exceptions. An important threat would be around the discussion on the trade-investment relationships.

In terms of the objective aimed at setting-up “*a multilateral framework to secure transparent, stable*

⁶⁴ Its aim was to reduce tariffs on ICT products by the year 2000, a measure that favoured the expansion of large telecommunication companies as sales increased worldwide. *WTO Trade agreements and ICTs*. (<http://www.choike.org/nuevo/informes/2294.html>)

⁶⁵ These agreements force members to open their telecommunication markets thus imposing a pro-competitive system that bans preferential treatment to national companies. *Idem* previous note.

⁶⁶ For the development of this concept and its treatment during the GATS Uruguay round, see Torrent, Ramón, “*La ‘excepción cultural’ en la OMC: la base de la política audiovisual en Cataluña*”.

⁶⁷ http://www.wto.org/spanish/news_s/news04_s/dda_package_sum_31july04_s.htm

⁶⁸ The exemption was established in 1994 for a period of 10 years and it was agreed that “they will be subject to negotiation in the next rounds of trade liberalisation”.

and predictable conditions for long-term cross-border investment, particularly foreign direct investment”, these opinions consider that “an investment agreement could force a re-evaluation of a significant number of cultural policies, including: prohibitions, limits or restrictions on foreign ownership in the cultural industries; public service broadcasters and other public institutions, since these might be perceived as unfair competitors for private foreign investors; regulations that discriminate against foreign broadcasting or publishing interests; co-production treaties; even financial subsidy programs if these discriminate against foreign firms or individuals”.

Another eventual risk would be the anticipation of “horizontal issues”, commitments “that apply across all services, whether or not a country has agreed to include that sector in its general commitments. This means that such commitments would apply to audiovisual services, publishing, sound recording, visual arts, and other forms of expression even if these sectors are otherwise “exempt” from the GATS disciplines”⁶⁹.

The official deadline for the completion of trade talks is December 2005⁷⁰, although some observers and recent facts seem to indicate that the process will continue until 2007, particularly due to the lack of agreements on agricultural subsidies⁷¹.

Bilateral and regional agreements

Upon the failure of WTO negotiations in Cancun in 2003 and difficulties faced in regional processes, such as the Free Trade Area of the Americas (FTAA), the US has developed a strong offensive to establish bilateral or sub-regional agreements and covenants of different kinds. This trade strategy is clearly set out in the documents of the Bush administration known as the “President’s Trade Policy Agenda”⁷².

According to these guidelines, the US will be giving priority to bilateral and regional negotiations in order to establish different kinds of agreements, some directly as FTAs, others as preliminary agreements like the Trade and Investment Framework Agreement (TIFA)⁷³, Bilateral Treaties of Promotion and Protection of Foreign Investments (TPPI)⁷⁴ or Bilateral Investment Treaties (BIT)⁷⁵.

The perspectives proposed by the US are concluding. A key issue will be to impose “an aggressive agenda for market opening in services” all over the world, “including audiovisual and telecommunication services”. This decision is not based on the principles of freedom, but on specific interests: “Since the United States is the world’s leader in services for the 21st century economy,

⁶⁹ Garry Neil, International Network for cultural diversity, *WTO Trade Negotiations: Doha Development Agenda Threatens Cultural Diversity*. November 20, 2001. (<http://www.incd.net/informe01.html>)

⁷⁰ The Sixth WTO Ministerial Conference will take place in Hong Kong on December 13- 18, 2005.

⁷¹ With respect to “free trade” the position of the US government has been denounced as hypocrite, since this country grants subsidies to large media companies, among others by exempting them from payment for the right of use of the radioelectric spectrum.

⁷² Office of the United States Trade Representative (2005), *The President’s Trade Policy Agenda for 2005*. (http://www.ustr.gov/Document_Library/Reports_Publications/2005/2005_Trade_Policy_Agenda/Section_Index.html)

⁷³ TIFAs are very general and not always include the cultural goods and services sector.

⁷⁴ See “Human Rights and bilateral treaties”. Joint statement submitted by the Europe Center – Third World, and the American Association of Jurists before the Commission on Human Rights, 56th period of sessions – July 26 to August 13, 2004. (http://movimientos.org/show_text.php3?key=3064)

⁷⁵ See also *Bilateral Investment Agreements: agents of new global standards for the protection of IPRs?* <http://grain.org/briefings/?id=187>

*and services account for 80 per cent of US employment, our efforts in this area continue to be significant. Market opening in services is essential to the long-term growth of the US economy*⁷⁶.

The strategy in terms of bilateral agreements was launched in a fast and strong way. These include from investment agreements until regulations regarding intellectual property rights, also comprising audiovisual and telecommunication services. As stated by cultural diversity coalitions monitoring these processes⁷⁷, in March 2004 the US had “24 FTAs either signed, under negotiation or announced. Forty-five BITs have been signed or were being drawn up. And 52 Trade and Investment Framework Agreements had been signed. To sum up, 121 trade negotiations with nearly 90 countries (TIFA and BIT negotiations are sometimes undertaken simultaneously with one country)”⁷⁸.

For the Office of the US Trade Representative (USTR), the main goal in Asia was focused on the Association of Southeast Asian Nations (ASEAN), aiming at “creating a network of bilateral FTAs” with countries in this bloc. In the Middle East the goal was “to create a free trade area at regional level by 2013”⁷⁹, broadening the TIFA and BIT agreements across the region. Meanwhile, a FTA was being launched in Africa with the Southern African Customs Union (SACU), while several TIFA regional agreements and other bilateral treaties were also underway. In Latin America, the process started with a FTA signed with Chile and then with Mexico, followed by trade talks with Ecuador, Colombia and Peru and the signing of a Free Trade Agreement with Central America and the Dominican Republic (CAFTA).

In 2003, the US signed a FTA with Chile and Singapore. In 2004, activities were particularly intense. Among others, a FTA was signed with Australia in February, with Morocco in March and with Bahrain in May; several negotiation rounds were launched with Peru, Bolivia and Ecuador in South America, with Korea (a BIT) and Thailand in Asia and with the Southern African Customs Union (SACU) made up of South Africa, Namibia, Swaziland, Lesotho and Botswana.

Neither the type of agreement nor the country or subregion are chosen at random. Thus, the US seeks to create conditions for addressing more doubtful goals (such as the FTAA) or to create a previous record to be set as example – either to seduce, to put pressure or to force – for the purpose of achieving more ambitious goals by means of a “domino effect” – such as is the case of the FTA-SACU in Africa.

In Latin America, for example, upon the resistance of MERCOSUR countries, the US external⁸⁰ and internal⁸¹ pressures to make the CAFTA (with Honduras, El Salvador,

⁷⁶ Office of the United States Trade Representative (2005), *op. cit.*

⁷⁷ Coalition Current Bulletin, Vol.2, N°2, March 2004.

⁷⁸ The “Grain” organization expresses that talking about negotiations is one the myths surrounding “free” trade agreements: “The agreements that have already been signed show that this is an exercise in promoting packaged products that are almost identical to the letter, and are merely reorganised to better clarify the protection of major investors’ interests. The texts are simply improved versions of the original documents presented by the US in the deliberations about the WTO, the FTAA and the Multilateral Agreement on Investment (MAI). Everything suggests that the non-industrialised nations – for example, Chile and the CAFTA negotiators – succeeded only in clarifying the so-called “non-conforming measures”. These are merely partial, transitory and easily evaded exceptions which to date have been shamefully marginal and rare. The US, on the other hand, leaves out important economic activities and parts of its territory”. *The disease of the day: Acute treatyitis – The Myths and Consequences of free trade agreements with the US*, GRAIN, July 20, 2004 (http://movimientos.org/show_text.php3?key=2810).

⁷⁹ Office of the United States Trade Representative (2005), *op. cit.*

⁸⁰ Pressures and “temptations” of all kinds towards signatory countries, although upon closing this investigation the approval of the Congresses of Nicaragua and Costa Rica was not yet certain.

Nicaragua, Costa Rica, Guatemala and Dominican Republic) progress at forced pace have been a good example of a negotiation that goes beyond the strictly economic goals of the FTA. By means of the agreements with Mexico and Chile, the possible ratification of CAFTA and progress in the Andean countries – with the exception of Venezuela – the US could be excluding MERCOSUR countries, apart from deeply eroding the possibilities of a coherent and strong regional strategy that may interfere with its own interests⁸².

The countries that have entered into FTAs are not only of interest to the US from an economic perspective. For the US, the implementation of these agreements *“has more of a political and even ideological connotation: it implies advancing in the dogmatic imposition of the ‘free trade agenda’ within the global context, in an attempt to have influence on the next round of negotiations at the WTO”*⁸³. By reaching partial (bilateral or subregional) agreements with weak or pro-US governments, it is possible to create a favourable atmosphere to put pressure for example on the establishment of the FTAA.

Anyway, warns of the risk of promoting a “light” FTAA were reported on several occasions, since in spite of including less requirements than those expected by the US it would be perfectly supplemented by harsher bilateral or subregional agreements, such as is the case of CAFTA. The proposal of a “light” FTAA would be *“an application of the same tactics to leave to bilateral negotiation the most controversial questions”*, with regards *“in particular to bilateral treaties of promotion and protection of foreign investments (TPPI), that somehow set up the axis of this corporative law”*⁸⁴.

This overall policy of bilateral and regional trade agreements⁸⁵ has been strongly criticized even by the World Trade Organization. In a report entitled “The future of the WTO”⁸⁶, it is argued that the multilateral system *“is seriously threatened by regional and bilateral trade agreements”* and it criticizes that *“non-trade objectives have been injected in the bilateral trade agreements, citing the one-sided and relatively ambitious provisions on intellectual property”*.

In general, these treaties are not exclusively limited to trade or economic issues but appear as political agreements that establish relations that – explicitly or implicitly - go beyond trade issues, including many times aspects that are related to cultural diversity, as it was previously pointed out. The US believes that cultural production should be considered as any other area of the economy and therefore it is *“aggressively seeking to conclude agreements in which its trading partners accede to demands that the sector be liberalized, meaning they forego the right to have culture policies designed to ensure a space for domestic production, including measures to support the development of national cultural industries”*⁸⁷.

The reason: cultural industries represent the second most important export sector of its

⁸¹ To have it approved, President Bush himself had to intervene in Congress, exerting pressure for the Agreement to be ratified in the House of Representatives. He finally succeeded by a 217-215 vote.

⁸² According to the Uruguayan analyst Eduardo Gudynas, *“this, in practice, is tantamount to an FTAA that leaves out the most important trade competitors and limits Brazil’s options as a regional leader. It is also a strategy that will leave Latin America divided for many years to come, thus curtailing its capacity to coordinate production and economic policies”*.

⁸³ Eduardo Tamayo G., *Aprobación del DR- CAFTA: Un boomerang para Estados Unidos*, Servicio Informativo ALAI-AmLatina, July 29, 2005 (http://www.bilaterals.org/article.php?id_article=2391).

⁸⁴ Europe Centre – Third World and the American Association of Jurists, *op. cit.*

⁸⁵ It is worth pointing out that the United States is not the only country promoting these agreements.

⁸⁶ http://www.wto.org/spanish/thewto_s/10anniv_s/future_wto_s.htm

⁸⁷ Coalition for Cultural Diversity (CCD 2003), *As UNESCO starts work on the Cultural Diversity Convention, the challenge will be to hold the line on culture in trade talks*, Vol. 1, No. 5, December 2003. (http://www.cdc-ccd.org/coalition_currents/Dec03/coalition_currents_sp.html).

economy. In 2004 these industries invoiced over 400 billion dollars⁸⁸ and their growth at world level in US dollars amounted to 300 per cent only between 1980 and 1998. Besides, *“the European Union, the United States and Japan gather 87 per cent of profits earned in terms of cultural goods and communications, the remaining 13 per cent being left to all other countries in the world”*⁸⁹.

“The aim of this battle”, as stated by cultural diversity coalitions, “is to prevent countries from mortgaging their future by giving up the right to introduce new cultural policies or adjust existing ones in response to changing circumstances. Protecting this capacity to introduce new policies in the future is a critical issue for all countries, but in particular for developing countries which in many cases do not yet have a comprehensive set of cultural policies in place but aspire to do so”.

⁸⁸ Colussi, Marcelo (2005), *Del Informe MacBride a Telesur*, Rebelión, August 2005. <http://www.rebelion.org/noticia.php?id=19232>

⁸⁹ Octavio Getino quoting García Canclini at Culture Industries in Argentina, Observatory of Culture Industries of the City of Buenos Aires.

IV. Cultural Diversity in UNESCO

The debate towards a Convention: tensions and interests at stake

Origins and Objectives

The Convention on the Protection and Promotion of Diversity of Cultural Expressions (CCD) was created by initiative of Canada and France within the sphere of UNESCO and is supported by a large number of countries. In view of trade liberalisation processes, UNESCO's CCD⁹⁰ aims at promoting cultural diversity, protecting it against the specific threats posed by globalisation processes. It intends to prevent culture from being treated as an ordinary commodity and therefore seeks to avoid the consolidation of monopolies of cultural and media industries in the hands of a few multinational companies.

In October 2003, UNESCO's General Assembly approved a proposal for launching the CCD process with instructions to conclude negotiations in 2005. This proposal was supported by almost all member States except for the US, which after 19 years of not taking part in the organization⁹¹, has now returned to active participation and has tried to block the CCD process, subordinating it to WTO agreements.

Pursuant to UNESCO's procedures, Director-General Matsuura appointed an international pluridisciplinary group made up of independent experts in charge of gathering suggestions and opinions for the development of a preliminary draft. Following a number of meetings and an intergovernmental negotiation process, a preliminary draft was drawn up for the CCD which may open space for States to decide to which extent they wish to protect their national cultural sectors.

The final outcome of negotiations on the content of the CCD is not clear at the time of writing this document, and the Convention's future depends on whether it will be subordinated to trade agreements or not. However, the simple fact of the existence of such negotiation process supports the efforts of some countries not to subject their cultural industries and sectors to the WTO sphere.

The process towards the CCD

The Universal Declaration on Cultural Diversity⁹², adopted unanimously by UNESCO's member states at the General Conference meeting in 2001, is the immediate antecedent to the CCD.

The group of experts appointed by Matsuura was in charge of proposing the key concepts to be included in a first preliminary draft for the CCD. At their first meeting⁹³ the experts worked on the Convention's aims, its definitions and fields of application as well as on its relationship with other international instruments and with the international cooperation and assistance. Ideas were expressed with regards to what is to be understood as cultural

⁹⁰ http://portal.unesco.org/culture/es/ev.php-URL_ID=11281&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁹¹ See Frau-Meigs, Divina, *El retorno de los Estados Unidos al seno de la Unesco: ¿Flexibilidad o endurecimiento ante el fantasma de MacBride?*. <http://www.audiovisualcat.net/publicaciones/q21casfraumeigs.pdf>

⁹² <http://unesdoc.unesco.org/images/0012/001271/127160m.pdf>

⁹³ December 17 to 20, 2003, Document CLT/CPD/2003-608/01.

diversity for the CCD purposes: *“the aim of the Convention is not to protect cultural diversity in the widest sense of the term, but rather to protect a specific aspect of cultural diversity, namely the diversity of cultural contents and artistic expressions”*.

With respect to the objectives, it initially proposed: *“(i) to recognize the specificity (culture/trade duality) of cultural goods and services and accordingly envisage appropriate measures, (ii) to identify the obligations of the State Parties in respect of the protection and promotion of cultural diversity, (iii) to preserve the rights of the States Parties to maintain or adopt appropriate measures for the promotion of cultural diversity, and (iv) to strengthen international cooperation and solidarity with a view to ensuring a balance between developing and industrialized countries in terms of production and access to the international market”*.

The potential conflict with the WTO, central issue throughout the whole process, was already addressed at this first meeting: *“It remained the general opinion that the great challenge was the question of how UNESCO would manage, in the future Convention, to develop an innovative cultural approach in the current international legal context in which commercial considerations tended to take precedence”*, says the report.

Following a second meeting of experts⁹⁴, UNESCO’s General Director called for an “information meeting”⁹⁵ with permanent delegations. The work being carried out by the group was already accomplishing a first stage of exchange and was starting to focus on the actual drafting of some chapters, which were outlining the final text of the Convention. At that first stage, the experts agreed on some specific texts with respect to the aims and guiding principles that should be included in the Convention, seeking to consolidate the gains of the Universal Declaration on Cultural Diversity.

From the start, experts placed at the core of debate the principle of *“the sovereign right of States to adopt measures to protect and promote diversity of cultural expressions within their territory”*, the recognition of the specific characteristics of cultural goods and services and the relationship that the Convention would establish with other international instruments.

Regarding this issue, experts agreed on *“the need for coordination at the international level to respect the spirit of the convention”* and pursuant to their rights and obligations *“in the context of other international instruments”*. At the same time, a restrictive clause was proposed (similar to that included in the Biodiversity Convention) to the effect that this requirement be mitigated in situations where *“the respect for these obligations would result in serious damage to culture diversity or would constitute a menace to it”*.⁹⁶

Finally, on July 15 2004, UNESCO presented the preliminary draft of the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions⁹⁷, following a third and last meeting of the group of experts called by UNESCO⁹⁸. As of that moment, a period of consultations with governments was launched, which started in September⁹⁹,

⁹⁴ March 30, 2004.

⁹⁵ <http://unesdoc.unesco.org/images/0013/001342/134243m.pdf>

⁹⁶ The reports drawn up by experts are available at <http://www.unesco.org/culture/diversite/convention>.

⁹⁷ Document CLT/CPD/2004/CONF-201/2.

⁹⁸ May 28, 2004.

⁹⁹ September 20-24, 2004.

followed by a second meeting early in 2005¹⁰⁰ and new rounds of conversations that concluded at the Third Intergovernmental Meeting of Experts held in June of that year¹⁰¹.

Main aspects under discussion

The preliminary draft Convention underwent several revisions during that period and a final version consolidated by Kader Asmal, Chair of the Plenary - with some modifications approved in the third intergovernmental meeting - was finally formulated as “recommended¹⁰² and was sent to the General Conference to be adopted without changes”¹⁰³. The title adopted for the convention was finally *“Preliminary Draft of a Convention on the Protection and Promotion of the Diversity of Cultural Expressions”*¹⁰⁴.

Among the main contents it includes the concept that cultural activities¹⁰⁵, goods and services are not mere commodities or consumer goods, but instead that *“recognition should be given to their distinctive nature as vehicles of identity, values and meaning”*¹⁰⁶, as well as to their economic and cultural nature, and *“must therefore not be treated as solely having commercial value”*. The United States objected to these definitions, as well as to the definitions of *“cultural expressions”*, *“cultural activities, goods and services”*, *“cultural industries”*, *“cultural policies and measures”* and the *“protection”*¹⁰⁷.

With regards to the latter concept, texts highlight the objective and the right to protect but also to promote the diversity of cultural expressions. If this text was to be approved, States would be reaffirming *“their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention”*¹⁰⁸.

These cultural policies may include *“regulatory measures and public financial assistance”*, possibilities for the *“creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services”*, measures to *“provide domestic independent cultural industries and activities in the informal sector effective access to the means of production, dissemination and distribution of cultural activities, goods and services”*; measures *“aimed at encouraging non-profit organizations, as well as public and private institutions and artists and other cultural professionals, to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services, and to stimulate both the creative and entrepreneurial spirit in their activities”*; as well as measures aimed at *“establishing and supporting public institutions, as appropriate”*¹⁰⁹.

¹⁰⁰ From January 31 to February 11, 2005.

¹⁰¹ From May 25 to June 4, 2005.

¹⁰² The decision to send a recommendation to vote it instead of a simple report with options to be discussed, was another decision that had to be made by those countries promoting the Convention in order to avoid delays within the process and manage to have it effectively voted in October 2005.

¹⁰³ Preliminary report of the Director-General, August 4, 2005.

¹⁰⁴ Initially, the aim was to create an instrument for the *“protection of the diversity of cultural contents and artistic expressions”*.

¹⁰⁵ Added at the final stage of the process.

¹⁰⁶ Art.1 (g) of Chapter I – Objectives and guiding principles.

¹⁰⁷ Art.4 – Definitions.

¹⁰⁸ Art. 5 parag. 1 – General Rule regarding rights and obligations.

¹⁰⁹ Art.6 – Rights of Parties at the national level.

At the third meeting, specific references to media diversity¹¹⁰ were included, as well as measures to be adopted by States “*aimed at enhancing diversity of the media including through public service broadcasting*”¹¹¹.

However, the possibilities of enforcing the foregoing definitions remained closely related to the controversial Art. 20, where the relationship of this Convention with other international agreements – such as those approved within the WTO sphere – will be defined.

The subordination of the CCD to free trade agreements became one of the focal points of discussion during the whole process. Two options were put forward with regards to this issue:

Option A

Along the line proposed by most experts, it was stated that the CCD does not modify the rights and obligations of State parties under any other existing international instruments, but a safeguard clause is proposed for those cases in which “*the exercise of these rights and obligations would result in serious damage to the diversity of cultural expressions or constitute a menace to it*”¹¹². By means of this exception, countries can take measures for the protection or encouragement (even economic ones) to defend their cultural industries, for example, even against a free trade agreement if that country believes that its cultural sovereignty is at risk. Civil society and most countries were resolutely inclined to choose this option¹¹³.

Option B

This alternative plainly stated that the CCD will not “*affect the rights and obligations of State parties arising from other international instruments*”, which would leave the above-described aspects as mere goodwill statements – since international instruments such as the FTAs or agreements within the framework of the WTO are defining and can certainly define commitments and policies to the contrary.

Finally, the CCD preliminary draft arrived at a compromise solution – also rejected by the United States – that “*without subordinating this Convention to any other treaty*” it shall foster “*mutual supportiveness*” and states that the provisions of this Convention shall be taken into account “*when interpreting and applying the other treaties to which they are parties or when entering into other international obligations*”¹¹⁴.

The US presented a proposal “*to submit two options on the article for subsequent consideration by the General Conference*”¹¹⁵ which was rejected. “*The United States of America then made a formal*

¹¹⁰ “Reaffirming that freedom of thought, expression and information as well as diversity of the media enable cultural expressions to flourish within societies”

¹¹¹ Art.6 (h)

¹¹² This text takes as reference a similar approach included in the Convention on Biodiversity.

¹¹³ However, a warning was made with regards to the inconvenience of keeping a paragraph about such option, since it made an exception “in the opposite way” in the case of international agreements related to intellectual property rights, which could not be disclaimed, not even in the case of the safeguard clause. Finally almost all references to these issues were withdrawn from that article and from the rest of CCD texts.

¹¹⁴ Art. 20 – Relationship to other treaties: mutual supportiveness, complementarity, and non-subordination

¹¹⁵ Preliminary report of the Director-General, August 4, 2005

*objection to the text of the article as adopted*¹¹⁶, while other countries such as Australia, Israel, Japan, New Zealand and Turkey also expressed their reservations¹¹⁷.

While there are those who consider that the second paragraph¹¹⁸ of the same article contradicts or leaves room for bilateral pressures following the ratification of the CCD, many others argue that its approval – although not fully satisfying – implies a significant advance in favour of the protection of cultural diversity.

Positions and Interests at stake

Although the CCD may facilitate the promotion of cultural diversity, the reason why many countries supported the Convention is not because they want to turn their national communication systems into diversity spaces, but because of the aim to prevent massive concentration in transnational companies, while keeping control and concentration of media and cultural industries at national and regional level. Therefore, the international civil society has the responsibility of supporting the CCD process, but also of exerting pressure on national governments so that the text reflects a true diversity and not just a series of homogenized national cultural industries, following the market logic but with a “local touch”.

Among civil society sectors, the most active role in this process has been played by the coalition movement for cultural diversity, which brings together artists, small and medium-sized industries of cultural production and dissemination and is present in 30 countries around the world. The role played by media workers and community media organisations has not been very relevant especially in the initial stages of the CCD process.

The Communication Rights in the Information Society (CRIS) campaign, which has become involved in the process, highlights an additional tension point¹¹⁹: that the Convention should be designed not only to protect the diversity of national and regional cultural industries but also to protect the cultural diversity and communication rights of humankind as a whole¹²⁰.

French speaking countries, led by the French and Canadian Governments, especially the authorities of Quebec, have played a central role in what regards to the promotion of the Convention¹²¹. The European Union has systematically opposed the United States on the issues concerning the so-called “cultural exception”.

In the negotiation process leading to the draft of the Convention, the delegation of the United States at UNESCO has systematically opposed to the views of most member states in an attempt to weaken the CCD and subordinate to it to trade agreements. In fact, the discussions for the approval of the CCD took place within the framework of a strong US offensive for the establishment of free trade agreements, as reviewed in the previous chapter. The re-entering of the United States to UNESCO, at the end of 2004, shows the

¹¹⁶ *Ibid.*

¹¹⁷ Initially it was also objected by Chile and Argentina, which subsequently withdrew their objections.

¹¹⁸ Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.

¹¹⁹ Together with the possible subordination of the CCD to other instruments and the consideration of references to the protection of intellectual property rights in terms of the protection of community culture.

¹²⁰ CRIS, UNESCO’s Convention on Cultural Diversity Campaign, 2004.

¹²¹ ALAI-AMLATINA 24/09/2004, Quito – Convention on Cultural Diversity.

importance given by the government to the possibility of a Convention which could represent a constraint on its interests.

The government of the United States not only joined this process following its own initiative, but also arrived late, since the underlying concepts for this preliminary draft do not arise in the first experts meeting held in 2004, but are the result of a process of many years, being the approval of the Declaration on Cultural Diversity, in 2001, the most relevant stage.

During 2004, the large campaign carried out by the United States to establish bilateral free trade agreements in every region of the world takes place in parallel to the CCD different instances and gives framework and urgency to its potential definitions. The relaunching of the WTO Doha round of negotiations contributes to define the final international context in which the CCD negotiation takes place. In particular, due to the fact that the official talks on the new trade agreements are expected to come to an end soon after the date set for the Convention's approval.¹²²

Therefore, the strategy of the United States was initially focused on blocking the Convention's effectiveness and then on trying to postpone the draft's approval, whether avoiding its presentation as a motion for resolution or denouncing procedure issues. Following the approval of the text, the next stage is to secure its ratification by at least 30 countries in time for the Convention to enter into effect. However, the goal must be set higher: if the CCD is to have the necessary political influence, it will need the massive support to be obtained in this next stage. The greater the number of countries ratifying the Convention above the minimum necessary, the bigger the possibilities it will have to succeed.

The United States will be putting great pressure on countries to delay or prevent the ratification. Therefore, the task of civil society upon government leaders, particularly in Southern countries, to prevent their countries opinion from being modified at the time of submitting the ratification document will be essential.

¹²² The official closing date for the Doha negotiations is December, 2005, but it could be extended to 2007 due to a lack of agreement within the agricultural sector.

V. Threats posed to Cultural Diversity

The growth and consolidation of concentration in terms of the production and distribution of cultural goods and services - particularly those related to the media - is a fact and represents one of the major threats against cultural diversity¹²³.

According to the opinion of the Special Rapporteur for Freedom of Expression of the Interamerican Commission on Human Rights, “*the concentration in the ownership of communication media conspires against plurality and diversity of expression in different sectors of society. This seems to be a growing practice in the hemisphere considering the denounces received by the Rapporteur.*”¹²⁴

This process is the expression - at the cultural level - of a global dynamic of economic and political power concentration that is evidenced, among other things, through ownership control and accumulation, the growing participation of foreign capital in the national media, the centralisation and homogenisation of contents, the convergence among different technology sources (between telecommunications and media, between new and traditional technologies), the weakening and privatisation of public services and the globalisation of media markets and industries. These elements hinder the attempts to set national cultural policies driven by public interest.

These processes have been combined “*to eliminate the technical and regulatory barriers, allowing a vertical and horizontal media integration as well as the emergence of large multimedia conglomerates which control both the complete production and distribution chains (vertical integration) and the different markets within the sector (horizontal integration)*”¹²⁵.

Media ownership: concentration and control

Control and concentration of media ownership¹²⁶ has grown considerably in recent decades, encouraged by benefits provided by scale economies aimed at the reduction of production and distribution costs, the possibility of cross-subsidies and broader profit margins. This process has taken place both at national and international level as well as in rich and poor countries.

A concentration analysis cannot be reduced to gathering information about the number of media in the hands of a certain group. The capacity to produce and control the distribution of contents through other dependent or subordinated means should also be taken into account. Therefore, ownership accumulation goes alongside with a process of centralisation and control of contents - information, meanings, opinions and values.

¹²³ “Media content, media channels and distribution systems are in the hands of a handful of corporations. There are threats to the current system that oversees ownership and allocation of Internet domain names. Even the audiovisual spectrum, which is public property, is under the siege of commercial interests” CRIS Campaign, Issue Paper No. 4, *Media Ownership: Big Deal?*, 28th October, 2003. (<http://lac.derechos.apc.org/wsis/cdocs.shtml?x=20445>)

¹²⁴ Bertoni, Eduardo, Special Rapporteur for Freedom of Expression. Evaluation of the Situation of Freedom of Expression in the Hemisphere.

¹²⁵ O’Siochrú, S., Bruce Girard, Amy Mahan (2002), *Global Media Governance*.

¹²⁶ Strictly, broadcasting media ownership does not exist, since the radioelectric spectrum belongs to the Heritage of Humanity, and therefore they are only users who were granted an authorization or license by national States.

There are several ways of achieving this: through abusive use of a dominant position in the market; renting programme spaces, establishing entertainment or information chains with minor operators, or imposing productions, schedules and leading actors from the main offices located in industrialized countries to developing countries. This relationship pattern repeats itself between regional corporations and weaker countries or within the countries themselves, where monopoly or oligopoly groups make the entire country consume what is being produced in the big capital cities.

The diminished production capacities of most local radiobroadcasters and the weakness of public media concerning the release of quality productions add to a situation in which large capitals have greater competitive advantages. This problem goes beyond traditional media and appears in every cultural expression from film production to Internet contents.

Recent studies have confirmed that, although the percentage is decreasing, English is the language of at least 45 per cent of Internet contents¹²⁷. This proves that the Internet reinforces global tendencies for a linguistic standardization¹²⁸ and that the United States, followed by the United Kingdom, Canada, Germany and Australia are the countries which concentrate the greatest information flow on the Internet.¹²⁹

On the other hand, de facto monopolies, such as the well-known search engine Google, conspire against the true freedom of information and expression within the Internet. According to a recent article¹³⁰, this software visited by “9 out of 10 people” who access the Internet to look for information, is not neutral regarding the selection of answers when a search is carried out. This company, whose market value is higher than the value of NewsCorp and other US media groups, has a direct impact on the options the user obtains when searching for information on the Internet. This is due to the software it uses and to censorship actions, such as the ones agreed with the government of China “to block any search originated in that country regarding issues so controversial as human rights or Taiwan”¹³¹.

Similar actions have been related to Yahoo! and Microsoft. According to a denounce made in September 2005 by the organization Reporters without Borders, “Microsoft’s MSN users in China are not allowed to use words such as ‘democracy’ or ‘human rights’ on their Internet-based journals (blogs). The newspaper South China Morning Post published in June that issues such as ‘freedom’, ‘demonstration’ or ‘Taiwan’s independence’ are likewise censored”.

The homogenisation and concentration of contents regarding audiovisual production is also high. In the first 19 weeks of the year 2005, film market indicators in Argentina¹³² showed that only 2.3% of the viewers watched nationally produced films and only 0.5% watched films produced in other Latin American countries. 89.2% corresponded to films

¹²⁷ Observatory of Languages and Cultures, FUNREDES (2005). According to the document “Benchmarking the Plan of Action of the World Summit on the Information Society (WSIS) in Latin America and the Caribbean” (version 3.0), OSILAC (January 2005), the percentage would be 50%, while for the Global Reach Group (www.greach.com) webpages in English represent 51.3% of the languages in the Internet.

¹²⁸ *Multilingualism on the Internet*, Vol. 6, N°1, February 2004, research coordinated by Sue Wright. (<http://www.unesco.org/shs/ijms/vol6/issue1>)

¹²⁹ Barnett, George ; Bum-Soo Chon and Devan Rosen (2001), *The Structure of the Internet Flows in Cyberspace*, Networks and Communication Studies, NETCOM, vol. 15, n° 1-2, 2001.

¹³⁰ Macnamara, Adán (2005), *América Economía*, Issue 302, June 2005.

¹³¹ *Ibíd.*

¹³² Which has an important film industry, compared to most Southern countries. In the first semester of 2005, 26 new national productions were shown, contrasting with only 3 or 4 in Uruguay, for example.

produced in the United States and the remaining 4.8% to films from European countries.¹³³

The same happens all over the world: the Minister of Culture and Communication of France, Renaud Donnedieu de Vabres, has informed that “85 per cent of cinema tickets sold around the world are connected with Hollywood films”¹³⁴.

Concerning information, this concentration of new and old communication media allows “big corporations such as those owned by Rupert Murdoch or Silvio Berlusconi to hold dominant and exclusive market positions, thus preventing a true pluralism” and favours the existence of a “one-track thinking”¹³⁵.

For the CRIS campaign, “this reduction in the ownership of communication media, focusing on profit-oriented contents, fostered by advertising, has led to a decrease, at a diverse rate, of different opinions, points of view and the possibility for informed debates taking place”. Concentration also results in a parallel reduction or denial of “ordinary people’s access to independent media and alternative visions of an economic, political and social future”.

Social organizations such as the International Federation of Journalists (IFJ) have also expressed their concern about the “impact on media quality, pluralism and diversity”. According to IFJ: “public concern about corporate and political dominance over media and information services is greater than ever. (...) Not surprisingly, politicians are worried, too. The media concentration process has paralysed policy makers and it is time to stimulate fresh debate and prepare concrete actions to confront the challenge of corporate power in mass media”¹³⁶.

With regards to music production and distribution, the situation is similar. Seventy-five per cent of the world music market is controlled by four multimedia corporations: Vivendi concentrates 25.9%, Sony - BMG 25.2 %, EMI 12%, and AOL - Warner 11.9%¹³⁷.

On the other hand, only five powerful US-based multimedia companies - AOL-Time-Warner-CNN, Viacom-CBS-MTV, Disney-ABC-ESPN, News Corp-Fox TV-DirectTV and General Electric-NBC-Vivendi-Universal¹³⁸ - together with Bertelsmann, in Europe, and Sony, in Japan, hold the power of the media on a global scale¹³⁹.

Within the region there are other actors which should be considered: some of them play the role of competitors while others form media alliances, such as Televisa in Mexico, Cisneros in Venezuela, Globo in Brazil or Prisa in Spain.

This concentration poses a serious threat on cultural diversity and has been denounced both in Europe and Latin America. In 2004, the European Parliament requested the European Commission to prevent the growing concentration in the communication media

¹³³ Cinema Advisory Board.

¹³⁴ UNESCO Third Intergovernmental Meeting for the CCD, Paris, June 2005.

¹³⁵ Roberto Savio, IPS (International Press Service) Director and member of the International Committee of the World Social Forum (WSF).

¹³⁶ International Federation of Journalists (2005), *Media Concentration*. (<http://www.ifj.org/default.asp?Issue=OWNER&Language=ES>)

¹³⁷ Observatory of Culture Industries (OIC), Undersecretary of Management and Cultural Industries of the City of Buenos Aires, 2004.

¹³⁸ Some authors claim that there is a “second division” with large regional groups located in the US, but also in Japan and Europe such as Comcast and Hearst, Mc Graw Hill, Pearson, Kirch, Hachette, Prisa and others (the latter quoted by McChesney, 2004).

¹³⁹ Columbia Journalism Review, *Who Owns What*. <http://www.cjr.org/tools/owners/>

*“from leading to the creation of an oligopoly which may endanger pluralism, cultural diversity and consumers’ freedom of choice”*¹⁴⁰. The European Ministerial Conference on Media Policies¹⁴¹ informed on the growing concentration trend in the region and decided to take steps to protect and promote cultural and linguistic diversity in the media and to adopt specific regulations for the sector in order to *“avoid their potential harmful impact on pluralism and preserve diversity in the media”*¹⁴². The need for transparency in the media sector was also pointed out, *“including transparency with regards to ownership, and the importance of supervising media concentration, both at national and European levels”*.

In Italy more than 90% of all public and television revenues “are controlled by the private company Mediaset and together with the public broadcasting company RAI, which deprives Italian audiences of an effective variety of information sources, thereby weakening the guarantees of pluralism”, states Milos Haraszti, representative of the Organization for Security and Co-operation in Europe, Freedom of the Media, (OSCE) in a recently published report¹⁴³. Both groups are controlled by Silvio Berlusconi, who has indirect control over a vast number of media companies in Italy as well. Among them, three of the eight nationwide TV networks, the Mondadori publishing group, two daily newspapers and several weekly publications¹⁴⁴.

In 2004 Italy passed the “Gasparri Law” in order to regulate television, to adapt the regulatory framework for the launching of the digital terrestrial transmission technology (DTT) and to increase competition in the market of television. Although the development of new technologies has always been related to a greater democracy and diversity of opinions, in his report, Haraszti claims that it is *“likely to reproduce”* more than reduce media concentration in the country, echoing the opinion of the panel of legal experts of the Council of Europe Venice Commission, who stated that Gasparri Law *“led to a relaxation of former regulations for the restriction of media concentration in Italy”*¹⁴⁵.

The government of Portugal has recently announced that new regulations to prevent media concentration are being studied.¹⁴⁶ This measure responds to the sale operation of Grupo Lusomundo Media – previously owned by Portugal Telecom, the largest telephony operator in the country to Controlinveste (other Spanish groups such as Prisa were also interested in this transaction). Although approved by the High Authority for Social Communication (AACS) - subject to the fulfilment of certain conditions – Portugal’s Competition Authority decided to start a thorough investigation which has halted the transaction stating that *“the operation may create or reinforce a dominant position, from which competition may be hindered”*. In spite of this decision, the AACS recommended the prompt creation of a regulatory framework to regulate competition issues in the world of communications, and to reinforce current provisions in the Portuguese Constitution which prevent the “excessive” concentration of social communication media to ensure *“the possibility that every group will have access to content distribution”*¹⁴⁷.

¹⁴⁰ European Parliament resolution of April 1, 2004.

¹⁴¹ Kiev, March 10 and 11, 2005.

¹⁴² European Parliament resolution of April 1, 2004.

¹⁴³ Visit to Italy: The Gasparri Law - Observations and Recommendations, June, 2005

¹⁴⁴ IFEX, *“Leyes italianas no restringen concentración de medios: OSCE”*.

(<http://www.ifex.org/es/content/view/full/67388/>)

¹⁴⁵ *Ibíd.*

¹⁴⁶ <http://periodistadigital.com/>, consulted on June 30, 2005.

¹⁴⁷ Speech given by socialist Minister Santos Silva before the Portuguese Confederation of Communication Media, June 30, 2005.

The concentration of cultural goods and services, including telecommunications, is also very important in Latin America and the Caribbean and is undergoing a process of consolidation and growth. Levels of ownership concentration are important in the whole sector, including the press, radio, free-to-air television, paid television, basic and mobile telephony, and Internet providers. According to Guillermo Mastrini and others, *“the control over sales/audience/subscribers, as well as the total revenues of the four largest companies of each sector range from 40 per cent (average) in the case of the radio to more than 95 per cent in basic and mobile telephony and paid television (average)”*. Excepting the radio, these groups or companies have more than 60 per cent of the market share. The same happens globally with transnational companies based in the US, Europe and Japan, and there are groups in Latin America, such as Cisneros (Venezuela), Globo (Brazil), Televisa (Mexico) and Clarín (Argentina), which have strong control within their countries and corner a great portion of the regional market¹⁴⁸.

The behaviour of these groups follows “a similar logic to the one followed by the major global-scale corporate actors: they are multimedia groups with shares in other communication activities and also in other branches of the industry and trade. These large regional groups have jointly-owned businesses (such as DirectTV, whose share stock is held both by Cisneros and Clarín) while they make and break alliances with the most influential actors in the world market”¹⁴⁹.

In Mexico, 86% of television frequencies concentrates in two groups: Televisa and TV Azteca. The former owns four national chains and the latter two. There are no private broadcasting companies¹⁵⁰. Televisa owns 189 of the 200 most popular programmes and concentrates 76% of the country’s viewers¹⁵¹.

The multimedia group Televisa, besides having more than 300 TV stations- such as Televisa, Cablevision and Innova – also concentrates among other things, Internet services (for example EsMas.com), cinema production and distribution (Televisa), radio chains (for example, Acir-Radiópolis), magazines (for example: TV and Novelas, TeleGuía, Muy Interesante) and record labels (Melody and Fonovisa)¹⁵².

In Brazil 90% of the prime time TV audience (from 8pm-0am) is concentrated on two multimedia groups: Globo and Bandeirantes (SBT). Only Rede Globo, which owns 133 stations and affiliates all along the country comprises 74% of viewers and Abril Group publishes seven of the largest circulation magazines in the country.¹⁵³ Globo Group manages among other businesses, several TV networks (Rede Globo, Canal Brazil, Globo News, Telecine, Premier, USA network, SporTV and others), Internet services (Globo

¹⁴⁸ According to Mastrini’s opinion, Latin America plays a subordinated role to “the global commercial system of information and communication activities”, but with “speculative trends regarding the development of these processes in central countries”.

¹⁴⁹ “This is the case of the Globo Group which has associated with a group of companies from Brazil, Argentina, Chile, Paraguay and Bolivia led by Telecom Italia to provide telecommunication services in Brazil, Argentina, Chile, Cuba, Bolivia and Paraguay”, Mastrini and Becerra, *op. cit.*

¹⁵⁰ Calleja, A. *Informe Anual sobre la Situación de las Radios Comunitarias en ALC: el caso de México.*

¹⁵¹ Hilbert, M. and Doris Olaya (2005), *Benchmarking the Plan of Action of the World Summit on the Information Society (WSIS) in Latin America and the Caribbean* (version 3.0), OSILAC, January 2005. (<http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN020039.pdf>)

¹⁵² Data corresponding to 2003 gathered by OSILAC from sources belonging to the economic groups, extracted from Hilbert and Olaya, *op. cit.*

¹⁵³ *Ibid.*

online, Shoptime, Som Livre and others), cinema (TV Globo Filmes), press (Diario de Sao Paulo, Casa & Jardim, etc.), radio stations (Globo FM and others)¹⁵⁴.

Media concentration has also taken place in the United States through a growing privatisation process of the radioelectric spectrum. Regulations supported by the Federal Commission of Communications (FCC) have allowed cross-ownership of media enabling for example, newspaper owners to own TV stations in the same city and to “*free the large media conglomerates of the restrictions on the acquisition of more local and national TV stations*”¹⁵⁵. This policy has not been successful so far, since initiatives have been vetoed in both Chambers of the United States Congress. Anyway, concentration is already very high¹⁵⁶.

The globalisation of media markets and industries also represents a concerning trend. This trend, which started in the 1980s, would be involving a restructuring in the media institutions and even “*the way in which cultural products are produced, distributed and consumed*”¹⁵⁷.

The use of new technologies

The technological development and convergence have facilitated the process of multimedia expansion and have allowed the consolidation of concentration and control over the media. But although technology is the structural basis that made this globalization possible, an exclusively “free market-based” view was in charge of providing the political and intellectual framework for putting it into practice.¹⁵⁸

According to Robert McChesney’s words “*Underlying the new communication technology has been a political force - the shift to neoliberal orthodoxy - which relaxed or eliminated barriers to commercial exploitation of media, foreign investment in the communication system and concentrated media ownership*”¹⁵⁹.

Although it is evident that new technologies bring new services, provided the present allocation of frequencies is not revised and changes are not made to broadcasting regulatory frameworks with a view to ensure equal opportunities for the access of all social sectors to radioelectric frequencies, digitalisation will not have democratization effects but will only result in more benefits for the already established broadcasters.

For example, digitalisation could bring about an optimization in the use of the radioelectric spectrum. However, while some TV technological pattern options allow for a broader diversity (more channels within the same bandwidth, as in the European pattern), others consolidate the power of “analogical” concessionaires which already own electronic media

¹⁵⁴ *Ibid.*

¹⁵⁵ The Washington Post, July 2, 2003.

¹⁵⁶ For example: Clear Channel concentrates 1,200 local radio stations (Miren Gutierrez, *Fewer Players, Less Freedom*, IPS, March 20, 2004) and Sinclair Group owns 62 local television channels in the whole United States (*Le Monde Diplomatique*, Chilean Issue, September, 2005). (<http://www.lemondediplomatique.cl>)

¹⁵⁷ O’Siochrú, Girad, Mahan (2002), *op. cit.*

¹⁵⁸ Guatemala is a paradigmatic case. Having an indigenous population estimated at 65% of the total inhabitants, it does not own any radio stations, and the languages of its 23 ethnic groups are not used in commercial radio stations. The same happens with television: the four existing free-to-air TV stations have the same owner who is of Mexican origin.

¹⁵⁹ McChesney, R and Dan Schille (2003), *The political economy of international communications: foundations for the emerging global debate about media ownership and regulations*. UNRISD, Geneva, December, 2003.

(the same operators use the bandwidth to provide consumers with other services)¹⁶⁰. This situation raises a controversy about the concept of “technological neutrality”. In countries with a virtual saturation of the radioelectric spectrum in capitals and metropolitan areas and a high concentration of media in only a few hands (state-owned or private) the possibilities of digitalisation could open a space for a greater diversity of voices and images if one of the technological options was to be chosen. On the other hand, if the other option was chosen the result would be the just the opposite.

Beyond its democratisation possibilities, the prevailing idea regarding the “technological revolution” in radio broadcasting is that it will be mainly a means to increase the business possibilities of this industry: *“Increased spectral efficiency, the possibility of using a transformed return channel, in this case radio broadcasting within a whole system of telecommunications (bi-directional and interactive) and the flexibility provided by the new technology, whether to offer a higher quality signal or a higher number of channels with the same capacity, allows traditional radio broadcasters the possibility to increase the number and nature of services offered, thus increasing the business opportunities within this industry”*¹⁶¹.

“Elimination of Barriers”

In the list of measures that the US government¹⁶² regards as “significant barriers” for its exports in the cultural sector there are the *“content quotas for the radio, cinema and television together with limitations to foreign property of national publishing companies, radio broadcasters, cable companies and satellite TV companies”*. France appears on this list establishing a 60% of the television screen quota for European production contents (figure which is higher than the 51% agreed in the EU Board for the Television without Borders) and 40% for French content programmes. France requires both private and public radios to broadcast at least 40% of French music.

Although most often an argument to justify the opening of audiovisual markets is the free flow of information and ideas, the US government openly declares that its goal is to eliminate a barrier so that *“programmes produced in the US can enter the French market”*. The US Foreign trade policy opposes its internal policy in terms of communication and culture sectors, where eliminating the state’s intervention and leaving the market “free” have never been considered. This domestic sector as well as others, such as the agro-industrial sector, is granted significant subsidies from the US Government, thus making it possible to dominate exterior markets as well. Large US cultural enterprises are granted massive state subsidies by means of free access to the electromagnetic spectrum or tax reductions. As in other sectors, neoliberalism in the cultural sector is not expressed through a reduced State intervention, but through the application of neoliberal tools in a selective way, favouring the most powerful cultural companies, which by means of their lobbying armies, exert pressure for the elimination of national “barriers” on other States and thus have access to new markets.

¹⁶⁰ As proposed by the Mexican Senator Javier Corral (PAN) *“¿Cómo hacer una sociedad de la información digital inclusiva sin resolver ahora formas equitativas de acceso a las frecuencias analógicas?”*, Consultation meeting for Central America, Cuba, Mexico and Dominican Republic, UNESCO, Tegucigalpa, October 29 to 31, 2002.

¹⁶¹ Ing. Leonardo Marsili, Broadcasting Chief URSEC, Unidad Reguladora de Servicios de Comunicaciones (Regulatory Unit for Communications Services), Uruguay, January 2003.

¹⁶² Office of the US Trade Representative (2004), *2004 National Trade Estimate Report on Foreign Trade Barriers*. (<http://www.ustr.gov/reports/nte/2004/index.htm>)

In the national Conference on Media Reform, held in the United States from November 7 to 9, 2003, several participants pointed out that the goal of the United States is to liberalize cultural production in the FTAA “*this would imply considering culture as a commodity, publishing as a service and the contents as assets*” and “*it would deny the fact that intellectual and cultural production has other dimensions, which are more important than their economic value, related among other things to sovereignty, peoples’ identity and the development of a dynamic and participatory public environment*”¹⁶³.

The impact of the North America Free Trade Agreement (NAFTA) - signed with the United States and Mexico - on Canadian cultural policies, has been mentioned as an example of the negative consequences “barrier elimination” policies may have: “*National law is no longer empowered to require a percentage of Canadian contents to be included in Canadian issues of magazines from the United States (only advertising is provided by each country); tax or postal benefit used to be given by that country to its magazines as a means of protecting its cultural integrity have been declared as opposed to free trade. This has actually forced some Canadian magazines to disappear from the market. What is more, it also affects the right a country may have of restricting the advertising of certain products for public health reasons, for example, tobacco.*”

The FTA signed between United States and Australia includes a cultural exception agreement, considered as very weak by the Australian audiovisual industry.¹⁶⁴ According to the FTA, paid TV companies will be allowed to allocate up to 80% of their budget to buying foreign programmes and it also allows that “*90% of the documentary, children, art and education programmes come from foreign countries*”, while the “*the remaining channels can devote 100% of their budget to foreign programmes, without showing any Australian programmes whatsoever*”.

Having taken notice of the threats these treaties pose to cultural diversity, the European Parliament has requested UNESCO’s General Assembly to “*call upon all state parties not to accept, within the framework of bilateral agreements, any commitment which could compromise the protection of cultural diversity.*”

As it has been stated in the chapter about the WTO and FTAs, the liberalisation or direct elimination of regulatory barriers has facilitated a process of ownership concentration and media control. Due to pressure exerted by corporations and even without the existence of free trade agreements, several countries have abolished or relaxed those regulations which prevent or limit media concentration, the entry of foreign capital and/or foreign media control.

Privatisation

Latin America underwent a strong privatisation process in the 1990s, which aiming at opening the market to competition and granting access to better and more affordable services for the population, dismantled state-run telecommunication monopolies. In most cases, results were not those stated and the goal of making the market competitive was not achieved: state-run monopolies were turned into private monopolies or oligopolies and, throughout the process, the capacity for setting social public policies was strongly weakened¹⁶⁵. The weakening and privatisation of public broadcasting services was part of this tendency.

¹⁶³ Burch, Sally, *USA:Communication Media Reform* , November 11, 2003 (<http://www.rebellion.org/medios/031113usa.htm>)

¹⁶⁴ http://www.cdc-ccd.org/Espagnol/liensenespagnol/nouveautes_esp/framenouveautes_esp.htm

¹⁶⁵ Mastrini and Becerra, *op. cit.*

While in the case of Europe there are reports stating a decrease in media concentration indices due to *“the progressive loss of influence of public channels”*¹⁶⁶, in Latin America – following the American model – the struggle for diversity occurs in opposition to media private monopolies. In Latin American countries, civil society efforts aim at strengthening the public media, which have been left as simple subsidiaries of powerful commercial media.

In Europe, on the other hand, the loss of public spaces owing to the reduction of resources and unfair competition *“against the massive resources that large global media groups can draw on to develop programming”*¹⁶⁷ is on its way to the replacement of state monopolies by private monopolies or oligopolies.

This process of demonopolization was also reported in Africa, where until the 1980s there were state-run monopolies basically¹⁶⁸. By the late 1990s *“there were literally thousands of them, mostly commercial and only a few producing some degree of significant local programming”*.

It has been demonstrated, on the other hand, that a greater variety of media does not grant by itself the free flow of information and opinions. Global and regional multimedia groups, though competing with one another and with national media, are becoming increasingly associated within a web with greater power concentration. And despite some opinions that these are “good” concentrations – implying that this is the only way to compete with large corporations at a national and regional level – reality seems to show otherwise.

The Spanish group Prisa, for instance, has entered Latin America through an association with the Venezuelan group Cisneros – in order to set up the radio station network Caracol – and with Televisa, from Mexico – to set up the Radiópolis system. In Brazil, the Globo group is associated with the Time global conglomerate and with Sky digital television (now merged with DirecTV), to which the Colombian group El Tiempo is also associated.

In southern countries, even in Central and Eastern Europe, an increased foreign stakeholding in national media can be appreciated. While in some cases – in Chile, for instance – the opening is complete and concentration has no limitations whatsoever, others have chosen to regulate previously-existing situations by means of legislation¹⁶⁹, allowing certain percentages of capital contributions to the media.

In Brazil, the national companies initially opposed foreign capitals but later on, as a result of financial difficulties and the weakening of their accumulation capacity, they left their “nationalism” aside and opened up to the possibility of associating with foreign companies and capitals in order to obtain fresh money for their activities. The Globo group and the publishing house Abril, pressed to that purpose¹⁷⁰, interested in *“selling a small portion, between 7% and 10%, so as to balance the group accounts and reassume strategic investments”*. Finally, an amendment of the Decree Law 236 was passed, allowing *“investment or pension funds, whether national or foreign, to hold up to 19.99% in any number of radio or TV stations”*.

¹⁶⁶ Alfonso Sánchez-Tabernero, Dean of the School of Communications, University of Navarra, April 2004

¹⁶⁷ IFJ (2005), *op. cit.*

¹⁶⁸ According to O’Siochru, Girard and Mahan, in the mid-1980s there were only seven independent broadcasting stations in all Sub-Saharan Africa, *op. cit.*

¹⁶⁹ In Uruguay, a foreign enterprise or individual cannot be holders of media. However, the presence of the groups Clarín and Cisneros in some of the national media is well-known. One way of avoiding the legal impediments is by using Uruguayan “figureheads” who appear to be the holders.

¹⁷⁰ A government decision was preferred to the legislative debate that was being carried out at the same time.

In the case of Peru, for example, even though the possibility of foreigners holding radio station licences or authorizations is excluded, the Radio and TV Broadcasting Law passed in 2004 allows *“the participation of foreigners in legal entities holding authorizations and licences”* who cannot *“exceed forty per cent (40%) of total shares or capital stock, and in addition have to own, or hold a stake or shares, in radio stations back in their countries of origin”*¹⁷¹.

¹⁷¹ Art. 24 “Foreign stakeholding”, Radio and Television Broadcasting Law N°28,278.

VI. Conclusions and recommendations

The processes and trends identified during this research strongly question the idea that the market can solve the problems of development or ensure cultural diversity on its own. On the contrary, in the surveyed areas of telecommunications, broadcasting, and cultural services in general, the market shows a natural tendency towards a growing oligopolization and monopolization, thus limiting and reducing cultural diversity.

Therefore, one of the main conclusions of this paper is that it is not enough to acknowledge cultural diversity for it to exist. It is necessary to defend, promote and ensure it through active public policies and appropriate regulatory frameworks, and that is why governments should count on political will as well as on sufficient financial and human resources for this. If action is not taken for the development of these policies and tools to oppose, or at least restrict the trends above-described, Southern countries will also be accountable for their effects and, sooner or later, will be forced to accept their “cultural suicide”.

The market has not responded to ICT access in rural areas and marginalized urban areas. Private commercial initiative is aimed at investments in large urban concentrations, where scale economy allows for good returns on invested capital¹⁷². On the other hand, the market is also tending to an increasing degree of concentration which favours cultural diversity reduction: *“Historically, the market of telecommunications has been either monopolistic or oligopolistic. It is a market where all those who sell want to be monopolies and all those who purchase want multiple providers”*¹⁷³.

Therefore, and despite Southern countries limited resources, governments shall have to take responsibility – and meet part of the costs¹⁷⁴ – for creating that infrastructure and granting the supply of basic communication services, as well as protecting pluralism and media diversity. As stated by the International Federation of Journalists (IFJ): *“The public’s need to be properly informed means that information services must be regulated beyond the market framework of ratings, profits and commercial objectives”*.

The fact that the US and global corporations insist on trade opening, flexibilization of regulations and, in general, reduction of state powers concerning the setting of national policies driven by public interest, should be enough to draw attention to the importance that the principle of *“the sovereign right of States to adopt measures to protect and promote diversity of cultural expressions within their territory”*, stated in the CCD draft, should guide national strategies. This right is in agreement with the obligation of States to pursue active policy and enable the exercise of fundamental human rights, thus granting *“a significant space for local cultural content, and the adoption of measures which encourage the existence of national cultural industries capable of producing and distributing said content”*.

¹⁷² Gómez, G. *“Estudio y recomendaciones sobre Radio, NICTs y desarrollo rural en América Latina”*, La Onda Rural, April 20-22, 2004 (<http://onda-rural.comunica.org/docs/gomez.doc>)

¹⁷³ Engineer Miguel Brechner, LATU (Technological Laboratory of Uruguay), September 2004.

¹⁷⁴ Several countries have established special funds for universal access plans, as in the case of Bolivia (FITTEL) or Colombia (Fondo de Comunicaciones del Ministerio de Comunicaciones y el Fondo Financiero de Proyectos de Desarrollo – FONADE).

(See “Universal access funds” - <http://www.choike.org/nuevo/informes/2695.html>)

Some of the affirmative actions recommended at a national or subregional level¹⁷⁵ for the acknowledgement and promotion of cultural diversity should include policies for:

- Establishing incentives for the production of national and local content, and the plurality of opinions and information;
- Establishing proactive measures in the broadcasting environment (screen quotas), distribution and marketing for the development of cultural industries;
- Strengthening public media by offering sufficient resources and infrastructures for the development of their work;
- Establishing effective limits to ownership concentration and to media content centralization;
- Establishing limitations to crossing in media ownership in different technological resources so as to control the spreading of multimedia;
- Granting sufficient powers and resources to the bodies in charge of the regulation of telecommunications and broadcasting for an effective supervision of these aspects;
- Acknowledging and promoting community media and other non-commercial forms, both in connection with broadcasting and other ICTs;
- Modifying regulatory frameworks concerning (both analogical and digital) radio and TV for the creation of enabling environments which ensure equal ICT access of all social sectors, particularly the most vulnerable ones;
- Making provisions in management plans regarding the radioelectrical spectrum (for analogical as well as digital use) for public, community, educational and other non-commercial media;
- Selecting the digital broadcasting pattern to be used at a national level, in terms of its contribution to democratization and diversity of options, and not to greater concentration;
- Enabling civil society participation in the development, definition and implementation of information and communication policies;
- Encouraging social monitoring of cultural industries and media by civil society.

WSIS: Cultural diversity left out

By analyzing the WSIS process, starting point of this research, it may be noticed how definitions and actions on cultural diversity were gradually being left aside. Texts aimed at the promotion of cultural diversity, included in the WSIS Declaration of Principles¹⁷⁶ were lost amidst the process of fulfilment of these general goals, both at global level – in the Geneva Action Plan¹⁷⁷ – as in Regional Action Plans¹⁷⁸.

There has been neither real interest nor conviction within the WSIS process regarding the importance of considering cultural diversity as an essential focal point for building an equitable information and knowledge society. While some countries never agreed with and systematically opposed this perspective, others have been neglectful in defending their

¹⁷⁵ As it could occur in the Southern Common Market (MERCOSUR)

¹⁷⁶ <http://www.itu.int/wsisis/docs/geneva/official/dop-es.html>

¹⁷⁷ <http://www.itu.int/wsisis/docs/geneva/official/poa-es.html>

¹⁷⁸ http://www.itu.int/wsisis/documents/listing.asp?lang=es?&c_event=s|2&c_type=co|ret

citizens' interests.

Beyond discourse, a technology/market-based approach has prevailed in practice, with governments and private companies as the main stakeholders and citizens as consumers of content and technologies. In many WSIS papers there is no reference to cultural diversity and triumphs the reductionist idea that the solution to the digital divide lies in increasing connectivity. At the same time it is stressed that the only important thing is the development of infrastructure and the need for “enabling environments” which may eliminate barriers to investment in the communications sector¹⁷⁹.

On the other hand, some guidelines for the promotion of technologies adapted to national needs, the development of capacities for their appropriation, the encouragement and protection of plurality concerning the management of media and technology, the promotion of content and defense of public domain have been relegated.

The WSIS process has not reached the large urban centres in our countries or aroused any interest at the core of the political or academic sectors, or the civil society organizations. As the process advanced, basically a “damage reduction” strategy was observed – with the exception of Internet governance issues and ICT financing. The small number of Heads of State and Government present at the meeting closing the first phase in Geneva shows the low profile which has characterized the process. On the weak papers passed, the diplomatic commitment seems to have prevailed; a commitment achieved over the last few hours in order to prevent the summit from becoming a failure¹⁸⁰.

Although the different participants tried to make their interests take priority, the WSIS was not essentially a space for negotiation. African countries, for instance, failed in their attempt to make the WSIS approve the creation of the Digital Solidarity Fund¹⁸¹ as a new ICT financing mechanism and questions as the ones related to intellectual property rights regulations were dropped from the agenda during the first instances of the process – at the request of the United States that preferred to reserve these issues for environments where they have greater possibilities to impose their views. The most paradigmatic case is, perhaps, that of broadcasting entrepreneurs who, but for general references to the importance of media and the insistence for specific language to be included in the papers¹⁸², were not interested in submitting concrete proposals to be included within the WSIS commitments – not even in favour of their corporate interests, such as the inclusion of funds for broadcasting digitalization. The only goal of their representatives, in all

¹⁷⁹ See, for example, the following text from the Plan of Action of the first phase of the WSIS: “Governments should take action in order to support an enabling and competitive environment for the necessary investment in ICT infrastructure and for the development of new services” (article 9 of C2 action line – “Information and communication infrastructure: an essential foundation for the Information Society”). See also the text corresponding to C6 action line – “Enabling environment”.

¹⁸⁰ As Sally Burch, active participant in the Summit process, wrote at the beginning of 2003 “many participants and observers of the process have some serious doubts about the possible results of the Summit, due to the trade-based approach and the little willingness of governments to make real commitments, made evident by the lack of advance in content and the low profile shown by the majority of official delegations, among other things”. World Summit on the Information Society: Visiones Enfrentadas, March 18, 2003.

¹⁸¹ Which was finally created outside the scope of the WSIS.

¹⁸² As the addition “pursuant to national legislation” in every paragraph stating respect for human rights. A functional mention for those wanting to promote censorship and limit freedom of expression, as well as for those who wish to maintain discriminatory legislations which prevent the entry of other media granting plurality and diversity of opinions.

preparatory events, being strictly aimed at preventing the inclusion of a reference to community media in official documents.

As regards the work of civil society, although it could not stop Plans of Action being contrary to the DP, it succeeded in including some general definitions and encouraging the discussion of certain issues which, otherwise, would not have been present during the process – such as the right to communication. In its strategy, initiatives were also complemented to improve texts with actions to prevent setbacks in relation to other international instruments.

As for transnational companies, national private oligopolies and some developed countries – such as the United States – although they would have preferred more accurate definitions concerning the market role, WSIS agreements do not oppose their strategies and priorities and do not contradict the global tendencies mentioned above.

The challenge presented to Southern countries is, therefore, in the definition of national and regional strategies. Within national development strategies the definition of “digital agendas” is being gradually included; a new field of controversy concerning meanings and actions is opening up. That will be again the place for debate for a new approach to the information society to be adopted. Maintaining the prevailing perspective in the WSIS process, turns it into, at the least, an inefficient proposal to advance towards the Millenium goals or to ensure cultural diversity. On the other hand, not addressing these issues would mean to leave national development possibilities at the mercy of the threats they were exposed to.

Technological inevitability

Optimism or “technological inevitability” is questioned unless accompanied by regulations and incentives designed to change current trends. Claims such as Tyler Cowen’s¹⁸³, who states that “*All these debates will soon become obsolete. The Internet and sharing files, not to mention satellite television, will afford so many options that quotas will no longer matter*”, appear inaccurate when considering the facts described in chapter 2. Should this be true, it would be impossible to understand, for instance, the United States’ efforts aimed at the elimination of screen quotas.

In effect, ICT development allows great access to information and its dissemination, but this potentiality can be promoted or hindered by political and regulatory decisions. Some hindrances – and solutions – are the result of technological development and others, of economic and political interests. As a matter of fact, one of the tasks to be carried out in the future is determining which hindrances – and solutions – are the result of technological development and which are the result of “*human development*”¹⁸⁴.

The management of one of the most important ICT resources, the radioelectrical spectrum, has become a major technical pretext in Latin America and the Caribbean, as well as in Asia and Africa, especially at the time of allocating radioelectrical frequencies.

¹⁸³ Member of the group of experts appointed to prepare a Convention on Cultural Diversity Draft, in “[*The Volokh Conspiracy*] Update, why the French need Hollywood, and how *The Lord of the Rings* is perceived”, December 19, 2003.

¹⁸⁴ Gómez, Gustavo (2004), *Estudio y recomendaciones sobre Radio, NICTs y desarrollo rural en América Latina*, International Seminar-Workshop La Onda Rural, April 20- 22, 2004

The opportunities for civil society organizations – rural and indigenous community-based, among them – to access frequencies are strongly limited. This is not due to technological difficulties, but rather to policy and regulatory frameworks preventing or limiting their access.

The incidence of political decisions on effective democratisation which would entail the adoption of digital patterns in broadcasting has already been dealt with. The optimisation in the use of the spectrum could open democratizing options or increase the money-accumulation capacity and consolidate the power of current oligopolistic and monopolistic operators.

The problem is, obviously, not only technological. As Francisco Pérez Trejo puts it, referring to challenges at the rural level: *"There is a digital divide which leaves the rural world aside and overcoming it is not only a matter of technology (...) it is a political question, and it requires political will, education and funds"*¹⁸⁵.

In broadcasting, policies, actions and resources will be necessary to allow digitalization of public, community, educational and other non-commercial radio and TV. The modernisation of regulatory frameworks is also essential in order to achieve an enabling environment for the access of all social sectors to radioelectrical frequencies on an equal footing. This task should be encouraged as from now, with analogical technologies, since current successful bidders might be the only ones to benefit from the advantages of digitalization, according to the existing options in digital patterns. But also because of the importance of broadcasting in Southern countries, currently and for many years to come. While 5 to 8% of the Latin American population had access to Internet in 2002, radio and TV continue to be the most developed technologies in the region. At that time, the ITU reported that 44% had access to radio and 29% to television¹⁸⁶.

"Before worrying about closing the digital divide which is just opening for some of us, we should solve the pending questions of the analogical divide", Mexican Senator Javier Corral said at a WSIS preparatory event organized by UNESCO¹⁸⁷, wondering if we can speak of a democratic and plural information society given the existing difficulties to face *"the current legal frameworks which regulate traditional media technologies and which show the more closed-in and monopolistic economy frameworks, such as broadcasting"*.

With regard to new technologies, especially Internet, cost barriers, little availability of content in local languages - or adapted to local realities - and the low stakes on capacity building, beyond the basic use of equipment and *software*, evidence the limitations of *hardware* and cable-based policies.

The fixing of prices, rates and taxes on *software* and equipment should operate in favour of a real access for all economic groups, the existence of different needs should be acknowledged, and a gender perspective should be incorporated so as to ensure equal access to all men and women. It is essential to ensure minimum access to infrastructures

¹⁸⁵ World Agricultural Information Centre (WAICENT), FAO.

¹⁸⁶ This is an infrastructure that is already installed and which the population is familiar with. The idea of taking advantage of radio synergy with other technologies, with the Internet specifically, is becoming increasingly popular. Shared access policy, such as telecentres in relation to rural and community radios, seems to be one of the ways to increase the possibilities of rural communities to access information.

²³ Consultation Meeting for Central America, Cuba, Mexico, and Dominican Republic, UNESCO, Tegucigalpa, October 29-31, 2002.

and services, but it would also be necessary to implement integral measures for those to be used effectively (cost reductions for priority sectors, promotion of national technological solutions and education since childhood, among others).

Together with infrastructure needs in our countries – communications, electric, etc. - active public policies are crucial to enable and promote content being produced and disseminated by means of those technologies, just as it is essential to build the human skills necessary for their appropriation. “Digital inclusion strategies” should therefore be encouraged in order to promote *“not only access to, but also use and social appropriation of, digital technologies: for meeting the needs of the communities, and fostering public policy development, knowledge creation, appropriate content creation and capacity strengthening”*¹⁸⁸.

Connectivity as a false paradigm

All of the above leads us to state that connectivity cannot be the paradigm to bridge the digital divide or ensure cultural diversity, thus making a reapproach of the problem and alternatives¹⁸⁹ essential.

Although access to telephone services and other variables have advanced in Southern countries, digital divides continue to widen. Some authors state the necessity to survey not only the connections but also their conditions of use. The differences shown by the figures regarding Internet flow and number of homes with broadband access, demonstrate the existence of significant imbalances between rich and poor countries.

Upon analyzing the situation within national borders¹⁹⁰, it can be noticed that the rates indicating PC possession and access to Internet are more uneven than between countries, situation already revealed by ECLAC in 2002 when estimating that *“the domestic digital divide in Latin America and the Caribbean is even more serious than the international divide”*¹⁹¹.

It is feared by many that, in addition to being insufficient, the aim of everybody having access to new technologies is unfeasible. Indicators show how the divide is taking on huge proportions and is turning into new divides. The conditions faced by Southern countries economies, on the other hand, do not allow for optimistic prospects. Especially when taking into account the existing huge social and economic inequalities and the increasing educational and cultural barriers.

ECLAC’s definition, already developed in a previous chapter, stating that *“the core of development technologies does not lie in connecting to the ICT infrastructure”* is echoed by international organizations, such as the United Nations Food and Agriculture Organization (FAO). Its position is that *“it is wrong though to assume that without access to the Internet, communities do not have existing information systems of any substance. This can lead an overly optimistic technologically deterministic approach to the conclusion that the problem will only be solved if the existing information*

¹⁸⁸ Telecentros... ¿para qué?, op. cit.

¹⁸⁹ The idea of digital inclusion for social inclusion, definition proposed by civil society to mark its difference from the proposal of universal access and connectivity as a paradigm, is another example of language that has been adopted by institutions which actually promote very different approaches.

¹⁹⁰ “Major growth in access in many countries of the South is largely confined to urban areas and more profitable markets, and most have found themselves on the wrong side of a growing ‘Digital Divide’ - a multi-faceted divide that has well-educated, high-income males with ‘Western’ perspectives clearly on top everywhere, North and South”. CRIS campaign.

¹⁹¹ Hilbert and Katz, 2002.

*networks are replaced with 'modern' systems*¹⁹².

This approach has consequences on the proposed strategies and goals for “capacity building”, understood as literacy rather than use of technologies. The absence of goals, plans and resources for capacity building in connection with content production and dissemination, in local languages and according to local needs, prove that the prevailing idea of capacity is the minimum amount necessary for the reception of content. It is common to see, from this perspective, that literacy courses are limited to the teaching of proprietary *software* programmes – such as Microsoft’s Word, Excel or Internet Explorer.

A strategy which does not limit itself to turning people into consumers of technologies and contents developed by others should be encouraged. Emphasis should be made on pursuing public policy with a view to building and strengthening capacities for the production of content and creative appropriation of ICTs, making them suitable to local needs and realities.

In this other approach, capacity building should *“include the support to local small and medium-sized enterprises, which could develop more suitable software and solutions than those offered by transnational companies. This would also favour the use of local labour force as well as the technological development of the country. This approach extends to policies supporting local companies and (state and private) research centres which create ICT solutions, as well as to decisions to increase state investment amounts allocated to research”*¹⁹³.

Other multilateral processes

As stated above, from the cultural diversity perspective it seems quite obvious that the WSIS will not provide the tools or guidance necessary for its acknowledgement and granting. The negotiations in the context of the WTO, WIPO¹⁹⁴, regional or bilateral free trade agreements, and the CCD process within UNESCO have been identified as the policy definition environments with greater impact on the generation, development and dissemination of various cultural goods.

In the case of the WTO and FTAs, the analysis carried out evidences the seriousness of the threats posed to cultural diversity – already pointed out by many countries and civil society sectors closely following this process – since trade or investment agreements are being increasingly imposed on country decisions and weaken the capacity for implementing cultural policies driven by public interest.

However, facing WTO negotiations and the US aggressive strategy to establish these agreements, there is growing opposition from the political and business sectors in connection with the agricultural and farming industry. Popular mobilisations have hindered the ratification of CAFTA and delayed the signing of agreements with Andean countries, or have led to the suspension of negotiations with the group of South African countries¹⁹⁵

¹⁹² FAO (2003), *“Livelihoods approaches to information and communication in support of rural development and food security”*.

(<http://www.fao.org/waicent/portal/outreach/livelihoods/es/livesyst-es.html>)

¹⁹³ Gómez, G. *Políticas Públicas de Comunicación: El ausente imprescindible - Democracia, Sociedad de la Información y Gobierno Progresista*, Montevideo, January 2004.

(<http://wsis.choike.org/upload/77736973706f7274616c646f63756d65/PolComGusGomez.rtf>)

¹⁹⁴ World Intellectual Property Organization

¹⁹⁵ In this case, due to the South African reluctance in questions regarding intellectual property rights.

until next year, while the Doha round talks seem to be stagnating once again.

Discussions within the process towards the UNESCO Convention have shown an almost unanimous commitment at intergovernmental level – with the exception of the United States – regarding this instrument. This seems to be the only opportunity for affirmative actions at the international level with the object of establishing binding rules and regulations for member States to hold their right to protect and promote their own cultural production, and for them to count on tools to defend it against global corporations which control the sector of cultural goods and services.

As regards recommendations, the need to support all efforts aimed at maintaining the “cultural exception” within the WTO must be emphasized. That is to say, cultural goods and services are not to be considered just another commodity and are therefore to be left out of trade liberalisation agreements. Together with maintaining this exception, the idea of a “moratorium” which might be promoted by Southern countries to avoid the inclusion of cultural aspects in the negotiations of bilateral and regional free trade and investment agreements has also been suggested¹⁹⁶.

Culture as a right

Other alternatives put forward are based on resorting to existing international and regional instruments on human rights. In the Americas¹⁹⁷ as well as in Europe¹⁹⁸ and Africa¹⁹⁹ there are mechanisms and tools to denounce situations that may violate international human rights agreements, particularly those regarding freedom of information and expression. The use of these tools could revert facts, policies and regulatory frameworks that may be incompatible with these agreements, because of political pressure, reports and recommendations or by judicial decisions binding upon the countries party to the treaty.

Concentration “*is a clear danger to media pluralism and diversity*”, says the Organization for Security and Co-operation in Europe (OSCE). Also, the European Court of Human Rights has stated that pluralism “*is the basic general rule of European media policy*”²⁰⁰ and it must be ensured. Under recent European jurisprudence, article 10 of the Convention on Human Rights not only establishes an individual right to freedom concerning media, but it also “*imposes a duty to grant pluralism in opinions and cultural diversity within the media in favour of a functional democracy and freedom of information for all*”.

In America, the Pact of San José de Costa Rica provides that “*The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions*”(Art. 13.3). This

¹⁹⁶ Canada, despite having the bad experience of a FTA that affects its sovereignty (and maybe for that reason), has incorporated an absolute cultural exception in its bilateral negotiations with Chile, Costa Rica and Israel. Australia and Singapore followed these steps in the bilateral Free Trade Agreement signed in 2003.

¹⁹⁷ American Convention on Human Rights or Pact of San José Costa Rica (entered into force in July 1978).

¹⁹⁸ European Convention on Human Rights (entered into force in September 1953).

¹⁹⁹ African Charter on Human and Peoples’ Rights (entered into force in October 1986).

²⁰⁰ Interamerican Commission on Human Rights (2004), *Indirect violations to Freedom of Expression: The impact of the concentration of media ownership*, Annual Report 2004 of the Special Rapporteur for Freedom of Expression.

refers not only to direct abuses by the State but also by “private entities”, such as oligopolies and monopolies.

One of the bodies within the Interamerican system, the Interamerican Court of Human Rights has construed this article so that – in the same way that “...*freedom of expression requires, in principle, that the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media, it must be recognized also that such media should, in practice, be true instruments of that freedom and not vehicles for its restriction. It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, inter alia, a plurality of means of communication, the barring of all monopolies thereof, in whatever form...*” (Advisory Opinion 5/85).

The Organization of American States’ Declaration of Principles on Freedom of Expression also establishes that monopolies or oligopolies as regards media ownership and control “*conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information*”, on account of which they must “*be subject to anti-trust laws*”²⁰¹.

Some organizations, such as the World Association of Community Radio Broadcasters (AMARC), have already made use of these mechanisms for preserving cultural diversity in broadcasting, and there have been decisions, reports and recommendations which strengthen the protection of these principles. Such is the case of the acknowledgement of community radios importance²⁰², the discussion on the exclusive establishment of financial requirements regarding access to radioelectrical frequencies²⁰³, or the voiced concern on media concentration within the continent²⁰⁴ – which has been recently pointed out as an “indirect” violation to freedom of expression.

²⁰¹ Interamerican Commission on Human Rights (2000). Art. 12, *Declaration of Principles on Freedom of Expression.*, OAS. October 2000.

²⁰² *El ejercicio de la libertad de expresión por medios de comunicación comunitarios*, Special Rapporteur for Freedom of Expression 2002, Interamerican Commission on Human Rights (IACHR).

²⁰³ *Informe sobre El Derecho a la Libertad de Pensamiento y Expresión en Guatemala*, Chapter IX, OAS/Ser.L/V/II.111, Special Rapporteur for Freedom of Expression, IACHR, Guatemala, April 6, 2001.

²⁰⁴ Interamerican Commission on Human Rights (2004), *op. cit.*