

## Council of Europe Film Policy Forum “Shaping policies for the cinema of tomorrow”

Krakow, 11-13 September 2008

### Contribution by Yvon Thiec

Convention on the protection and promotion of the diversity of cultural expressions.  
A tool to enhance cinema production at the world level?

1. The UNESCO Convention on the protection and promotion of the diversity of cultural expressions which entered into force on 18 March 2007 represents a big step forward on the long journey towards putting cultural rights on a par with economic, social and political rights in the sphere of international law<sup>1</sup>.

The objectives proclaimed by the Convention include protecting and promoting the diversity of cultural expressions, and creating a favourable environment within which for cultures to flourish. It also encourages dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace. It aims to reaffirm the importance of the link between culture and development for all countries, and to support actions undertaken nationally and internationally to secure recognition of its true value.

It gives recognition to the distinctive nature of cultural activities, goods and services, and reaffirms the sovereign rights of States to implement policies and measures in favour of cultural diversity. Finally, it aspires to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.

2. The Convention includes an extensive section on how the - ambitious – objectives mentioned above are to be delivered. Chapter IV - Rights and Obligations of Parties – lists at length the measures that can be implemented.

Article 6 describes the possible measures:

- Laws aimed at protecting and promoting cultural diversity;
- Measures to promote independent national cultural industries;
- Public financial assistance;
- Measures aimed at developing and promoting the free exchange and circulation of cultural goods and services;
- Measures aiming at enhancing diversity of the media including through public service broadcasting.

Article 7 emphasizes access to diverse cultural expressions "as well as from other countries of the world".

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<sup>1</sup> In which the Council of Europe has played a prominent role by paving the way for culture and diversity to be given more weight within a prescriptive framework, i.e., a framework of legal rules. Examples include the European Cultural Convention, which entered into force in 1955, the Convention on the Value of Cultural Heritage for Society (2005) and the European Convention for the protection of the Audiovisual Heritage (2008), not forgetting the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities which also contribute to the promotion of cultural diversity

Article 11 recognizes the fundamental role of civil society in protecting and promoting cultural diversity.

Article 12 promotes international cooperation:

- Facilitating dialogue on cultural policy;
- Enhancing public sector strategic and management capacities through professional cultural exchanges and sharing of best practices;
- Reinforcing partnerships with civil society, NGOs, and the private sector;
- Promoting the use of new technologies;
- Encouraging the conclusion of co-production and co-distribution agreements.

Article 14:

The Convention pays special attention to developing countries, where it speaks of enabling the emergence of “viable local and regional markets”, access to international distribution networks, the markets of and collaboration with developed countries. There is a big focus on music and film. Exchanges of information and experience, training of human resources, development of SMEs, and technology transfer are also recommended.

Added to this is the preferential treatment that developed countries should grant to artists and other cultural professionals, as well as the goods and services supplied.

Article 18 establishes an international fund for cultural diversity funded by the Parties and other institutions<sup>2</sup>. Article 19 provides for exchanges, analysis and the dissemination of information.

The architects of these measures are the signatory parties, i.e., the States that have ratified this Convention, who have the 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 (article 5).

What scope does this Convention offer the cinema?

3. Let me say that I am not concerned to discuss the Convention’s measures for the protection of cultural diversity, which ipso facto cover the cultural industries defined in article 4.5<sup>3</sup> and act as a shield against any attempted undermining of all or any part of

<sup>2</sup> For reference, the European Parliament is considering earmarking a budget for this fund for the European Union’s participation in the Convention.

<sup>3</sup> It is worth noting that the Convention is the first instrument with an import in international law that takes the cultural industries into account in its definitions. This gives express recognition to the cultural industries as key cultural contributors to the production and distribution of cultural goods and services through a de jure recognition of the explicitly economic and commercial nature of the production and distribution of cultural (and audio-visual) goods and services. This is a minor revolution, as hitherto the cultural industries have only received half-hearted acknowledgement as key contributors to the creation of cultural goods and services. Think only of Andre Malraux’s startling contention that “the cinema is also ... an industry”. Bear in mind that in Europe, film producers have legal recognition only as exclusive assignees of the rights of authors-directors. They have no legally-recognized final cut on the works financed by them (unlike US studios). Jacques Delors argument that “works of authorship are not a commodity like any other” has been repeated ad nauseam but given no legal effect. And yet it would have been a decisive act to use this as the basis for creating a European legal status for the cultural industries which dispelled the ambiguities that still today beset the cultural industries in Europe, while preserving the essence of their business (“works of authorship”). There is significance in the profoundly reactionary role of the rhetoric aimed at demeaning “creative artists”. In the Thirties, Walter Benjamin clearly pointed up the industrial nature (and its impact on the masses) of 20<sup>th</sup> century cultural production (of which the totalitarian (Nazi, fascist, Stalinist) regimes were well aware and exploited to good effect). Shostakovich’s troubles with the Soviet regime stand as an example of the clash between an artist who created a work of authorship and the attempts of a totalitarian State to rein him in. It is a matter of record that most artists did not, like Shostakovich, opt to make a stand on their home soil but emigrated to Hollywood and New York, strengthening the potential of US film production and facilitating the development of a US visual art (abstract expressionism) that would come to dominate at least the Western world. It should be noted that Hollywood was also to return the favour by putting the cinema industry to work for the war effort and the defense of democratic values (e.g., Frank Capra’s seminal tribute to democratic values in the film “Mr. Smith goes to Washington”). (On a side note, the European film industry has yet to make “Mr. Dupont or Herr Braun or Mr. Jones goes to the European Parliament...”).

The lack of specific legal definitions of the cultural industries in EU law is a clear barrier to recognition of these activities and their promotion in Europe (even though they account for between 2 and 3% of European GDP – the same as motor

cultural policies or activities by one party against another party or another international organization. By this, the Convention establishes a method of peace which makes a clear break with the pre-Convention period in which the WTO sought to be judge and jury of all service activities, including cultural and audiovisual services<sup>4</sup>, by including them in the GATS (TRIPS), but naturally with an exclusive focus on regulating trade at the expense of valuing cultural expressions<sup>5</sup>.

4. The idea here is to focus on the new armoury that this Convention could offer the development of the cinema by promoting exchanges between the world's film industries. Because in a globalized world, where the power of images is key to cultural expressions, an essential delivery system for creative output and a means of understanding the world, the cinema conveys it best of any of the ways of giving most practical effect to this Convention.

### **What of the place of the world cinema on the European scene, and conversely, the place of European cinema on the world scene?**

It is midnight, Dr Schweitzer! Things are not looking so good.

Let us start with foreign cinema production shown in Europe. By "foreign", I mean non-EU non-US<sup>6</sup> films.

Where film exhibition is concerned, the numbers at the moment may be less bad than they have been, but if the figures in the excellent study by the European Audiovisual Observatory on "The place of third country film and audiovisual works in European

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manufacturing) and is holding back the implementation of a forward-moving schedule of measures to promote cultural diversity, in particular under the UNESCO Convention.

<sup>4</sup> Cultural and audio-visual **goods** are covered by GATT. The cinema is covered by a specific measure of protection in article IV of the Agreement signed in 1948

*Article IV: Special Provisions relating to Cinematograph Films*

*If any contracting party establishes or maintains internal quantitative regulations relating to exposed cinematograph films, such regulations shall take the form of screen quotas which shall conform to the following requirements:*

*(a) Screen quotas may require the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time actually utilized, over a specified period of not less than one year, in the commercial exhibition of all films of whatever origin, and shall be computed on the basis of screen time per theatre per year or the equivalent thereof;*

*(b) With the exception of screen time reserved for films of national origin under a screen quota, screen time including that released by administrative action from screen time reserved for films of national origin, shall not be allocated formally or in effect among sources of supply;*

*(c) Notwithstanding the provisions of subparagraph (b) of this Article, any contracting party may maintain screen quotas conforming to the requirements of subparagraph (a) of this Article which reserve a minimum proportion of screen time for films of a specified origin other than that of the contracting party imposing such screen quotas; Provided that no such minimum proportion of screen time shall be increased above the level in effect on April 10, 1947;*

*(d) Screen quotas shall be subject to negotiation for their limitation, liberalization or elimination.*

I have cited this article in full as it is arguably not impossible under the UNESCO Convention for such measures to be enacted because the States Parties have "the sovereign right to adopt policies and measures for the protection and promotion of the diversity of cultural expressions on their territory" (article 2.2 of the UNESCO Convention). Article 8.1 (UNESCO Convention) says that a Party may determine the existence of special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding (proportionality principle)

<sup>5</sup> The (intellectual) absurdity of the scope of the current WTO negotiations (Doha Development Round), covering all goods and services (including human resources (movement of persons)), agriculture, civil aircraft, intellectual property, industrial tariffs... and negotiating technique (a final result requires agreement on everything by everyone) cannot go unremarked. Such a technique cannot withstand the "realpolitik" of negotiations, because apart from the three to four heavyweights (US, EU, India, Brazil), no other country can really control the inputs and outputs of such a system...

<sup>6</sup> The place, importance and effects on European "civilization" of US film will not be discussed here.

markets<sup>7</sup> are anything to go by, third country film production still gets grievously little showing in European countries.

Canada heads the list with 0.55% of total admissions in the European Union, followed by Australia (0.32%) and Japan (0.29%). With more than eight million admissions, an Australian film (Happy Feet) is the most shown non-EU, non-US film on the European market, followed by a Canadian film (Silent Hill) with more than three million admissions. The top ten includes 4 Canadian films, 2 Chinese films, 2 Japanese films and one Russian film.

The European Audiovisual Observatory study also looks at the supply of (non-EU and non-US) films over five years (2002-2005). In this time, the supply of foreign films rose slightly from 1244 films in 2002 to 1500 films in 2006. The study remarks on the positive role of co-productions with regard to market access (54% of Latin American films and 42% of African films that had access to the European market are European majority co-productions). Additionally, films co-produced by EU countries and third countries enjoyed most success. The average number of admissions for a purely Canadian film was 58 821 compared to 377 818 admissions for a co-produced film.

I found no relevant information on television showings of foreign films in this study, however, which is regrettable for is – or was - television not the world's biggest film theatre? (until it was supplanted by the Internet, where unfortunately the audience does not pay because of pirating, so that nothing is known of viewer preferences about the films they watch on it illegally and hence in secret).

For the proponents of a culturally diverse cinema gathered here today, the figures I have just quoted on the presence of foreign films in the 27-country EU pose a real challenge.

### The place of European films

European film production posted steady growth in 2007:

- 921 films produced in 2007 in the 27 Union countries, including 711 national productions, and 210 international co-productions.
- Production levels in Europe have risen by an average 5.1% since 2003, helped on particularly by rising volumes in France (+21%), Spain (+12%) and Italy (+7%).
- Admissions were slightly down by 1.3% (from 932 million in 2006 to 919 million in 2007).
- Rising demand for European films (the market share of European films rose from 28.6% in 2006 to 28.8% in 2007; conversely, the market share of US films declined from 63.5% to 62.7%).
- Steady growth in video on demand services.

The number of video on demand services rose sharply, with 116 new services and a total of 258 live services accessible on 293 platforms at the end of 2007. France, the Netherlands and Germany are the top-performing States in terms of accessible services.

### What showing does European cinema make on export markets?

I failed to find any figures on the presence of European cinema on export markets (which itself speaks volumes), and so we must refer to the databases held by national cinema promotion agencies (where they exist). I have referred, for example, to Unifrance's figures which relate only to French cinema (which cannot be taken as significant since it has a greater presence on export markets than other European film productions) (cf annex 1).

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<sup>7</sup> *The place of third country film and audiovisual works in European markets* – Report prepared by the European Audiovisual Observatory, Martin KANZLER and André LANGE (May 2008).

At present, national promotion/export strategies are being run with no thought as to the possibility of exploiting European cinema as a specific brand on export markets.

Furthermore, to put it in standard geopolitical terms, the North (excluding the USA) and the South have a shared interest in using the UNESCO Convention on the protection and promotion of the diversity of cultural expressions to promote their film production.

Shared interest: The North has resources and a real market on its home territory, but makes a patchy or poor showing in the countries of the South: it can develop there only with the support of existing local resources (exhibitors, distributors, critics, etc.). The South, on the other hand, may be working its own market, but depends - including for financing - on the North to produce and create. Co-productions with Europe are on record as being a potent enabler for access to the European market.

**What, therefore, can be done in this context and with the assistance of the Convention on the protection and promotion of the diversity of cultural expressions, to increase the supply of foreign films in Europe and conversely to open up the market for European cinema outside Europe?**

1. Have a presence at UNESCO on the Convention agenda.

As I mentioned earlier, the UNESCO Convention gives a key role to participation of civil society (article 11) in protecting and promoting cultural diversity. An ad hoc committee formed of European and world cinema professionals should be set up as a representative NGO with UNESCO to be actively involved in the Convention's work, both in the Conference of Parties (the Convention's supreme body) and the Intergovernmental Committee (its executive) to have an advisory and watchdog role in matters relating to the cinema.

A number of NGOs already attend Intergovernmental Committee proceedings, and gave evidence to it for the first time at its last session.

This is an important approach, because the Intergovernmental Committee, acting under the authority of all the Parties, is where the guiding principles for implementation of the Convention will be formulated.

2. How to put the Convention into practice.

It is not just about taking action towards the UNESCO organs and bodies, but also acting at the business end. Close cooperation between professionals in the different countries to train, learn, share the (considerable) resources of the cinema : the history of cinema, a knowledge of legislation that promotes the cinema (quotas, for example), a knowledge of intellectual property rights and copyright, training in production, funding networks and services, writing, film-making and post-production techniques. This is what leads to the sharing of best knowledge and best practices.

They include:

- Training in legislative provisions that help to create an enabling environment for the development of a film industry (broadcasting quotas, tax shelters); there are big gaps in the knowledge of such provisions in the regions of the South, and the development of expertise is required to strengthen the legislation in many countries.
- Knowledge of and respect for copyright which, while covered by international conventions and a sanction under the TRIPS Agreement, are insufficiently protected by national legislation in some regions of the world (many personal accounts by African professionals on this) which is damaging to the general structure of the film industry.

- The standard matters taught by film schools on the different aspects of the film production chain (production, film making, distribution, new media, scriptwriting, accounting, financing) for which North-South partnerships should be considered, including public/private partnerships (school twinning).
- Co-productions. The clear fact that North-South co-productions are a factor in facilitating access to the European market is a strong reason for stepping-up North-South co-productions.
- Film distribution partnerships should be formed to facilitate two-way access - by films from the South to the European market, and by European films to markets in the South - with a focus on development of the online market.

This is not a complete list, but strives to show that involvement by professionals at all levels is essential to enable such developments.

- Financing: The fund for cultural diversity provided for by the Convention should be leveraged for the actions listed above.
- Article 19 makes arrangements for exchange, analysis and the dissemination of information. The Council of Europe has an irreplaceable instrument for data collection and analysis in the European Audiovisual Observatory. Thought should be given to the possibility of associating such institutions with the development of the Convention. Clearly, there is a strong case for a similar observatory to the European Audiovisual Observatory being established at some future point, but with a more global remit.

A network should be established of human resources in Europe that are available and ready to help and promote learning and training in the least developed countries.

Yvon Thiec  
13 September 2008

## ANNEX 1

## Ciné-Chiffres internationaux et diffusions TV (longs métrages français) / UNIFRANCE

## Monde

## Données cinéma des films français - Monde

Année	Nombre de films	Recettes cumulées (€)	Nombre d'entrées	Nombre de copies	Nombre de pays
2008	Nos cumuls de l'année en cours seront publiés une fois l'année close				
2007	364	326 461 769	66 563 023	6 843	50
2006	356	322 033 859	61 012 019	7 087	50
2005	359	380 831 757	75 762 551	7 250	66

## Données TV des films français - Monde

Année	Nombre de films diffusés	Nombre de diffusions cumulées	Nombre de chaînes TV
2007	73	124	9
2006	602	2 593	32
2005	2 054	15 794	198
2004	2 016	16 339	189

## Amérique du Nord

## Données cinéma des films français - Amérique du Nord

Année	Nombre de films	Recettes cumulées (€)	Nombre d'entrées	Nombre de copies	Nombre de pays
2008	Nos cumuls de l'année en cours seront publiés une fois l'année close				
2007	73	58 287 485	13 021 249	2 316	2
2006	103	81 353 634	16 152 485	2 985	2
2005	92	131 444 592	27 813 434	3 366	2

## Données TV des films français - Amérique du Nord

Année	Nombre de films diffusés	Nombre de diffusions cumulées	Nombre de chaînes TV
2005	391	2 326	28
2004	466	3 444	30
2003	505	3 099	34
2002	460	2 010	29

## Afrique

## Données cinéma des films français - Afrique

Année	Nombre de films	Recettes cumulées (€)	Nombre d'entrées	Nombre de copies	Nombre de pays
2008	Nos cumuls de l'année en cours seront publiés une fois l'année close				
2007					
2006	3	30 416	18 793	11	2
2005	7	915 359	317 182	18	3

## Données TV des films français - Afrique

Année	Nombre de films diffusés	Nombre de diffusions cumulées	Nombre de chaînes TV
2005	20	50	3
2004	17	43	2
2003	13	35	2
2002	6	10	3

## Amérique latine et centrale

## Données cinéma des films français - Amérique latine et centrale

Année	Nombre de films	Recettes cumulées (€)	Nombre d'entrées	Nombre de copies	Nombre de pays
2008	Nos cumuls de l'année en cours seront publiés une fois l'année close				
2007	102	24 247 247	8 404 146	437	6
2006	54	12 472 655	4 450 975	468	5
2005	74	17 131 320	6 270 531	522	11

## Données TV des films français - Amérique latine et centrale

Année	Nombre de films diffusés	Nombre de diffusions cumulées	Nombre de chaînes TV
2005	211	843	21
2004	167	726	16
2003	209	807	16
2002	91	293	12

## Asie

## Données cinéma des films français - Asie

Année	Nombre de films	Recettes cumulées (€)	Nombre d'entrées	Nombre de copies	Nombre de pays
2008	Nos cumuls de l'année en cours seront publiés une fois l'année close				
2007	65	37 092 969	6 513 524	849	7
2006	57	27 007 779	5 114 597	713	6
2005	43	38 503 136	6 842 415	618	11

## Données TV des films français - Asie

Année	Nombre de films diffusés	Nombre de diffusions cumulées	Nombre de chaînes TV
2006	241	1 485	23
2005	312	2 002	26
2004	309	1 711	19
2003	334	2 123	20

## Moyen-Orient

## Données cinéma des films français - Moyen-Orient

Année	Nombre de films	Recettes cumulées (€)	Nombre d'entrées	Nombre de copies	Nombre de pays
2008	Nos cumuls de l'année en cours seront publiés une fois l'année close				
2007	3	678 203	112 406	42	5
2006	17	2 766 506	528 517	86	5
2005	25	2 656 929	443 448	37	6

## Données TV des films français - Moyen-Orient

Année	Nombre de films diffusés	Nombre de diffusions cumulées	Nombre de chaînes TV
1999	32	43	4
1998	71	113	6

## Océanie

## Données cinéma des films français - Océanie

Année	Nombre de films	Recettes cumulées (€)	Nombre d'entrées	Nombre de copies	Nombre de pays
2008	Nos cumuls de l'année en cours seront publiés une fois l'année close				
2007	27	14 096 148	2 143 567	172	1
2006	10	4 362 514	791 229	0	1
2005	4	2 665 757	494 861	22	2

## Données TV des films français - Océanie

Année	Nombre de films diffusés	Nombre de diffusions cumulées	Nombre de chaînes TV
2005	114	131	4
2004	107	140	4
2003	122	194	4
2002	147	193	5