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The Role of Global Media Governance

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ABSTRACT

There is a growing emphasis on free trade in global media governance, which could rock the foundations of media regulation in western democracies. While the US government pushes for the further liberalization of audiovisual services under the umbrella of the General Agreement on Trade in Services (GATS), other countries are less enthusiastic. They see the World Trade Organization (WTO) as a threat to their media culture. This article discusses the implications of the GATS for societal regulation of the media and the role of UNESCO's new Convention on Cultural Diversity (CCD). The conclusion is that the liberalization of audiovisual services will prevent several media regulation measures: quota regulations, support programmes for the audiovisual industry and the funding of public service broadcasting are all potentially at risk. Additionally, UNESCO's efforts to promote and protect cultural diversity appear unlikely to stop this development.

Key Words cultural diversity, GATS, global media governance, liberalization, regulation

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Global free trade is increasingly important. This 'tilting to trade' of global media governance, as Ó Siochrú and Girard (2002: 124) express it, poses a challenge for nation-states and their media policies. In the end, this shift might dramatically restrict the possibilities of statutory media regulation, resulting in a purely commercial media landscape. However, there is an effort to resist these developments in some countries. In many western democracies, the World Trade Organization (WTO) and its General Agreement on Trade in Services (GATS) are seen as a threat to national media regulation. While the US government pushes for a further liberalization of audiovisual services, other countries are more reserved and fear increased commercialization. They claim that public service broadcasting, quotas for local content and programmes of support for the audiovisual industry are all at stake. Accordingly, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has been pulled back into the arena of global media governance. By representing a non-economic perspective on the media, it hopes to justify regulation that considers the media as not just another commodity.

This article aims to explore the influence of global media governance on media regulation and the potential implications of ongoing liberalization. In what follows, I argue that the possibilities of societal regulation of the media are being restricted in the current era of global media governance. After a brief presentation on the WTO and its free trade agreements, I go on to consider the immediate and possible future implications of the GATS for media regulation at the European and national level. UNESCO's role in global media governance is then examined, with a special focus on the new Convention on Cultural Diversity (CCD). In the concluding section, I look at the relationship between the GATS and the CCD.

The development of global media governance

Media regulation is traditionally the task of (national) governments.[1] Since the media are not just any other business (McQuail, 2005: 233), societal regulation going beyond the economic is often deemed necessary. In Europe especially, after the Second World War, media policy was heavily influenced by normative and political considerations (van Cuilenburg and McQuail, 2003: 193). Today, it is still felt and argued that more than a mere economic approach to regulation is needed.

In the last decade, there has been an observable shift from media regulation to media governance. On the one hand, self- and co-regulation are becoming more important. On the other hand, the influence of non-national regulation is increasing as well (Puppis, 2007: 59–63). In Europe, the

European Union (EU) is today a major player in broadcasting regulation. Additionally, global media governance is becoming more relevant. International governmental organizations (IGOs) have existed since the 19th century; however, global media governance has only changed substantially during the last few years. The development of global media governance and the formation of IGOs in the media sector can be differentiated into three phases (Ó Siochrú and Girard, 2002: 119–27):

1. *The 19th century to Second World War:* Economic and technical developments were the stimulus for international collaboration. Multilateral cooperation became necessary with respect to communications technology: to allow for interconnection of national telecommunications networks and to coordinate the use of frequencies, predecessors of the International Telecommunications Union (ITU) were founded. Additionally, 'concern was rising about the economic rights of industrial inventors . . . and creative artists' (Ó Siochrú and Girard, 2002: 120): the Berne Convention for the Protection of Literary and Artistic Works was adopted to protect copyright at a global level. Today, the World Intellectual Property Organization (WIPO) administers the convention.
2. *Second World War to 1990s:* The second phase was shaped by the newly institutionalized United Nations. In the aftermath of the Second World War, the human rights aspect became more important in global media governance. For example, UNESCO, one of the UN's suborganizations, is especially concerned with culture and media and it strives to protect freedom of expression. While UNESCO was paralysed during the Cold War (Sinclair, 2004), today the organization sets a high premium on promoting and protecting cultural diversity.
3. *Since the 1990s:* 'The third phase is characterized by the rise and consolidation of the liberalization agenda in media globally' (Ó Siochrú and Girard, 2002: 124). Not only has free trade become the new focal point of global governance in the media sector, there has been a 'power shift' (Raboy, 2002: 7) to the WTO, an IGO outside the UN family, which administers agreements on free trade in goods and services and on trade-related aspects of intellectual property rights. The WTO's emphasis on trade liberalization puts pressure on societal regulation of electronic media.

Rather than examining global media governance from its beginnings, this article aims to explore the third phase in more depth. The

Framework agreement	Agreement establishing the WTO		
Trade agreements	GATT	GATS	TRIPS
	Basic principles	Basic principles	Basic principles
	Other goods agreements and annexes	Services annexes	
	Countries' schedules of market access commitments	Countries' schedules of specific commitments and MFN exemptions	
Dispute Settlement	Dispute settlement understanding		
Transparency	Trade policy review mechanism		

Source: WTO (2007: 24).

Figure 1 The WTO agreements

strong emphasis on liberalization and on purely economic aspects of the media – together with the power of the WTO – has the potential to rock the foundations of media regulation in western democracies, bringing about highly commercialized media landscapes and subordinating cultural objectives to competition. Regulatory measures implemented for social, political or cultural reasons may be incompatible with the GATS.

WTO – free trade to the fore

The most important and most powerful player in the third phase of global media governance is the World Trade Organization (WTO). Its mission is to eliminate barriers to international trade. Unusually for an IGO, the WTO was given remarkable powers to sanction breaches of the rules. Today, the WTO administers agreements that cover trade in goods (the GATT), trade in services (the GATS) and trade-related aspects of intellectual property rights (the TRIPS) (see Figure 1).

The General Agreement on Tariffs and Trade

The General Agreement on Tariffs and Trade (GATT) deals with international trade in goods. The basic principles of the agreement are non-discrimination and market access (GATT, Articles I–III and XI):

- *Non-discrimination* The most favoured nation (MFN) principle prohibits discrimination between a country's trading partners. Benefits granted to one trading partner have to be granted to all other WTO member states as well. The principle of national treatment forbids the discrimination of imported goods compared to locally produced goods. However, national treatment only applies once a product has entered the market allowing for customs duties. Therefore, market access is crucial.
- *Market access* For competition to take place at all, foreign goods first require market access. Hence, the WTO member states committed themselves to lowering trade barriers (customs duties or quotas that restrict quantities selectively) in so-called rounds of trade negotiations.

The GATT is relevant to the media in two ways. First, the basic principles (non-discrimination and market access) apply to cross-border trade with cultural goods like films, CDs, books, newspapers and magazines. However, with respect to print media, markets are mostly confined by language areas (or even by national or regional borders). Trade conflicts are therefore unlikely, with the famous exception of the 'Canada Periodicals' case (Graber, 2003: 289–90). Second, the GATT contains an exception from the national treatment principle for the screening of motion pictures. This allows for the preferential treatment of local movies. Apart from the South Korean example, these screen quotas are largely without any practical relevance (Graber, 2004a: 197–200).

The Agreement on Trade-Related Aspects of Intellectual Property Rights

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) brings the protection of copyright under world trade regulation. Similarly to the other WTO agreements, the basic principles are MFN and national treatment (TRIPS, Articles 3 and 4). The TRIPS commits all member states of the WTO to comply with the aforementioned Berne Convention – regardless of whether they are signatory states of the convention or not. Reasons for the adoption of the TRIPS lay in the rather slow operation of the WIPO machinery and the fact that it had no power to directly sanction misconduct. While enforcement of WIPO conventions is the responsibility of the signatory states, the TRIPS allows for the imposition of penalties by the WTO's Dispute Settlement Body. The ability to impose drastic trade sanctions considerably strengthens the enforcement of copyrights, even in developing countries – which meets the interests of the big companies (Freedman, 2006: 22; Graber, 2003: 220–2; Pauwels and Loisen, 2003: 303).

The General Agreement on Trade in Services

The General Agreement on Trade in Services (GATS), dealing with governmental measures regarding trade in services, is especially relevant for the electronic media. The agreement covers audiovisual services (film and broadcasting) as well as services in telecommunications. While the basic principles in the GATT apply to all sectors of the economy, the GATS consists of both general and specific commitments. The general commitments apply to all service sectors directly (GATS, Articles II and III):

- According to MFN, benefits granted to services and service suppliers residing in one member state have to be also granted to services and service suppliers from other WTO member states. However, there is one significant difference from the GATT. Back in 1995, it was agreed that individual countries could make exemptions from the MFN principle of non-discrimination for a limited, time period (these so-called MFN exemptions still persist).
- According to the transparency principle, governments have to publish all relevant regulations affecting trade in services.

The specific commitments of the GATS only apply if a member state has opted to liberalize a certain service sector during trade negotiations (Articles XVI and XVII):

- The principle of market access should guarantee that governments do not take measures to prevent the access of foreign services or service suppliers to their domestic markets.
- According to the principle of national treatment, foreign services and service suppliers cannot be discriminated against vis-a-vis domestic services and service suppliers.

To fully understand which commitments were entered into in a particular service sector, it is necessary to take a look at individual countries' schedules of specific commitments and lists of MFN exemptions.

Implications of the GATS for media regulation

Given the above elaboration, what are the implications of the GATS for the regulation of electronic media? This section briefly considers the status quo before taking a look into possible outcomes of future trade negotiations.

Status quo

At the moment, the implications of the GATS for media regulation are rather limited. It is necessary, however, to distinguish between telecommunications and audiovisual services.

In telecommunications, the full impact of the service agreement has already taken effect. In 1998, the so-called Agreement on Basic Telecommunication was adopted as the fourth protocol of the GATS. Accordingly, the scope of the GATS was broadened to the whole telecommunications sector. The signatory states of the protocol, on the one hand, committed themselves to the liberalization of basic telecommunications services. On the other hand, they now have to comply with certain regulatory principles. In the meantime, over 90 countries made specific commitments in telecommunications, among them all the industrialized nations. Therefore, the fourth protocol nowadays affects over 90 percent of world trade in telecommunications services (Geradin and Kerf, 2004: 130, 144–5; Luff, 2004: 45–8).

While the GATS applies to audiovisual services as well, its impact so far has been minor in this sector. Fewer than 30 countries would commit to free trade in this sector. Looking at western democracies, only the US and New Zealand opted for the liberalization of (almost) all audiovisual services. Neither the EU and its member states nor other European countries, Canada or Australia have yet made any specific commitments to liberalize broadcasting or film markets. Moreover, these countries have requested extensive exemptions from the MFN principle. Accordingly, most countries only have to comply with the transparency principle. Looking at the EU's role, it seems rather unusual at first that the EU resists the WTO's liberalization attempts. After all, the EU is normally characterized as adopting a liberal approach to the audiovisual sector (Wheeler, 2007) and there is said to be a wide gap between the EU's cultural diversity rhetoric and the regulatory instruments put in place (Burri-Nenova, 2007). Thus, it might be assumed that the EU would be more interested in protecting the European audiovisual industry than in cultural objectives. The EU, however, is not a unitary actor and it is confronted with a difficult balancing of 'both economic versus cultural and subsidiarity versus supranationality concerns' (Biltereyst and Pauwels, 2007: 38). Moreover, the EU itself has taken a number of initiatives in support of the cultural industries (Pauwels et al., 2007). In this respect, therefore, for economic and cultural reasons, the EU's negotiating position is understandable.

Future WTO negotiations

While MFN exemptions and the absence of specific commitments prevent a liberalization of world trade in audiovisual services at the moment, it would be a mistake to underestimate the possible consequences of the GATS. Although the Europeans and their partners have been able to postpone the liberalization of the audiovisual sectors for now, the sector is not 'safeguarded against future attempts at liberalization' (Pauwels and Loisen, 2003: 306). Already in 2001 another trade negotiations round began in Doha (Qatar). Due to irreconcilable differences, these negotiations have been temporarily suspended.

Despite the setbacks in WTO negotiations, the GATS might gain importance for electronic media in the future. Four aspects that could restrict the possibilities of media regulation are subject to future WTO negotiations (Graber, 2003: 140–4; 2004a: 206–14; 2004b: 56–64; Pauwels and Loisen, 2003: 306; 2004: 494–5; Wagner, 2001: 3–4):

- First, the GATS builds upon the principle of progressive liberalization (Article XIX): commitments in the audiovisual sector are automatically part of future trade negotiations rounds. Primarily, it is the US government, considering the economic interests of its own audiovisual production industry, which presses for a liberalization. On the one hand, the MFN exemptions still in effect will expire eventually (Pauwels and Loisen, 2003: 298–9; 2004: 491). On the other hand, the US requests specific commitments (national treatment and market access) in order to continue the liberalization of the audiovisual sector. Until now, neither the EU nor national governments have agreed to any concessions in this respect.
- Second, there is disagreement regarding government subsidies for service industries. At the moment such subsidies are permitted as long as they do not infringe upon general or specific commitments in a certain service sector. Mainly the US government pushes for an agreement that restricts the legitimacy of service subsidies in general.
- Third, the US is questioning the distinction between the GATT and the GATS. The US government proposes to classify products that can be delivered over or downloaded on the Internet (i.e. movies, TV shows, music) as 'virtual goods'. It is argued that these products have a tangible equivalent (i.e. DVD, CD). Following this logic, audiovisual services would not be covered by the GATS but by the GATT. This implies a far stronger liberalization.

- Fourth, not only is the distinction between goods and services disputed, so too is the existing classification scheme within the GATS. By referring to the technological convergence between the telecommunications and the broadcasting sectors, the US government has proposed a reclassification. This proposition is based on the argument that some subsectors currently subsumed under audiovisual services would be better classified under telecommunications. Obviously, this would imply a stronger liberalization of the said subsectors.

Possible future implications of the GATS for audiovisual services

Progressive liberalization, a restriction of service subsidies and reclassification are viewed as serious threats to media regulation by Europe and Canada. They fear that concessions in future trade negotiations will result in increased commercialization. Indeed, media regulation at European and national level would be directly affected.

To begin with, progressive liberalization, involving the unfettered application of the GATS principles to audiovisual services, has implications for media regulation (Bernier, 2004a: 226–31; Graber, 2003: 241–83; Krajewski, 2005: 13–6; Ó Siochrú and Girard, 2002: 64; Pauwels and Loisen, 2003: 306; 2004: 498; Wagner, 2001: 3–4). If the MFN exemptions are not extended or if a WTO member enters into the specific commitments of national treatment and market access, several regulatory measures will be affected (see Figure 2).

Co-production treaties The MFN treatment conflicts with bilateral as well as multilateral co-production treaties, like the Council of Europe's (CoE) European Convention on Cinematographic Co-Production.

Audiovisual production support The MFN treatment is incompatible with European support programmes such as the CoE's Eurimages fund and the EU's MEDIA programme. Regarding specific commitments, national treatment works in contradiction to national support programmes.

Quota regulations The transmission and production quotas for European content in broadcasting contained in the CoE's European Convention on Transfrontier Television (ECTT, Article 10) and in the EU's Audiovisual Media Services Directive (AVMSD, Articles 4 and 5) run counter to the MFN principle. National treatment would prohibit transmission and production quotas for domestic content in broadcasting (i.e. local music or

	Co-production treaties	Support programmes for audiovisual production	Quota regulations	Must-carry obligations
Most-favoured-nation treatment				
National treatment				
Market access				

[a]While trade unions like the European Community are granted an exception from the principle of MFN treatment (GATS, Article V), this cannot be called upon for the regulatory measures discussed here. The quota regulations in the AVMSD and the MEDIA programme accept content from some non-EU member states as European as well. Accordingly, audiovisual services from some non-EU member states are favoured over all the other WTO members.

Figure 2 Possible implications of a progressive liberalization (indicated by shaded cells)[a]

TV productions) that exist in some countries (e.g. Australia, Canada and France). A commitment to grant market access would render quotas for European or national content in broadcasting an impossibility.[2]

Must-carry obligations Must-carry obligations that favour the distribution of domestic radio and TV channels (e.g. in cable networks or on digital platforms) would be prohibited since they infringe the principle of national treatment.

However, as already indicated, the progressive liberalization of audiovisual services is not the only threat to the regulation of electronic media. The possible adoption of an agreement regarding subsidies for service sectors would not only impede any support programmes for the audiovisual industry on a European and national level but would bring the funding of public service broadcasting (i.e. licence fees in most countries) under pressure as well. The latter could lead to the end of the 'dual' broadcasting systems in place in many western democracies.

Finally, attempts at the reclassification of some audiovisual services are of importance too. In the wake of convergence and digitization, it will be difficult to exclude broadcasting from WTO rules (Freedman, 2006: 22; Winseck, 2002: 31). New services like video or audio on demand, podcasting, digital television applications (e.g. electronic programme guides) or even the websites and the dissemination of traditional broadcasting

channels over the Internet could either be classified as e-commerce or 'virtual goods' and be subsumed under the GATT or be classified as telecommunications services – thus bringing liberalization in through the backdoor. This might not only prohibit several regulatory measures for these subsectors but also prevent public service broadcasters from being present on new platforms and from adapting to a changing environment. In the end, with the growing importance of new media, the very existence of non-commercial, public-funded broadcasting could be in danger.

In sum, quota regulations, must-carry obligations, support programmes for the audiovisual industry and the future of public service broadcasting are all at risk. Not surprisingly, politicians, audiovisual production companies benefiting from existing regulation and public service broadcasters in particular are highly critical of such developments. For instance, a representative of the German public broadcaster, ARD, sees media policy in danger and has highlighted the problems a reclassification would cause:

> If audiovisual services were to be liberalised under GATS . . . the most basic and fundamental audiovisual and cultural policies would be at risk or would even become flatly illegal. . . . we must also resist attempts . . . to define anything on the Internet exclusively as electronic commerce: If we allowed this to happen, we would be prevented from extending most pro-active cultural and audiovisual policies to the digital world. . . . we must ensure that audiovisual policies remain legitimate in the digital interactive environment as they were in the analogue world. (Wiedemann, 2004: 5)

Similar concerns were expressed by the European Broadcasting Union:

> We see a clear danger that if too much emphasis is placed on the so-called 'liberalization opportunities' this will backfire and undermine Europe's cultural interests. (EBU, 1999: 2)

> Some of the liberalization requests received would not only erode policy-makers' choice in the future but would also threaten the basic pillars on which the European audiovisual model is based today. (EBU, 2003: 6)

The situation in New Zealand illustrates the implications of GATS commitments for media regulation. At the end of the 1990s, the low percentage of domestic content in television provoked discussions about the necessity of compulsory local content quotas. After the new Labour government was elected in late 1999, it planned to reintroduce quotas for free-to-air broadcasting but was advised 'that such measures would breach the market access and national treatment provisions of the GATS' (Kelsey, 2003: 5). Other options, e.g. support programmes or subsidies, were a

breach of GATS commitments as well. Obviously, there was little scope for media regulation. Helen Clark, New Zealand's prime minister and minister for culture, was quoted as follows:

> We have unilaterally disarmed ourselves on trade but very few others have been so foolish. We're now left with perfectly legitimate calls for local content and people saying 'You can't do that because of GATS'. This seems a bit ridiculous. (*New Zealand Herald*, 10 April 2000, cited in Kelsey, 2003: 5)

UNESCO – bringing cultural diversity back in

Considering these implications, it becomes apparent why a free trade logic is perceived as a threat by many western democracies. They are afraid of the effects of a purely commercial media landscape that cannot be regulated beyond the economic anymore. Particularly, they fear that an increase in commercialization will squeeze public interest programming out of the market. Additionally, they worry about a marginalization of their local (media) culture by successful American audiovisual products.

In this situation, the EU, other European countries and Canada are, at least partly, pinning their hopes on UNESCO. By highlighting the importance of cultural diversity they are attempting a countermanoeuvre to the free trade doctrine of the WTO.[3] The UN's cultural organization is expected to deliver an alternative perspective on the media.

Hence, UNESCO has experienced a sudden return to the arena of global media governance. After the eventful debates surrounding the 'New World Information and Communication Order' in the 1970s and 1980s, UNESCO moved to calmer waters following the withdrawal of the US and the UK from the organization. UNESCO focused on less controversial activities. More recently, however, the organization has been increasingly involved in the promotion of cultural diversity. In 2001, the UNESCO's General Assembly unanimously adopted the Universal Declaration on Cultural Diversity (Resolution 31C/25). The non-binding declaration calls cultural diversity 'the common heritage of humanity'. In the years since, 'moving with astonishing speed' (Harvey and Tongue, 2006: 225), a binding convention on the same issue was prepared and intensely negotiated. This work resulted in the adoption of the Convention on the Protection and Promotion of the Diversity of Cultural Expression (CCD; Resolution 33C/41) in October 2005 – albeit the US voted against it. The convention came into force in March 2007, three months after 30 countries ratified it. For the media, and specifically broadcasting regulation, the convention is highly relevant:

- First, the CCD acknowledges the importance of culture by stating that the 'cultural aspects of development are as important as its economic aspects' (Article 2 (5)).
- Second, and most importantly, the CCD legitimates the regulation of electronic media. The convention entitles its signatory states to adopt measures and policies to 'protect and promote the diversity of cultural expressions' (Articles 2 (2) and 5 (1)). This provision includes the sovereign right to provide opportunities for the production, dissemination and distribution of cultural goods and services (e.g. must-carry obligations; Article 6 (2) (b)), to provide public financial assistance (e.g. support programmes; Article 6 (2) (d)) and to implement measures 'aimed at enhancing diversity of the media, including through public service broadcasting' (Article 6 (2) (h)).

The CCD fills a void in international law: 'Until now, there has been no binding instrument of public international law recognizing the pursuit of the diversity of cultural expression as a legitimate goal of governmental policy' (Graber, 2006: 558–9). The US, however, does not support the convention and views it as a kind of protectionism against the US American film and television industry. According to Jane Cowley, US Department of State, the CCD is 'relatively anti-American' and 'open to misinterpretation' (Free Press, 2005). Robert S. Martin, who was part of the US delegation in UNESCO negotiations, goes even further and connects the convention directly to the WTO trade negotiations:

> The . . . convention . . . is deeply flawed. . . . This convention is actually about trade. . . . Because it is about trade, this convention exceeds the mandate of UNESCO. Moreover, it could impair rights and obligations under other international agreements and adversely impact prospects for successful completion of the Doha Development Round negotiations. (US Department of State, 2005)

Governments outside the US, public service broadcasters and companies benefiting from existing media regulation hope that the convention will curb the liberalization of the audiovisual sector. While the European Commission (2006) points out the CCD's recognition of 'the legitimacy of public policies in protecting and promoting cultural diversity', some officials see it as a counterbalance to liberalization. For instance, the former French minister of culture, Renaud Donnedie de Vabres (2005), believes that the CCD 'allows resistance to the pressures exerted on culture by trade agreements and the WTO'. It comes as no surprise that European public broadcasters are in favour of the CCD too:

> UNESCO is best placed to ensure that audiovisual and cultural policies receive the legally binding recognition on the global level that they deserve. . . . [Cultural diversity] is not about nationalism, and it is not about protectionism. (Wiedemann, 2004: 6)

> The EBU strongly supports . . . a UNESCO convention, not least because the protection and promotion of cultural diversity and media pluralism are an important factor in the European audiovisual model, and of public service broadcasting in particular. (EBU, 2005: 1)

In sum, the UNESCO convention highlights the sovereign right of nation-states to take measures to protect and foster cultural diversity, including media diversity.

Cultural diversity – a false hope?

The question that remains unanswered is whether placing trust in the UNESCO convention is not a false hope. Are the expectations of the CCD to act as a counterweight to the WTO justified or are they just an illusion?

A major shortcoming of the convention is its normative weakness. In contrast to the WTO agreements, the CCD does not impose binding and enforceable obligations on the contracting parties but merely reaffirms the right of states to protect and promote cultural diversity (Graber, forthcoming; Smith, 2007: 37; Wouters and De Meester, 2007: 51).

Nevertheless, since the CCD permits regulatory measures prohibited by the GATS, conflict between the two treaties is a distinct possibility. As long as WTO members that are party to the CCD do not enter specific commitments regarding audiovisual services and as long as the MFN exemptions do not expire, no problem arises (Voon, 2006: 642; Wouters and De Meester, 2007: 51). Thus, most countries are not confronted with a difficult situation as yet. However, the following conflicts could emerge (Bernier, 2004b: 71; Krajewski, 2005: 32–3; von Schorlemer, 2005: 50; Voon, 2006: 639–40):

- First, problems between the GATS and the convention could arise out of the commitment to national treatment (GATS, Article XVII) and the rights of parties at the national level (CCD, Article 6). In particular, the measures that provide opportunities for the production, dissemination and distribution (CCD, Article 6 (2) (b)) and those aimed at providing public financial assistance (CCD, Article 6 (2) (d)) could be inconsistent with national treatment.
- Second, the MFN principle (GATS, Article II) may be in conflict with the co-production and co-distribution agreements explicitly

envisioned in the convention (CCD, Article 12 (e)) and with the postulated preferential treatment for developing countries (CCD, Article 16). Since most countries still assert several MFN exemptions, this is not as yet an issue.

- Finally, a possible new agreement on subsidies for the service sectors would conflict with public financial assistance (CCD, Article 6 (2) (d)) and possibly with measures aimed at enhancing diversity of the media like public service broadcasting (CCD, Article 6 (2) (h)).

At the moment, there is no obvious solution in the event of a conflict between the two treaties. In all likelihood, a complaint against a state adopting regulatory measures in accordance with the CCD but violating provisions of the GATS would be brought before the WTO's Dispute Settlement Body (Wouters and De Meester, 2007: 45). However, there is little scope to invoke the UNESCO convention as a defence against GATS obligations within the framework of a WTO dispute settlement procedure (Smith, 2007: 47; Voon, 2006: 648; Wouters and De Meester, 2007: 35). The reason for this is not only the normative weakness of the CCD but also the relationship between the two treaties.

The conflict clause of the convention makes clear that the convention is not subordinate to any other treaty (CCD, Article 20 (1)). The CCD and other treaties not only have to be applied in a manner that fosters mutual supportiveness, the signatory states must also take the relevant provisions of the convention into account when (1) interpreting or applying other treaties and (2) when entering into other international obligations. 'The first situation could become relevant if WTO Panels were confronted with a dispute between governmental measures on cultural policy and WTO principles of free trade' (Graber, 2006: 566). The second condition applies to the conclusion of new treaties or the amendment of existing ones, e.g. within the WTO framework (Graber, 2006: 567). At the same time, though, the conflict clause confirms existing obligations of states under other treaties (CCD, Article 20 (2)) like the GATS. 'The use of the Convention to preserve policies to protect cultural diversity against the impact of WTO obligations thus seems very limited' (Wouters and De Meester, 2007: 44).

Since the CCD cannot alter the obligations of states under the GATS, it could at least help the WTO dispute settlement authorities in interpreting GATS provisions (Smith, 2007: 52). However, even this is controversial (Wouters and De Meester, 2007: 48). In search of a solution, Graber (2006: 571) suggests several options as to how to link WTO law with the UNESCO Convention on Cultural Diversity when WTO bodies are confronted with a dispute:

- The WTO dispute settlement authorities could 'evolutionarily' interpret the agreements by including justifications of cultural policy. However, they are not allowed to change existing obligations in their sentences.
- A special agreement regulating issues of trade and culture could amend existing WTO law. Considering the different positions of the member states, this seems highly unlikely.
- The WTO legal framework could be amended with a procedural interface linking the treaties allowing for an observation in all conflicts between culture and trade.

Graber (2006: 571) favours the third option; however, 'the problem consists in finding the right place in the WTO architecture in which to insert such a link'. Yet if there were a procedural clause then member states could refer to the convention: 'There is an opportunity for the Convention to be used as a point of reference when the definition of boundaries between trade and culture is discussed in future WTO trade negotiations or dispute settlement procedures' (Graber, 2006: 574). Otherwise, the chances that the WTO bodies take the UNESCO convention into account when deciding on conflicts are probably slim at best. Thus, the CCD's role today is more political than legal. In trade negotiations the convention may strengthen states that are opposing a liberalization of the audiovisual sector (Wouters and De Meester, 2007: 52). Nevertheless, the convention's significance should not be underestimated. For the first time there is a legally binding instrument that justifies regulation for the protection and the promotion of cultural diversity and that recognizes the distinctiveness of cultural assets (Bernier, 2004b; Pauwels and Loisen, 2004; von Schorlemer, 2005).

It is still to be seen what the exact implications of the ongoing but suspended Doha round will be for the regulation of electronic media. However, be it a liberalization of the whole audiovisual sector, be it an agreement on service subsidies or be it a reclassification of some services as 'virtual goods' or telecommunications, the impact on media regulation will be far reaching and could cause a dismantling of existing societal regulation in favour of a commercialized media landscape. Support programmes for the audiovisual industry, must-carry obligations, quota regulations as well as the future of public service broadcasting are all at stake. Regarding convergence and digitalization, a reclassification would be particularly threatening since it could prevent a regulation of new services.

Thus, it is obvious why governments outside the US, public broadcasters and the audiovisual production industry benefiting from the current situation are greatly concerned and pin their hopes at least partly on

the new UNESCO convention. Meanwhile, the allegation of protectionism put by the US government and audiovisual producers in the US cannot be dismissed entirely. Some regulatory measures at least are not just in the interest of the domestic media companies and producers but suit the purpose of strengthening the global competitiveness of the European media industry as well.

With the WTO and UNESCO, two international governmental organizations stand head to head in the global media governance arena. Both pursue very different goals. The first is perceived as a threat to culture. The latter is seen as some kind of knight in shining armour defending the righteous. To precisely predict the future development and potential effects for European and national media regulation is impossible. For the moment, at least, the GATS does not pose any imminent problems for countries that have not yet made specific commitments. Even so, it may well be that audiovisual services become 'bargaining tools for trade officials when attempting to make deals in other areas' (Freedman, 2006: 30) in order to conclude negotiations.

Will there be a further liberalization with consequences for media regulation? Or will a new, fourth phase of global media governance put an end to the current era of free trade? Whether it will still be possible to complement economic with societal regulation depends not least on the nation-states. In the end, it is they who decide which goals to prioritize and consequently under which global framework media regulation is to take place.

Notes

1. Due to different historical developments, media regulation is primarily concerned with broadcasting regulation. Therefore, and taking into account the technological convergence, this article focuses on the electronic media.
2. It is debatable, however, if quotas that prescribe the language and not the origin of content (e.g. quotas for French music in France or Quebec instead of quotas for domestically produced music) would constitute a discrimination. Theoretically, such content could be produced in every country. In reality, however, this may discriminate service providers residing in other language markets (Krajewski, 2005: 16).
3. Given the EU's usual prioritization of economic interests and the aforementioned gap between cultural diversity rhetoric and the regulatory instruments adopted in the AVMSD (Burri-Nenova, 2007), this emphasis on cultural diversity is somewhat surprising. One could argue that policies have to be consistent at all levels in order to be defensible. Whether this inconsistency will be a disadvantage in future trade negotiations remains to be seen. I thank an anonymous reviewer for this last point.

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