

THE UNESCO CONVENTION ON THE DIVERSITY
OF CULTURAL EXPRESSIONS

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CULTURAL EXPRESSIONS

A Tale of Fragmentation
in International Law

Toshiyuki KONO
Steven VAN UYTSEL
(eds.)



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FOREWORD

The editors are very pleased to present *The UNESCO Convention on the Diversity of Cultural Expressions: A Tale of Fragmentation in International Law*. This book aims at discussing the UNESCO *Convention for the Promotion and Protection of the Diversity of Cultural Expressions* (“Convention on the Diversity of Cultural Expressions”) from the viewpoint of its potential relationships with other fields of international law.

It is generally known that one of the main driving forces behind this Convention was the inability of the international trade regime to properly deal with cultural expressions and more specifically to deal with the audiovisual sector. This deadlock in the trade regime inspired civil society to take action and look for a new forum to discuss, and eventually adopt, an international instrument defending the cultural content of the audiovisual sector, thus putting in place the special trade measures required for its protection.

These initiatives of civil society resulted in a shift towards UNESCO. Within a relatively short span of time, UNESCO did not only initiate negotiations, it also adopted a new binding international instrument. The shift of venue had more implications than only the adoption of a new instrument. Trade was no longer the only issue at stake. The negotiators raised issues of tangible and intangible cultural heritage, human rights law issues and development law issues. All of these issues, some more explicitly than others, were addressed within the Convention on the Diversity of Cultural Expressions.

Cultural heritage, human rights and development issues, just like trade, are dealt with in other international legal instruments. Yet, the new UNESCO Convention on the Diversity of Cultural Expressions also purports to have something to say on these issues. To what extent this Convention effectively has any influence on the other international legal instruments is the subject of this book. To draw this study of the fragmentation of international law to an end, we have opted to add a section that examines the extent to which the Convention on the Diversity of Cultural Expressions has an influence on the legislation of two jurisdictions, Europe and South Africa.

This book has been a long journey. The contributors deserve our warm gratitude for their patience. We thank them for staying with us until the end of the project.

We would like to acknowledge the help of Carol Lawson and Yuji Matson for their linguistic editorial work. Finally, we would like to thank Tom Scheirs from

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Toshiyuki Kono & Steven Van Uytsel
Fukuoka, 1 May 2012

CONTENTS

<i>Foreword</i>	v
<i>List of Abbreviations</i>	xvii

INTRODUCTORY PART. POSITIONING THE CONVENTION ON THE DIVERSITY OF CULTURAL EXPRESSIONS

The Convention on the Diversity of Cultural Expressions. Beyond a Trade and Culture Convention Toshiyuki KONO and Steven VAN UYTSEL	3
1. Introduction	3
2. Trade versus Culture, a Tension with a History	6
2.1. The Aftermath of World War I: A Destroyed European Film Industry	6
2.2. The Havana Charter: Conditioned Screen Quotas	7
2.3. GATT's Confirmation of Protectionist Measures in the Form of Screen Quotas	8
2.4. The Uruguay Round: From Cultural Specificity to Cultural Exception	11
2.5. The Creation of a Legal Standstill within GATS	14
2.6. Negotiating further Liberalization of the Audiovisual Sector	16
3. Cultural Tensions in the Trade Regime	18
3.1. Civil Society Groups take Initiative	18
3.2. Shifting the Venue	20
3.3. Development and Culture	22
3.4. A Dual Concept of Culture	25
4. Negotiating in the Wake of a Century's Long Tension	28
4.1. The Trade and Culture Debate governs	28
4.2. Promotion of Cultural Development	29
4.3. Non-Trade Related Issues Briefly Discussed	30
5. Redirecting the Focus	31
5.1. The Experts embrace Culture in all Its Aspects	31
5.2. The intergovernmental Meetings affirm the Broad Cultural Approach	35
6. Trade and Beyond, Mapping out the Book	39

PART I.
THE CONVENTION ON THE DIVERSITY OF CULTURAL
EXPRESSIONS REVISITED

The Convention on the Diversity of Cultural Expressions. A Critical
Analysis of the Provisions
Rostam J. NEUWIRTH 45

1. The Text of the Convention on the Diversity of Cultural Expressions
Revisited. 45
2. The Title 46
3. The Preamble. 48
 - 3.1. Substantial Remarks 49
 - 3.2. The Preamble Revisited. 52
4. Title I: Objectives and Guiding Principles 53
5. Title II: Scope of Application 55
6. Title III: Definitions 55
7. Title IV: “Rights and Obligations of Parties” 57
8. Title V: “Relationship to Other Instruments” 62
 - 8.1. The Evolution of Article 20 of the Convention on the Diversity
of Cultural Expressions. 63
 - 8.2. An Evaluation of Article 20 of the Convention on the Diversity
of Cultural Expressions. 65
9. Title VI: Organs of the Convention on the Diversity of Cultural
Expressions 66
10. Title VII: Final Clauses and the Annex. 67
11. Concluding Remarks 68

The Impact of the U.S. Position in the Trade and Culture Debate.
Negotiation of the Convention on the Diversity of Cultural Expressions
Carol BALASSA 71

1. Introduction: The Debate over Applying Trade Rules to Motion
Pictures. 71
2. Preparations to Negotiate Trade in Services 72
 - 2.1. The United States Report on Trade in Motion Pictures. 72
 - 2.2. The Trade Argument 73
 - 2.3. The Culture Argument 75
3. The Uruguay Round. 76
 - 3.1. Confrontation with the EU 76
 - 3.2. Focus on Economic Issues 77
 - 3.3. Outcome of the Uruguay Round 79

4.	The Doha Development Agenda and the Audiovisual Sector	80
4.1.	The Audiovisual Objectives Paper.	80
4.2.	Change in Tone.	81
4.3.	Change in Substance	82
4.4.	Impact	83
5.	The Convention for the Protection of the Diversity of Cultural Expressions	84
5.1.	A Disguised Trade Negotiation within UNESCO	84
5.2.	U.S. Perspective on Trade Implications of the Convention.	85
5.3.	Human Rights Implications of the Convention on the Diversity of Cultural Expressions	88
5.4.	Outcome of the Negotiation.	89
6.	Assessment of the U.S. Position in the Trade and Culture Debate.	89
7.	Conclusion: Impact of the U.S. Position on the Convention on the Diversity of Cultural Expressions in International Trade Negotiations . .	91

The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions. A Cultural Analysis

Ivan BERNIER	95	
1.	Introduction	95
2.	The Purpose and Scope of the Convention on the Diversity of Cultural Expressions	98
3.	The Action Plan of the Convention on the Diversity of Cultural Expressions with regard to the Protection and Promotion of the Diversity of Cultural Expressions	101
3.1.	The Sovereign Right of States to Formulate and Implement their Cultural Policies as a Basis for Cultural Action	102
3.2.	Creating the Conditions for Cultural Expressions to Flourish and to Freely Interact in a Mutually Beneficial Manner	105
3.2.1.	Actions to be undertaken by the parties within their territory	106
3.2.2.	The actions to be undertaken by the parties at the international level.	110
3.2.3.	Actions in support of cooperation for development.	112
4.	The Potential Conflicts between the Convention on the Diversity of Cultural Expressions and Other Agreements	116
4.1.	The Relationship between the Convention on the Diversity of Cultural Expressions and Other Treaties (Article 20)	117
4.2.	International Consultation and Coordination (Article 21).	120
5.	Conclusion.	121

PART II.
HERITAGE LAW & THE CONVENTION ON THE DIVERSITY OF
CULTURAL EXPRESSIONS

The 1972 World Heritage Convention and the Convention on the Diversity of Cultural Expressions Federico LENZERINI	127
1. Introduction	127
2. The Evolution of International Law on Culture: From Cultural Property, Through Cultural Heritage, to a Holistic Vision of Culture ..	128
3. The World Heritage Convention and Its System of Implementation	131
4. The Interaction between the Convention on the Diversity of Cultural Expressions and the World Heritage Convention	136
4.1. Mutual Supportiveness in Interpretation.	136
4.2. Complementarity	138
4.3. Potential Conflicts	140
5. Conclusion	142
 Intangible Cultural Heritage and the Convention on the Diversity of Cultural Expressions Steven VAN UYTSEL and Toshiyuki KONO.	 143
1. Introduction	143
2. Establishing a Common Framework.	144
2.1. Intangible Cultural Heritage, Cultural Expressions and Safeguarding	144
2.2. Communities: Part of the Convention on the Diversity of Cultural Expressions?	146
3. Interaction at the Operational Level	148
3.1. Mutually Supporting Obligations and Conflicting Ones	148
3.2. Conflict Regulating Provisions	150
3.3. Mutual Supportiveness by Implementing a Double Scheme	151
3.4. The ICH Convention Will Take Priority in Cases of Conflict . . .	152
3.4.1. The role of civil society	152
3.4.2. Poverty eradication	154
4. Interaction at the Interpretation Level	157
4.1. Existing International Law for Interpreting New Treaties	157
4.2. Little Space for Evolutionary Interpretation because of Shared Premises	159
5. Conclusion	161

PART III.

HUMAN RIGHTS & THE CONVENTION ON THE DIVERSITY OF
CULTURAL EXPRESSIONSCultural Rights and the Convention on the Diversity of Cultural
Expressions. Included or Ignored?

Yvonne DONDERS	165
1. Introduction	165
2. Cultural Rights as Human Rights	166
2.1. Cultural Rights in the Narrow and in the Broad Sense	167
2.2. The Cultural Dimension of Human Rights	168
3. UNESCO and Cultural Rights	170
4. UNESCO Universal Declaration on Cultural Diversity	174
5. The Convention on the Protection and Promotion of the Diversity of Cultural Expressions	175
5.1. Cultural Rights in the Convention on the Diversity of Cultural Expressions	176
6. Conclusion	180

Civil and Political Rights and the Convention on the Diversity of Cultural
Expressions

Eva BREMS	183
1. Introduction	183
2. The Convention on the Diversity of Cultural Expressions as an Instrument Furthering the Right to Freedom of Expression and the Right of Access to Information and Ideas	184
2.1. Drafting Process	184
2.2. The Convention on the Diversity of Cultural Expressions	186
2.3. Analysis	188
2.3.1. Room for state discretion in the implementation of obligations to fulfil	188
2.3.2. Mandatory measures to implement obligations to fulfil	189
2.3.3. The free marketplace of ideas	190
3. The Convention on the Diversity of Cultural Expressions as an Instrument Restricting the Right to Freedom of Expression and the Right of Access to Information and Ideas	192
3.1. The Convention on the Diversity of Cultural Expressions and Its Critics	192
3.2. Analysis	194
3.2.1. Legitimate restrictions	194

3.2.2.	Conflicting rights	195
3.2.3.	The risk of abuse	198
4.	Conclusion	200

The Convention on the Diversity of Cultural Expressions. What is Its Added Value for Minorities and Indigenous Peoples?

Anna MEIJKNECHT	201	
1.	Introduction	201
2.	UNESCO and Cultural Diversity	202
3.	Minorities, Indigenous Peoples and Cultural Diversity	205
4.	The Convention on the Diversity of Cultural Expressions in the Context of Other Instruments on Minorities and Indigenous Peoples ..	207
5.	Looking for the Added Value of the Convention on the Diversity of Cultural Expressions	212
5.1.	The Culture of Minorities and Indigenous Peoples	212
5.2.	Linguistic Minorities and Indigenous Peoples	215
5.3.	Minorities and Indigenous Peoples in Developing Countries ...	218
5.4.	Intra-State Policy: Interaction Between the Individual and Institutional Stakeholders	219
5.5.	International Cooperation and the Rights of Transfrontier Minorities and Indigenous Peoples	222
6.	Conclusion	225

PART IV.

TRADE AND INTELLECTUAL PROPERTY & THE CONVENTION ON THE DIVERSITY OF CULTURAL EXPRESSIONS

The Convention on the Diversity of Cultural Expressions and Its Impact on the “Culture and Trade Debate”. A Critical Evaluation after 5 Years

Rostam J. NEUWIRTH	229	
1.	Introduction	229
2.	Milestones in “Culture and Trade” Conflicts	232
2.1.	The Nature of “Culture and Trade Conflicts” and Their Part in the “Trade Linkage Debate”	232
2.2.	‘Culture and Trade Conflicts’ from the Past to the Adoption of the Convention on the Diversity of Cultural Expressions	236
3.	The ‘Culture and Trade Debate’ after the Adoption of the Convention on the Diversity of Cultural Expressions	242
3.1.	Elements of Criticism of the Convention on the Diversity of Cultural Expressions	242

3.2.	The Impact on International Trade	244
3.3.	The Work of UNESCO and the Main Bodies of the Convention on the Diversity of Cultural Expressions	246
4.	“Moments of Truth”: The Convention on the Diversity of Cultural Expressions Put into Practice	253
4.1.	The WTO Dispute Settlement Body and <i>China – Audiovisual Entertainment Products</i>	253
4.2.	The European Court of Justice	259
4.3.	The UNESCO Convention and Regional Trade Agreements (RTAs): The Case of Korea (and Why the US Might Want to Join the UNESCO Convention)	259
5.	Conclusion	270

Substantive WTO Law and the Convention on the Diversity of Cultural
Expressions

	Tania VOON	273
1.	Introduction	273
2.	The Potential Clash Regarding Cultural Goods and Services	276
2.1.	The Cultural Character of Goods and Services	276
2.2.	National Treatment	277
2.3.	Most Favoured Nation Treatment	278
2.4.	Market Access	279
3.	Managing the Clash Regarding Cultural Goods and Services	281
3.1.	Subsidies	281
3.2.	Safeguards	282
3.3.	Article IV(a) of GATT 1994	284
3.4.	General Exceptions	285
3.5.	Special and Differential Treatment	287
3.6.	Preferential Trade Agreements	288
4.	Conclusion	288

Intellectual Property and Cultural Diversity. Two Views on the
Relationship between Market and Culture

	Branislav HAZUCHA	291
1.	Introduction	291
2.	Intellectual Property and the Convention on the Diversity of Cultural Expressions	293
3.	Culture, Free Market and Intellectual Property	300
3.1.	Incentives and Rewards	301
3.2.	Critique of Intellectual Property Regimes	305
3.3.	Intellectual Property as a Means for Cultural Diversity	309

4.	Culture, Protectionism and Redistributive Justice	313
4.1.	Distorted International Market and Liberalised Trade	314
4.2.	Intellectual Property and Redistributive Justice.	318
4.3.	Intellectual Property and Intangible Cultural Heritage	324
5.	Conclusion.	328

PART V.

DEVELOPMENT & THE CONVENTION ON THE DIVERSITY OF CULTURAL EXPRESSIONS

International Cooperation on Development and the Convention on the Diversity of Cultural Expressions

Lilian RICHIERI HANANIA and H��l��ne RUIZ FABRI	333
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1.	Introduction	333
2.	Development and International Trade Provisions	336
3.	Cooperation on Development in Favour of Cultural Diversity	340
3.1.	General Cooperation Modalities.	340
3.2.	Cooperation in Favour of Development.	344
3.2.1.	Preferential treatment	345
3.2.2.	Financial assistance	348
	A. Assistance in the framework of Article 18 of the Convention on the Diversity of Cultural Expressions	348
	B. General financial assistance.	350
3.2.3.	Collaborative agreements	351
4.	Conclusion.	352

Sustainable Development and the Convention on the Diversity of Cultural Expressions

David THROSBY	353
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1.	Introduction	353
2.	Sustainable Development	354
3.	Cultural Diversity.	356
4.	The Convention on the Diversity of Cultural Expressions	358
5.	Conclusion.	361

PART VI.

IMPLEMENTATION OF AND VIEWS ON THE CONVENTION ON
THE DIVERSITY OF CULTURAL EXPRESSIONS

The Convention on the Diversity of Cultural Expressions and the European Union. The Quest for Competence and Implementation Evangelia PSYCHOGIOPOULOU	365
1. Introduction	365
2. European Union Cultural Competences: Delineation and Exercise	369
3. the Convention on the Diversity of Cultural Expressions and the EU’s Involvement in Its Drafting	373
4. The Convention on the Diversity of Cultural Expressions as a Test-Bed for the Demarcation of Cultural Powers between the European Union and Its Member States	377
5. Implementing the Convention on the Diversity of Cultural Expressions: The Way Ahead	382
5.1. Free Movement, the Internal Market and the Convention on the Diversity of Cultural Expressions	383
5.2. Competition Law and the Convention on the Diversity of Cultural Expressions	386
5.3. External Relations and the Convention on the Diversity of Cultural Expressions	390
6. Concluding Remarks	393
Implementation of the Convention on the Diversity of Cultural Expressions in South Africa. Perspectives from a ‘Developing Country’ Christa RAUTENBACH	395
1. Introduction	395
2. South Africa’s Role Leading up to the Convention on the Diversity of Cultural Expressions	398
3. Application of the Convention on the Diversity of Cultural Expressions in South Africa	402
3.1. Application of the Convention on the Diversity of Cultural Expressions in General	402
3.2. South Africa’s Expectations in Terms of the Convention on the Diversity of Cultural Expressions	406
3.3. South Africa as a Developing Country	414
3.4. Mobilization of Civil Society in South Africa	419
3.5. Implementation of the Convention on the Diversity of Cultural Expressions in South Africa	421
4. Concluding Remarks	427

Table of International Treaties and Conventions 431
Table of Charters, Declarations, Recommendations, and Resolutions 435
Table of Operational Guidelines 437
Table of Free Trade Agreements. 439
Table Of European Legislative Acts, Conclusions, Recommendations and Resolutions. 441
Bibliography. 443

LIST OF ABBREVIATIONS

AD Agreement	Anti-dumping Agreement or Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
ASEAN	Association of Southeast Asian Nations
AsgiSA	Accelerated and Shared Growth Initiative for South Africa
AVMS	Audiovisual Media Services Directive
AU	African Union
Cariforum	Caribbean Forum of ACP States
CEDAW	International Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Covenant on Economic, Social, and Cultural Rights
CIA	Central Intelligence Agency
CLAC	Centres de lecture et d'animation culturelle
CNUCED	Conférence des Nations Unies sur le commerce et le développement
COP	Conference of Parties
CRC	Convention on the Rights of the Child
CSCE	Commission on Security and Cooperation in Europe
CT	Custom Territories
CUSFTA	Canada-United States Free Trade Agreement
Cultural Diversity Declaration	Universal Declaration on Cultural Diversity
DAC	Department of Arts and Culture
DACST	Department of Arts, Culture, Science and Technology
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing The Settlement of Disputes
DTI	Department of Trade and Investment
EC	European Community
ECJ	European Court of Justice
EC Treaty	Treaty establishing the European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms

EIA	Economic Integration Agreement
ELIAMEP	Hellenic Foundation for European and Foreign Policy
EU	European Union
FCC	Federal Communications Commission
FCNM	Framework Covenant for the Protection of National Minorities
FESTAC	Festival of the Arts and Culture
FICDC	International Federation of Coalitions for Cultural Diversity
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Service
GNI	Gross National Income
GSP	Generalized System of Preferences
HDI	Human Development Index
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of All Forms of Racial Discrimination
(I)CESCR	(International) Covenant on Economic, Social and Cultural Rights
ICH Convention	Convention for the Safeguarding of Intangible Cultural Heritage
ICIC	International Committee for Intellectual Cooperation
ICRMW	International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families
IFCD	International Fund for Cultural Diversity
IGC	Intergovernmental Committee
IICI	International Institute of Intellectual Cooperation
ILM	International Legal Materials
ILO	International Labour Organization
ILO Convention No.169	ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries
INCP	International Network on Cultural Policy
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
ITO	International Trade Organization
JIPSA	Joint Initiative for Priority Skills Acquisition
KORUS FTA	Korea-US Free Trade Agreement

Languages Charter	European Charter for Regional or Minority Languages
lit.	litera
LNTS	League of Nations Treaty Series
MAI	Multilateral Agreement on Investment
Marrakesh Agreements	Marrakesh Agreements Establishing the World Trade Organization
MFN	Most-Favoured Nation
MINMEC	(South African) Ministers and Members of the Executive Council
MPAA	Motion Picture Association of America
NAFTA	North American Free Trade Agreement
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
OIF	Organisation Internationale de la Francophonie
PCC	Protocol on Cultural Cooperation
Recommendation 1043	Recommendation 1043 on Europe's Linguistic and Literary Heritage
REIO	Regional Economic Integration Organizations
RTA	Regional Trade Agreement
SACAN	South African Chapter of Arterial Network
SACCD	South African Coalition for Cultural Diversity
SADC	South African Development Community
SAMRO	South African Music Rights Organization
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
TEC	Treaty on the European Community
TFEU	Treaty on the Functioning of the European Union
TIC	(South African) Technical Intergovernmental Committee
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TWF	Television without Frontiers Directive
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development

UNDM	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNISA	University of South Africa
UNTS	United Nations Treaty Series
US	United States
USA	United States of America
USTR	United States Trade Representative
UTECA	Unión de Televisiones Comerciales Asociadas
v.	versus
Vienna Convention	Vienna Convention on the Law of Treaties
WIPO	World Intellectual Property Organization
World Heritage Convention	Convention Concerning the Protection of the World Cultural and Natural Heritage
WTO	World Trade Organization