

Globalization, Culture, and Development

The UNESCO Convention on Cultural
Diversity

Edited by

Christiaan De Beukelaer

Miikka Pyykkönen

J. P. Singh



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Summary: "The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions provides an international policy lens for analysing broad debates on issues of cultural globalization and development. The interdisciplinary contributions in this volume offer a fresh understanding of these key issues whilst examining cultural globalization, which is conceived in terms of artistic expressions and entertainment industries and interpreted anthropologically as the rituals, symbols, and practices of everyday life. The broad gamut of theories, methods, and evidence collected by the editors outlines UNESCO's accomplishments, shortcomings, and future policy prospects. This edited collection has a clear message: The Convention is a useful and important instrument in the debate on cultural diversity, but not broad enough or sufficient to confront major challenges concerning human rights, sustainability, and cultural diversity as a whole" — Provided by publisher.

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Acronyms and Abbreviations

ACTA	Anti-Counterfeiting Trade Agreement
AECID	Spanish Agency for International Development Cooperation
CARIFORUM	The Caribbean Forum
CBD	Convention on Biological Diversity
CD	Compact Disc
CDIS	Culture and Development Indicator Suite
CER	Creative Economy Report
CETA	Comprehensive Economic and Trade Agreement
DAC	Development Aid Committee
DVD	Digital Versatile Disc
EC	European Commission
ECJ	European Court of Justice
ECOSOC	The Economic and Social Council
EEI	Enabling Environment Index
EFA	Education for All
EU	European Union
G-77	Group of 77
GA	General Assembly
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
HLP	High-Level Panel
IAHS	International Association of Hydrological Science
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICH	Intangible Cultural Heritage
IFCD	International Fund for Cultural Diversity
IFIs	International Financial Institutions
IGC	Intergovernmental Committee
IIC	International Institute for Intellectual Cooperation

ILO	International Labour Organization
INCD	International Network for Cultural Diversity
INCP	International Network on Cultural Policy
INGOs	International Non-Governmental Organizations
LDCs	Least-Developed Countries
MDG-F	Millennium Development Goals Achievement Fund
MDGs	Millennium Development Goals
MEA	Millennium Ecosystem Assessment
MFN	Most-Favoured Nation
MONDIACULT	World Conference on Cultural Policies
MOST	Management of Social Transformations
MoU	Memorandum of Understanding
MPAA	Motion Picture Association of America
NAFTA	North American Free Trade Agreement
NGOs	Non-Governmental Organizations
NIEO	New International Economic Order
NWICO	New World Information and Communication Order
ODA	Official Development Assistance
OECD	The Organisation for Economic Co-operation and Development
OIF	International Organization of Francophonie
OS	Operating System
OWG	Open Working Group
PLU	Plan Local d'Urbanisme (Urban Planning Map)
SCoT	Schéma de Cohérence Territoriale (Metropolitan Plan)
SDC	Swiss Agency for Development and Cooperation
SDGs	Sustainable Development Goals
SICA	Service Centre for International Cultural Activities
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TRIPs	Trade-Related Aspects of Intellectual Property Rights

TTIP	Transatlantic Trade and Investment Partnership
UIS	UNESCO Institute for Statistics
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific, and Cultural Organization
US	United States of America
WCCD	World Commission on Culture and Development
WCED	World Commission on Environment and Development
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
WWF	World Wildlife Fund

Introduction: UNESCO's "Diversity Convention" – Ten Years on

Christiaan De Beukelaer and Miikka Pyykkönen

The General Conference of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005a) ten years ago at its 33rd session on 20 October 2005. For the last two decades, cultural diversity has been one of the key driving forces of UNESCO's work on culture, development, and education. Although stemming from UNESCO's paradigm of approaching culture and cultural diversity within the relatively wide scope of human activities, the 2005 Convention also restructured UNESCO's focus on them – the arts, artistic products, and expressions of heritage are now salient:

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions is a legally-binding international agreement that ensures artists, cultural professionals, practitioners and citizens worldwide can create, produce, disseminate and enjoy a broad range of cultural goods, services and activities, including their own. It was adopted because the international community signalled the urgency for the implementation of international law that would recognise:

- The distinctive nature of cultural goods, services and activities as vehicles of identity, values and meaning;
- That while cultural goods, services and activities have important economic value, they are not mere commodities or consumer goods that can only be regarded as objects of trade. (UNESCO, n.d.)

This book has a clear message. The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005a)

is a useful and important instrument in the debate on cultural diversity. It is, however, not broad and sufficient enough to confront cultural diversity as a whole, including challenges concerning human rights and sustainability. What remains a challenge is the discursive and practical understanding that the 2005 Convention constructs about “culture” and “cultural diversity”: while “diversity” refers mainly to arts-related expressions of heritage, also wider understanding of culture and cultural diversity “haunt” in the background strongly. It is also somewhat unclear what kinds of expressions are recognized through the Convention – all or only those articulated, produced, and “commodified” in certain ways?

The multidimensionality of cultural diversity concepts comes partly from the working processes of UNESCO itself, where many kinds of stakeholder representatives and interest groups, scientific disciplines, and policy sectors have been involved in formulating these issues. The multidimensionality, then, results partly from the diverse basic purposes of the 2005 Convention. First, it is an international legal tool and impacts national legislations. Second, it directs principles of politics and policies of the national and international governmental bodies in relation to cultural matters, especially the ones concerning the markets of the expressions. Third, it encourages local, national, and international endeavours to bring together various actors towards the creation and recognition of the cultural expressions and their diversity. Hence, the Convention is a tool for legislators, policy-makers, and civil society actors at the same time.

These challenges and their backgrounds are the points of departure for the chapters in this volume. This book assesses the 2005 Convention’s record in the past decade, and explores the ways in which it can continue to advance our understanding and engagement with cultural diversity on a global scale. The book provides a firm understanding of (a) what has been positive about the convention and why it is needed, (b) what kinds of challenges remain, and (c) how the convention could and should inform further legal, policy, and grass-roots approaches to cultural diversity and cultural rights.

Early analyses of the UNESCO Convention took place soon after its adoption (e.g. Neil, 2006a). These analyses could not reflect rich empirical information about the actual work of the Convention as we have now. Hence, a thorough empirical and critical analysis of the convention is overdue and possible after ten years of the Convention’s implementation and existence. This book explores both intended

and unexpected implications and impacts of the convention, including its juridical, discursive, and political impacts, also its practical consequences and possible shortcomings.

In this introduction we first place the convention in its historical context, then we describe its ambiguities before summarizing the authors' contributions. Our core argument, which runs through the whole chapter, is that the 2005 Convention is a very useful tool to deal with cultural diversity at a global level, but that it remains relatively weak in many of the (policy) contexts within which cultural diversity is intertwined with issues of human rights and sustainability. Equally, when it comes to the possibilities it offers for UNESCO or the member states to conduct, regulate, and control the practices implementing it, there are considerable limitations, as the following chapters show.

Context

When analysing the 2005 Convention and its purpose and impacts, it is crucial to acknowledge the historical, political, and organizational context in which it emerged. As J. P. Singh notices in Chapter 2, for instance, the work for the Convention started in the situation where the General Agreement on Tariffs and Trade (GATT), and since 1995 World Trade Organization (WTO), strove for the liberalization of the global markets. When WTO tried to create and execute agreements, which would allow the free trade of cultural industry products (movies, music, television, and magazines, for instance), some countries reacted and started to find alternative agreements to preserve national rights in defining bilateral or multilateral terms and conditions for trade agreements. Especially the French and Canadian representatives took a firm position in thinking of ways of securing these national conditions through UNESCO after the "image wars" between EU and the United States and the "Canadian magazine dispute" in the early 1990s, at the end of the so-called Uruguay Round of the GATT.

The disputes within GATT and later WTO parties led to the statement of what is called "cultural exception" – a statement that free trade does not touch upon cultural products in the way of the other trade commodities (Gournay, 2002; Meunier, 2000; Regourd, 2004). The representatives of the EU, France, and Canada, in particular, formulated the rationality for this exception: cultural products and expressions should be treated differently than others, because they are of special significance for the countries and their national identities (see Singh,

Chapter 2). This led to the allowance of bilateral and multilateral agreements between European countries – also with some other countries – in different cultural industry sectors, particularly television and films. Import of high-budget US cinema and TV productions was restricted in the name of supporting European productions. This was linked to the promotion of global cultural diversity through facilitating the distribution of small productions without massive advertising and distribution means. This justification rested on Euro–Canadian interests, but the interests of developing countries were allegedly also represented. However, these “developing countries” were promised more than they have actually received. The articles pertaining to development cooperation (Article 14) and preferential treatment (Article 16) served more as an argument to sway votes than as a basis for a broad and active agenda, in spite of some valuable initiatives (see De Beukelaer and Freitas, Chapter 13).

On this basis the representatives of the EU and Canada started to work for the 2005 Convention within UNESCO. The spirit of these debates clearly resonates in the 1st Article of the Convention, which highlights that the objectives of this legal instrument are:

(h) to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;

(i) 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.

Beyond the 2005 Convention, there are other instruments engaging cultural diversity within the United Nations (UN) and even within UNESCO. First, the Convention builds on a variety of UN treaties and declarations on human and cultural rights, such as the UN’s Declaration of Human Rights (1948), International Convention on the Elimination of All Forms of Racial Discrimination (1965), International Convention on Civil and Political Rights (1966), International Covenant on Economic, Social, and Educational Rights (1966), International Labor Organization’s (ILO) Indigenous and Tribal Peoples Convention (1957), International Covenant on Economic, Social, and Cultural Rights (1976), and Declaration on the Rights of Persons Belonging to National or Ethnic,

Religious and Linguistic Minorities (1992). Within UNESCO, several documents have addressed cultural diversity in other ways. All seven of UNESCO's cultural conventions, and many other declarations and recommendations, can be understood as addressing cultural diversity and sustainability. For example, the Convention Concerning the Protection of the World Cultural and Natural Heritage from 1972 focuses on "world heritage" as the preserve of humanity's cultural history, and the Declaration on Race and Racial Prejudice from 1978 stresses the equality of all humans, in order to help overcome racial prejudice and exclusion. However, the 2005 Convention would not have emerged without UNESCO's documents and declarations on the protection and promotion of cultural diversity.

UNESCO's current programme on cultural diversity began in 1982 when the World Conference on Cultural Policies (MONDIACULT) was held and the Mexico City Declaration published (UNESCO, 1982b). In 1982, "diversity" was not an explicit theme but embedded in the statements concerning, for instance, development, democracy, and cultural identity. The articles included statements on how different cultures are the cornerstones of the common heritage of humankind and how different-level dialogues are fundamental conditions for cultures and their relations, and – in the end – for entire humanity.

The report "Our Creative Diversity" (WCCD, 1996) explicitly defined cultural diversity for the first time and placed it in the context of international cultural policy. This report made "diversity" as somewhat synonymous with the term "multicultural", meaning the variation of cultures as sets of lifestyles, languages, and ways of thinking were not only in a given territory but also in a global sense. Its promotion was an act against the presupposed homogenization caused by economic and cultural globalization, and it was introduced in the context of the UN decade for cultural development (1988–1997). The perspectives of development and creativity were seen as indelible parts of the discourse on cultural diversity in this document. UNESCO's Stockholm Conference on culture and development in 1998 set the scene for interventions on the topic. The concluding definitions of the conference, in line with "Our Creative Diversity", proposed an understanding of "diversity" that strengthens the bonds between diversity and development issues, and between culture and socioeconomic qualities of nations and communities. UNESCO's 2002 Universal Declaration on Cultural Diversity continued this trend.

However, the 2005 Convention represents somewhat different understanding and diversity with its focus on cultural expressions and

products. This deviation partly comes from the different nature of the document: while the previous formulate principles, the 2005 Convention aims at concrete changes in legislation, policy, and civil society action. The major reason for the change lies in the organizational and political context: due to its active member-parties and their representatives UNESCO needed a document to give reason and directions for trade regulations and restrictions concerning the trade of cultural goods.

These long (and at times contradictory) histories and contexts have certainly influenced the 2005 Convention and contributed to its conceptual ambiguity. Several chapters in this volume address the political and organizational development of the Convention. However, the chapters of the book not only grasp historical challenges, paradoxes, and contradictions, but many authors also concentrate on implementation challenges in the fields of international law, global economics, interstate relations and organizations, sociocultural politics and policies, and development issues. The shift to an information technology-led environment is also not accounted for in the convention.

Ambiguities of national and international governance of cultural diversity

While hardly anyone would argue that diversity of cultural expressions is not something we should celebrate and protect, there is little agreement on the ways that this can be done. Like many politicized debates, the solutions are often framed in a *faux* choice of two extremes: state protectionism on the one hand, and free trade on the other. It is important to understand that while the approaches and methods of these solutions vary considerably, the proponents of these stances agree on the very same aim: maintaining – or even increasing – cultural diversity. Both the most strident defenders of the free market (Cowen, 1998) and its critics (Bodirsky, 2012; McGuigan, 2009) make their arguments precisely because they are convinced it is the best way to defend the diversity of cultural expressions.

The tension between these two stances is political and governmental. The 2005 Convention is perhaps the most explicit political result of this debate between those in favour of marketization of cultural diversity politics and those against it on the level of international treaties. The convention in essence serves to provide a legal framework for countries to maintain state support and protectionist measures. In this regard, the Convention is largely the “European” response to the “American” drive towards free trade of culture as *entertainment*. The Convention, however,

also stresses the need to reinforce national, regional, and local cultural industries in the name of the fair competition among actors in the global markets. It seems to play two games at once: maintaining culture as a public (or semi-public) good through subsidies while strengthening its competitive potential in an increasingly global marketplace through the cultural industries.

In spite of this seemingly functional dual focus, the Convention may be an insufficient instrument in the legal and normative struggle for cultural diversity in the global era. One of its weakest points is that no institution is authorized to arbitrate in case of infringement to its (otherwise legally binding) principles. UNESCO has neither the power nor the capacity to do this, which essentially leaves its implementation and enforcement to individual member states. This is duly recognized in Article 25, which stipulates that “in the event of a dispute between Parties to this Convention concerning the interpretation or the application of the Convention, the Parties shall seek a solution by negotiation” (UNESCO, 2005a, p. 12). If this would fail, the article further outlines, conflicting parties can seek mediation by a third party. As a last resort, the Convention proposes a Conciliation Commission “that shall render a proposal for resolution of the dispute, which the Parties shall consider in good faith” (UNESCO, 2005a, p. 16). This leaves the Convention vulnerable to conflict with other legal instruments.

Moreover, the Convention cannot overrule other binding documents (Singh, 2011a, p. 82). Although UNESCO is the organization of international norm-setting and diplomacy, and its conventions are principally legally binding treaties, it does not have the power to overrule the laws and policies of the sovereign states. This is accordingly the Charter of the United Nations and the principles of international law. The 2005 Convention, for instance, states in Article 2 that “States have [...] the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.” This means that it is in the power of every member state as to how (if at all) it implements the 2005 Convention in its legislation and policies. Yet it is particularly the relation of the Convention to other international norms legislative tools that undermines its power: “Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties” (Article 20). To sum up: it is ultimately very hard for UNESCO to conduct how the 2005 Convention is adopted through national legislation or how its articles are implemented in domestic or regional policies (see also Singh, 2011a, p. 106).

What is missing?

The 2005 Convention has been a necessary point of debate and action, which has proven to be a versatile tool in policy-making in different contexts. Yet, this book shows that it may not be sufficiently strong to tackle debates on cultural diversity that extend beyond mere “cultural expressions”. New elements are needed to extend its effectiveness primarily to cultural rights, sustainability, and social justice.

The Convention explicitly engages with “the diversity of cultural expressions” and not with cultural diversity in “general terms”, meaning diversity of ways of life, for instance. This is one of the key strengths of the Convention, because it shifted the debate from abstract, and often vague, terms to a clear policy-oriented agenda. Yet, in doing so, debates on forms on cultural diversity that cannot be grasped in “cultural expressions” lost prominence. One of these dimensions is “cultural rights” as they are later articulated in the Fribourg Declaration of (2007). In great part they concern peoples’ rights to particular cultural practices, beliefs, and languages, which greatly relate to “cultural expressions” – not just industrial or professional ones such as in cultural industries – prevalent in people’s everyday lives. How can the 2005 Convention maintain its useful and narrow focus while opening up to a more ambitious agenda, which links to minorities or socioeconomically disadvantaged people, especially when it comes to their rights to “everyday culture” (Fiske, 1994)?

While the 2005 Convention is a legal framework that helps countries to maintain public support for culture and to protect internal markets, it also seeks to increase competitiveness of “smaller” and less established producers of cultural expressions through the cultural industries. In this regard, the Convention seems largely caught between the state and the market, leaving little room to explicitly focus on non-market or collaborative forms of creation and distribution (see e.g. Henry, 2014). The core question for the implementation processes, hence, is how can they focus the attention on such activities?

Environmental sustainability features explicitly in the Convention as part of the “development” potential of culture. Though the focus on sustainable development remains voluntaristic (see De Beukelaer and Freitas, Chapter 13). While some governments and civil society groups use the existing framework to promote a more sustainable policy agenda, this remains the exception, rather than the rule. More importantly, there is a lack of clear engagement with what the Convention can mean in relation to a more fundamental normative debate about what

“sustainability” means and how it could be attained. This does not mean that the Convention does not lend itself to furthering an agenda for sustainable development, but rather that it does not have the strength to drive this agenda forwards in and of itself.

Finally, the Convention remains largely Western in its understanding of what *can* be done or *should* be done to protect and promote cultural diversity. There is insufficient attention to the context in which cultural expressions are created. More importantly, the semantic division between “developed” and “developing” countries impedes a serious anti-colonial, or at least post-colonial, engagement between the different levels of power between different groups of countries. Not only does dualistic division fail to reflect the current geopolitical reality (De Beukelaer, 2015; Singh, 2007), it also maintains a divide along the lines of former colonial powers and their colonies.

Book outline

The remainder of this book is organized in four thematic parts that address different key elements of the 2005 Convention: culture, diversity, Convention, and looking ahead. This division allows the reader to approach critical points of the Convention thematically and comprehensively.

The first part, *Culture*, addresses the different notions and understandings of culture in the context of the 2005 Convention. The overarching question that the different contributors to this part engage with is what “culture” means in the context of debates on cultural diversity in general, and the Convention in particular. They focus on the conceptual tensions within and between “culture” and “cultural diversity” in the UNESCO agenda (Isar and Pyykkönen, Chapter 1), the place of culture in trade negotiations (Loisen and Pauwels, Chapter 3), and the particular importance of cultural globalization in relation to the Convention (Singh, Chapter 2). In sum, these chapters set out the conceptual, political, and historical perspectives on culture and cultural diversity.

The second part, *Diversity*, explores the understanding of “diversity” in the context of the convention. All chapters maintain a broad engagement with diversity, beyond the “diversity of cultural expressions” alone. They explore the limits of “diversity” by analysing the relations of cultural and other forms of diversity. The central question here is what the term “diversity” means in abstract and concrete terms. This starts with a historical perspective on UNESCO’s engagement with cultural diversity (Saouma and Isar, Chapter 4) and opens up from there to

include critical perspectives on the links between cultural and biological diversity (Soini and Blanc, Chapter 5), the paradoxical – and even perhaps fictitious – tension between market and non-market approaches to maintaining cultural diversity (Neuwirth, Chapter 6), and the roles that the convention’s “cultural diversity” can (or, rather, *should*) play in relation to thinking about social justice (Clammer, Chapter 7).

The third part, *Convention*, engages most explicitly with its role as a legal and normative document. It thus builds on the previous parts, but focuses strongly on the way the Convention relates to other documents and initiatives dealing with cultural diversity. As such, it explores the role the Convention plays in relation to human rights (Donders, Chapter 8) and how it connects to intangible cultural heritage (Wulf, Chapter 9), a topic that is in fact addressed by a preceding convention (UNESCO, 2003a). While the Convention does not mention digital means of distribution, these technologies, with the rise of YouTube, iTunes, Netflix, and Amazon have altered the rules of the game. The question remains in what ways the Convention is equipped to deal with this (Guèvremont, Chapter 10).

The fourth part, *Looking Ahead*, asks what the Convention can mean for the future of cultural diversity debates and policies. It engages with the debate on cultural diplomacy in the globalizing world (Figueira, Chapter 11), the role of civil society in the implementation of the Convention (Anheier and Hoelscher, Chapter 12), and the relatively weak focus on sustainability in the Convention (De Beukelaer and Freitas, Chapter 13). This part primarily reflects on the efforts that remain to be made to advance the role the Convention can play to further protect and promote the diversity of cultural expressions, as it highlights those tensions between culture and diversity that the Convention insufficiently deals with.

Part I

Culture

1

Confusing Culture, Polysemous Diversity: “Culture” and “Cultural Diversity” in and after the Convention

Yudhishtir Raj Isar and Miikka Pyykkönen

Introduction

Like all norm-setting instruments elaborated by international organizations, UNESCO’s Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005a) is based upon concepts that are well-established keywords in the contemporary *zeitgeist*. However, this international treaty is an intriguing instance not only of how one of those concepts – cultural diversity – has been given a special meaning by an international organization, but also of how different stakeholders, be they governments or non-state actors, greatly stretch the envelope of meanings they in turn assign to it. By yoking, in fact subsuming, cultural diversity to the notion of “cultural expressions”, the drafters of the 2005 Convention sought to impose their selected special meaning in international public discourse. Yet they also felt the need to ensure, discursively, that the language of the Convention provided space for the several other, more common, understandings of the term. This assemblage of meanings includes several strands of the broad “anthropological” idea of cultural diversity, aesthetic readings of it as well as “cultural and creative industries” understandings. This is the principal cause of the semantic confusion that surrounds the 2005 Convention.

Furthermore, as is the case with most intergovernmentally adopted normative texts, the concepts used in the Convention and/or the relationships between them are polysemous and leave room for multiple interpretations. This is not accidental. As argued in more detail by

Saouma and Isar (Chapter 4), such treaties are the outcome of often laborious negotiations among member states, whose representatives bring to the table the meanings of terms used or given special ideological resonance in their own national settings (as well as the different interests these meanings represent). The solution generally adopted by the international organization secretariat officials who actually draft the texts is to take on board as many meanings and interests as is grammatically possible so as to arrive at a sort of international common denominator. Often, these manoeuvres stretch the grammar, not just the patience of the reader. It is illusory to even imagine that an intergovernmental organization would be capable of hewing to, or choose to enunciate, unitary understandings of concepts.

Academic analysts often miss this intrinsic feature of the normative texts elaborated by international organizations. Scholars themselves tend to work with unitary understandings, often even quarrelling among themselves over whose is “right”. Thus they often make the mistake of judging intergovernmental organization texts as if they possessed the conceptual coherence of academic writing. In the case of the 2005 Convention, since civil society activists were also involved in the drafting, an even broader set of actors has had a stake in the terms.

This polysemous quality results in a certain amount of vagueness and feeds ambiguous or overlapping implementation practices. In some cases, these practices even contradict each other. Thus, some use the Convention and its terminological toolkit exclusively in relation to the production, distribution, and consumption of cultural goods and services, while other actors deploy it to eke out spaces for cultural difference per se, or for free expression or new forms of it. In other words, the conceptual blur has eminently practical and actor-position implications.

The concepts we explore in this chapter, both individually and in their intrications, are “culture” and “cultural diversity”. First we examine the ways in which “culture” has been conceptualized over the years by UNESCO and in the 2005 Convention itself. We focus on the ways in which it is being interpreted or reconstructed in the implementation of the Convention, in different contexts, and by different social or cultural actors. After describing and explaining the diversity of the conceptualizations and significations, we reflect upon their real and possible consequences.

We ourselves have not sought to work with any fixed understanding of either “culture” or “cultural diversity”; instead our purpose is to analyse the emergence and nature of the conceptual variations. From this position, we have set ourselves a deconstructive objective, that of

uncovering the contextual nature of the concepts in their practical and teleological use. We should be aware of what kind of “culture” is being evoked in different discursive and practical contexts. The same applies to “cultural diversity”: it is diversity of the arts, of class-based understandings or differences that stem from pluri-ethnic conditions? In our conclusions we shall indicate why we consider such distinctions to be so important. For the purposes of this deconstructionist approach we propose five intersecting categories of contexts or foci – *economic, artistic, participation, heritage, and multicultural* – in and through which the 2005 Convention is implemented, and, hence, can – and should – be taken as the analytical framing.

“Culture” and “cultural diversity” in UNESCO usage

Culture

Culture is the “C” in the acronym UNESCO, whose constitution, adopted in November 1945, opens with a sentence of great rhetorical resonance: “Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed.” The 1945 Constitution went on to state a commitment to, *inter alia*, “the wide diffusion of culture”, “the intellectual and moral solidarity of mankind”, “the unrestricted pursuit of objective truth”, and “the free exchange of ideas and knowledge [...] for the purposes of mutual understanding and a truer and more perfect knowledge of each other’s lives”.

The 1945 Constitution also established that it was UNESCO’s mission to “maintain, increase and diffuse knowledge by assuring the conservation and protection of the world’s inheritance of books, works of art and monuments of history and science” and “by encouraging co-operation among the nations in all branches of intellectual activity” (UNESCO, 1945).

This mission was based on a kind of “high arts understanding” of culture, in other words the works and practices of intellectual and especially artistic activity and heritage (Williams, 1985). This understanding was the reigning conception of that epoch and of the elites among the core group of founding nations, the Western “Allies”. It was much later, in the 1960s, the decade of decolonization, that UNESCO began the shift towards the “ways of life” understanding of culture. This shift was a worldwide trend that UNESCO followed rather than led, yet the organization played a key role in making it “stick” internationally. This shift meant envisioning the cultural principally within a

paradigm of representation, as a key marker in the politics of difference and recognition, rather than within a paradigm of aesthetics or history.

The shift also involved an awareness that the concept of “development” used by UNESCO at that point needed to be revisited as a plural project, parsed in terms not just of the abstract universal idea of “culture” or “western model of development” but also and above all in terms of distinct ways of life, each with its own distinctive developmental path (Maheu, 1973). This meant that the reigning gross national product (GNP), commodity-centred, and linear development paradigm of the period had to be contested. This contestatory stance was expressed at UNESCO by the notion of the “cultural dimension of development” introduced in the mid-1970s, as UNESCO mounted a series of intergovernmental conferences on cultural policies in different world regions. No single, specific definition was ever actually provided, but language such as the following put across what was meant: “balanced development can only be ensured by making cultural factors an integral part of the strategies designed to achieve it; consequently, these strategies should always be devised in the light of the historical, social and cultural contexts of each society” (UNESCO, 1982a).

This claim for voice and recognition expressed by, from, and for the non-Western world, was largely the result of political emancipation and new nationhood, which led many “peoples” to challenge the frame of reference in which a single system of values alone generated rules assumed to be universal. It was also determined by other coterminous attitudes, tendencies, and postures: burgeoning culturalist claims; the upsurge against the economic dogmas of industrial society; the revolt against the priesthood of technical expertise and the world view of mainstream economics; the positions of “Third World” ideology, driven as much by the neo-utopian imaginings of Westerners as by the nativist affirmations of the formerly exploited and oppressed. And so, as underlined by Marshall Sahlins (1994), peoples and communities across the world found themselves replicating the process that in Europe first brought the culture concept itself into being, as the German bourgeoisie affirmed the notion of *Kultur* against the French Enlightenment concept of civilization, with Herder among others opposing ways of life to stages of development and a social mind to natural reason. On the one hand these new “non-Western” demands increased the polysemy of the meanings of “culture”, but, on the other hand, they also spread and globalized the Western liberalist/Hegelian understandings of “culture”.

A combination of usages prevails today. “Culture” for UNESCO is both “arts and heritage” and “ways of life”. The two understandings are also

often conflated, both in UNESCO and in general usage. Hence when fostering the first is advocated as an imperative, the advocacy is not deployed for the sake of the arts and heritage themselves, but because they embody and/or are the vectors for the values and symbols of “ways of life” that risk being eliminated by the pressures of globalization. This often leads to the kind of confusion that Sahlins warned about: “If ‘culture’ is the total and distinctive way of life of a people or society it is meaningless to talk of ‘the relation between culture and the economy’, for example, since the economy is part of a people’s culture” (cited in WCCD, 1996, p. 21). UNESCO has undoubtedly contributed to this confusion, notably through the famous Mexico City definition of 1982 and by routinely deploying both the narrow and the expansive meanings simultaneously.¹ Yet all governmental discourses tend to do the same: while almost all governments claim, rhetorically, to interpret culture in the vexingly expansive, so-called “anthropological” sense, none of their ministries or departments of culture deal with anything but a particular kind of arts and heritage.

The drafters of the 2005 Convention built upon these open-ended conceptual foundations. There is no definition of culture in the Convention, but given its focus on cultural goods and services, the text cannot but privilege the arts and artistic expressions that are at the heart of the cultural and creative industries sector, as well as that sector itself. Yet, unsurprisingly, the Convention also links culture to international and national development policies and cooperation, poverty reduction, economic growth, social cohesion, traditional expressions of minorities and indigenous peoples, interaction, and creativity. It also sees culture as an instrumentality in achieving certain political, social, and economic goals, while cultural expressions are important both for their market value and as adjuncts to better governance systems (Pyykkönen, 2012; Singh, 2011b, pp. 100–107).

Cultural diversity

We focus here on the term “cultural diversity” as it figures in the text of the 2005 Convention. We remind the reader at the outset that the treaty was not designed primarily to cover cultural diversity per se, understood as cultural differences between human groups. Its purpose was not to support the “right to be different” (or “right to be treated the same” regardless of the differences) of many different categories of individuals and/or groups placed in some way outside dominant social and cultural norms (e.g. disabled people, religious groups, gays and lesbians, ethnic groups, women, as well as the poor and the elderly). Nor did its

drafters want it to focus upon *ethnic* differences and the affirmations of ethnic minorities in the face of dominant majorities and/or the homogenizing tendencies of “national” cultures. Language in the “Preamble” refers to all these contemporary pieties, but the operative articles of the Convention certainly do not.

These articles concern the diversity of “those expressions that result from the creativity of individuals, groups and societies, and that have cultural content”. The Convention’s core object is at once the products of the cultural and creative industries and the right of sovereign states to promote and protect them. “Cultural activities, goods and services”, as stated in the Convention:

refers to those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activity may be an end in itself, or it may contribute to the production of cultural goods and services.

(Article 4)

The principal intent of the Convention is stated in Article 6, which affirms that “within the framework of its cultural policies and measures as defined in Article 4.6 and taking into account its own particular circumstances and needs, each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory”. An unequivocal illustrative list of measures follows.

As mentioned already, although the main focus of the 2005 Convention is clearly on the diversity of cultural expressions in the cultural and creative industry format, in the “Preamble”, as well as in the language of its “Objectives and Guiding Principles”, the Convention embraces all the differing diversities imaginable. These rhetorical segments of the text are in fact based on the language of UNESCO’s earlier Universal Declaration on Cultural Diversity (2001), which was designed to cover all the possible facets of cultural diversity, and thereby not only transform the notion from an observed human reality into a normative metanarrative, but also and above all validate “cultural exception” thinking (Isar, 2006). The broad scope of the 2001 Universal Declaration provided solid ground for taking the next step, the real purpose, which was to draft an international treaty pertaining to the rights and responsibilities of national governments as regards the production, distribution, and consumption of cultural goods and services. The 2005 Convention actually

echoes the earlier broader reading by making the following grand claims for “cultural diversity” *tout court*, which:

forms a common heritage of humanity and should be cherished and preserved for the benefit of all. [...] creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for communities, peoples and nations.

(UNESCO, 2005a)

In Article 4, “Definitions”, however, the Convention text gets to the heart of the matter as far as its drafters were concerned:

Cultural diversity is manifested not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

The terms creation, production, dissemination, and distribution all reveal the central focus on *cultural products* (activities, services, and goods), in other words on commodified forms of culture. That this would turn out to be the case was obvious from the start, since the Convention was designed to be a counterforce to the free trade rules pertaining to commodity trade (as well as of other forms to be sure) of which the World Trade Organization is guardian and guarantor. Although it is a kind of “counter-hegemonic instrument”, the 2005 Convention text ends up following the same rationalities, operational logic, lexicon, and even practices as its “enemies”, because it has to operate with and within the same discourse, concepts, and logic of action – in this case the logic of the market economy (Pyykkönen, 2012, p. 547; Singh, 2011b, p. 107).

This takes place especially in connection with “Cooperation for development”. Thus Article 14 states that: “Parties shall endeavour to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector.” The means it identifies with a view to doing so include: (a) the strengthening of the cultural industries in developing countries (for which a variety of

market-related measures are envisaged); (b) capacity-building; (c) technology transfer; and (d) financial support (see also De Beukelaer and Freitas, Chapter 13).

Multiple dimensions, multiple challenges

The different understandings of cultural diversity that run through the 2005 Convention emerge from multiple reference points without any clear hierarchy or even relation between them. The text refers to (i) the diversity of collective, ethnicity-linked, or nationality-specific cultural traditions; (ii) the diversity of arts (styles, genres, modes, sectors, and so on); (iii) the diversity of artistic and cultural expressions as products, that is, the diversity of markets of immaterial and material cultural expressions. This breakdown does not make for clarity, particularly since these different dimensions are not self-evidently compatible. Indeed, they can even contradict each other: claims for recognition on the part of national or ethnic entities rarely factor in any kind of internal diversity, stemming sometimes from arts and markets, but often from subcultures, minority cultures, social classifications, identities, and so on. In other words, the Convention's "diversity" does not mesh in – at least not very clearly – with the hybrid nature of all cultural entities, things, and phenomena.

This reading of diversity runs the risk of being a static idea, not rooted in the ongoing production of diversity as a process of change but as a conservationist notion of preserving what has already been created, a paradox when the goal is to foster the dynamism of contemporary cultural production rather than play a preservationist heritage-oriented role. This is partly because the concept is built upon unquestioned, undeconstructed discourses of nationhood. Precisely because its object is cultural diversity *among* nations rather than *within* them, it does not hasten the adoption of any kind of truly cosmopolitan agenda in which cultures are no longer seen as fixed, given, bounded wholes.

As Paul Gilroy (2004, p. 6) puts it, the idea of culture "has been abused by being simplified, instrumentalized, or trivialized, and particularly through being coupled with notions of identity and belonging that are overly fixed or too easily naturalized as exclusively national phenomena". This perspective runs increasingly into difficulties in the many instances "where the boundaries and power of a state do not coincide neatly with the will or identity of its members or the scale of action undertaken by other collective actors" (Calhoun, 1994, p. 17). Official definitions of what constitutes a political community, whether they are

couched in terms of ethnic identity or in terms of citizenship, invariably underestimate the importance of the institutions, networks, and movements that knit people together across different sorts of boundaries. Previously strong identifications with “national” cultures are loosening, increasingly challenged by a strengthening of other ties and allegiances, both “above” and “below” the level of the nation-state. National identities remain strong, to be sure, and how could it be otherwise, especially with respect to such matters as legal and citizenship rights? But local, regional, and community identities have in many cases become far more significant, while regional as well as “global” identifications are also beginning to compete with national ones (Hall & Du Gay, 1996). These transformations have clearly not been taken into account by the 2005 Convention (barring a couple of references to indigenous peoples).

As mentioned earlier, although UNESCO has prided itself on popularizing abstract “ways of life” understandings of culture, the Convention framework concerns concrete cultural products. In the process:

The discursive commodification takes most influentially place through locating words, culture, cultural expressions and diversity to nearby commercial and economic words, when the conceptual map and the logic of the latter reifies the significance of culture. In other words [...] culture becomes – textually – an object of ideas and practices of the markets and the market economy, and it becomes understood in [...] terms of market-based discourses.

(Pyykkönen, 2012, p. 555)

This leads us to pose several questions. Can all tangible or intangible expressions of a cultural nature be commodified as readily as the Convention suggests? Where is the dividing line between everyday expression of heritage and artistic expression? Who are the legitimate artists, for instance, in cultures where traditional cultural expressions are part of everyday life? Is popular culture – whose expressions consist more or less of a mix of elements produced in different ethnic and national contexts – always worth protecting and promoting in the name of diversity?

UNESCO’s understanding of cultural diversity and related concepts and ideas have been criticized by some as being Western-centric (e.g. Freedman & Schafer, 2008; Stoczkowski, 2009). This critique is apt in the case of ideas related to the commodification of cultural expressions and the regulation of different forms of diversity. It is clear that in the discourse of the 2005 Convention these are largely tied to a Western

liberal political rationality and free market reasoning. At the level of implementation, this might mean that all the recognized or accepted actors are obliged to share these liberal and free market rationalities as they are gradually disseminated throughout the world. Surely cultural diversity in the full sense of the term can bloom only when its constituent elements are constructed in terms of purely cultural criteria and values, and not necessarily according to preconceived (“Western”) ideas of liberal democracy or market economy. Rustom Bharucha among others has noted how alternative paradigms of creativity found in the so-called “traditional” sectors of everyday life cultures in the “South” embody “value-systems that counter the standard assumptions of the creative economy”, taking as one example traditional floor-drawing practised across the Indian subcontinent and the way it is based on impermanence, ecological awareness, and humility (Bharucha, 2010, pp. 21–36).

When criteria of market value are used, it might even be claimed that only groups who are “modern” enough can claim to be contributing correctly and positively to the diversity that is valued this way. This certainly happens in the case of groups that lack the means or know-how to articulate and communicate their cultural expressions according to free market economic or Western cultural industry practices (production, distribution, advertising, branding, selling, following general quality standards, reaching audiences, etc.). This is the case, for instance, among some remote indigenous groups living very close to nature and whose “cultural logic” does not include marketization of cultural expressions, and whose expressions are mainly meant for the use of the group itself without any needs of making money through them.

The concepts in the implementation process

The 2005 Convention also illustrates contemporary “governmentality” in the cultural arena. The term governmentality refers to all those procedures, practices, and actions of the governing institutions and actors, which aim at the improvement of the forces and capabilities of individuals, organizations/collectives, and population according to important political rationalities such as freedom of the markets or national economy (Foucault, 1991, pp. 102–103). It also encompasses the actions that communities and individuals take upon themselves in order to respond to the “call” of those governing bodies. Hence, governmentality takes place in the intersection of governing others and the self (Foucault, 2000, p. 225). The capability to make new things and realms governable

is an important dimension in governmentality. Governmentalization of culture refers to all those practices, actions, and processes through which culture as a subject and object becomes governable better and more comprehensively than before, according to the market economy principles or the diversity of expressions (Pyykkönen, 2012, pp. 548–549). One form of making things more governable and creating apparatuses of international government is to create certain kinds of knowledge about culture and its elements and actors. A step further consists of providing instructions for translating that knowledge into action, or at least giving guidance to that effect. The theoretical approach depicted above is the starting point for the conceptual analysis that follows.

The Intergovernmental Committee that oversees the implementation of the 2005 Convention elaborated a set of “Operational Guidelines” between 2007 and 2011, the purpose of which was to interpret each article and provide guidance on the forms and implementation that each should take (see Donders, Chapter 8). Through these guidelines, the Convention defines desired paths and steps – “obligatory passage points” (Callon, 1986). The first desired step is, not surprisingly, the integration of the Convention in national legal frameworks. Second, the texts contain suggestions of means for information-sharing and transparency concerning country- or party-specific practices of implementation and related knowledge production, material for education, visibility of the Convention and public-awareness raising. Third, they offer models for enabling the participation of civil society actors and ideas regarding ideal partners and the division of labour amongst them. There are specific suggestions for cooperation and networking related to development issues. There are also tools for evaluation, monitoring, and reporting. In addition, Convention-related publications and documents describe key measures achieved and identify good practices (Sekhar & Steinkamp, 2010; UNESCO, 2012b). Last but not least, an International Fund for Cultural Diversity as envisaged in Article 18 of the Convention has been established. Nevertheless, each party is fully responsible for implementation according to its own legal and political-administrative arrangements. Hence rates, routes, and degrees of implementation vary considerably.

The Operational Guidelines also incorporate the Intergovernmental Committee’s preferences concerning the use of the key concepts. “Diversity” has become a guiding term or leitmotiv for cultural policy-making and the periodic reports that states parties have submitted in 2012–2013 demonstrate that the Convention has been interpreted by many as a template for the entire range of policy-making in the cultural

domain. Many reports have paid little heed to the clearly stated object, commodified “cultural expressions” (UNESCO, 2012b, p. 9). In fact, the interpretations of the Convention that governments have reported embrace the gamut of understandings of cultural diversity in its original anthropological meaning. The Convention is read and deployed as an instrument regarding cultural and social policies pertaining to practically all the “differing diversities” within societies. The discourses authorized by these readings do exactly the same and so does the implementation that ensues. UNESCO has no means of exercising any kind of discursive control in this regard. There is no way it can insist that interpretation and implementation remain focused on cultural and creative industries rather than the entire range of “differing diversities” evoked earlier.

We have in effect identified five different but overlapping ways in which both culture and cultural diversity are understood, signified, and “practicalized” in the implementation practices of the states parties (see also Donders, Chapter 8). These “types” have been constructed as clusters of practices as reported upon by different governments. The five different foci are the following: an economic focus, an artistic focus, a participation focus, a heritage focus, and a multicultural focus. The economic focus has become the hegemonic one. The others appear in different settings but are overshadowed by the latter. The following sections clarify the use of “culture” and “diversity” in these five foci.

Economic focus

The focus here is on cultural goods and services as commodities, hence on increasing economic productivity of the local and national cultural/creative sector. Cultural diversity means the available variety of such goods and services. The higher the economic value of the sector, or its contribution to GDP, the more diverse it is taken to be. Under this focus, cultural policies foreground the cultural and creative industries and seek to establish infrastructures and mechanism for this purpose (UNESCO, 2012b, p. 15). Domestic production facilities and boosting exports are core areas. These are taken to be the principal challenges facing national cultural policy. An increasing salient discourse of promoting public/private partnerships accompanies this focus. These shared characteristics are especially clear among European states parties, present not only in domestic goals and implementation, but also in transnational and international activities such as development cooperation and EU networks and programmes such as Media Mundus and Eastern Partnerships.

Artistic focus

In this reading, “culture” means that the arts and cultural diversity refers above all to the variety of artistic traditions, genres, and styles that coexist throughout the world and of which each state party is a repository within its territory. Implementing the Convention accordingly, this focus means enabling diversity of artistic creativity. It also involves promoting the mobility of artists and their work, as a facet of cultural diversity.

Participation focus

This is characterized by national government initiatives designed to increase the participation of people in cultural life or for social/socioeconomic goals. Many seek explicitly to provide space to different ethnic groups in the fields of national culture. These correspond to the principle of “cultural democracy” that has gained ground in the cultural policies of many countries since the end of the 1960s. Under this focus are also to be found third sector (or civil society) initiatives aimed at enhancing the participation in cultural life of local communities as well as of interactions between them, such as the Critical Neighbourhoods Initiative in Portugal (UNESCO, 2012b).

Participatory endeavours often include elements of the economic focus since the purpose – often very directly – is to increase the number of producers and consumers of cultural goods and services. The participatory focus also blends in with the multicultural focus (described below) when the greater participation of ethnic minorities and/or the improvement of ethnic relations are the goals. Similarly, a heritage focus may also be present in participatory initiatives when the aim is to introduce local or minority cultural traditions to wider audiences by enabling the former space for cultural expression in the public sphere.

Heritage focus

Here, “culture” means above all traditions; “diversity” is the diversity of traditions globally or nationally. The challenges arise in organizations and institutions that conserve and present the heritage, such as museums. From an international perspective it is important that museums in each country embrace different cultures, while at the national level – and sometimes even the local – they are able to do justice to the plurality of heritages emanating from the diversities of the communities that they at once serve and represent. These are mostly public sector initiatives that seek to include the different communities as well as third sector actors.

Multicultural focus

Here “culture” means ways of life, and “cultural diversity” is the diversity of the ethnic groups and communities inhabiting a given territory. Initiatives focus on ethnic diversity and ethnic relations. They are often public sector projects with notable third sector participation/partners. This is most clearly apparent in Latin-American countries, where the ethnic diversity stemming from the indigenous cultures, the cultures of the colonial powers, and creole mestizo cultures is highlighted.

Across all these five types – economic, artistic, participation, heritage, and multicultural – the professionalization of culture is a recurring theme. It means the enhancement of the significance of culture and cultural actions through increasing the professionalization of its actors (e.g. artists and service providers). It is intertwined with the economic, artistic, and heritage foci.

Conclusions

As argued in other chapters in this volume (Saouma and Isar, Chapter 4; Neuwirth, Chapter 6; Clammer, Chapter 7), the 2005 Convention has been successful in raising awareness of cultural diversity, especially the diversity of cultural expressions. However, we argue that the Convention is a partial failure both discursively and practically. One major reason for this is that its definition of “culture” and “diversity” is so narrow (see also Clammer, Chapter 7; Donders, Chapter 8). Culture refers primarily to arts and heritage, and diversity essentially to the diversity of the cultural and creative industries. As we have explained, the drafters of the 2005 Convention deliberately excluded from its central focus major areas such as ethnic diversity or diversity stemming from social, sexual, gender, and subcultural differences. In spite of this – or perhaps partly because these areas are covered in the preambular language – the spheres of diversity embraced by the text *appear* to be very complex, wide, and multi-referential. The other major reason lies indeed here: although the Convention tries to operate with narrowly understood “expressions”, they are indissociable from the wider understanding of culture as way of life, and the relations and points of reference of these two dimensions are rarely clear discursively or empirically.

The 2005 Convention brought the economic dimension of culture and the arts centre stage in UNESCO’s work (Pyykkönen, 2012). It might be argued that the Convention has reinforced the “economization”

of the concept of culture. Yet even this is not altogether clear, a certain vagueness characterizes the text (see Neuwirth, Chapter 6). This vagueness probably stems partly from the evolution of the concepts within UNESCO (from *Our Creative Diversity* through “the Universal Declaration on Cultural Diversity” to the Convention itself). UNESCO’s discourse on cultural diversity juggles between understanding it as all forms of diversity in human life and approaching it merely through cultural products and expressions (Singh, 2011b). Part of the vagueness is certainly because of the debates between UNESCO and WTO, or other international norms regulating culture and trade, in which UNESCO has been forced to formulate different kinds of economic understandings of culture and cultural diversity in and for themselves (see Singh, Chapter 2; Loisen and Pauwel, Chapter 3; and Neuwirth, Chapter 6). These conceptualizations do not always mesh together in order to offer a coherent and robust conceptual basis for understanding and speaking about culture (see also Pyykkönen, 2011).

Many users – and not just scholars – expect to see in such texts clear definitions of concepts and the boundaries between them. As we have tried to show, such outcomes do not emerge from intergovernmental processes of elaboration. This chapter has explored the plurality of interpretations of the meanings of the 2005 Convention’s conceptual arsenal. Such *deconstructive* analysis of meanings is essential in order for *constructive critique* to take place, and if a more self-aware deployment of the terms is to be encouraged. It could also lead to more precise usage in this regard and inform all those interested in intergovernmental norm-making in the cultural arena of some of the unintended and even perverse outcomes of this particular “conceptual game”.

For such normative tools to be more successful than they actually are in attaining their goals, there needs to be a better fit between the concepts and the tools put in place in order to implement them. In addition, the concepts need to be (pre)defined according to their context of use. How could – or perhaps even should – one use such and such a term in different contexts and what are the contextual limits of its use? After all, it is the context that determines the use of a concept. For this reason, a contextual but reflexive understanding of these contexts appears indispensable for the more effective use of international normative instruments, especially since they are so often polysemous by nature and design.

Note

1. The Mexico City definition is the following: "culture may now be said to be the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs."

2

Cultural Globalization and the Convention

J. P. Singh

The 2005 UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions can be viewed as safeguarding group identities as understood through cultural expressions. Equally, the Convention protects the economic interests of member states in commercially produced cultural expressions such as film and television programmes. This dichotomy has led to vociferous trade versus culture debates in international cultural policy-making; but, seen as a facet of global deliberation, this may be an enduring contribution from UNESCO to global norm formation. Despite the importance of cultural issues within UNESCO, until the 2005 Convention culture had remained relatively marginalized from discussions among post-Second World War global institutions. The emergent global issues of culture, cultural identity, and cultural expressions therefore, need some historical context. Without this context, the vocabulary of the UNESCO Convention seems technocratic, limited to debates between commerce versus culture, and devoid of connections to historical trends.

Understanding the role of culture in globalization provides multi-layered meanings. The 2005 UNESCO Convention speaks to a diversity of cultural expressions but during a time when globalization – the interconnection and flows among people, places, things, and ideas – broadens and deepens in scope. Cultural globalization is, therefore, Janus-faced: its cultural element speaks at once to cosmopolitanism but also loss to local ways of life; in an economic sense globalization speaks to both the local and global production of cultural expressions, often through well-organized transnational cultural industries. Appadurai's (1996) notion of "scapes" link the notion of the local to the global, in which both global and local identities are imagined and strengthened.

In unpacking the role of the UNESCO Convention, all these elements must be kept in mind.

How well does the Convention address the overlaps between cosmopolitanism and locality, between local and global cultural productions? This chapter looks to the dialogue between UNESCO's high-idealism and the political interests of its member states for an answer. The first subsection provides a conceptual framework evaluating cultural globalization within the context of UNESCO's political history. The second part addresses the creation of the 2005 UNESCO Convention, and the last subsection addresses the implementation of the Convention in the last decade.

The chapter concludes that, despite the many broad and multiple ways culture is understood in UNESCO, the 2005 Convention has mostly addressed the economic elements because of the political pressures from nation-states and in spite of the inclusion of civil society actors who might have spoken of culture, in an anthropological sense, as ways of life. Civil society does not always lend support to the intrusion of markets in local cultures, and may be a reluctant partner in activities such as heritage tourism. Equally, civil society can question state domination or support – for example, the diminishing of arts funding to local organizations as “national” cultural industries proliferate. Many other cultural issues remain unaddressed in the 2005 Convention; “local” or “national” culture can also be idolized in the name of cultural diversity, while the hierarchies and fissures in local cultures that are oppressive are overlooked. Nevertheless, the UNESCO Convention remains an exemplar for international norm formation in addressing cultural anxieties.

Culture in UNESCO

UNESCO is often (mis)identified, especially among media organizations, as the United Nations' cultural agency, mostly because the seven cultural conventions from UNESCO are well known, especially the 1972 Convention on the Protection of World Cultural and Natural Heritage.¹ The 2005 “Cultural Diversity” Convention is the latest of the seven cultural conventions at UNESCO. UNESCO's prominent work in cultural heritage began in the early 1960s. Heritage preservation issues began to be conceived as the common global heritage of humankind, and this perception was eventually enshrined in the 1972 Convention. Cultural issues were, therefore, a departure from the early debates about an educational agency, the “E” of UNESCO, to counteract Nazi propaganda.

When culture featured in those early debates, it elevated “universal” ideals, chiefly understood as Western Enlightenment ideals, and tried to diminish the value of parochial or local cultural influences (Huxley, 1947). This is best revealed in the canonical opening of UNESCO’s Preamble: “That since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed.”

Parochial notions of culture that divided peoples from each other were antithetical to the agenda of an educational agency to counteract Nazi propaganda. UNESCO, which came into being after a series of conferences that started in 1942, initially involved education ministers from allied countries, until a constitution was signed in London in November 1945. Like the United Nations, these negotiations reflected universalist ideals that can be traced back to Western Enlightenment thinkers such as Emmanuel Kant and Auguste Comte. UNESCO’s “spiritual” philosophy can also be traced back to the Czech-born Comenius (1592–1670), who was frequently cited in Director-General Federico Mayor’s (1987–1999) speeches (Pavone, 2008). The references are mostly to Comenius’ educational ideals. These ideals are eloquently captured in the UNESCO Preamble, which continues from the statement above to note: “That ignorance of each other’s ways and lives has been a common cause, throughout the history of mankind, of that suspicion and mistrust between the peoples of the world through which their differences have all too often broken into war.”

UNESCO’s early forays into culture spoke against parochialism and ethnocentric biases. The first declaration in the newly formed UNESCO condemned the racism that had grown so virulent in the Nazi era, although there were, of course, many antecedents. Banton (2002, pp. 42–46) notes that the attribution of racism to Nazis only was a noble lie. Racism had been and was rampant all over Europe. While the word “racism” owed its origins to the treatment of Jews in Nazi Germany, “post-colonial” thinkers such Aimé Césaire and Franz Fanon pointed out that the racism witnessed in Europe had existed in Europe’s colonies for centuries. In the late 19th and early 20th centuries evolutionary biologists, including Charles Darwin, regarded the superiority of races as a scientific fact. UNESCO’s first Director-General, the biologist Julian Huxley, was a well-known eugenicist.

Despite the fraught history of racism in Europe, UNESCO moved forward with science and education programmes to deal with parochial cultures that divided peoples (Hajnal, 1983; Petitjean et al., 2006). In the 1950s, it commissioned a series of “tension studies”, including one from Jean-Paul Sartre, which investigated the causes of conflict that arose

from factors such as nationalism and racism. The underlying assumption was that cosmopolitanism would override cultural divisions.

The “C” of culture in UNESCO, understood chiefly through Western Enlightenment ideals, such as Kant’s notions of peace and Comte’s ideas of global solidarity, were soon applied to cultural expressions and representations. In this respect, UNESCO enshrined the World Copyright Convention in 1952, as an act of fostering creativity through legal property rights. As mentioned above, UNESCO’s signature programme also conceived world heritage with similar aspirations. The Convention’s Preamble notes: “it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value”. These ideas can be traced back to heritage conservation ideals in the Western world. In 1880, the art critic and poet John Ruskin noted that preserving historical architecture was a necessity in the midst of the industrial revolution: “We have no right whatsoever to touch them. They are not ours. They belong to those who built them, and partly to the generations of mankind who are to follow” (quoted in Klamer & Throsby, 2000, pp. 138–139). To this day, the controversies regarding world heritage include its partial, elitist European and top-down ideals.

UNESCO’s ideals, therefore, are mostly communicated in global rather than national or local terms. Its offices and their instruments – directives, recommendations, and conventions – arrive couched in the language of globally shared norms and beliefs. These ideals are, for example, explicit in moves to start listing World Heritage in the 1960s, to start a New World Communication and Information Order (NWICO) in 1970s, and Education for All (EFA) initiatives from the 1990s.

Nevertheless, from the 1960s the concept of culture also underwent a subtle shift as it began to acknowledge cultural expressions as forms of ways of life that matter to communities more than the universal ideals that UNESCO cherished. Cultural expressions began to converge with anthropological understandings to turn towards local rather than global aspirations, albeit still conceived in terms of global governance – obviously, in this case, through UNESCO. The parallel global movements towards notions of cultural identity and rights, and highlighting the importance of culture in development, were important and are discussed below.

Cultural identity and rights

UNESCO’s universalism is a proper place to start; but, if other factors are not considered, it can be misleading. Although called by different

names, notions of cultural or group identities and respect for cultural diversity run parallel to UNESCO's universal ideals. UNESCO's eight-volume *General History of Africa* begun in the 1950s challenged canonical interpretations of Euro-centric views, even if couched in universal terms. Political controversies in the 1960s and 1970s provide further evidence. The 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR) came at the behest of the Eastern bloc and many post-colonial countries that viewed the individualistic focus of the Universal Declaration of Human Rights in Western terms.

The most relevant example for this chapter may be UNESCO's efforts to recognize non-Western ideas of cultural heritage. Just as indigenous rights movements began to circulate in the world, UNESCO adopted this same cause. In the 1970s, the Smithsonian institution in Washington, DC, and UNESCO organized a series of symposia on folklore and cultural life that are now regarded as the beginnings of the moves that eventually led in 2003 to the Convention on the Safeguarding of the Intangible Cultural Heritage (Aikawa, 2004; Mason & de la Torre, 2000). In the United States, the impetus came from acknowledging the role of folklore and oral cultures in African-American and Native-American groups. The 2003 UNESCO Convention on intangible cultural heritage, therefore, safeguards historical processes rather than products and monuments. East Asia and Sub-Saharan Africa, in particular, championed the discussions as conforming to their notions of heritage. There was also a link to the 2005 Convention: the 2003 Convention, in its politics of negotiation, is also regarded as the price these regions extracted for supporting the 2005 Convention. The 2003 Convention was a counterpart to the "tangible" heritage convention of 1972, while the 2005 Convention dealt mostly with cultural industries, conceived in terms of diversity.

In the 1980s, UNESCO began considering the role of culture in development. Here, too, it reflected broader ideational and transnational movements that spoke to culture. Examples include the Mayan Rights movements in Latin America (Davis, 2004) and the push back from the developing world on development objectives and instruments framed in the global North (Escobar, 1995). The 1982 World Conference on Cultural Policies, or *Mondiacult*, in Mexico forwarded an anthropological view of culture. But underlying it were broad political and cultural pressures. A group of 77 (G-77) developing countries were behind the move in 1987 to declare 1988–1997 as the Decade for Culture and Development. In 1993, UN Secretary-General Boutros Boutros-Ghali and UNESCO's Director-General Federico Mayor

created the World Commission on Culture and Development. The first sentence of the Commission's 1995 *Our Creative Diversity* report notes: "Development divorced from its human and cultural context is growth without a soul" (WCCD, 1996, p. 15) (see De Beukelaer and Freitas, Chapter 13, this volume, for debates on culture and sustainability).

There is a temptation to view anthropological views of culture as sitting astride universalistic notions and thus in conflict with UNESCO's fundamental ideals. Anthropologists and cultural studies theorists themselves often deride universal notions as ill-informed Enlightenment projects of modernity, entailing diffused forms of governmentality and regulation (several chapters in this volume make a similar case, albeit not as anthropologists). These debates, nevertheless, miss two points. The first is ontological. Political theorists have pointed out that universal and cultural ideals may not necessarily be in conflict with each other. Often even local ideals reflect global networks (Keck & Sikkink, 1998). To the extent that they are participatory, they also reveal the politics of deliberation among conflicting ideals (Benhabib, 2002; Laclau, 2002; Singh, 2011a, chapters 1 and 7). The second point concerns the politics of deliberation at UNESCO itself. The organization is circumscribed in its functioning as its direct constituents remain nation-states (Sewell, 1975; Wells, 1987). The latter dominate UNESCO's debates even though UNESCO has worked hard to connect with civil society, intellectual, and transnational networks.² UNESCO's difficult position sitting betwixt global or cultural ideals and the political prerogatives of its membership in fact helps to explain the creation of the 2005 Convention, which is the subject of this book.

Negotiation of the 2005 UNESCO Convention

The politics of the World Trade Organization propelled those at UNESCO towards the 2001 Declaration on Cultural Diversity and subsequently the 2005 Convention that would seek to regulate international commerce in cultural (mainly entertainment industry) products. Three aspects of these politics, explained below, are important. First, many market-based economies since the Second World War had taken exception to the exchange of cultural products in international trade. Second, in making their case at UNESCO, these countries linked their agenda to the cultural economy issues that had arisen since Mondiacult. Third, the arbitration of their position at UNESCO obeyed "national" interests. UNESCO's high idealism on culture merely provided the context for justifying national interests in the name of cultural diversity.

The issue of audiovisual, as it is known at the WTO, galvanized global public debates about cultural identity during the Uruguay Round of trade talks from 1986 to 1994 involving mostly the United States and the European Community, in particular France. From the late 1940s onwards, Western Europe successfully argued that cultural industries, especially films, needed special protections such as quotas. During the Uruguay Round, the need for a “cultural exception” supplemented the language of quotas. This resulted in the European Union (EU) taking the now-famous most favoured nation (MFN) exemption, which allowed it to preserve its cultural industry policies.³

The main issue concerned the 51% programming quota for television that had come out of a European Commission’s Television without Frontiers Directive that came in to force in 1992 just as the Uruguay Round headed to its end-game. In reality, very few states implemented this quota but the EU position was to try to enshrine this quota formally through the evolving General Agreement on Trade in Services (GATS). A related issue was the EU position that content restrictions apply to all of the 300-plus channels that were coming about as a result of satellite and cable technologies. The United States wanted it restricted to 50% to 70% of the channels. In as much as US films and television programmes dominate in Europe, and taxes on box office receipts often subsidize domestic films and television, the Motion Picture Association of America (MPAA) also argued that they were subsidizing the European industry and objected to the agreement sought by the Europeans at the Uruguay Round. EU and the United States fiercely opposed each other in these negotiations, which in France came to be called “guerres des images” (image wars).

Transnational cultural industry coalitions, such as the European Broadcasting Union, among Europeans resulted in the MFN exemption that allowed EU not to make any commitments toward liberalizing its audiovisual sectors. In the EU, this came to be known as the “cultural exception”, underscoring the firm belief that cultural industries were non-negotiable and directly linked to cultural identity.⁴ France’s former Culture Minister Jack Lang, an important force behind the Television without Frontiers Directive and EU’s GATT position, famously declared: “The soul of France cannot be sold for a few pieces of silver” (Murray 1997: 209). Goff (2007) presents a comprehensive analysis of the way the elite in Europe used the dispute to endow meaning to their borders, deepening national identities and helping to create the momentum for a European identity.

The decade after the Uruguay Round ended featured a progressive hardening of the European position on cultural industries. Europeans

continued to frame the issue in cultural identity terms but also shifted the focus from cultural exception to cultural diversity. Canada and France led an international coalition of governments to switch the cultural industry issue over to UNESCO from the WTO, which resulted in the Declaration on Cultural Diversity in 2001 and the 2005 Convention on the Protection and Promotion of Diversity of Cultural Expressions in 2005 at the 33rd General Conference in UNESCO. The Preamble to the text starts by “affirming that cultural diversity is a defining characteristic of humanity”. Its 35 articles affirm the rights of nations to formulate cultural policies that promote cultural diversity and protect indigenous cultures. Taken collectively, these articles outline a legal rationale against liberalization, although, as the introduction to this volume notes, these articles also enable these nations to compete in the global marketplace. Article 20 then establishes the relationship to other international treaties: “mutual supportiveness” is mentioned as the underlying principle, but the Convention cannot be subordinated to other treaties. In other words, unlike other international conventions where the latest convention supersedes earlier conventions, the 2005 UNESCO Convention does not supersede WTO treaties that were framed earlier. If there were to be a trade versus cultural protection issue in the future, it would have to be resolved in the spirit of mutual supportiveness without subordinating the UNESCO Convention.

In moving towards a convention, the French and the Canadians created a network of cultural ministers from around the world, with funding from the Canadian Council for the Arts, called the International Network on Cultural Policy (www.incp-ripc.org), which now includes over 70 cultural ministries. INCP was also instrumental in creating a parallel non-governmental network of international cultural industry workers and artists that in September 2000 coalesced into International Network for Cultural Diversity (www.incd.net). Representatives, who would later form the INCD, were at the failed WTO Seattle Ministerial in December 1999, in an effort to bring cultural issues to the meetings and also to organize protests against them. INCD is headquartered in the Canadian Council for the Arts, which is the leading arts advocacy group in Canada. INCD and INCP annual meetings and agendas run parallel to each other. INCD had drafted an International Convention on Cultural Diversity, which was similar to that of the INCP in its aims and philosophy except that it was more emphatic in keeping audiovisual negotiations out of the WTO. While Canada and France frame INCD as a global network of non-governmental organizations, the imprint of the Canadian and French governments is ubiquitous.

It seems that as UNESCO Cultural Diversity and Convention deliberations developed they became more and more about commerce to the exclusion of other perspectives such as anthropological or sociological ways of understanding diversity (see also Isar and Pyykkönen, Chapter 1, this volume). UNESCO's thinking about culture in the 1990s was often framed in terms of the *Our Creative Diversity* report (WCCD, 1996) but this report often emphasized the syncretic, hybrid, and exchange features of cultures. By the time the UNESCO Cultural Convention came about, the complexity of these anthropological arguments was lost to make way for discourse on national cultural policies and economic protections for culture.

Implementation of the Convention

An examination of the Convention's articles show that, although it is supposed to be framed for the broader purpose of ensuring cultural diversity, its main focus seems to be preserving and protecting (from trade) a few cultural industries in national terms. Thus, cultural industry seems to be coterminous with national identity even if it allows governments to define cultural identities. The case of France is especially ironic because, like many other European states, its government does not collect any data on any identity except national identity. Its ethnic minorities often see themselves as excluded from socio-political-economic life. Just as the ink was drying on the 2005 Convention, riots broke out in several French cities over police brutality, leading President Jacques Chirac to declare a state of emergency on 8 November 2005 that lasted until 4 January 2006. On the other hand, France's partner in leading the moves for the 2005 Convention is Canada, which is a *de jure* two-nation bilingual state (de facto, it has many languages) and is well known for recognizing its indigenous groups (first nation) and their cultures.

At an organizational level, UNESCO can point to several intra-organizational measures that attest to the smooth functioning of the organization.⁵ The Convention was ratified on 18 March 2007. According to the provision of its Article 18, an International Fund for Cultural Diversity was set up with voluntary contributions and had collected \$5.8 million in funds by March 2103 and funded over 60 projects in the first three years of its pilot phase (2009–2012). The parties to the Convention submit quadrennial reports to UNESCO, and the first was due in 2012 (see Anheier and Hoelscher, Chapter 12, this volume; Isar and Pyykkönen, Chapter 1, this volume). Several offices have contributed to the work of the Convention. The UNESCO Institute for Statistics (UIS)

issued a new Framework for Cultural Statistics (UNESCO Institute for Statistics, 2009), which took into account the work of the Convention. UIS also set up an Expert Group on Measuring the Diversity of Cultural Expressions.⁶

At the level of global norm formation, four other issues provide some context for evaluating the implementation record of the conference. First, legally the Convention lacks force. The Vienna Convention on the Law of Treaties allows for later conventions to supersede earlier ones on the same topic. Article 20 wording, as noted earlier, sets a new legal precedent of “mutual supportiveness” which means that the Convention does not subordinate instruments at the WTO (see also Neuwirth, Chapter 6, this volume). The US delegation inserted this phrasing in Article 20 shortly after rejoining UNESCO in 2004; in fact, one of the reasons the United States rejoined may have been due to pressures on the Bush administration from entertainment industries, which make up the country’s biggest export item at over \$100 billion a year in film, television, and music sales. In general, even without Article 20, UNESCO must rely on norm diffusion and voluntary measures for compliance because of its lack of capacity for dispute settlement and enforcement.

Second, the re-entry of the United States to UNESCO changed not only the wording of specific articles as mentioned above, but also the trajectory of the implementation. The Convention was not a priority for the United States and it wanted to direct resources of the organization elsewhere. The United States brought an additional \$240 million for its official membership dues, amounting to nearly 22% of the UNESCO budget. In October 2005, the United States was one of the two countries, along with Israel, to vote against the Convention while 148 countries voted for it. As a non-signatory, the United States is not bound to the Convention and it also carried additional clout as the biggest dues paying member. While UNESCO’s budgetary processes are arcane and complex, great powers do carry clout (Hoggart, 2011; Singh, 2011b). In a further twist, the United States stopped paying its dues in 2011 after UNESCO voted to admit Palestine as a member. Just when the organization could have hoped to allocate resources to the measures, the United States now cut off funding. Thus US engagement with UNESCO can be described as two phases: dilution of the Convention (in 2004–2005) and then dropping funding for the organization altogether (in 2011).

Third, the Convention is premised on an analog model of product flows in cultural industries. In such a world, member states ship cultural products to each other in metal containers, which can be regulated at national borders, while governments encourage their own creative

industries in a variety of ways. In a world of digital technologies the analog model falls apart. The primary cultural consumption is related to social media where notions such as protection and promotion of a diversity of cultural expressions sound quaint and anachronistic. For example, the Convention was not designed to take into account 1.4 billion Facebook users with 4.5 billion pieces of content including 300 million photo uploads per day (in 2014).⁷ Adding 1 billion YouTube users per month, the 650 million Twitter users, and other forms of social media makes this even more complicated. Forms of digital and social media access vary around the world, of course, but the worst off are societies that may be the most ill-prepared to withstand the looming global onslaught of digital technologies.

Fourth, digitization has also once again shifted the major battle in cultural productions from Hollywood versus the rest a global North–South battle on intellectual property enforcement. Countries such as Canada and France have formed a formidable global coalition with their cultural adversaries such as the United States to enact and enforce restrictive intellectual property rights. Examples include the many preferential trade agreements that the United States and the EU have signed with countries in Latin America and Sub-Saharan Africa. A particularly restrictive measure is the most recent Anti-Counterfeiting Trade Agreement (ACTA) signed in 2011 but not yet ratified, largely due to civil society protests worldwide (Sell, 2013). ACTA went far beyond the existing WTO agreements in intellectual property protection and enforcement, which are now the most important cultural industry issues for both the rich-country signatories and non-signatories to the 2005 Convention.

The workings of the Convention in the last ten years, therefore, can also be examined within the broad context of overlapping issues in other international organizations that attend to trade, intellectual property, and economic development. The 2005 Convention sought to address the economic aspects of cultural globalization. However, the lack of movement on further liberalization on culture (or any other issue) from the World Trade Organization has, in an ironic twist, put a damper on UNESCO's efforts to thwart such moves because the original impetus is now removed. Furthermore, the increasing salience of intellectual property concerns has changed the geo-strategic dimension of the cultural globalization debate from the United States towards the EU/Canada parameter to a global North–South axis. Global economic rule-making in culture now concentrates on intellectual property issues rather than cultural production and has shifted from copyright to trade mark policies.

The anthropologist Lourdes Arizpe (2004, p. 175), who supervised the 1998 *World Culture Report*, writes that there are four groups of thinking in culture and development that are relevant: the first concerns those who question ideas of modernization and economic growth; the second concerns those cultural groups seeking inclusion; the third concerns cultural groups making claims that gain them political advantage; the fourth concerns groups seeking to protect their national markets in cultural goods and services. The 2005 Convention on the Protection and Promotion of a Diversity of Cultural Expressions is centred on the fourth goal, while the Convention's creation and implementation also reveal the political tug of war implied in the third goal. The Convention was framed primarily at the behest of countries whose national markets suffered as a result of dispute settlement rulings at the WTO and cultural exports from the United States.⁸

In evaluating the record of the 2005 Convention, we would also be remiss in not placing it in the context of UNESCO's work on global agenda-setting and norm creation. Finnemore and Sikkink (1998) and Finnemore (1993) underscore the importance of organizations like UNESCO in championing global norms that states adopt: instead of nation-states constraining UNESCO in this "endogenous" shift, the international organizations lead nation-states. The record of the 2005 Convention provides little cheer for notions of cultural diversity either in terms of the Convention's particular focus or the weak implementation record that followed. However, the most enduring contribution of the 2005 Convention is that it has raised the stature of cultural industries issues in global debates and facilitated the visibility of connections between cultural industries and identities. In so doing the organization benefits from and encourages efforts at sub-national and transnational levels on cultural diversities and identities. Global agencies such as the World Bank, the United Nations Conference on Trade and Development (UNCTAD), the World Intellectual Property Organization (WIPO), and the United Nations Development Programme (UNDP) now regularly coordinate their work on cultural industries with UNESCO (see De Beukelaer and Freitas, Chapter 13, this volume). The organization receives credit when Afro-indigenous identities are discussed in Latin America and Caribbean, or the missing value-chains for the music industry are discussed for Sub-Saharan Africa (Singh, 2007, 2011a). Global deliberations such as these may not account for specific measures but in the long run they can help explain ontological shifts in the easily understood dimensions of these issues.

UNESCO is an important site to examine the Janus-faced cultural globalization of cosmopolitanism versus locality referred to earlier in this chapter. On one hand, it champions universal notions that reflect global flows of ideas, human beings, and artefacts. On the other hand, UNESCO also stands out as an example of human cautions and imperatives that question cultural globalization that may not bind humanity with common aspirations. The ideas expressed at the Smithsonian in the 1970s reflected incipient moves in the Americas and other places to think of local and transnational identities that were not moored to national flags or universal ideals that carried Eurocentric assumptions. The work of the 2005 Convention may be a retreat into national flag-waving, but it also encourages and questions ideas of cultural identities and cultural productions. In this sense, UNESCO reflects a broad sweep of cultural trends in global history.

Notes

1. After the 2009 election of Director-General Irina Bokova, for example, BBC referred to UNESCO as the cultural organization of the United Nations. (BBC News, Bulgarian Chosen to Head UNESCO." 22 September 2009. http://news.bbc.co.uk/2/hi/middle_east/8269942.stm).
2. In the 1940s, in the negotiations that led up to the establishment of UNESCO, the French had wanted a global intellectual organization along the lines of the League of Nations' International Institute for Intellectual Cooperation (IIIC). The British and the United States did not listen. The compromise was that UNESCO would be headquartered in Paris and that nation-states would consult with National Commissions for UNESCO in arriving at their position. The National Commissions would represent civil society and intellectual voices in national positions. In practice, the role of the National Commissions has been limited. UNESCO itself has been far more successful in creating and promoting international networks, from the International Association of Hydrological Science (IAHS) to the World Wildlife Fund (WWF).
3. The MFN or most favoured nation clause in international trade means that no nation is to be discriminated against in the application of trade measures. An MFN exemption thus allows Europeans to discriminate against any nation, in this case the United States.
4. The EU negotiates as a single entity at the WTO. However, its single position often reveals fissures. The United Kingdom, the biggest cultural products exporter in the EU, and countries such as Denmark and the Netherlands are reluctant to go along with protectionist measures.
5. Many of these measures are listed on the Convention's website. <http://www.unesco.org/new/en/culture/themes/cultural-diversity/diversity-of-cultural-expressions/the-convention/> Accessed 2 July 2014.
6. The author served on both the Taskforce and the Working Group.

7. "Top 20 Facebook Statistics." <http://zephoria.com/social-media/top-15-valuable-facebook-statistics/> Accessed 6 July 2014.
8. Canada lost an important case concerning magazines and periodicals to the United States at the WTO in 1997, which prompted the Canadians to confer with France, which had led the most strident opposition against the United States on audiovisual issues at the Uruguay Round.

3

Competing Perspectives? WTO and UNESCO on Cultural Diversity in Global Trade

Jan Loisen and Caroline Pauwels

Introduction

The critical celebration of ten years of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005a) coincides with the 20-year anniversary of that other global policy institution dealing with trade and culture, the World Trade Organization (WTO). Possibly both celebrations will be rather tempered. On the one hand, the fairly rapid negotiation of the 2005 Convention has been followed by slow implementation. On the other hand, WTO members appear unable to find sufficient common ground to finalize the Doha round of negotiations that began in November 2001. In terms of their interinstitutional dialectics in the field of trade and culture, or particularly on the issue of audiovisual services as they are called in the WTO, hardly any change has apparently been realized. This chapter therefore looks back to and takes stock of competing ideas and perspectives on media and cultural diversity in global trade within UNESCO and WTO. In tracing the development of different perspectives on trade and culture, we reconstruct the history of the WTO/UNESCO interinstitutional dialectics by focusing on a number of milestone events and debates. Drawing on Douglass North's conceptual framework for understanding institutional change, and the persistence of informal rules especially, we argue that notwithstanding the trade and culture debate's complexity, manifold tensions, and often deeply competing perspectives, the final analysis is not that complicated and allows for optimism. The interinstitutional dialectics WTO/UNESCO evolve in a pendulum-like motion, perhaps continually balancing out economic and cultural dimensions of media and culture. Instead of one global

policy organization becoming dominant and winning at the expense of the other, a plurality of competing perspectives has been present since the trade and culture debate's inception and appears likely to continue in the future.

Informal constraints and competing ideological perspectives

To frame the complexity of the trade and culture debate in WTO and UNESCO, we start from Bhagwati's observation (1989, p. 17) that "profound commitments to policies are generally due to a mix of ideological factors (in the form of ideas and example), interests (as defined by politics and economics), and institutions (as they shape constraints and opportunities)". In UNESCO and the WTO, 195 and 160 members respectively engage with different interests and ideas in policy-making. Therefore, institutional developments are bound to be complex, ambivalent, and, often outright contradictory. Nonetheless, institutional change occurs: institutions matter in shaping the way that societies or particular policy issues evolve through time. Vice versa, one can assume that interinstitutional dialectics as well as societal and contextual changes impact institutions. Regarding the interplay of ideas, interests, and institutions, North's (1990) work on institutions, albeit focusing on long-term societal change that can cover several centuries, appears particularly useful to frame the development of the trade and culture debate in the interinstitutional dialectics WTO/UNESCO (Loisen, 2012).

North (1990) identifies informal constraints, formal rules, and enforcement mechanisms as the fundamental "institutions" of an institutional framework. It is important to acknowledge that North's concept of institutions is different from the common understanding of institutions as organizations such as the WTO or UNESCO. For North (1990, p. 3), institutions are the rules of the game in a society, while organizations are the players in the game. The interaction between the organizations that engage with an institutional framework shapes changes in the institutional matrix in a particular direction. Understanding these institutions and the process of institutional change is therefore key to understanding historical change (North, 1990, pp. 3–7), or in our case the development of the debate on cultural diversity and trade in UNESCO and the WTO.

Although in the modern Western world the structure of the economy and society is usually formulated in terms of formal rules, informal

constraints such as codes of conduct, norms of behaviour, standards, and conventions are more pervasive with regard to choices that actors make in negotiation, cooperation, and social or economic organization (North, 1990, p. 36). As this chapter addresses competing ideas and perspectives on cultural diversity in global policy organizations, our focus will be foremost on informal institutions. These are the result of socially transmitted information and cultural heritage, such as knowledge, values, ideology, and other elements that influence behaviour by means of learning processes and imitation. This “cultural filter” offers a conceptual framework for encoding and interpreting information and provides for the continuation of informal solutions to deal with past, present, and future problems. Consequently, informal constraints are important sources for the continuity of societal change and path dependence (North, 1990, pp. 37, 44).

Although focusing on informal constraints surrounding the global trade and culture debate, it is clear that they permanently interact with formal rules, (judicial) enforcement and actors seeking to realize their goals within an institutional framework and a particular policy context. Informal institutions are, however, essential in co-defining that framework and its future evolution. Because of informal constraints’ deep embeddedness and persistence within the framework, North argues that they are essential in understanding processes of incremental change.

In operational terms, we have analysed informal constraints in terms of different policy traditions, norms, and values related to three keywords and their related fields of tension that continually challenge policy-makers: cultural diversity, convergence, and subsidiarity.

“Cultural diversity”: Tensions in the relationship between culture and economics

Media and cultural goods and services have a dual nature. Both their cultural and economic dimensions should be covered in policy goals, formation, and practice, which is precisely the challenge outlined in the UNESCO Convention’s fifth guiding principle (Article 2) on complementarity of economic and cultural aspects of development.

“Convergence”: Tensions regarding the adequate policy approach to media and culture

As the production and distribution of media and cultural goods and services are subject to fast and unpredictable technological and economic

developments, new challenges are permanently created to shape policies on converging media and cultural goods and services in a culturally viable and economically sustainable manner.

“Subsidiarity”: Tensions surrounding policy levels for policy definition and implementation

In an increasingly multilevel governance and multistakeholder management context of media and cultural policies, policy-making increases in complexity. Subsidiarity refers to questions of which governance level is best suited for, and which actors to include in, deliberations to develop policies to protect and promote cultural diversity.

In addition, we distinguish four phases in the development of the global institutional framework for cultural diversity, which structure subsequent parts of the chapter:

- (1) Dealing with the dual nature of media and culture in a context of embedded liberalism (1940–1960)
- (2) Towards a new world information and communication order (1960–1980)
- (3) From GATT to WTO and beyond (1980–2000)
- (4) Towards cultural diversity? (2000–...)

Dealing with the dual nature of media and culture in a context of embedded liberalism (1940–1960)

The abovementioned fields of tension were already apparent in the beginning of the trade and culture issue. With regard to the dual nature of media and culture, Adorno and Horkheimer's (2006) deliberately polemical analysis of the rapidly developing culture industry centred on culture and industry being a contradiction in terms. Commodification and industrialization of culture eliminates culture's capacity to act as a utopian critique supporting societal change. A completely different view embraces and celebrates media and culture's dual nature. First, in terms of its direct consequences regarding employment, trade potential, sales, etc. Second, in light of the media's indirect function, such as the supporting role of advertising in which the audience's attention is sold to market industrial goods as well as more general processes of political and cultural influence:

The modern American motion picture, almost beyond any possible comparison with other items of export, combines considerations of economic, cultural, and political significance.

(Mayer, 1947, p. 31)

To some extent extreme, these different views resonated in the global trade and culture dispute. In the same time frame when the trade and culture dispute began to be articulated, two organizations dealing with the issue on a global level were set up. In 1945, UNESCO was created, striving for cooperation among nations after two world wars by, *inter alia*, building intercultural understanding, supporting cultural diversity, and protecting freedom of expression. In 1947, the General Agreement on Tariffs and Trade (GATT) was launched, also striving for cooperation, yet by means of opening trade with a view to secure economic growth and development. Although cooperation to secure peace among GATT members was shared, their perspective in terms of catering for the dual nature of trade and culture appeared opposite. Hence the framing of the issue as a “dialogue of the deaf” (Roy, 2005) since the post-war period up until today. The former GATT and current WTO practice of reducing trade barriers seems to favour a “culture as commodity” view, which stresses free trade and opposes parochialist, protectionist cultural policies thwarting individual *consumers’* preferences and tastes. UNESCO’s mission, in turn, is more in line with a “culture as dialogue” view, central also to the 2005 Convention on cultural diversity. Informal constraints in this context are more tolerant of government intervention on the basis of market failures in media and cultural sectors that may deny *citizens* a qualitatively pluralist and culturally diverse offer (Sauvé & Steinfatt, 2003).

As may be expected considering the new balance of power after the Second World War, the first negotiations on the trade and culture issue occurred in GATT. The United States, seeking to valorize its post-war hegemony and setting out predominantly from a culture as commodity view, asked amongst other things that European countries abolish their quota on the import of cinema films in return for the Marshall Plan. The Europeans, and especially France, countered this request invoking both informal institutions and formal rules to continue its protectionist policies. Setting out from a “culture as dialogue” perspective, the cultural aspect of cinema and its contribution to cultural identity was stressed. The European discourse also appealed to vivid fears in, and shaky trust among, many countries. On the one hand, full liberalization would have

implied too much pressure for the revival of cultural industries in light of American post-war dominance – some would argue, cultural imperialism – in the sector. But also past experiences with propaganda and the imperfect understanding of technological innovation provided fertile ground for caution (Pauwels & Loisen, 2003, p. 293). Although technological convergence was in its infancy, the difficult assessment of new technologies' societal impact immediately created anxiety. Whereas the relationship between culture and economics (the issue of cultural diversity) explicitly juxtaposed GATT members, uncertainties related to the convergence and subsidiarity fields of tension strained relations as well. A clash of informal constraints in terms of different policy traditions, norms, and values was therefore already apparent during the first GATT negotiations, and is essential to understand the issue's incrementally changing development path (North, 1990).

As a consequence of competing ideas and interests within a particular historical context, the well-known compromise of Article IV was reached in the first GATT negotiation round of 1947. On the one hand, the path of liberalizing trade was firmly set (e.g. through Article XI GATT on a general elimination of quantitative restrictions). On the other hand, cinema films were explicitly excluded from Article III GATT (National Treatment). By excluding cinema films from Article III, European countries were able to continue to use their quota systems where necessary (Pauwels & Loisen, 2003, p. 293). In terms of informal constraints, the compromise was also a prime example of the embedded liberalism norm, that is, "a form of multilateralism that is compatible with the requirements of domestic stability" (Ruggie, 1982, p. 399) and of the coexistence of complementarity and contradiction in the international trade regime (Ruggie, 1982, p. 404).

In the 1960s, the United States again put the issue on the GATT agenda to assert that European limitations on the import of television programmes contravened GATT provisions. In their view, television programmes were not the same as cinema films. Aware of the issue's sensitivity, the United States used a careful approach and acknowledged, at least in its discourse, "governments have quite properly taken a special interest in it because of its importance as a cultural and informational medium" (GATT, 1961, p. 2). However, the Europeans were not ready to make concessions on this occasion either (de Witte, 2001, p. 242). Once again led by France, they invoked a similar line of defence as in 1947. Especially uncertainty surrounding technological evolutions in media refrained other parties to answer the US call. Moreover, media and cultural products appeared to be different than goods (GATT, 1962, p. 8).

The European plea that culture is not a product like any other was easily acceptable in these years, as discussions were held exclusively on liberalizing trade in industrial and agricultural goods (Pauwels & Loisen, 2003, p. 293).

Towards a new world information and communication order (1960–1980)

The institutional framework for trade and culture developed in GATT was in fact only beginning to unfold and remained to a large extent incomplete. Policy actors operated from a predominantly nationally defined cultural filter within a post-war context of uncertainty. Formal rules explicitly targeting media and cultural trade were minimal, although inclusion of “the sector” (i.e. only screen quota for cinematographic films) in the trade regime via Article IV GATT foresaw future, progressive, liberalization.

Changes in the global political and economic context, however, led to the articulation of an alternative institutional framework in a competing global organization operating differently than the GATT club model. Largely disconnected from multilateral trade proceedings, a first comprehensive debate on global policies regarding media and information was indeed held in UNESCO, notably in the 1970s. After the 1960 wave of decolonization and in a bipolar Cold War context, developing countries, led by the non-aligned movement, raised their voice, introducing a development perspective into global policy deliberations (see Saouma and Isar, Chapter 4). Within the UN system, these parties stressed that, though formally independent, their political and economic sovereignty was precarious and called for a New International Economic Order (NIEO). Also in the field of communication and culture, Western cultural imperialism and periphery dependence of communication hardware and content were challenged in the developing countries’ call for a New World Information and Communication Order (NWICO), which centred on “the four Ds”: *Democratization* to counter the lack of balance in essentially one-way communication flows from rich to poor countries; *Decolonization* in cultural terms to stop misrepresentation and lack of respect for countries’ cultural identities; *Demonopolization* to reduce the dominance of transnational companies in communication technology; and *Development* for genuine national independence and an equitable distribution of communication resources (Carlsson, 2003, p. 40).

The debate over NWICO culminated in the landmark report *Many voices, one world* (1980), prepared by the McBride Commission. The

(unexpectedly) far-reaching analysis confirmed structural imbalances in information flows and in the distribution of communication resources, and fundamentally questioned the Western liberally motivated free flow of information doctrine. It recognized and supported the developing countries' call for a free and balanced flow, by making a series of recommendations – such as the right to communicate, and limits on concentration and monopolization in media – for a new, more just, and more efficient world information and communication order. Any policy translation of the NWICO framework largely failed, however. Backed by the Western media and press conglomerates, especially the United States and the United Kingdom – who would leave UNESCO in the mid-1980s – argued against any infringement on the freedom of information and expression. But also other Western countries, including France and Canada, who 20 years later would be the main proponents for the 2005 UNESCO Convention, did not support substantial change:

There is precious little evidence, for example, that the French rhetoric about “cultural sovereignty” or “cultural imperialism” has ever meant anything more than concern for the French TV/film industry or an opening of its markets to more programmes from Western Europe. [...] France is undoubtedly not alone in its hypocrisy: it is doubtful if any other Western countries that criticize free flow and cultural imperialism have adopted broadcasting policies that balance their flow of programming to the Third World with reciprocal exchanges.

(Roach, 1997, pp. 108–109)

Without sufficient support from the West, the NWICO framework had little capacity for implementation. After the neo-conservative US and UK governments' withdrawal from UNESCO, not only NWICO was largely abandoned, but also UNESCO's role regarding cultural diversity and global trade faded in the next two decades. In negotiating the 2005 Convention, its supporters appeared to have learned from this experience. The fairly quick negotiations, catering for the divergent positions of most of the UNESCO membership, have led to results: UNESCO has reclaimed its role in the debate – arguably, though, by developing a quite general and legally weak text as the end result.

Perhaps the debate over NWICO was indeed too radical and disconnected from prevailing ideas and interests regarding the flow of information, media, and culture. Change is seldom revolutionary but usually incremental (North, 1990, p. 90). Moreover, several ideas proposed by developing countries and the 1980 McBride report were in

conflict with trends accelerating in the 1980s regarding the fields of tension identified earlier. The debate on media, culture, and trade indeed shifted back to the trade regime's institutional framework that appeared to better accommodate industrialized Western countries' ideas and interests. In terms of the dual nature of media and culture, increasing neo-liberalization, deregulation, and privatization clearly benefited a more economic approach to these sectors (cultural diversity). In addition, rapid developments and convergence in the field of media and information and communication technologies appeared to bring enormous trade opportunities (convergence). And finally, a central idea in NWICO that global policy should foremost strengthen national policy capacities, ran counter to a more or less shared belief in many Western countries and companies that global policy organizations should restrict national intervention in the global free flow of information (subsidiarity). A response to these tensions was, however, in the making elsewhere.

From GATT to WTO and beyond (1980–2000)

Whereas in UNESCO the NWICO deliberations were gradually deteriorating, preparations were being made to embark upon a new round of trade negotiations that could catalyse stagnating industrialized economies hit by a succession of crises since the early 1970s. In addition to deregulating trade in goods, liberalizing services was put on the agenda. A fundamentally different mindset was necessary to tackle the services issue, which is traditionally anchored in national policy traditions as something intangible and not related to traditional trade instruments such as tariffs. In the subsequent deliberations, regulation of services was conceptualized as a trade barrier. Diminishing expectations in the Western world to benefit from liberalization in traditional industrial sectors created a window of opportunity for an epistemic community of policy-makers, specialists, and academics to meet and discuss services liberalization. Although many questions and ambivalences remained regarding how to deal with the intangible nature of services in trade policy, these preparations simultaneously helped reduce uncertainty and have contributed to a more or less shared understanding that services liberalizations was not only possible, but would also bring economic benefits (Drake & Nicolaïdis, 1992). Especially relevant for the field of media and culture is that an explicit link was made to the analysis of – and belief in – industrial societies' transformation into post-industrial information societies. In information society theory (for

a critical perspective, see Garnham, 1998), cultural and creative industries (see Neuwirth, Chapter 6) were seen as an important factor for future economic growth and potentially new investment markets for transforming industrial societies.

In light of these evolutions, pressure clearly increased on upholding trade barriers in media and culture. Especially since the embedded liberalism of international norms in the post-war era, providing leeway in some sectors not to engage with trade liberalization, appeared to be gradually disintegrating with neo-liberal ideology resurging in international trade relations (Ruggie, 1982, p. 413). In addition, on a more down-to-earth level, the European Community, within the context of the "Television without Frontiers" directive negotiations, was at that time also moving towards a more economic and liberal approach to the media sectors. The fact that the French in particular made a quite radical U-turn in policy in 1986, by privatizing the public broadcaster TF1, indicates the extent to which also in Europe the view was gaining ground that television was perhaps not a product just like any other, but was clearly being economically underexploited. In other words, clear breaches were being made in the traditionally defensive, culturally protectionist European arguments and the inclusion of the audiovisual sector in the negotiations became unavoidable. The United States indeed argued for the inclusion of the audiovisual sector in the global liberalization negotiations. Although the European Community reluctantly agreed with this mainly US proposal initially, it also quickly realized that its economy would benefit from partial liberalization of the services sector. As a result, both the United States and Europe strived after liberalization of the services sector, although with admittedly divergent sector-based interests (Pauwels & Loisen, 2003, pp. 293–294).

The changing context thus led to several players (i.e. mostly Western WTO members) aiming to change and update the rules of the multi-lateral trade game (i.e. create a new services trade agreement). In case changes to a certain institutional constraint are made, this will lead to a reconfiguration of the institutional structure and to changes in other institutional constraints. For example, changing the formal rules can have consequences for informal norms and conventions. However, the latter change more slowly than formal rules (North, 1990, pp. 83–90). As a matter of fact, the changing context and shifts of informal constraints regarding convergence and subsidiarity did not prevent the French from resuming their traditional protectionist discourse, indicating the persistence of informal constraints related to cultural diversity.

Resistance was launched against a liberalization of the audiovisual sector, with the help of the argument that the cultural nature of the film and television industry justified protection via quotas and subsidies. Some argued that the audiovisual sector should be *excluded* fully from the General Agreement on Trade in Services (GATS). However, the majority adopted the view that all services, thus including the audiovisual sector, needed to be incorporated in the global agreement. Thus, the concept of cultural *specificity* was proposed. The European Community would have made a (minimum) number of commitments in the audiovisual sector, and, on the other hand, the separate status of audiovisual services as a cultural product should have been acknowledged in the agreements, for quotas and subsidies to remain possible. However, according to the supporters of a third option, cultural specificity would not have offered adequate guarantees for the preservation of European audiovisual regulations and support measures. They therefore advocated gaining a cultural *exception*, which finally received support from all member states despite a number of objections (Gualtieri, 2002, pp. 107–112; Pauwels & Loisen, 2003, p. 295).

Just before the close of the Uruguay round, the United States set higher requirements. The deadlock appeared irresolvable and, in the end, no agreement was reached between the European Community and the United States. In line with the spirit of a cultural exception, the former adopted a very wide range of exemptions from the “Most Favoured Nation” principle for the audiovisual sector and did not make any commitment to liberalization. Although hailed in European public debate as a victory, among others by professionals who were mobilized in the process, this does not mean that the sector was not subjected to the general GATS rules. Furthermore, no success had been achieved in explicitly incorporating the concept of cultural exception (de Witte, 2001, pp. 234–244). The dispute – increasingly symbolic and polemical – was “put on ice” via the reaching of a compromise where no single party saw its objectives fulfilled (or was it the opposite?).

Quite quickly after the WTO’s establishment, the dispute reappeared with the Canada Periodicals case of 1997, in which the United States challenged Canadian restrictions on the import of split-run periodicals. The WTO panel and appellate body dismissed Canada’s defence that partly invoked cultural reasons. Although the panel stressed “that the ability of any Member to take measures to protect its cultural identity was not at issue in the present case” (WTO, 1997, §5.45), critics disagreed. They considered it a prime example

of the WTO's neglect of cultural considerations and pro-trade judicial activism (Krikorian, 2005, p. 957), suggesting a reinforcement of the commodification of culture in the WTO (Neil, 2006b, pp. 41–44).

Towards cultural diversity? (2000–...)

Early celebrations on achieving a cultural exception indeed quite quickly made way for doubts and fears regarding the institutional framework under development in the WTO. Concerning the dual nature of media and culture, the economic dimension appeared to be stressed, relegating cultural concerns to the margins. In addition, increasingly converging media – especially with internet applications developing fast – increased uncertainty, such as in terms of which rules (GATS audiovisual, GATS telecom, GATT, TRIPs) would apply in the future for media policies. In terms of the subsidiarity question (see above), a future negotiating round would perhaps again shrink possibilities to secure “shelf space” for culturally inspired policies and support mechanisms. These fears were further exacerbated when Jean-Marie Messier, the former chief executive of the Franco-American Vivendi/Canal Plus/Universal group, declared the French cultural exception to be dead (Rousselot, 2001). In addition, new proposals – including formerly silent voices, such as that of Brazil – for liberalizing audiovisual services were launched prior to the start of the WTO's Doha negotiating round in 2001 (for an overview of different country positions, see Pauwels, Loisen, & Donders, 2006).

Several actors therefore looked for an alternative framework to discuss the issue and UNESCO was eager to re-enter the global trade and culture debate. In the same month of the Doha round's launch, the Universal Declaration on Cultural Diversity was adopted. Corresponding with the three fields of tension referred to earlier, it discussed opportunities and threats to cultural diversity due to economic developments and technological convergence, and called for international cooperation to revise the relationship between trade and culture (Craufurd Smith, 2007, p. 29). The idea of developing a new international UNESCO Convention regulating cultural policies and trade was supported predominantly by usual suspects Canada and France, and reinforced by diverse cultural lobbyists. The prospect of having a convention contrary to WTO agreements thrilled some parties, while worrying others fundamentally. It came therefore as no surprise that the United States rejoined UNESCO in 2003, the same year that negotiations on the 2005 Convention started and, in that process, voiced its fierce criticism. The United

States continually stressed that the UNESCO Convention was not about culture but about trade, *inter alia* pointing out that the European Commission (EC), which has an exclusive competence for trade, negotiated on behalf of the European Union (EU) member states, which have competence for cultural issues¹ (Pauwels et al., 2006, pp. 132–133, 142–144). Although the 2005 Convention has many weaknesses – in terms of fuzzy concepts, unclear scope, many rights but few obligations, and weak institutional provisions (see Isar and Pyykkönen, Chapter 1) – its fast negotiation process, overwhelming adoption in October 2005, and steadily increasing ratification (see Saouma and Isar, Chapter 4) indicated a shared concern among other parties that while cultural products and services have a dual nature, there are limits to liberalization and free trade in media and culture. Whether this means a return to, or revision of, a new form of embedded liberalism is a topic for debate. Likewise, its influence and strength in countering or (re-)interpreting trade-oriented agreements remains to be seen, but as a policy signal it should not be disregarded (Craufurd Smith, 2007, p. 52).

Naturally, the 2005 Convention did not end the discussion on the treatment of audiovisual goods and services in international trade forums such as the WTO; nor has it been conclusive about nations' rights and duties in developing and implementing cultural policies. Cultural diversity, convergence, and subsidiarity tensions remain, as are competing perspectives in this respect. Perhaps a distinct fifth phase in the culture and trade debate's never-ending story is currently unfolding with the rise of bilateral agreements. In light of faltering multilateral trade negotiations, the United States increased its bilateral trade agreements in which liberalization of cultural trade is an important topic on the agenda. While exploring implementation of the 2005 Convention, the EU has been experimenting with mainstreaming culture in its external relations through protocols on cultural cooperation and other international cultural cooperation agreements (Loisen, 2014). Improvements still need to be made yet these agreements show at least the willingness of EU officials to mention the UNESCO Convention as the backbone of international cultural relations. Reference to the Convention in the latest amendment of the Audiovisual Media Services Directive appears to underline that commitment to the Convention's underlying ideas. Moreover, other parties, introducing new voices, and with a stake in the issue have entered the debate (Pauwels et al., 2006), thus increasing complexity once again.

The announcement of negotiations between the EU and United States on a Transatlantic Trade and Investment Partnership (TTIP) in

2013 may finally put an end to the discussion if the topic of trade and culture is addressed by the historically main actors. It seems unlikely, though. Immediately after the rumour that audiovisual services would be included in the TTIP, a series of organizations reacted. They issued a statement arguing – and implicitly appealing to the three tensions discussed in this chapter – that:

the very inclusion of “new” audiovisual services by the Commission in its draft mandate as well as statements by Commissioner De Gucht threatened cultural diversity. Europe’s freedom was in jeopardy to deploy both existing and future measures that may be needed in order to create a level playing field between offline and online services – on both sides of the Atlantic – at a time of major change for the audiovisual sector. By doing so, the Commission disregarded 20 years of consistent policy making aimed at defending a certain approach to media regulation, culminating in the success of the UNESCO Convention for Cultural Diversity.

(CEPI, CICAÉ, EBU, EPC, EUROCINEMA,
EUROPA CINEMAS, ... UNIC, 2013)

In short: the TTIP appeared to be introducing only the latest chapter in the trade and culture debate, featuring oppositional parties, acting from antagonistic interests and ideas regarding trade and culture – as has been the case since its inception.

Conclusion

In conclusion, some lessons can be drawn. Whereas culture and trade issues emerged almost simultaneously within both UNESCO and GATT, no organization has managed to monopolize the ideas and subsequent approaches towards resolving trade and culture tensions.

Several trends within the fields of tensions analysed in this chapter suggest dominance of an economic approach over cultural concerns. Certainly in the multilateral trade forum, the cultural component of cultural diversity was under pressure. Since the 1980s especially, the economic potential of the cultural industries has been underlined in a context of deregulation, liberalization, and privatization. The cautious policy response to uncertain technological developments also gave way to optimistic belief in converging media as a motor for renewed economic dynamism in the information society. However, those fearing that the WTO would therefore finally overrule UNESCO, as the

liberalization agenda implies a certain irreversible path dependency, were proven wrong. Opposing views regarding cultural diversity, powered by diverging cultural filters and other informal institutions, remain at the heart of the issue. When the WTO seemed to have the upper hand, UNESCO forcefully re-entered the debate since 2000, recalibrating the pendulum swing vis-à-vis tensions in the relationship between culture and economics. Converging media also did not lead to converging pro-trade policies. Rather, a patchwork of rules, commitments, exemptions, and intentions currently governs the global institutional framework for media and culture. In addition, the question of subsidiarity also stays unresolved. The unravelling of the post-war embedded liberalism compromise, and the demise of NWICO, appeared to put the WTO in prime position to develop future policies for media and culture. UNESCO and several nation-states proved resilient, though, countering the path of trade liberalization with the development of the 2005 Convention, which provides an alternative institutional framework based on a different set of informal norms and standards.

Those hoping that UNESCO and its underlying argumentation would finally gain cause were, however, equally proven wrong. Whereas articulation and adoption of the 2005 Convention by a large number of countries quite unexpectedly happened fast, the Convention still does not live up to all expectations and its implementation has been rather slow. To give but one example: it seemed easier to adopt words and principles than to actually invest in the (optional) International Fund for the promotion and protection of cultural diversity. The parties to the Convention pay more lip service to cultural diversity than actually financially investing in it (see Isar and Pyykkönen, Chapter 1; De Beukelaer and Freitas, Chapter 13). Moreover, parties withstand liberalization as long as they have nothing to gain with it, and positions shift when a stronger economic bargaining power has been attained (Pauwels et al., 2006, p. 156).

It is clear from this overview that the issue of cultural diversity and how to achieve this will remain on the agenda for future generations. Interinstitutional dialectics are there to stay. Whereas both UNESCO and the WTO have been striving for the lead in the debate, none has actually “won”. And probably never will. The plurality of views, ideas, interests, and institutions, including their inherent paradoxes and tensions, appear to be the best guarantee to avoid monopolization of the trade and culture issue by UNESCO or WTO. Quite optimistically, one could therefore conclude that cultural diversity is not trapped in path dependency of one or the other organization, but evolves in their

interinstitutional dialectics. As North points out, the idea of path dependency does not close out the prospect of change altogether: “At every step along the way there were choices – political and economic – that provided real alternatives. Path dependence is a way to narrow conceptually the choice set and link decision-making through time. It is not a story of inevitability in which the past neatly predicts the future” (North, 1990, pp. 98–99). Conversely, as neither organization was able to overrule the other, the only path dependence to be identified is that no single path was ever followed.

Note

1. The Treaty on the Functioning of the EU distinguishes between three types of competence. First, in case of exclusive competences, the EU alone is able to legislate and adopt binding acts (e.g. in trade policy). Second, the EU and member states share competences to adopt binding acts in other fields (e.g. regarding the environment), yet member states can only do so if the EU has refrained from exercising its own competence. Finally, the member states are in the driving seat to legislate for a series of other policy fields in which the EU only has supporting competences. In cultural matters, for example, the EU can only intervene to support, coordinate, or complement member states' actions.

Part II

Diversity

4

“Cultural Diversity” at UNESCO: A Trajectory

Galia Saouma and Yudhishthir Raj Isar

Introduction

This chapter combines the experience of the lead author, Galia Saouma, who writes as a practitioner, and the more academic perspectives of the second author, Yudhishthir Isar, who has had a foot in both camps. The first served as the Secretary of the 2005 UNESCO Convention on Cultural Diversity, from its entry into force in 2007 until the end of 2011, after a long professional career as an international civil servant in the cultural department of UNESCO. The second author was also a cultural official of that organization for almost three decades, but has been an academic analyst and independent cultural policy advisor since 2002. Both authors draw upon their previous praxis yet also stand back from it analytically, as they trace the itinerary of the term “cultural diversity” in UNESCO.

This itinerary has been based principally on an understanding of “cultural diversity” as denoting cultural differences *among* nations rather than *within* them. It began with a rather simple and straightforward celebration of human diversity in the early years. Later, during the period of decolonization, the idea was gradually inflected to become a normative metanarrative linked to the idea of “development”. Its most recent avatar is the term “diversity of cultural expressions”, as defined by the eponymous 2005 Convention. This is a far narrower reading, yet it is also one that accords the term “cultural diversity” a significant new status in international law. From the 1990s onwards, UNESCO has also tackled the *infra-national* dimensions of cultural difference, but only in a secondary way and under a different label, that of “cultural pluralism”. Its discursive deployment of the term “cultural diversity” has related principally to issues that are *inter-national* in nature. In both

cases, UNESCO usage is actually a palimpsest of notions elaborated over the years and in which each layer reflects the evolving semantic preferences of its Secretariat as well as of the representatives of its member states who take part in the negotiations around the terms.

A final point worth making at the outset is that as regards the terms “culture” and “cultural diversity” UNESCO has not been an inventor of meanings. Rather, it has selected particular readings of terms once they have entered the “public domain” as it were and has then adapted them to its own discourse. Its interpretations, therefore, are in no wise comparable to academic elaborations (see also Isar and Pyykkönen, Chapter 1). Scholars have in fact contributed directly to UNESCO’s formulations only fitfully and/or in a limited way; these contributions have always been repackaged for a semantic universe of diplomatic expediency in which the Secretariat and its authorizing environment of member states operate.

“Cultural diversity”: An unfolding story

The term “cultural diversity”, understood as diversity among nations, has recurred in the language of UNESCO since its inception in 1945. Cultural differences among human societies were valued by the framers of its constitution as a given of the human condition that needed to be nurtured and celebrated – rather than hatefully denigrated as they had been by the racist doctrines of the political regimes defeated during the Second World War. Only later did cultural diversity become a keyword in various culturalist affirmations within UNESCO, by which countries consciously mobilized their cultural distinctiveness (Appadurai, 1996; Isar, 2004, 2006, 2008). In this guise, the term became a metonym for resistances to Western cultural hegemony (driven by the decolonization that considerably enlarged UNESCO’s membership in the 1960s) and/or for the cultural claims of discriminated groups everywhere.

In the earliest UNESCO sense, as defined earlier, cultural diversity was a “good” that was not tied to any particular definition of “culture” itself, yet was ideally suited to the understanding of world culture as made up of distinct “national cultures”: neatly bounded and homogeneous wholes whose contents are given – hence as embodied things to be “protected” or “preserved” (Handler, 1994). It was only to be expected that governments coming together in an intergovernmental setting should hew to such a vision of each other’s “national culture”. Nor can we ignore the key clause in UNESCO’s Constitution stipulating that “with a view to preserving the independence, integrity and *fruitful diversity of the*

cultures and educational systems of the States Members of the Organization, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction". "Fruitful diversity", to be sure, provided that this meant *diversity between and among nations*, not cultural differences within them. Yet each of these national entities has also craved recognition of what came to be termed its "national identity".

It is important, therefore, that Sir Julian Huxley, the first Director-General, should have gone out of his way in 1946 to state that UNESCO had no ambitions to create a uniform world culture but sought only to propose broad international frameworks. Two years later he stressed that:

Cultural diversity is welcome as making for a greater richness of human achievement and enjoyment; thus we must not endeavour to impose any standardized uniformity of culture, but on the contrary should aim at encouraging the free development of divergent and characteristic cultural expressions in different regions and countries.

(cited in Isar, 2004)

What is also significant about this reassurance is that it sought explicitly to assuage concerns expressed by representatives of France (notably the philosopher Jacques Maritain) that UNESCO's leadership was attempting to elaborate a kind of abstract world culture, defined in essentially Anglo-Saxon terms, rather than envisage the cultures of the world as a differentiated plurality (Conil Lacoste, 1994). Five decades later, the vigorous commitment of France to the early 21st-century elaboration of "cultural diversity" in the cultural goods and services sense was driven by and catered to anxieties of a very similar nature, in other words resistance to the hegemony of a "global culture" dominated by the United States.

Culture, cultural diversity, and national identity

Cultural diversity understood as national distinctiveness meshed in neatly with the geopolitical affirmations of newly independent nations in the 1960s, for whose benefit UNESCO's previously high-culture-oriented (in other words Western) understanding of "culture", was gradually replaced by a far broader "ways of life" reading. Between 1956 and 1964, the number of member states rose from 70 to 114. Against this background of newly acquired or regained national sovereignty, culture

in UNESCO's deliberations reflected the various elaborations, revivals, or reinventions of culture in the nation-state container.

Reflecting this trend, the celebration of the twentieth anniversary of the organization led to the adoption of the 1966 Declaration on the Principles of International Cultural Cooperation, which states the following (Article 1):

- (1) Each culture has a dignity and value which must be respected and preserved.
- (2) Every people has the right and duty to develop its culture.
- (3) In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

The 1966 Declaration provided a new rhetorical framing for UNESCO's activities in culture. It was also among the sources of inspiration for the Universal Declaration on Cultural Diversity (UNESCO, 2001), itself a prelude to the 2005 Convention, which defined diversity as the "common heritage of mankind", and is also echoed by the 2005 Convention itself: the recognition in 1966 of the "equal dignity of all" is expressed in 2005 by "equal dignity of and respect for all cultures" (Article 2.3). The 1966 Declaration also paved the way for the notion that cultural exchanges could and should be from people to people, rather than just from state to state.

Affirming cultural difference as key to "development"

The negotiations that led to the adoption of the 1966 Declaration prompted strategic thinking by French cultural officials on how to give a more prominent role to culture in UNESCO's programmes. They chose to share their country's newly elaborated model and methods of cultural policy with the rest of the membership (Isar, 2004). In 1966, the organization's General Conference also endorsed the proposals of the French representatives, thus setting in motion UNESCO's ensuing work in cultural policy as well as providing a template for it. This notion of cultural policy was based on the master concept of "cultural development" elaborated in France, notably within the wartime Resistance (and, earlier still, in the *éducation populaire* movement of the Front Populaire). "Cultural development" was subsequently defined by UNESCO in the following terms: "a process of development or progress in the cultural life of a community, aimed at the attainment of cultural values and

related to the general conditions of economic and social development" (UNESCO, 1981). The objective of "cultural development" was the flourishing of culture itself, mainly high culture, "as a sociological dynamic in which society grows and changes; as a powerful sector of the economy; as a professional environment inhabited by skilled creators, artists and craftspeople; as a transmitter of aesthetic expression, ideas and values" (Epskamp & Gould, 2000).

Yet in this perspective also lay the idea that development itself needed to be revisited as a plural project, parsed in terms not just of the abstract idea of universal "culture" but also and above all in terms of distinct ways of life, each with its own developmental path. This led UNESCO to introduce in the 1970s the notion of the "cultural dimension of development". Through a series of intergovernmental conferences in different regions, the emphasis was shifted from "progress in the cultural life of the community" to the idea that culture – that is different cultures and cultural difference – must be made integral to the development process: the flourishing of the distinctive culture of each nation would benefit its development. Witness the celebrated definition adopted by the 1982 Mexico City World Conference on Cultural Policies, where culture is "the whole complex of spiritual, material, intellectual and emotional features that characterize a society or social group" (UNESCO, 1982a).

In point of fact, many of the key articulations of the 2005 Convention around "cultural diversity" were, in the goods and services sense, adumbrated early on within UNESCO, under the rubrics of both "cultural development" and "the cultural dimension of development". In 1969, the first volume of the organization's *Studies and Documents in Cultural Policies* underlined issues that largely prefigured Article 6 of the Convention, which lists measures aimed at protecting and promoting the diversity of cultural expressions to be taken by each state party. The cultural policy framework developed over the next decade by the UNESCO Secretariat covered a range of measures, including the elaboration of statistics and indicators; the consolidation of cultural institutions and legal, administrative, and financial channels to support cultural activities; as well as long-term programming and training for artists and cultural agents. As these themes became part of the taken-for-granted cultural policy discourse of UNESCO, member states began to advocate for increased financial and institutional support to culture. They did so by positing the very links between culture, cultural policy, and development that were reiterated over three decades later in the 2005 Convention. The intergovernmental regional conferences referred to earlier also, as part of the discussion on administrative and financial measures

needed for cultural policy, addressed such topics as the involvement of the artist in cultural policy, the cultural industries, technological developments affecting audiovisual communication, cultural participation, training of specialists in cultural development, cultural rights, and planning. The 2005 Convention deployed very similar formulations in its Article 7 (measures to promote cultural expressions) that reads as follows: 'Parties shall also endeavour to recognize the important contribution of artists.'

The path towards the 2005 Convention

We continue this chapter by analysing the emergence of the most recent elaboration of the notion of cultural diversity, which centres on the production, distribution, and consumption of cultural goods and services. We begin by situating the process in the context of international norm-making.

The international norm-making process at UNESCO

The "diversity of cultural expressions" is among the most recent of the normative metanarratives that have been generated over the years by intergovernmental organizations such as UNESCO. These notions and terms with specific institutional meanings have provided as it were the semantic infrastructure for new international norm-making. They have also anchored the idea that international norms can and should be elaborated intergovernmentally in order to supersede purely national ones. These new norms constitute "global" doctrine and provide frameworks within which certain issues may be addressed intergovernmentally, for example in the fields of human rights, environment, climate change, and, most recently, "cultural diversity".

These metanarratives have always reflected changing patterns in international relations, notably shifts in the distribution and/or deployment of "hard" power or international influence. They have been inflected by the changing bargaining powers of different countries, as well as evolving stakes, often based on internal politics, influenced of course by global processes such as decolonization, the end of the Cold War, and globalization. Like all discourses elaborated in the intergovernmental arena, those of UNESCO have often resulted from semantic manoeuvres designed expressly to circumvent or mask differences of stakes and opinions in order to reach a consensual platform. Hence these texts present a range of rather vague meanings that are open to many different interpretations and adaptations. As the organization's discourses have evolved in

phases, the crystallization of new ideas and/or norms has often required arduous negotiations between governmental representatives within the governing bodies. The terms themselves have become stakes in the interplay among member states, operating in an international arena that should be understood in the literal sense of the word as a place of confrontation and conflict – even if only at the level of meaning-making (Wright, 1998).

By defining the responsibilities of states, international treaties set out “rules of the game” that are expected to be implemented at the national level by new national laws, regulations, administrative practices, and so on (see also Loisen and Pauwels, Chapter 3). At UNESCO, the implementation of these treaties is entrusted to the Secretariat, while each Convention also acquires an intergovernmental governing body that elaborates a programme of action whose purpose is to demonstrate the new style of practice that governments ought to follow in the domain in question. While building up awareness in different national and/or local settings of major issues, UNESCO’s norm-making has often led states to forge alliances among themselves around those concepts that they themselves perceive to be conducive to their national interests. At the same time, the organization’s own normative positioning and reach have been inflected by changing balances of power among its member states. Alliances such as the Group of 77 (G-77) operate within it, serving to secure a majority of votes with a view to either blocking or influencing decisions, notably at the normative level. In some cases the interests, perceptions, or values of the major or hegemonic powers are served; in other cases different groupings of nations succeed in imposing their views.

Benefits for the global South?

To what extent have countries of the global South benefited from the 2005 Convention, presented by its champions as truly global? France and Canada had a clear stake in obtaining international validation of their own systems of support to the cultural and creative industries based on targeted subsidies and the like, hence targeted by stalwarts of global free trade, led by the United States. They were also keen to preserve, if not augment, the export earnings from their cultural and creative industries sectors. But precisely because they were able to position themselves, together with the European Union as a whole, in opposition to the United States – seen more or less universally as the hegemonic wielder of both “hard” and “soft” power – they were perceived and sought to be perceived as operating in the “Minervian” mode

of global institution-building. In this mode, driven by the dictates of wisdom rather than those of *realpolitik*, Minervian actors bring a “non-hegemonic contribution to global governance, one that relies more on global and decentralized institutional incentives than on a unipolar power structure” (Tiberghien, 2013, p. 6).

France and Canada based their case for the adoption of a new international treaty on a platform of rule-based economic multilateralism, so to speak, and secured a truly international coalition that included both state and non-state actors (coalitions of the latter were actually subsidized by Canada). The former included notably, to begin with, the European Union, for which cultural protectionism has always been a key stance (Schlesinger, 2001) and whose officials saw in the proposed treaty the opportunity not only to bolster European cultural and creative industries but also allow the European Union to wield greater influence internationally. The stiff opposition of the US government served to strengthen the cause rather than weaken it, particularly as US hostility played into the anxieties about its own cultural hegemony, referred to earlier, and that have long marked international cultural politics. Despite the fact that few developing countries had significant cultural and creative industry sectors, the drafters advisedly included right from the start a set of articles in the Convention pertaining to “international cooperation”. Here the phrase is code for measures by which developed countries would be required to support the aspirations of developing countries for increased resources to develop their cultural sectors.

Thus a series of “development”-oriented articles were included in the text. Article 13 concerns “integration of culture in sustainable development” while Article 14 – “Cooperation for development” – stipulates that: “Parties shall endeavour to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector.” Article 16 concerns “Preferential treatment for developing countries” and Article 18 the establishment of an “International Fund for Cultural Diversity”. Experience since 2007 has shown, however, that these articles, included with a view to securing a wide measure of support from the global South, have scarcely turned out to be content-rich. Article 16 in particular is clearly a *voeu pieux*, while donations to the International Fund for Cultural Diversity have fallen far short of real needs and expectations, since these are defined as voluntary contributions from states parties rather than obligatory ones.

The momentous yet abidingly ambiguous semantic shift

More needs to be said about the special meaning that “cultural diversity” has acquired in the UNESCO framework. The term was deliberately chosen by France at the end of the 20th century as a replacement for the far narrower and somewhat negative connotations of the “*exception culturelle*” that it had been negotiating for, together with Canada, since the end of the Uruguay round of discussions in 1994 that also led to the creation of the World Trade Organization (WTO). When, in the context of a debate over the European Union’s broadcasting directive *Television Without Frontiers*, the United States attempted to make free trade principles apply to all cultural goods and services (concerned, of course, with their own audiovisual exports), France countered with the argument that a “cultural exception” was necessary: culture was not just another type of merchandise. But the very word “exception” exposed France to accusations of exceptionalist thinking. The transition to “diversity” was a semantic manoeuvre designed to sidestep this stigma and it also enabled French diplomacy to tap into the generalized anxieties about cultural domination mentioned earlier. Thus “cultural diversity” became the rallying cry for a new international cause, that of empowering states to practice different forms of cultural protectionism. The adoption of a new international treaty would be the means to secure this empowerment.

Negotiations towards the adoption of the Universal Declaration on Cultural Diversity (UNESCO, 2001) were the first step in the strategy adopted. The core of that text was Article 8, entitled “Cultural goods and services: commodities of a unique kind”, which states:

In the face of present-day economic and technological change, opening up vast prospects for creation and innovation, particular attention must be paid to the diversity of the supply of creative work, to due recognition of the rights of authors and artists and to the specificity of cultural goods and services which, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods.

Cultural pluralism

Now the 2005 Convention was negotiated for by its backers in order to prepare the ground for further decisive steps in pursuance of Article 8, in other words for the adoption of a binding international treaty. Yet they also realized that the prevailing understanding of cultural

diversity related to the recognition and nurture of cultural difference within societies that everywhere were becoming increasingly heterogeneous. The term was being widely deployed, notably in Europe and North America, with a view to supporting the “right to be different” of many categories of individuals/groups placed outside dominant social and cultural norms, with the predominant emphasis on ethnic differences and the differing affirmations of ethnic minorities in the face of dominant majorities and/or the homogenizing tendencies of “national” cultures (Bennett, 2001). Within nations a new policy stance already had emerged, that of “cultural pluralism”, seen as the political corollary of cultural diversity understood as a sociological reality.

The term has also had a career at UNESCO. The first reference to cultural pluralism as a political philosophy occurred at the 1982 World Conference on Cultural Policies, which underlined that cultural diversity must be recognized and managed within “societies” (UNESCO, 1982a). This rhetorical affirmation, however, was not followed up in the immediate or medium term by any effort in the culture department of UNESCO to address the policy challenges of cultural heterogeneity. On the other hand, the “Management of Social Transformations” (MOST) programme undertaken by the social science department took up multiculturalism in the classic sense (see e.g. Inglis, 1996). In 1996, the independent World Commission on Culture and Development foregrounded cultural pluralism in its report entitled *Our Creative Diversity* (WCCD, 1996). This prompted UNESCO to develop a programme on cultural pluralism in cities and award a “Cities for Peace Prize” for the promotion of social cohesion by municipalities.

The principal follow-up to the report of the World Commission was the organization in 1998 of the Stockholm Intergovernmental Conference on Cultural Policies for Development. The UNESCO Secretariat built upon the Commission’s findings in a “Background Document” it prepared for the Conference, in which it analysed issues arising from the notion of “a commitment to pluralism” within national communities. As a result, the Action Plan adopted by the Conference, while it reiterated the primary emphasis on diversity *among* nations in world society *also* underlined, probably for the first time in a text of this nature, that “acceptance of cultural diversity helps to highlight and strengthen *intercommunity links* rooted in values that can be shared by all the different socio-cultural *components of national society*”. The Action Plan also affirmed that:

cultural policies should aim to create a sense of the nation as a multifaceted community within the framework of national unity – a community rooted in values that can be shared by all men and women and give access, space and voice to all its members [...] aim to improve social integration and the quality of life of all members of society without discrimination.

Moreover, it exhorted member states to respect gender equality, fully recognizing women's parity of rights and freedom of expression and ensuring their access to decision-making positions. Two years later, the UNESCO Secretariat's World Culture Report published in 2000 and subtitled "Cultural Diversity, Conflict and Pluralism explored cultural pluralism as such in some depth; yet it also stressed that "cultural diversity has to be understood for what it is: conscious and deliberate choices that distinguish one culture from another" (UNESCO, 2000, p. 37).

Distinguishing one culture from another was to be the principal but not the sole thrust of the 2001 Universal Declaration. Like all such rhetorical texts, the Preamble begins by reiterating notions already revered in the UNESCO canon, including the "fruitful diversity of cultures". It goes on to refer to recent developments that require new conceptual framing by noting that "culture is at the heart of contemporary debates about identity, social cohesion, and the development of a knowledge-based economy". Referring to globalization, it states that the "development of new information and communication technologies, though representing a challenge for cultural diversity, creates the conditions for renewed dialogue among cultures and civilizations". Other articles reaffirm the right and responsibility of each nation to protect its distinctiveness in the face of globally homogenizing forces and tendencies.

Article 2, however, makes the leap from the global to the national level – in other words in the direction of cultural pluralism – in what were, for UNESCO at least, unprecedented terms:

In our increasingly diverse societies, it is essential to ensure harmonious interaction among people and groups with plural, varied and dynamic cultural identities as well as their willingness to live together. Policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace. Thus defined, cultural pluralism gives policy expression to the reality of cultural diversity...¹

Article 3, “Cultural diversity as a factor in development”, echoes this by affirming that “cultural diversity widens the range of options open to everyone” and links it to development “not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence”. Individual as well as collective rights recognized by the individual state are taken up in Article 4 entitled “Human rights as guarantees of cultural diversity”. Article 5, entitled “Cultural rights as an enabling environment for cultural diversity”, instates cultural rights as “an integral part of human rights” before specifying that:

All persons should therefore be able to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons should be entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

These ideas are further developed in Article 6, “Towards access for all to cultural diversity”. This applies implicitly to the local level by stating that “freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity”.

The core goal

Nevertheless, the principal function of the 2001 Universal Declaration was to prepare the ground for a new international treaty on the sovereign rights of different countries to support their respective – and different – cultural and creative industries. To be sure, the Preamble of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005a), reiterates the pluralist pieties at all levels, as do the principles enunciated (in Article 2) and the rights recognized (in Article 6). But the operative paragraphs leave no room for doubt as regards its core purposes. The imperatives of diversity *within* nations are subsumed into the discourse of diversity *among* nations. While the two strands evolved together, the second would always dominate. This was the key legacy of the Universal Declaration (UNESCO, 2001).

Yet today, both texts are being appropriated in the service of many causes other than those that drove their original champions. Many of these causes have much broader reach than the sovereign right of governments referred to above. They relate, for example, to ethnic differences or represent the politics of cultural rights and/or linguistic diversity. It remains to be seen, however, whether these multiple readings of the 2005 Convention will actually help to establish and implement policies that foster the flourishing of cultural diversity in all its forms, in other words as much within societies as among them, given the “flows and crossovers between cultures, and the patterns of their intermingling that are produced by the movement of peoples and the restless cultural mixing that now characterises developed cultural markets” (Bennett, 2001, p. 19).

Conclusion

We have sought to demonstrate the extent to which UNESCO’s conceptual arsenal in favour of cultural diversity is a palimpsest of notions negotiated among its member states and often proposed by them, as was the case with the 2005 Convention’s understanding of “cultural diversity”. Some of these notions date from almost seven decades ago, while others have been proposed, debated, adopted, and propagated only recently. We have shown that all the layers of the palimpsest focus primarily on *differences among nations* and that, largely for that reason, as a conceptual framework, the Convention itself is not at the forefront of contemporary cultural transformations and trends. It takes no account of transnational flows; nor does it address the exponential spread of the internet and digitalization that have transformed cultural production, distribution, and consumption everywhere. It ignores “the ways in which the meanings and symbols of culture are produced through complex process of translation, negotiation and enunciation” (Stevenson, 2003, p. 62) as well as by contestation and conflict. It is constrained by the UN principle of national sovereignty.

The 2005 Convention itself is undoubtedly a step forward in cultural policy terms. It has great value in simply existing. Although it was “sold” to the global South by its main sponsors in the name of development, it seems likely that its development-oriented provisions will remain largely an empty shell. The Convention is simply not conceptually robust enough to effectively underpin and inspire a system of cultural governance adapted to the market-driven realities of the 21st century, notably the circulation of cultural goods and services, the

imperatives of social inclusion, or the aspirations of cultural producers and consumers across the world.

Note

1. The “harmonious interaction” clause no doubt reflected the Japanese values of the then Director-General Koichi Matsuura.

5

Cultural and Biological Diversity: Interconnections in Ordinary Places

Nathalie Blanc and Katriina Soini

Introduction

It is increasingly recognized both by policy-makers and scientists that cultural diversity and biodiversity are not only equally significant for sustainable development, but are also interrelated. International policy documents such as UNESCO's Declaration on Cultural Diversity (2001) and Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005a), and the UN Convention on Biodiversity (CBD) (UN, 1992), refer to the linkages and analogies between the two, as do the writings of many scholars. In this context, the focus is mainly on the indigenous people, their knowledge, and their role in the maintenance of biological diversity, with cultural diversity often reduced to a few specific cultural practices or symbols, such as languages.

In this chapter, we argue that a broader view is needed to valorize the links between cultural and biological diversity to meet the overall aims of sustainability. Sustainability cannot be achieved through the protection of natural and/or cultural spaces, but needs to be thought of as a transition towards a more balanced and fair relationship between natural and human systems. Therefore, our aim is to discuss frameworks linking together biodiversity and cultural diversity to propose a synthetic approach to both these issues.

First we present the meaning of biological diversity and cultural diversity, and their interconnections, as they have been discussed in particular in the international policy arenas. Then we introduce and compare different conceptual expressions such as "biocultural diversity", "capability", or "ecosystem services". In the third part, two case

studies illustrate how cultural diversity is intrinsically linked to diversity in the natural world. The first case study is the result of a comparison of city dwellers' visions of urban greenways in three French cities, thus exemplifying local urban cultures and their links to natural urban morphology. The second explores the view of rural dwellers in Finland regarding biodiversity and nature and its relation to local settings. By displaying the differences of perceptions of nature, diversity in all ways related to the ordinary rhythms of life, we conclude that biodiversity and cultural diversity cannot be separated from the daily practices from which they draw their full meaning.

Our argument is that both biological and cultural diversity should be understood not only as being interrelated, but growing from the scale of genes to one of landscapes as forms, and as sensible expression of a contextualized way of life. We suggest that it is important to examine environmental forms as expressing a common and limited range of possibilities towards sustainability. The notion of form refers here to any perceptual unit treated as a link between parties and a whole. Today, the dynamic development of environmental forms marks a change in the relation to environmental processes. These forms are synthetic intermediates in the apprehension of these changes and their modes of production in public spaces (Judith Butler, cited in Lukács, 2010). For example, greenways, as new forms of land use, reflect tensions and achieve a synthesis that redefines the collective modes of life (in theory if not in practice). These forms in their differing expressivity show alternative paths both at an ontological and at an ethical level towards an uncertain future. Diversity is thus defined as the connected ways in which people are able to ensure a balanced life, meaning that diversity as a category-relative concept associates plurality with a value, that being the survival of an ecosystem or the right to an open future (Heyd, 2010).

Two separate ways towards diversity: The international conventions on biological diversity and cultural diversity

The term "biodiversity", a contraction of "biological diversity", was introduced in the mid-1980s by natural scientists (Takacs, 1996). Quickly agreed by an intergovernmental preparatory group, an international Convention on Biodiversity (UN, 1992) was opened for signature at the Conference on Sustainable Development in Rio de Janeiro in 1992. The key message of this Convention was the conservation and

sustainable use of biological diversity at gene, species, and ecosystem level, and the fair and equitable sharing of the benefits arising from the utilization of genetic resources (UN, 1992, Articles 1–2). Although the Convention mainly focused on the biological aspects, culture was also brought in: it acknowledged the role of traditional lifestyles of indigenous people related to the conservation of biodiversity, and recognized their property rights to biodiversity and associated knowledge (UN, 1992, Article 8). It is estimated that areas controlled, owned, or managed by the indigenous groups coincides with roughly 80% of the planet's biodiversity (Sobrevila, 2008). Questions related to the intellectual property rights related to genetic resources and associated traditional knowledge thus become a crucial issue. Overall, the trend seems to strengthen conservation mechanisms in order to stop the erosion of biodiversity. According to the Aichi Biodiversity Targets (UN & UNEP, n.d.) the aim is to increase globally the protected areas from 13% of the terrestrial land surface to 17%.

Similar to biodiversity, cultural diversity has been discussed by international conventions and declarations (e.g. European Council, 1997; UNESCO, 2001, 2005a). However, until now, it has received much less attention than biodiversity in public policies and is seldom reflected in economic principles (Throsby, 2008). The UNESCO 2005 Convention on Cultural Diversity refers to “the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies” (Article 4). The Convention does not make an explicit link between cultural diversity and biodiversity, but rather refers to it as “recognizing the importance of *traditional knowledge* as a source of intangible and material wealth, and in particular *the knowledge systems of indigenous peoples*, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion” (italics added). Since the 2005 Convention, UNESCO has increasingly brought forth the linkages between biological and cultural diversity.¹ Most recently, the Hangzhou Declaration (UNESCO, 2013b) states that:

access to essential environmental goods and services for the livelihood of communities should be secured through the stronger protection and more sustainable use of biological and cultural diversity, as well as by the safeguarding of relevant traditional knowledge and skills, paying particular attention to those of indigenous peoples, in synergy with other forms of scientific knowledge.

Thus, the Hangzhou Declaration recognizes both protection and sustainable use as ways to secure the access to environmental goods and services, and the role of indigenous people in this process.

Inextricable link between cultural and biological diversity

In more recent years, scholars have expressed an increasing interest to explore the interactions between biological diversity and cultural diversity (Heyd, 2010; Maffi, 2001, 2005; Pilgrim & Pretty, 2010; Throsby, 2008). It has been stated that biodiversity in human-dominated areas “cannot exist without the practices and knowledge developed by societies that it create, maintain, or reduce it” (Bérard & Marchenay, 2006). Similarly, many cultural practices are based on biological diversity. Researchers from different disciplines from cognitive science (e.g. Mesoudi, Whiten, & Laland, 2006) to ecology (Pilgrim & Pretty, 2010), ethnobiology (Maffi, 2001, 2005), cultural policy (Throsby, 1997, 2008), and philosophy (Heyd, 2010) have found linkages and analogies between the two diversities at various scales and in various contexts. The coexistence of cultural (in particular in terms of languages) and biological diversity (in particular in terms of species) has often been used as an evidence of interrelatedness (Harmon, Woodley, & Loh, 2010; Maffi, 2001). Both in the field of cultural and biological studies, it has been argued that diversity is crucial to maintain the resilience of the cultural and biological systems. A diverse system is supposedly not only more stable both in time and space, but also has an intrinsic value for the future (Throsby, 2008). There are also differences between the two. For instance, while openness and interconnectedness are usually considered as a source and strength for cultural diversity, it might rather be a threat for the biological diversity (e.g. in the form of invasive species) (Heyd, 2010). However, cultural diversity and biodiversity being extremely complex phenomena, the discussion regarding their linkages will be an ongoing one both at a conceptual and empirical level (Heyd, 2010).

The discussion on the linkages between cultural and biological diversity in research and policies has focused until now on the indigenous people, ethnic groups, and their traditional (ecological) knowledge, as the interconnections between both diversities can be depicted easily. The crucial point is that sustainable development and scientific ecological analysis (as well as political ecology) have brought forth the value of an ecosystemic and complex view of mankind within and with its environment. Public policies have been mainly sectorial disregarding not

only the scientific complex understanding of ecological perspectives, but also the profound and practical links that people develop towards nature. The separation of cultural and biological diversity is the result of a sectorial view, which is also related to the tendency of objectification, which is part of capitalism. Pointing out the variety of forms is a way to fight the process of homogenization and to comprehend the stakes of diversity at an ontological and sensible level. Haila (1994, p. 39) has noted that the ecological value of a place depends on its surroundings. Consequently, beyond the “hotspots”, biodiversity conservation plans should involve surrounding areas. We suggest that Haila’s “paradox of place” concerns culture as well. Therefore the analysis of human–nature interface in all contexts and scales should result in the depiction of forms as a way to link biological and cultural diversity.

In this context, our proposal is to develop a deeper understanding of the forms of intermediation, such as by understanding them as landscapes or as narratives. We argue that relationships between cultural and biological diversity are inseparable to modes of living in places, and of the relationships built between natures and cultures at different scales of time and space, as diversity is always related to a scale of reference either spatial or temporal. Works of different disciplines of human and social sciences have already documented relationships between nature and culture. Anthropology has a major role in the production of knowledge, and ecological anthropology has seen in recent years an acknowledgement of the importance of the temporal and spatial aspects (Descola, 2005; Ingold, 2011; Milton, 1996; Moran, 2006; Sutton & Anderson, 2010; Townsend, 2000). On the other hand, the researchers in geography and environmental policy have been paying attention to the scales of diversity as being crucial, for example in environmental policy (see e.g. Swyngedouw, 2004; Young, 2002). Thus, we argue that the use of the term “cultural diversity” in relation to biodiversity goes hand-in-hand with the idea of a flexible regulation of the relationships between cultures and natures according to their localized specificity, and contrary to one that would be based upon a single-model protection linking together biological and cultural diversity (Descola, 2005).

There are already some analytical tools and conceptual representations, which might be applied when trying to capture the inextricable linkages between biological and cultural diversity. In this chapter, we examine three approaches: biocultural diversity, capabilities, and ecosystem services.

First, the intricate relations between biodiversity and culture can be captured by the concept of *biocultural diversity*, defined as the diversity

of life in all its manifestations (biological, cultural, and forms), which are all interrelated within a complex socioecological adaptive system (Berkes, Colding, & Folke, 2003; Harmon et al., 2010, p. 43). The concept of biocultural diversity was originally developed in a developing country context, where it was used with particular reference to “indigenous traditional” people and their interactions with nature (Pilgrim & Pretty, 2010). More recently, its interpretation has sometimes concerned also non-indigenous communities (Cocks, 2006). Biocultural diversity stresses the adaptive connections between nature and people and the significance of hybrid landscapes. Moreover it is a way to analyse these landscapes as an integrated value-practice system. The biological and cultural value of the environment grows from the practices. The definition of the “environment” thus exceeds a spatial understanding – for example when it comes to assessing biodiversity, gardening, or quality of habitat – to integrate a complex approach, which takes into account both scientific knowledge as a medium towards an understanding of social ties or cultural practices associated with a given space (Blanc & Eudes, 2014).

The second approach is grounded in the analysis of capabilities. The capabilities approach refers to how the development of individuals and collectives is based on resources present in the environment in order to build sound lifestyles. The notion of capability is developed in the direction of these interactions of human capacities in relation to environmental opportunities. Philosophical approaches to “capabilities” (Nussbaum, 2011; Sen, 2009) can be considered as means of analysis of the relationship between biological and cultural diversity: capabilities refers to the potential of the environment (natural and social) and “enabling” of individuals or groups to take advantage of these opportunities to fulfil human basic functions in order to defend physical integrity or to be able to feed one’s needs, and so on. Such an interpretation focuses on the elements that individuals as persons or as collectives are likely to mobilize in their social or physical environment to assume their livelihoods, health, and mobility. Following Sen (2009), Nussbaum (2011) argues that capabilities are not “possibilities of functioning” that are crucial for survival, but those “allowing individuals or groups to find the capacity to do so”. Diversity, both biological and cultural, plays a role in increasing these capabilities. It is a way to ensure a plurality of “well-beings” possibly by the provisioning of ecosystem services. This approach attempts to assess the degree of well-being allowed by the state of an environment. Part of this approach views humans as relational beings, which defines our ethical state. Nussbaum insists upon

the ethical and sensitive nature of our relationship to the environment: “Relations with other species and the natural world do not count only as instrumental, but as elements of this relationship” (Nussbaum, 2011). In this sense nature is as a part of human capabilities, and it follows that biodiversity, which is incremental for environmental sustainability and well-being, would be a crucial element of cultural diversity.

Finally, to capture the various functions, roles, and values of biodiversity in the regulation of biogeochemical cycles, for human livelihoods and well-being, a concept of *ecosystem services* has been introduced (MEA, 2005).² While the capabilities approach is “personal” with respect to biodiversity and cultural diversity, the ecosystem services framework approach aims to handle these issues as objects and values to be revealed in an explicit way, even in monetary terms. It can be thought of as a way to handle the various possibilities that people – wherever and however they live – have to tackle. What is new in this framework is that the cultural aspects – such as aesthetics, sense of place, spiritual values – related to biodiversity have been introduced as “services” besides the ecological ones, such as regulating, maintaining, and supporting services. MEA defines cultural services as “the non-material benefits people obtain from ecosystems through spiritual enrichment, cognitive development, reflection, recreation, and aesthetic experiences”. The ecosystem services framework introduces the cultural meanings given to nature, that is, it sees nature and culture not as separate but interrelated. On the other hand, it may lead to a categorized, anthropocentric, and economic view of culture in the context of biodiversity.

Our framework will be built on the operational character of the concepts introduced above: biocultural diversity allows us to think through a values-practice system, while the capabilities approach drives us to better understand the role of environmental issues in human well-being. An ecosystem services approach helps to make the links between the biological processes and the aspects of human well-being more explicit. As such, all of these approaches represent opportunities that nature offers for social and cultural creativity and exemplify the role of diversity in the well-being of all people. The recent conventions signed up by the member states of the European Council, such as the European Landscape Convention (2000) and the Faro Convention on the Value of Cultural Heritage for Society (2005) put an emphasis on everyday and subjective values, in parallel and contrast to “top-down” values. In the following section we explore what these different notions have to offer in terms of biological and cultural diversity assessment. Notably, what do forms of landscapes tell us about biocultural diversity?

Examples of urban greenways and rural settings

Our two case studies from different contexts aim to answer the following question: how to understand biocultural diversity? We consider different forms of creations, whether there are landscapes narratives, or forms of life. For each, we depict the importance of the links between nature and culture, locally speaking. We also examine how nature–human relationships involve capacity-building. In particular, we try to understand how people relate to nature in ordinary settings and build up their capacities according to this nature (depending also on environmental policies). Regarding this, it should be noted that ecosystem services are still being documented.

Urban greenways in three cities

There has been an increasing emphasis on the rich biodiversity and multiple ecosystem services that green urban spaces provide. Greenways have been part of urban planning for centuries for multiple reasons, such as aesthetic or health-related qualities (Ahern, 1995). They are still today part of urban policies in every country: besides being generally accepted as contributing in various ways to the well-being of citizens, they may play a crucial role in the preservation of natural processes that tend to be damaged at all scales by humanity. For example, greenways could contribute to balancing temperature and gas diffusion and emission, while cooling the atmosphere and trapping polluted particulates, or they could help to preserve biodiversity (Forman & Godron, 1986). This is why European countries published a regulation set of laws and directives to encourage urban design and public policies to plan such greenways at the European scale (a strategy for a European-wide green infrastructure in the context of post-2010 biodiversity European Commission policy). The French implementation of the green infrastructure, for example, is to introduce a greenways policy and two corresponding laws.³ Under the pressure of these laws, every local government, from administrative region to urban municipality, is supposed to think about how to integrate greenways in its urban planning at a local (PLU⁴) and metropolitan scale (SCoT⁵) in order to respect, create, or re-create corridors that could preserve connectivity between natural areas and help to halt the erosion of biodiversity.

Although there is an increasing body of research regarding ecosystem services and the role of urban nature, these works ignore how biodiversity might increase people capacities (capabilities), and also how this increasing biological richness is linked with changing values and

practices (biocultural diversity). Green infrastructure must be considered in very local situations and it is likely to face various contexts, that is to say, very different cultural, geographical, and ecosystemic dimensions from one place to another, from one city to another. Exploration for our case studies was carried out in Paris (central France), Marseilles (southern France), and Strasbourg (eastern France). In each of these cities, political and institutional initiatives confirmed that public authorities, whether regional or municipal, are very much interested in the greenways and biodiversity issues.

In each of these three cities, 24 focus groups composed of six to nine citizens – 160 in total – discussed the impact of biodiversity policies in their daily lives. As we mainly studied the urban side of the natural corridors, our scientific focus is “ordinary” biodiversity. Moreover, even if the main aspect of greenways is related to the ecological processes they are supposed to facilitate, we assume that, especially in the urban context, the multifunctionality of such greenways may be felt as to be legitimate, politically interesting, and, consequently, to be accepted by city dwellers. The human and social aspects of our research programme are particularly interesting in the context of issues linking cultural and biological diversity.

Our research revealed that each city has different ways of approaching biodiversity, which is very much linked to the culture of the city itself. Parisians do not see the link between their inhabiting such a dense city – and nature. In general, they think that nature shows itself in small enclaves in the city, or outside of Paris in the greater Parisian region. They categorize wildlife: they speak of animals unwanted by humans, and that strongly depend on humans (doves, rats) and demand that the authorities limit their spatial progress, because they see wildlife as potential pests. On the other hand, they talk about desirable animals such as squirrels, fish, and rabbits. In Marseilles, the stakes are different. The natural environment first evokes problems related to public health. Green space focuses on issues related to the treatment of waste (garbage collection, excrement) and dogs on leash. For Marseilles city dwellers, environmental projects have not yet any priority, as they must first address the problem of uncivic behaviour in public spaces. Nature is outside of the city, at the seaside (there is a strong project of a natural reserve linked through its greenways to the city itself). The creeks are compared to a haven of peace or areas of escape. For some Marseilles urban inhabitants, the city centre is the opposite of a natural area. A woman we interviewed stated that she “prefers to go by the sea in the wild creeks ... there are no buildings, it’s natural, it’s wild”. Another resident

goes to the creeks because she has the “feeling of choking, I’m choking in my neighbourhood, I cannot breathe ... I really need ‘to recharge’, to have an environment that soothes me, either by sight, the sun is on the horizon, the sea, I need to hear these animals, these wasps, to see these little gnats to see these flowers.” In Strasbourg, people are familiar with concepts associated to urban greenway (corridor, biodiversity). The description of places of naturalness clearly shows this strong idea of continuity of movement for plants and animals. People are very conscious of environmental stakes. However, it is when city dwellers practice greenways within their everyday life that it is best known, and rather for “human” uses. In addition, nature is a necessity and will constitute a major goal of urban life, as evidenced by these words:

I saw nature in two ways: firstly, in terms of observation, watch this space there, and on the other hand, try to integrate more. First, for reasons of health and to observe nature, contemplate, managing to join in this observation the whole society, it creates an urban fabric. The city back to life.

(Interview, Strasbourg, 2013)

For the people of Strasbourg, urbanization is not incompatible with the preservation of nature. The city dwellers are willing to change their mode of transport, for example, and to review the design of their city.

The differences are striking from one city to another in the attitudes and behaviours to inducing visions of urban greenways. In Strasbourg people use the urban greenways daily. Continuities between the city and nature are apparent, perceived, and described. Strasbourg city dwellers observe and contemplate nature by walking and/or cycling. In Paris and Marseille, on the contrary, parks and gardens are always mentioned as static elements of nature related to recreational activities. The inhabitants of Strasbourg, because of the structure of the city and the lines drawn by canals and cycle lanes, associate nature with their mobility, whereas Parisians and the people of Marseilles go to a park, a fixed site. They visit these spaces to rest and to enjoy the silence. Natural spaces offer a break from the “urban frenzy”. For urban dwellers, parks and gardens are associated with the opposite of stress, noise, and agitation. Yet, for everyone, nature is a purveyor of well-being in which the senses play an important role, despite the fact that, for some, nature is somehow synthetic and does not seem quite “real” in built-up city areas.

Drawing conclusions from this case study, one can say that even if people do act accordingly to whatever nature is made available, they

have their own way to characterize ecosystem services, linked to symbolic values – such as greening a city means a better life, whatever the scientific reality. In other words, the way people's lives are interrelated with nature is to be analysed in its own terms. It is a "world" in its own right. We can even say that people do address environmental issues collectively, sometimes developing "environmental communities", which are formed through common action on a material environment, considered in the context of neighbourhood solidarities, as well as with living nature and a broader environment.

Biodiversity and cultural diversity in rural settings

Biodiversity is highly debated in the context of rural landscape and livelihoods, such as agriculture and forestry. In Finland, similar to many other Western countries, the main concerns regarding biodiversity in farmlands are related to the loss of wildlife due to the intensification of agricultural practices. The traditional biotopes represent only 1% of that area as it used to be in the early 20th century. There is also an erosion of the genetic diversity of farm animals due to the commercialization and globalization of animal production. In the field of forestry, the threat is mainly related to the loss of wildlife species resulting from efficient forest management practices, such as large loggings (Ministry of Environment, 2007).

In a study conducted in a small rural municipality, Lammi, local residents' (farmers, other permanent residents, part-time residents) perceptions of biodiversity as a part of their everyday life were explored, in particular related to the agricultural landscape (Soini, 2007; Soini & Aakkula, 2007).⁶ While the previous cases from urban context concerned different cities, this case study focuses on socioeconomic and cultural groups, namely farmers, other permanent resident and part-time residents bringing forth cultural diversity of the local rural communities.

The main result of our study shows that people relate biodiversity to a practical use, either professional or as a part of their daily routines. These uses can be aesthetic: environmental aesthetics are crucial to be able to see how wildlife has been changing. In fact, even though the term "biodiversity" was mostly unknown to the interviewees, it is a valuable part of the everyday life practices of the residents. It is used as a qualifier of their lives. "Nature" starts at their doorstep, and many interviewees explain that they are living in the middle of "nature", although there are various types of "natures" ranging from the well-maintained "home yard nature" to "forest nature" or "wild nature", where human impact, culture, is least visible. For many farmers, the fields represent "nature".

When the interviewees were asked to name “culturally” and “naturally” valuable places, it is remarkable to note that these places are often overlapping, that is, natural and cultural values are very much interconnected in the minds of the local people. Nature is not only “out there”, but is a place to live in, to be engaged in, aesthetically speaking. Another important result is how nature relates to different capacities or expectancies. The farmers do not have the same use or the same vision of nature as other categories of residents. Their attitudes and actions reflect their own capabilities (capacities interacting with environmental possibilities), as in so far as depicting their own portrait as well as the one of the rural collective. Environmental narratives in this way address their sense of identity.

For instance, biodiversity, a difficult concept, is understood at the species and landscape level: people name flagship species and describe biodiversity as combination of different ecosystems (fields, forests, lakes). It enriches many capabilities concurring to local well-being: biodiversity represents opportunities to maintain their livelihoods (agriculture, forestry), hobbies (hunting, fishing), as well as aesthetic experiences. Through their everyday activities or “dwelling” in the rural landscape, the local people observe changes in the distribution of wildlife species and landscape, and share those with other members of the community. Although the perception of the everyday environment was based on sight in the first place, the soundscape is an important part of experiencing one’s environment and defining one’s position in space and time. So landscape becomes more of a mental view relating to identity and one’s place in nature.

The interviewees tend to define the “right” place for some of the species, confirming the spatial dimensions regarding biodiversity: some species belong to the forest, but should not be seen in homeyards; some belong in lakes, but not in the fields. Regarding temporalities, changes in wildlife and landscape are mostly taken “as a given”, a “natural result” of changing livelihoods. The landscape is supposed to reflect the local ordinary history in terms of livelihood as well as in terms of technics. Although the natural and aesthetic value of some traditional forms of landscape (e.g. traditional biotopes with grazing cattle) is appreciated, the interviewees understand that these forms are not related to an economically profitable agriculture and should not be maintained artificially. As one farmer puts it: “Once there was a time of haystacks, then time of small pales, and now of big pales, eggs of dinosaurs.”

The study revealed that biodiversity perceptions are connected to life worlds and ways of dealing with local landscapes, which are very

different amongst farmers, other rural residents, and part-time residents. Farmers' life worlds typically comprise the farm and its close surroundings. Biodiversity is thus linked with the aesthetics of farming practices in the fields and in the forests. The farmers suggest that biodiversity is high whenever the landscape is maintained, the crops and trees are growing well, and there are no weeds. The forest owners express the same thought: the unmaintained forest, where you cannot walk and trees are not doing well, is not valued. The perceptions of the other rural residents are more heterogeneous: some of them (those who are working outside the local community) are not very attached to the place in itself. The landscape is thus described mainly as a static view (Soini, Vaarala, & Pouta, 2012). The people who like hunting develop a rich understanding of biodiversity, emphasizing the importance of ecological corridors and various habitats. The part-time residents present the summer-house typically as a counterpart to urban life. They do not see spontaneously the linkage between enriching biodiversity and the local development.

Thus, rural residents' ways of perceiving and valuing biodiversity are highly connected with their ordinary multiple practices. Therefore, they tend to have a broader understanding of biodiversity than the experts do, placing it in its spatial and temporal context. The study also pointed out the culturally different ways of dwelling in and perceiving environment within the rural communities. From this perspective, it is crucial to understand how biodiversity perceptions reflect the diversity of the life worlds of rural residents belonging to the same ethnolinguistic group. Furthermore, the conservation of ecological hotspots does not necessarily meet the capabilities and ecosystem services that biodiversity provides for the local people, meaning that these issues should be viewed in a broader perspective, spatially and temporally. It is important to take the multiple connections between human and nature as a starting point for preserving both cultural and biological diversity through the linkages that exist between them.

There are challenges related to the biodiversity conservation policies at the local level due to the cultural diversity of nature perceptions, which are spatially and temporally bounded to the local life worlds. The production of provisioning services challenges to some extent the cultural services and the aesthetic appreciations of local people having adapted to the loss of biodiversity and the homogenization of landscape. New cultural understanding of environmental aesthetics needs to be achieved. Ecological transition should be thought of less as a technological one and much more as a cultural evolution.

Conclusion: Biocultural diversity for a sustainable future

Let's go back to the main question addressed in this chapter: what kind of transition towards sustainability is achieved through the interconnections of biological and cultural diversity? Our starting point was that diversity is a normative self-describing issue (Heyd, 2010). Linking cultural and biological diversity is like saying that both of them should be taken as end-paths towards sustainability. We see two issues in this regard. First, biological diversity as such cannot be separated from cultural diversity. Biodiversity is not the diversity of life, it is the diversity of social forms of relationships to living beings, in that each of these forms contributes differently to the increase or decrease to the diversity of life within a given society (André Micoud in Levêque, 2008). Second, nature–culture diverse relationships should be analysed in ordinary settings, rather than in exceptional biodiversity hotspots, being of paramount importance to a local sustainability.

However, both the high-level international conventions, Convention of Biodiversity and the 2005 UNESCO Convention, have a limited view of diversity itself and of the interconnections between cultural and biological diversity. Both of these conventions focus only on the role of the indigenous people and local traditional knowledge, and their role in the conservation of biodiversity and in the maintenance of the threatened genes, species, and landscapes. In this chapter we have argued that diversity should be considered not only within marginal ecological or human communities, but also in the “everyday” and “conventional” contexts, and we have introduced three different analytical frames through which these interconnections could be analysed.

Our case studies confirmed that the cultural diversity of everyday practices among the non-indigenous people, their capabilities, and their ability to perceive and adapt to environmental changes have great potential for sustainability, which the policies should better acknowledge. Transition towards a more sustainable society, evolution of eco-social or eco-cultural civilization as some call it (Soini & Birkeland, 2014), concerns most specifically the everyday life practices. It is important not only to maintain and strengthen those connections that already exist, but also to re-create and reconnect them in cases where they have disappeared or been damaged.

Keeping in mind Sen's (2009) notion of “capability”, between possibilities provided by institutions and the environment, and capacities proper to individuals, we need to explore, in various European countries, how biodiversity increases people capacities, permitting new forms of

investment in living environments. One approach of increasing importance in different cities in Europe (Blanc, 2013) is direct action: the example of gardening that results in improvements in living conditions, and a participation to public policies. This engenders new forms of public action that oblige us to envision co-constructed public policy. New environmental agents appear, imposing themselves in the fabric of environment policies. Life-world restoration by the residents themselves involves processes of construction and reconstruction of collective and individual identities, whereas exogenous forms of value-improvement (redevelopment aimed at upscaling, *branding* aimed at transforming the area's image, social assistance etc.) do not generally work at the heart of feelings and representations. This leads to difficulty in engaging a process of social recognition for residents through recognition of the value they can confer on the place they inhabit, and creating a feeling of collective pride – or at least residential satisfaction. Improving the value of a place involves improving residents' identity-value, which in turn supposes recognizing their impact on the milieu (this can be shown in small ways, for example by putting flowers on their balconies and window sills, cleaning and caring for – as opposed to damaging – the public space) and a latitude of action in terms of redeveloping that milieu. The ecosystem services approach can be used to reveal the multiple interconnections in a systematic way and communicate these to the policy-makers. A rich, formal approach through landscapes and narratives analysis permits a non-reductive view of culture and its transformation as only a tool.

Thus, we hold that we need better tools and theoretical approaches to be able to analyse forms of life, which take into account biocultural diversity on all scales and contexts. We need to go from a “protection” approach to an “everyday life practices” approach, one that tries to characterize the environmental forms that represent living solutions to an ecological drama (Blanc, 2012). This view is at odds with both the UNESCO Convention and the UN Convention: biodiversity should be understood at all levels, involving cultures in a deeper way. The 2005 UNESCO Convention does not take into account this ordinary biocultural diversity but remains very sectorial, linking this policy approach to specialized cultural actors.

Notes

1. For example, see “a high level round table discussion in Johannesburg summit” (UNESCO & UNEP, 2002); Workshop Paris (2007), International Social

Science Journal Special issue on Cultural Diversity and Biological Diversity (2006).

2. The Millennium Ecosystem Assessment, (MEA, 2005 launched by Koffi Annan in 2000) describes four types of ecosystem services: (1) Provisioning services are ecosystem services that describe the material or energy outputs from ecosystems. They include food, water, and other resources. (2) Regulating services are the services that ecosystems provide by acting as regulators, such as regulating the quality of air and soil or by providing flood and disease control. (3) Habitat or supporting services: (a) Habitats provide everything that an individual plant or animal needs to survive: food; water; and shelter. (b) Genetic diversity is the variety of genes between and within species populations. Some habitats have an exceptionally high number of species, which makes them more genetically diverse than others and are known as “biodiversity hotspots”. (4) Cultural services: (a) Recreation and mental and physical health; (b) Tourism: ecosystems and biodiversity play an important role for many kinds of tourism. (c) Aesthetic appreciation and inspiration for culture, art, and design: language, knowledge, and the natural environment have been intimately related throughout human history. (d) Spiritual experience and sense of place: nature is a common element of all major religions and traditional knowledge, and associated customs are important for creating a sense of belonging.
3. Grenelle I and Grenelle 2 laws (Loi n2009–967, 8 March 2009 and Loi n2010–788, 7 December 2010).
4. PLU: plan local d’urbanisme = urban planning map.
5. SCoT: schéma de cohérence territorial = metropolitan plan.
6. For the study a survey for the all the households of Lammi were sent all permanent residents (over 18 years old) of the Lammi (N = 2004). Furthermore 35 interviews in four villages were conducted.

6

The “Culture and Trade” Paradox Reloaded

Rostam J. Neuwirth

Introduction

One would expect that unless we properly address the questions that lie at the foundation of our legal system, we will generate paradoxes and antinomies. Now that we know more precisely what these puzzles and contradictions are, we should be impelled to attack the basic jurisprudential questions with a greater sense of urgency. If we wish to avoid disabling contradictions, we must reach a deeper understanding of the legal premises that guide our thinking.

(Fletcher, 1985, p. 1292)

For a great variety of so-called non-trade issues, such as human rights, public health, the environment, or labour standards, the assumption expressed by the negotiators by way of general exceptions enshrined in trade agreements was that they are different from trade and commerce and, therefore, ought to remain outside the spectrum of international trade regulation. The same can be said about culture in general and various cultural concerns in particular. However, the case of culture appears to take a more privileged role, which is rooted in the comprehensive, cohesive, and dynamic nature of the concept as it was also recognized by the Preamble of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. This means that culture, because it can be understood to form an amalgam of experiences and problems of social life, constitutes the most comprehensive approach in various attempts to successfully tackle the problems discussed in the course of the trade-linkage debate (Garcia, 1998a) – a debate addressing various individual “trade and [...] problems” as outlined above with a view of realizing the reconciliation

between their respective policy objectives (Garcia, 1998b; Lang, 2007; Trachtman, 1998, 2002). This means that, in recent years, “linkage” issues have not only moved from the periphery to the centre of the trade agenda (Dunoff, 1998, p. 347) but also that the “culture and trade” link has taken an increasingly important role among them (Stein, 2000, p. 314). Moreover, in view of the increasing acceptance and use of the concept of the “creative economy” as an emerging paradigm and “powerful transformative force” (UNESCO & UNDP, 2013, p. 314) for the present and future global economy (Howkins, 2002; Neuwirth, 2011; UNCTAD & UNDP, 2008, 2010), the role of culture in trade will further gain in prominence (Neuwirth, 2013c).

Thus far, most writings on the culture and trade link have been dedicated to the aspect of their mutual fragmentation as well as their deriving institutional and substantive legal conflicts, as exemplified by the relation between the World Trade Organization (WTO) and the United Nations Organization for Education, Science and Culture (UNESCO) (Graber, 2006; Hahn, 2006; Kono & Van Uytsel, 2012; Neuwirth, 2010; Richieri Hanania, 2009, 2014; Shi, 2013; von Schorlemer & Stoll, 2012; Voon, 2006). The suggestions and ideas formulated by the scholarly debate, however, have not been incorporated in practice, for instance, through the reform of the present international institutional framework leading to a better and more coherent global legal framework that would allow for an enhanced legal coordination between the two areas (Carmody, 1999; Neuwirth, 2006a; Voon, 2006). With little progress, the debate, which previously has also been presented as a “quandary” (Browne, 1998) or “conundrum” (Steger, 2002), can now be described as having reached the status of a true “paradox”, which features culture and trade as two apparently contradictory and seemingly irreconcilable concepts or perspectives (Dymond & Hart, 2002). In this context, it is noteworthy that our current time, with its imminent challenges as framed in the course of the global governance debate, has been described as being replete of “profound contradictions, and perplexing paradoxes” (Rosenau, 1995). In fact, the entire era has been referred to as “the Age of Paradox” (Handy, 1994) and conceptually the many complex developments are being met by the emergence of a new category of so-called essentially oxymoronic concepts, which also carry serious implications for law and legal thinking (Neuwirth, 2014b).

For these reasons, the present chapter revisits the core of the “culture and trade” paradox as a representative for the entire trade linkage debate. To this end, it briefly looks at the nature of the paradox before it tries to dissolve the apparent contradiction underlying the culture and

trade link based on the theory of comparative advantage and its later evolution to one of a creative advantage.

On the separation of culture and international trade

The flame knows no rest, for it lives in perpetual conflict between two opposite tendencies. On the one hand, it cleaves to its wick, drinking thirstily of the oil that fuels its existence. At the same time, it surges upward, seeking to tear free of its material tether.

(Tauber, 1995, p. 220)

There are numerous paradoxes and almost an equal number of definitions of the meaning of paradox. The Oxford English Dictionary *inter alia* defines a paradox as “a seemingly absurd or self-contradictory statement or proposition that might in fact be true”. Another useful way of defining the term is “by specifying that a paradox arises when a set of individually plausible propositions is collectively inconsistent” and that the “paradox is the product not of a mistake in reasoning but of a defect of substance: a dissonance of endorsements” (Rescher, 2001, pp. 6–7). Applied to the relation between culture and trade, it means that their regulation in general, or else the pursuit and realization of their respective objectives, might be impossible or result in a dilemma – a so-called catch-22 situation (Heller, 1961). This is because for culture, as much for other non-trade areas, such as human rights (Howse & Teitel, 2007, p. 3), the general assumption is that their issues are supposed to be discussed and regulated in isolation from each other.

Historically, this is, for instance, reflected in the rationale for the adoption of Article IV GATT, introducing screen quotas for cinematograph films, which marks an important precedent for the attempt to separate cultural from trade issues. The rationale for Article IV GATT was explained as being rooted in the assumption that motion pictures related more to the field of domestic cultural policies than to economics and trade (Jackson, 1969, p. 293). Another example is Article XX GATT, which exempts another category of cultural goods, namely “national treasures” and also those offensive to “public morals” from the scope of international trade obligations. In other words, the drafters of the GATT proceeded from the assumption of the difference and, perhaps to a lesser extent, incompatibility between culture and trade. A similar approach was taken at the regional level in the negotiation of the Canada–United States Free Trade Agreement (CUSFTA), where an exemption for cultural industries was inserted and later carried forward to the North American

Free Trade Agreement (NAFTA) (Acheson & Maule, 1996). Expressing a similar strain of thought, the panel in the *Canada Periodicals* case, a dispute involving the magazine sector as part of the cultural industries, stated that the ability of a WTO member to “take measures to protect its cultural identity was not at issue in the present case” (WTO, 1997, §4.45). Finally, a similar approach was taken when the issue of the international regulatory responsibility for the negotiation of an international instrument on cultural diversity was answered in favour of UNESCO over the WTO (Neuwirth, 2006b, pp. 829–830). The outcome was the adoption of the 2005 Convention. It is in an earlier version of Article 20 (1) of the Convention that the seeming contradiction and incompatibility between culture and trade (i.e. the paradox), surfaces in the legally most obvious way when the question of the mutual relation between the 2005 Convention and international trade agreements was formulated as follows:

This Convention shall not affect the rights and obligations of Parties derived from other international agreements. Nor shall other international agreements affect the rights and obligations of Parties under this Convention.

This wording clearly reflects a contradiction or conflict, albeit in negative and not positive terms. Later the open conflict was slightly mitigated in the final version when Article 20 of the Convention stipulated that parties shall not subordinate the Convention to other treaties and “shall foster mutual supportiveness between this Convention and the other treaties to which they are parties”. Through this choice of words, an open conflict was avoided and mitigated by way of focusing on the application of the Convention to future negotiations and actions and restricting its impact on existing rights and obligations.

The apparent incompatibility of the 2005 Convention with international trade agreements is also often alleged based on other provisions, such as those mentioning the rights of parties “to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions” (UNESCO, 2005a, Article 5(1)). These rights to adopt protectionist measure at the national level in the area of culture are interpreted as violating the obligations derived from the central principles governing international trade liberalization, namely the National Treatment (NT) and Most-Favoured-Nation (MFN) principle as well as the prohibition of quantitative restrictions or market access (Articles I, III, and XI GATT as well as Articles II, XVII, and

XVI GATS). In sum, the increasing awareness about and recognition of the dual (as in both economic and cultural) nature of cultural products or so-called cultural industries during the 20th century has still not been adequately integrated into the legal framework to pave the way for their combined consideration. For this reason, the paradox, antinomy, or incompatibility between the areas of culture, on the one hand, and trade, on the other, can be said to still persist in the present architecture of the international legal order.

Given that the international community constituted mostly by national governments, as members of both the WTO and UNESCO, are still unwilling to close the regulatory gap by reforming the institutional setting in spite of the open inconsistency in the legal framework, it may be helpful to tread another path. This path consists in the attempt first to resolve the paradox, that is, the seeming contradiction and irreconcilability between cultural and trade affairs. However, as Judge Cardozo remarked long ago, the “reconciliation of the irreconcilable, the merger of antitheses, the synthesis of opposites, these are the great problems of law” (Cardozo, 1928, pp. 4–5). As a matter of fact, these issues are not only the great problems of law but more so, their resolution should eventually constitute the central task of the service that law renders to the community it is meant to assist. In the concrete case, it means to try to avoid “disabling contradictions” between the areas of culture and trade by resolving their underlying paradox, which requires a deeper understanding of its guiding legal premises (Fletcher, 1985, p. 1292). These are, in my view, the underlying objectives of both regulatory fields, that is, the liberalization of international trade on the one hand, and the protection and promotion of the diversity of cultural expressions on the other. As for their respective underlying objectives, the preambles of the Agreement establishing the WTO and of the 2005 Convention certainly provide useful sources of interpretation. But more so, it is a closer look at the theoretical foundation for international trade law formulated by economists, based on the concepts of absolute and comparative advantage, which, in connection with the conceptual evolution of the cultural industries to the creative industries provides, as will be discussed below, the clue to the resolution of the paradox.

International trade and culture: From comparative to creative advantage

This division of labour, from which so many advantages are derived, is not originally the effect of any human wisdom, which foresees and

intends that general opulence to which it gives occasion. It is the necessary, though very slow and gradual, consequence of a certain propensity in human nature, which has in view no such extensive utility; the propensity to truck, barter, and exchange one thing for another.

(Smith, 2007, p. 9)

Historically, the rationale for trade and commerce has been explained primarily by the needs but eventually also tastes and caprice of people (Ricardo, 2004, p. 307). Expressed more concretely, it was noted that “differences in material wants supply the motives for exchange which we call commerce” and if every region had displayed the “same constituents in the crust of earth and the same forms of vegetation upon its surface, commerce would have never developed, for there would then have been no advantage arising from an exchange of the productions of one region for those of another” (Williams, 1926, p. 1). In short, diversity and variety in natural resources constitute the main rationale for trade and commerce. This is, for instance, best exemplified by trade in foodstuff and clothes or textiles. These two product categories also constitute the two foremost elements of a right to adequate standard of living as enshrined in Article 25 of the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR). For trade in food, it was recorded that “food markets were the first to become globally integrated, linking distant areas and cultures of the world” (Nützenadel & Trentmann, 2008, p. 1). Trade in textiles, as reflected in the term “silk road” as a major trade route, certainly followed suit in this trend (Anderson, 2009).

By contrast, today many voices raise the fear that enhanced volumes of international trade, notably in cultural products, have a detrimental impact on the diversity of cultures in the world. Concepts such as “globalization”, “cultural homogeneity”, “cultural imperialism”, “McWorld” and “coca-colonization”, or “neo-capitalism” are just some examples used to describe trade’s negative effect on the diversity of the world (Barber, 1998; Greig, 2002; Holton, 2000). “Glocalization”, “cultural diversity”, and “sustainable development” are just some of the conceptual responses coined to explain and to counter these fears. In this regard, it is interesting that many of these concepts coined in response to these trends of globalization apparently linked with increasing volumes of international trade are, in fact, paradoxes or oxymora (Neuwirth, 2014b). Thus, the proliferation of paradoxes seems to reveal a wider

trend and to underscore the need to look deeper into the culture and trade paradox.

In the case of culture and trade, it amounts to a paradoxical fact that diversity constitutes the foundation, or *conditio sine qua non*, for trade and commerce while, as a consequence of increased volumes of trade, the very foundation of trade appears to become threatened by tendencies towards a homogenization of the conditions originally providing the incentive for trade. In other words, trade appears to become threatened by its own success. In attempts by economists trying to explain the rationale for trade, the element of diversity was captured by the theories of, first, absolute and later comparative advantage as formulated by Adam Smith and David Ricardo (Ricardo, 2004; Smith, 2007). In the meantime, the progress and advances in technology, and the resulting changes in the economy, were beginning to question the adequacy of the theory of comparative advantage and indicated a shift to a competitive advantage instead (OECD, 2011; Porter, 1998). It means that differences based on natural resources still exist but gradually a change is under way in a sense that “more dominant today are *advantages that can be acquired*” (Gomory & Baumol, 2000, p. xiii).

In other words, the importance of nature-based factors as the main reasons for specialization and ultimately the incentive for trade is decreasing, while the significance of man-based factors has been steadily rising as it is also reflected in the increasing division of labour that characterizes the present time (den Butter, 2012, p. 12). It has even been argued that the shift to an era of man-made brain-power industries has ultimately led to the invention of the technologies that are creating a global economy (Thurow, 2000, p. 19). However, the term “competitive advantage” is still misleading, as already in the time of absolute or comparative advantage, the “competitiveness” of the producers was the determining factor. For the present culture and trade paradox, it is therefore better to speak of a “creative advantage”, which follows the overall evolution of the concept “culture” from the cultivation of the fields (*cultura agris*) to the cultivation of the mind (*cultura mentis*) (Rundell & Mennell, 1998, p. 12). Equally, it also matches with the recent emergence and acceptance of the concept “creative economy”. Finally, relying on “creativity” instead of “competitiveness” is also more promising from another perspective, because the term “creativity” effectively dissolves the apparent contradiction between culture and commerce, based on the separation between artistic and industrial creations as it is still mirrored in the division of intellectual property

rights in the 1883 Paris Convention for the Protection of Industrial Property and the 1886 Berne Convention for the Protection of Literary and Artistic Work. Creativity instead combines this age-old division by understanding “technology” in its etymological sense, which was defined as “the name not only for activities and skills of the craftsman but also for the arts of the mind and the fine arts” (Heidegger, 1978, p. 318).

Put briefly, the notion of “creative economy” still maintains some of the contradictory and oxymoronic nature of the concept’s predecessor, the cultural economy, but has managed to mitigate the apparent conflict between them by finding a new way of closing the former gap between artistic and commercial or cultural and trade concerns. This new understanding of technology is further supported by the tendency of industries to converge due to their strong reliance on creative input (Ancarani & Costabile, 2010, p. 216). Furthermore, the brief inquiry into the evolution of the theoretical foundations of trade theory, from the theories of absolute and comparative to a competitive and “creative” advantage, contribute to a different understanding of the culture and trade paradox, or else actually prove that the two elements are only “apparently” (i.e. from a superficial perspective) contradictory. Instead, the basic rationale for trade and commerce has and continues to be driven by reasons of diversity and variety. This means, that in order to maintain a strong foundation for a global exchange of economic offerings of all kinds, some degree of variety must be maintained. As indicated before, this is, for instance, also supported by some of the oldest products traded, namely foodstuff and clothes. For foodstuff, not only are there numerous novel technologies applied in its production, which qualifies them as a creative industry being part of the creative economy (Donald & Blay-Palmer, 2006; Neuwirth, 2014c), but it has also been argued that “in no other area have the interactions between global exchange and local practices been as discernible as in changing food cultures” (Nützenadel & Trentmann, 2008, p. 1). Representative for other industries, the same can be said for the textile and fashion industry, where also novel production, distribution, and marketing strategies qualify them as a creative industry but also point out the existential value of diversity for the survival of fashion from both a cultural and economic perspective (Neuwirth, 2014a). This last point was well summarized by von Ebner-Eschenbach by writing that “so soon as a fashion is universal, it is out of date” (1893, p. 50). As for life forms in general, the same has been expressed by the statement that “when you reach an equilibrium in biology you are dead” (Gleick, 1988, p. 298).

Similarly it could be said that as soon as a market becomes homogenized, the more the rationale for or volume of trade will decline. Equally, it means that the more trade volumes decline, less possibility for exchange between different communities will take place to the detriment of a great variety of vibrant cultures to flourish. Diversity is thus, as Williams noted, the “spring of commerce” (Williams, 1926, p. 1) and, it can be added that commerce through the exchange of economic offerings provides the lifeline of cultures. In this regard, there is no reason to assume that this is not applicable to other sectors of the creative industries as, in fact, all industries are potentially creative. To the contrary, it is more likely that this feature defines the global creative economy as a whole. For the same reasons, the regulatory approach of trade towards culture and culture towards trade, which calls for their separation based on, what in French is called “exception culturelle” (cultural exception) is nonsensical. From an economic perspective, such exception was criticized because it is based on protectionism, which “involves market distortion and creates economic inefficiency by inhibiting the achievement of gains from trade that arise as a result of specialisation and comparative advantage” (Throsby, 2010, p. 160). Legally speaking, it is no less nonsensical first because it implements a bad economic proposition counter to the idea of comparative and creative advantage. Furthermore, it also tries to separate what it – as was shown by virtue of the nexus between the diversity of nature and the incentives for trade – inextricably and intrinsically connected. The same argument is supported by the increasing usage of the concept “cultural industries”, which also reflects the need for the common consideration of economic and cultural issues based on their increasing convergence. Finally, an exception for culture is also absurd as it merely means to “confirm a general rule” (*exceptio probat regulam*) while preventing a more holistic regulatory approach from materializing in the related policy dialogue (Neuwirth, 2013b). In this regard, the regulatory shift from cultural exceptions to integration clauses was mentioned as a first step forward in culture and trade debate and the resolution of the paradox.

Conclusion

Paradox is a rich source for artistic creation; it is, however, a poor basis for the development of cultural trade policy.

(Dymond & Hart, 2002, p. 32)

A brief look at the basic rationale for trade and commerce as formulated by economists in the form of the theories of absolute and comparative advantage reveals a closer connection between trade and culture based on the diversity of natural and, later, of also man-made resources or “creative skills” providing the main incentive for trade. At the same time, trade based on the exchange of goods and services also provides the main impetus for cultures to flourish and remain vibrant. Put simply, the culture and trade paradox, which consists in the proposition of their apparent mutual exclusivity and incompatibility, has, by virtue of a renewed understanding of “creativity”, become resolved at the theoretical level. Conceptually, this task was achieved also based on a new cognitive understanding of the organization of global trade today, as epitomized by the concept of the creative economy, which emerged from technological changes captured by the evolution of the cultural to the creative industries. Theoretically, the brief look at the equivalent shift in theory, namely from one of a comparative to a creative advantage confirms this proposition. However, it also indirectly brings to the fore that the real problems in the culture and trade relation are neither culture- nor trade-related. Instead these problems are caused by the flawed conception of the regulation of trade based on separate domestic markets following the territorial boundaries of so-called sovereign nation-states as it is captured by the notion of “international trade”. The same, regrettably, emerges in attempts to subject culture to a similar framework of international regulation under the term “international cultural law” (Vadi, 2012). Therefore, in short, the true paradox consists not in the relation between “culture and trade” in general but instead in its understanding of “international trade” on the one hand and “national cultures” on the other.

The reason is that, by restricting consumers’ access to a wide range of economic offerings, the territorial fragmentation based on separate domestic markets and distinct legal orders does not contribute to the maintenance of a sufficient degree of diversity, in terms of economic offerings, so as to provide a sustainable incentive for trade and commerce to flourish globally. By the same token, protectionism based on national territorial boundaries does not contribute to the promotion of cultural diversity. In this regard, a truly borderless global market is needed where there all kinds of economic offerings, including those produced by the creative industries. Ultimately, in such a scenario of a borderless global “creative economy”, well-balanced global competition rules will be needed to secure the sustainability of a viable and competitive market to maintain the right balance between the diversity of

resources, both natural and creative, and the widest possible availability of the economic offerings produced by them. The same rules will also serve as a guarantee for many vibrant cultures to exist as their vibrance has, both like trade as well as because of trade, always come from the many cultures' mutual contacts and exchanges. As an afterword, the resolution of the culture and trade paradox also reveals that it is "change" affecting our dualist perception thereof of time and space, which eventually dissolves all contradictions. But our perception of change itself, ironically, often then gives rise to other paradoxes. Among them one can mention the developing–developed country dichotomy, which itself gives rise to many contradictory findings and paradoxical questions (Neuwirth, 2013a, p. 133). Similarly, the current international protection of intellectual property rights also gives rise to several paradoxes, expressed *inter alia* by a "copyright paradox" (Wu, 2005) in positive terms or a "piracy paradox" (Raustiala & Sprigman, 2006) in negative terms. In this area an important element is that the focus of the protection is mainly on individual rights and does not afford due consideration to collective cultural rights related to traditional knowledge or intangible cultural heritage as mentioned by the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage. Ultimately, however, these problems are intrinsically linked to the problem of the territorially conceived legal organization of the affairs on this planet, whether cultural or commercial, as enshrined in both the regime established under the aegis of the WTO and the agreements administered by UNESCO, such as notably the 2005 Convention. Finally, the culture and trade paradox – as many other paradoxes – can be reduced to another paradox, namely one that asks how to deal with change from a regulatory perspective, when – as we know from Tomasi di Lampedusa – "change is necessary for things to remain the same" (Tomasi di Lampedusa, 2007, p. 19).

7

Cultural Diversity, Global Change, and Social Justice: Contextualizing the 2005 Convention in a World in Flux

John Clammer

Introduction

The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions is a landmark document in establishing the recognition of governments around the globe of the essential role of cultural diversity both for its own sake, and for its role in maintaining peace within and between nations, and in contributing to the now key notion of sustainability. It is also a document that, a decade after its introduction, requires contextualization in the light of the expanding power of globalization, the persistence in the world of violent conflicts (many of them sadly based on issues of culture and religion), and the intensification of forms of social change that were perhaps less visible in 2005 than they are today. This chapter is accordingly an attempt to place the 2005 Convention in this broader context and to assess its viability, not as a statement of entirely laudable aims, but as a potential basis for inspiring the kind of cultural work necessary to remake national and global civilization in a way congruent with other major declarations of the UN, including its founding Charter and, very significantly, the Universal Declaration of Human Rights and the various sub-treaties and declarations to which it has given rise.

The 2005 Convention was in fact preceded by a number of other UNESCO Declarations, most importantly the 2001 Universal Declaration on Cultural Diversity, a document that opens with the ringing words “Committed to the full implementation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of

Human Rights” and continues with “Noting that culture is at the heart of contemporary debates about identity, social cohesion, and the development of a knowledge based economy”. It goes on in its various specific articles to argue for the relationship of cultural freedoms to human rights, the importance of guaranteeing access to cultural resources and possibilities of expression, of the need to strengthen capacities for creativity, and, in Article 3, the recognition of cultural diversity as a factor in development. The 2001 Declaration is quite a hard-hitting document: it does not mince its words about the essential nature of cultural freedoms and the need to protect and expand them as a vital expression of human rights. In some ways, I will argue, the 2005 Convention is a retreat from this clarity, and I will later attempt to show why this is the case. The 2001 Declaration itself was preceded by numerous specific declarations on particular aspects of culture, including world heritage protection, illicit transport and export of cultural property, underwater cultural heritage, and such broader and less focused declarations as the 1995 Declaration of Principles of Toleration and the 1997 Declaration of the Responsibilities of the Present Generation Towards Future Generations. UNESCO is certainly a declarative organization, but what is the context out into which these noble statements actually go?

Framing cultural diversity

The concepts of “cultural diversity”, and its close equivalents such as the rather more politicized concept of “multiculturalism”, are contested ones, as is the definition of “culture” itself, including UNESCO’s own use of the term in the 2005 Convention. Here I will not attempt to review their many meanings and variants – for excellent overviews, see Ivison (2010) and Murphy (2012) – but will attempt initially to set out some ideas for contextualizing the 2005 Convention in the context of the contemporary globalized world. The notions of cultural diversity, and the world context in which discourses of multiculturalism are situated, are not static. For the notion of cultural diversity to have any relevance it must itself move with the social, economic, political, and environmental changes that surround and in many respects drive it, and be alert to the possible abuses to which it is so easily subject. Cultural diversity must also today accept the existence of interculturalism and cultural exchange, the often unequal relations between cultures, cultural diversity (including subcultures) within a cultural area (“intra-culturalism”), and the mixing and hybridity that comes with the transmission of popular cultures, the growth of global cities, and international migration.

These broad categories also need to be given concrete expression in actual cultural manifestations such as theatre, a field where debates about interculturalism and cultural borrowing are intense (Knowles, 2010), and the migration of popular cultures.

It is significant that the idea of cultural diversity is not simply a descriptive concept: it is also for many an ideal to be achieved, for as John Dewey suggested, the existence of cultural pluralism is not necessarily an obstacle in creating a genuinely democratic society, but also a valuable resource. Empirically the world is culturally diverse and this is a fact that will not go away, and indeed is likely to intensify under the regime of globalization. What then is required to make the 2005 Convention an achievable reality? I would suggest three basic components. The first of these is the recognition of our common embeddedness in the natural environment: the recognition that the human species does not stand alone or at the apex of some evolutionary sequence, but is one species amongst many, and that we are dependent physically and psychologically on the rest of the biosphere that we are privileged to inhabit and share with those other life forms (e.g. Macy, 1990). Consequently we must find a notion of human identity that transcends anthropocentrism, and that is consequently reflected in human cultures.

The second is the requirement of justice. Simply to recognize cultural diversity is insufficient since difference can conceal inequalities; hierarchies of power and domination; traditionally justified gender discrimination or other forms of sexism, ageism, or racism; and ecologically negative practices. The task is to recognize different cultural expressions as equally valid attempts to grasp the complexity of the world and to impose some meaning on it, to encourage the flourishing of those cultural expressions congruent with larger existential desiderata (ecologically sustainable, non-violent, respectful of other life-forms, and alternative cultural expressions). While we are naturally reluctant to critique each other's cultures, we should recognize that those cultural expressions that violate these principles need rethinking and to encourage methodologies for this to become possible for members of those communities without resorting to cultural imperialism (i.e. imposing an alien cultural form from without). And this while remembering that all cultural forms are contingent and temporary and evolve historically: what *is* need not be what always *has* to be, as every living and dynamic culture knows from experience, and as now collapsed civilizations have learnt to their ultimate cost as they have violated these principles and brought about their own self-destruction (Diamond,

2005). Globalization has not brought about a planetary regime of equality and justice: it has in many cases brought about the destruction of indigenous cultures, exacerbated inequalities within and between nations, promoted the free flow of capital while both triggering and then restricting the free movement of peoples, and is behind many of the resource and environmental problems now plaguing the globe. Cultural diversity without social justice is hollow: worse, it can become an ideological and conceptual smokescreen behind which inequalities flourish.

The third is the principle of the interconnections between social and cultural processes themselves. Our present academic disciplinary distinctions are totally inadequate to capture the dynamic reality of the world in which they exist. Separating economics, political science, sociology, anthropology, and psychology from each other, and then further separating all these “social sciences” from the “humanities” (as essentially the study of human expressivity) has led to a fragmentation of knowledge entirely discordant with the realities of the operating principles of human cultures, which are holistic, interdependent, and with fuzzy boundaries, where one culture in practice merges with another and in which one “discipline” (say economics) is in reality wholly dependent on other factors – ecological, sociological, value systems arising from religion, historical, and political – which it excludes from its frame of reference. The painful context for this of course is that we cannot simply study in neutral and scholarly ways the “civilizations” that world history has so far thrown up, for it is these civilizations that are the cause of our contemporary problems. This dysfunction is what David Korten calls “Empire”: the seeking for domination rather than partnership in relation to both nature and human beings; the allowing of the economic to become not our tool, but our absolute master; the emergence of consumerism and materialism as our means of attempting to establish our identities and statuses; and the imperial ambitions of many religions contradicting the attempts of their founders to promote community, sociality, and compassion (Korten, 2006). These can hardly be called positive expressions of “cultural diversity” in the sense that the UNESCO Convention presumably means.

A key notion that emerges here is that of citizenship. The very notion of citizenship has come to be challenged with the advent of contemporary forms of globalization and with it the simultaneous weakening of the nation-state; the emergence of new cross-border actors such as transnational corporations, international non-governmental organizations (NGOs), and multilateral agencies such as the World Bank and the

WTO; and new forms of transnational practice such as the widespread use of the internet, mass tourism, and the spread of popular cultures across national boundaries. Julie Davidson argues that there are two major discourses in the shaping of emerging ideas of planetary citizenship – that of globalization and that of sustainability (Davidson, 2004). While globalization points to the linkages (positive or negative) that currently bind the world into what is effectively a single system, sustainability draws our attention to the fact that our current system has no future, and indeed is fundamentally self-destructive, unless means are found to create a global or planetary conception of citizenship based on mutual social responsibilities on the one hand and collective responsibilities to nature on the other.

Towards global citizenship?

In response to this idea of a planetary citizenship the notions of “ecological citizenship” (closely related with the preceding idea of locating human cultures within an environmental context), and of global or transnational citizenship have been emerging (Hudson & Slaughter, 2007). The traditional notion of citizenship as an abstract formal entitlement based on such criteria as place of birth, has begun to be challenged by the idea of citizenship as an active, ethical status implying obligations and responsibilities, including responsibilities towards the environment and requiring a cosmopolitan identity as being today the only possible realistic and moral social location of a global citizen. While *rights* undoubtedly continue to occupy a place of central importance, a shift is clearly occurring here from conceptions of the primacy of entitlements to one of *responsibility*, competence, and the sensible use of freedoms. The latter encompasses not only political rights, but also attitudes and practices involving consumption and behaviour patterns more generally, at the same time as a parallel shift is occurring from notions of citizenship as nationally bound to one of transnationalism, one in which, while local identities bound to specific place, culture, ethnicity, and religion remain important, they are contained within the bigger sphere of planetary or cosmopolitan responsibility.

As Davidson again puts it: “At the core of a cosmopolitan ethic is the idea of people taking more *responsibility* for the conditions of other people’s lives. Cosmopolitan citizenship is premised on cooperative relationships that enable the sharing of responsibilities and burdens [...] this era of global risk and vulnerability makes fellow citizens of people across the globe because of their shared responsibilities to participate in

the achievement of collective goods such as environmental protection and equity. Citizenship for sustainability entails responsibilities not just for those goods necessary for immediate survival, but also for those collective goods that enable the flourishing of humans and other species now and into the future" (Davidson, 2004, p. 176).

Global ethics and cultural diversity

This implies what might be called a "global ethic" as the basis for tolerant cultural diversity. A global ethic clearly exists as an ideal rather than a reality (as yet), but as with all ideals (for instance, the foundation of the UN, the drafting of the Universal Declaration of Human Rights or of the Earth Charter), no progress can be made towards its realization unless the idea is enunciated and thought given to strategies for its realization. The first requirement of a global ethic is to define the values upon which more or less universal agreement across cultures, religions, and political systems can be reached (something that has been proven to be possible by the long consultative process that led up to the drafting and adoption of the Earth Charter). The second is to inculcate through education, socialization, cultural practice, and the law, the idea that there should be no gap between such stated values and practice, the existence of this gap being a major form of hypocrisy in the present world situation.

It is also necessary to recognize that many of the conflicts between cultures cannot be attributed to material sources alone, such as competition for resources, but also require that attention be paid to the ontologies that shape culture and appear in any society as the *doxa* or unspoken or even unrecognized hidden assumptions, or the taken-for-granted upon which that culture operates (Clammer, Poirier, & Schwimmer, 2004). This is not to deny the possibility of universals or to argue that complexity reduces us to the position of cultural relativism. It is to argue that cultural (including linguistic) diversity is socially important in the same way that biodiversity is ecologically important: monocultures are rarely creative, find it hard to accommodate alternatives, are liable to infection to which they have no natural resistance, and are simply less interesting and give rise to fewer imaginative possibilities than multicultures.

While biology has provided one line of approach to the issue of the existence and qualities of a supposedly universal human nature – the argument of the more enlightened forms of sociobiology that we share a common genetic heritage regardless of race and nationality (Wilson, 2004) – political science suggests another. In a survey of arguments pertaining to human nature from a political science perspective,

Christopher Berry proposes that the discussion actually goes far beyond politics and embraces all of the human sciences, since the topic is central to a range of debates including human rights, the old question of the perfectability of humans, freedom versus constraint, and the possibility of a universalist political theory or of international law, amongst others (Berry, 1986). To even begin to address these issues, Berry finds it necessary to call on anthropology to inform political theory. This is partly because the problem of relativism is as acute in political science as it is in cultural studies, maybe more so as the whole possibility of human rights hangs on being able to establish a reasonable concept of the unity of the human species, as do concepts of development enshrined in such documents as the United Nations programmatic Millennium Development Goals. Yet as Berry and others point out, whether this purported unity is posited on the grounds of biosocial limitations, by the fact that all languages, despite their surface differences, presuppose a common underlying structure for communication and translation to be possible, or by the requirements of rationality, presumed to be a quality of all normal humans, actually matters less than the requirement to *find* or *assert* such a structure (Berry, 1986, p. 77).

There are really three questions here: that of the unity or existence of a universal human nature which must have as its basis certain shared characteristics and values (to be biologically human but to have no common moral values would call into serious question one's humanity); that of the basis for the belief in or against such a conception of unity; and the very real question of whether it actually matters if we can establish it or not. If for political, moral, aesthetic, ecological, or other good reasons we wish to believe in the sister/brotherhood of all humankind because that belief works a lot better than its alternatives in promoting a peaceful, just, and pleasant world, and because as a goal we *want* to bring that unity into existence because we believe it is a realizable potential, then does it really matter whether or not "human nature" as yet objectively exists? Perhaps achieving it is our evolutionary goal rather than an a priori characteristic of our species for all time.

This latter position indeed seems to be that of the philosopher Richard Rorty whose defence of liberalism is based on the idea that human solidarity or community is all that is necessary (Rorty, 1982, p. 207). In his view, liberalism, while requiring a sense of community, does not need the notion of a common human nature, and that as a result pragmatism is the appropriate corresponding philosophical position: "loyalty to our fellow humans does not require something permanent and ahistorical [...] which guarantees convergence to agreement" (Rorty, 1982,

p. 171). But this view would be contested by many others, including Marx and those who have followed him to various degrees, not by arguing for an ahistorical essence (although such a position has never been actually disproved), but rather by arguing that humanity is less a given than something created by its own labour. We have a “species being” as do all other bioforms, but this being is elastic and amendable and history is the story less of our continuity as a species than of our self-formation through labour (Harvey, 2000). The “anti-humanism” of Michel Foucault and Lévi-Strauss which appear at first sight as attempts to demolish the idea of human nature prove on close examination to be something rather different: in rooting their analyses in ethnology, one of the “counter-sciences” that, together with psychoanalysis “ceaselessly ‘unmake’ that very man who is creating and recreating his positivity. One may say of both of them what Lévi-Strauss said of ethnology: that they dissolve man” (Foucault, 1966, pp. 379–381). Both are attacking the forms of idealist philosophical anthropology stemming from Kant, not a view of the human rooted in actual human struggles for recognition and survival in a material world constrained by biological limits, but striving endlessly for creativity and meaning. When we speak of creativity from the perspective of the humanities we often are thinking primarily of the arts, yet we should remember that equally important aspects of the human imagination are social creativity (the ability to invent new social forms), moral imagination, and self-transcendence, all of which contain the possibility of both an open future that we can collectively shape, as indeed we must for better or worse, and of what Unger (2004) has called a “non-necessitarian social theory”, one beyond determinism yet within the bounds of the reality of the world that we have been given.

Cultural diversity, then, is not only an empirical reality, it is also a desired state of enriching pluralism. But how then can it be reconciled with the idea of a global ethics? This issue was addressed in detail at the 1993 Parliament of the World’s Religions and the result was enshrined in their concluding declaration. In the preface to the declaration the editors Küng and Kuschel point out that: “By a global ethic we do not mean a global ideology or a single unified religion beyond all existing religions, and certainly not the domination of one religion over all others. By a global ethic we mean a fundamental consensus on binding values, irrevocable standards, and personal attitudes” (1993, p. 21). In practice the declaration argues that this means the humane treatment of all beings and the recognition of the inalienable dignity of all humans regardless of age, race, gender, religion, social origin, or physical or mental ability. This, it is asserted, arises from four fundamental

guidelines found in most of the world's religions in some form, notably commitment to a culture of non-violence and respect for life; commitment to a culture of solidarity and a just economic order; commitment to a culture of tolerance and a life of truthfulness; and commitment to a culture of equal rights and partnership between men and women (Küng & Kuschel, 1993, p. 24).

Apart from the actual content of the declaration, two other things are noteworthy: the basis of shared values in *culture*, noting that this culture is an emerging and dynamic one not to be simply equated with any actually existing culture; and the recognition that a *just economy* is one of the bases of any shared ethic. This latter is an important point. The humanities frequently ignore the economic, and even cultural studies have had to struggle to find a methodology that creates ways to incorporate the economic into the study of culture. Yet it should be evident that the economy is a primary determinant of culture: it shapes or creates consumption through its products, marketing, and advertising, giving the illusion of "choice" in practice simply between the products that it makes available; it creates or heavily influences fashion, the structure and appearance of our cities, our entertainment, travel, art, food, leisure, and, although the authors of the declaration do not point this out, is the primary means of human interventions in nature through resource extraction, wastes and pollutants, deforestation, patterns of agriculture, and literal physical transformations of the landscape. While religion may shape values at one level of culture, the economy is often busy undoing them at another and substituting its own, and most often the economy wins. Civilizational dialogue is also structured largely through economic relations and few would realistically disagree that the WTO has far more influence than the Parliament of the World's Religions. The implications of this are clear: not only must the humanities engage with economics, but economic factors must be recognized as primary determinants of culture in the civilizational patterns that we have allowed to emerge globally since the Industrial Revolution, and must themselves be transformed if progress towards a workable global ethic and harmonious cultural diversity is to be made (Muzaffar, 2005).

But this cultural diversity is often under threat of extinction, requiring a supportive socioeconomic environment for its flourishing. One does not just "possess" a culture in the same way that one just has a particular eye colour. Culture is performative: it must be remembered, repeated, expressed, transmitted, and none of these things can happen in a situation where it is suppressed, where indigenous languages are forbidden to

be spoken, where it is considered quaint or shameful to wear one's ethnic dress, or where one's literature or art are denigrated. Many minorities have experienced this suppression and the *protection* as well as the celebration of cultural diversity then becomes important, as is moving beyond the categories of "high" and "low" culture, of "popular" culture as opposed to "serious" culture, of "art" as opposed to "craft", "folk" as opposed to "mainstream", with which a subtle ranking is imposed on the study and appreciation of culture. It is a pleasure to see that a literature is emerging that does indeed contest and deconstruct these hierarchical categories, for example in relation to art (Buszek, 2011; Clammer, 2014).

We are clearly then dealing with a dialectical process, one in which global citizenship possesses local rooting, and in which globalization itself has the tendency to trigger movements towards localization and the pursuit of the authenticity of indigenous cultures. Behind this lie a number of fundamental assumptions of a political and philosophical nature. There has been a tendency in much recent and contemporary social philosophy, cultural theory, and anthropology to talk of the "Other" as the counterpart to the self, drawing in large part from the philosophies of Martin Buber and Emmanuel Lévinas, from which some commentators have derived a politics of "difference" often promoting a multiculturalism of separation rather than communication, a multiculturalism of difference also extending to gender (e.g. Irigaray, 1989). But the pursuit of universalism in the sense of a global ethic affirming diversity while recognizing commonalities requires a new philosophical anthropology, one in which there are no "Others" in any ethical sense, and in which the politics and sociology of difference is transcended by one of unity. This position, however, can very easily become an idealist one. In discussing ethics, it is always necessary to consider its shadow side and the reason for which ethics needs to exist: notably the existence of evil. As Tzvetan Todorov has pointed out, collective identities are fragile and the "clash of civilizations" debate signals perhaps deeper fears about the barbarism that exists within and between civilizations – and the severe limitations of idealist accounts of "dialogue between civilizations" that do not take into account the actual dynamics of intercultural relations and the political and economic forces that drive them (2010). For identity politics may actually stand in the way of democratic and genuinely liberatory processes if they are based on conflict rather than compromise and dialogue, and can and do become the means through which tensions rather than consensus emerge (Gilbert, 2010). The fine line between identity and community becomes the fault

line that constantly has to be negotiated and can rarely be taken as a given or as a permanent position.

So whereas idealism in its philosophical sense is naive and dangerous in the complex globalized and politicized world that we inhabit, idealism in an ethical and political sense is very necessary. Without goals and ideals, even utopias, standards cannot be set towards which actual social, political, and economic systems and institutions should strive and in which they should be encouraged to move. The Universal Declaration of Human Rights embodies such ideals, as does the more recent Earth Charter and the ongoing attempts to create a Universal Charter of Human Responsibilities (e.g. Jeevan Kumar & Sudha, 2010). Equality and justice between cultures as well as within them needs to be one of these goals. This is now vividly illustrated in current debates about climate justice, and the questions of responsibility and restitution for the upheavals related to climate change. These issues will pose hard questions, but I would certainly predict that issues of environmental justice will move to the forefront of the coming intercultural and intercivilizational debates in the coming decades. What links many of these positions is education: for new patterns of socialization that enshrine and transmit global values congruent with a just and sustainable future for all beings – for a new *institutional* structure for the globe, in other words – without which Declarations, however well intended, will remain hollow (e.g. O’Sullivan, 1999).

Back to the Convention: Cultural diversity in an unjust world

All that has gone before in this chapter suggests some major issues that the 2005 Convention does not fully address. The first is engagement with globalization itself: as the major structuring force of our everyday lives, as a source of themes for literature and art, and as the dialogue partner in the debate between localism and the authenticity and autonomy of the indigenous and those wider forces and institutions. Globalization, especially in its economic forms or under the rubric of “development” is the major way in which our industrial civilization is attacking and destroying both cultures and nature: the resources upon which civilization and its economy are built. As a consequence, the ecological crisis is not one theme amongst many, but the main theme for any contemporary engagement with the contemporary world.

The second is the important issue of not simply attempting to formulate a global ethics, but to create institutions that enshrine those ethics,

reinforce them, and transmit and disseminate them, throughout society and to the next generation. As Denis Goulet (1995) rightly suggests, this is where we are at our weakest: we neither have such institutions yet in any systematic way (perhaps some NGOs and social movement organizations are the closest to which we have yet come) nor have we encouraged sufficiently our existing institutions, and especially the universities, to move in the direction of seeing their central purpose as not the exploitation of the Earth, but its future sustainability. Much the same can be said of our courts and legal systems, our multilateral institutions, businesses, schools, science, technology, and religions (Berry, 1999; Cullinan, 2011). Certainly a weakness of the 2005 Convention is its lack of dynamism in these and other respects, and its apparent lack of awareness of issues of youth, the media, and the new forms that identity struggles are taking around the globe.

Finally, what the whole argument of the 2005 Convention implies is both a philosophy and a politics. As a philosophy it presupposes the move towards the creation of a new philosophical anthropology, one based on the nurturing of a new kind of human being: ecologically aware and non-anthropocentric, committed to universal justice, social, political, economic and ecological, willing to put community (including the biosphere) before self-interest, and willing to act on shared and universally agreed values on which our survival will depend. This, we are as yet far from achieving. Politically I would argue that the Convention is what Will Kymlicka (2005) characterizes as representing “liberal multiculturalism” – one despite the international character of UNESCO still dominated by a number of ideas of Western origin, including its position on minority rights, the position of indigenous peoples, and the treatment of immigrants, including the possibilities of their eventually obtaining citizenship in their new countries of residence. The 2005 Convention is thus an oddly Western document, which, while it rightly draws attention to the role of culture, lacks a hard-edged analysis or concrete policy proposals of how to address the very issues that it itself raises, and in particular the “risks of imbalances” between nations represented by globalization, and the need to take measures not only to affirm, but to actually protect in “situations where cultural expressions may be threatened by the possibility of extinction or serious impairment” (UNESCO, 2005a).

Part III

Convention

8

Cultural Human Rights and the UNESCO Convention: More than Meets the Eye?

Yvonne Donders

Introduction

Cultural rights form one of the “categories” of human rights. This categorization of human rights mainly stems from the titles of two international human rights treaties that were adopted in 1966: the International Covenant on Civil and Political Rights (ICCPR: UN General Assembly, 1966a, entry into force 23 March 1976) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR: UN General Assembly, 1966b, entry into force 3 January 1976). Although cultural rights are mentioned in the title of the ICESCR, the text of this treaty does not make clear which provisions in the treaty belong to the category of cultural rights. In fact, none of the international legal instruments provides a definition of “cultural rights” and, consequently, different lists could be compiled of international legal provisions that could be labelled “cultural rights”.¹

Cultural rights can be broadly defined as human rights that directly promote and protect cultural interests of individuals and communities and that are meant to advance their capacity to preserve, develop, and change their cultural identity. Such rights include rights that *explicitly* refer to culture, such as the right to take part in cultural life and the right of members of minorities to enjoy their own culture; and rights that have a *direct link* with culture, such as the right to self-determination; the rights to freedom of religion, freedom of expression, and freedom of assembly and association; and the right to education (UN General Assembly, 1966a, 1966b). Apart from these explicit provisions in international human rights treaties, cultural rights have been addressed in

several other international instruments, notably those from UNESCO. The Universal Declaration on Cultural Diversity, for instance, adopted in 2001 by the member states of UNESCO, includes a provision on cultural rights as the enabling environment for cultural diversity (Article 5).

In an earlier work on cultural rights and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005 Convention) I concluded that “for those who expected a new international instrument promoting and protecting cultural rights, the Cultural Diversity Convention is clearly a disappointment. Although the human rights framework in relation to cultural diversity is recognized, cultural rights are not reaffirmed as the enabling environment for cultural diversity and are not further advanced” (Donders, 2012, p. 181). This conclusion was drawn based on an analysis of the drafting history and the text of the 2005 Convention. Although human rights are referred to at several points in the Convention, there are no substantive human rights for individuals and/or communities included in this treaty. In fact, it is more the opposite: the 2005 Convention gives rights to states to determine and implement cultural policies that they deem best to protect the diversity of cultural expressions.

Looking from a somewhat broader perspective, I also concluded in the same article that: “At the same time, the Cultural Diversity Convention, together with the other UNESCO instruments on culture, confirms the importance of cultural rights as human rights” (Donders, 2012, p. 181). Several provisions in the Convention elaborate on possible measures to be taken by states parties to protect the diversity of cultural expressions. These measures resemble measures to be taken to protect and promote cultural rights (Donders, 2012, p. 180). In other words, the Convention could perhaps play a role in the advancement of human rights in general and cultural rights in particular, despite the fact that cultural rights are not explicitly enshrined in this treaty. This approach seems to be taken by the UN Special Rapporteur on Cultural Rights. In her report on the right to artistic freedom, she referred to the 2005 Convention as a relevant supporting instrument (Shaheed, 2013, p. 6).

Ten years after the adoption of the 2005 Convention is a good time to assess to what extent the conclusions expressed above are still valid and to answer the question as to what the Convention has to offer in practice for the promotion and protection of human rights, in particular cultural rights. Do the ten years of practice with the Convention confirm that this Convention is not a human rights instrument? Or do states parties use the Convention as a tool to promote human rights, in particular cultural rights, and if so, how? Is the human rights relevance of the Convention perhaps more than meets the eye?

This chapter addresses these questions by analysing the practice of the 2005 Convention as expressed by the Operational Guidelines and the state reports. In the Operational Guidelines, states parties have elaborated guidelines on the practical implementation and application of the provisions of the Convention. In the state reports, submitted by 65 states parties in 2012 and 2013, states parties recounted on the way they have implemented the Convention, thereby showing their interpretation of the Convention provisions in terms of content and obligations. These sources are analysed below to assess the practice of the Convention as to what extent and how human rights, in particular cultural rights, are addressed as being part, or not, of the Convention. First a brief introduction is provided on the link between human rights and the Convention. This chapter focuses on human rights of individuals and communities, including for instance freedom of expression, freedom of religion, the right to education, minority rights, and rights of indigenous peoples. This chapter does not address copyright or intellectual property rights (see Singh, Chapter 2; and Neuwirth, Chapter 6). Although both are linked to human rights, they are mostly part of a different international legal regime mainly regulated and administered by the World Intellectual Property Organization (WIPO), and the World Trade Organization (WTO), for instance the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement).²

Human rights in the UNESCO Convention

The drafting process shows that although the 2005 Convention was never meant to be a human rights instrument, the issue of human rights was part of the debates from the very beginning. Some UNESCO member states wanted the Convention to focus on the human rights dimension of cultural diversity. In the end, however, the Convention emphasized the sovereign rights of states to develop and implement their own cultural policies to protect the diversity of cultural expressions (Donders, 2008, pp. 16–24).

Although no substantive human rights were included in the Convention, several general references to human rights can be found in its text. In the Preamble, for example, it is stated that cultural diversity is important for the full realization of human rights as proclaimed in the Universal Declaration on Cultural Diversity and other universal instruments. The Convention further contains several “guiding principles” in its Article 2(1). One of these principles concerns respect for human rights and fundamental freedoms.

This provision confirms the importance of respect for human rights for the promotion and protection of cultural diversity and reads as follows:

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law or to limit the scope thereof.

Apart from the general reference to human rights and fundamental freedoms, this provision explicitly mentions the right to freedom of expression and information. The United States, one of the crucial participants in the negotiations, insisted on the importance of these rights for the 2005 Convention. The United States was strongly opposed to the adoption of the Convention, among others, because it was concerned that the definition of the word “protection” would cause the Convention to be a protectionist instrument. This could create obstacles for the free exchange of goods and services, contrary to the idea of liberal trade at the bilateral or multilateral level. The United States considered the sovereign right of states to take measures and formulate policies to promote and protect cultural diversity as an open invitation to violate other agreements, such as human rights and trade instruments (Neuwirth, 2006b, pp. 838–839; UNESCO, 2005b). The United States continuously emphasized that UNESCO should promote the free flow of ideas by word and image and therefore insisted on the inclusion of freedom of expression and the free flow of information in the text of the Convention (UNESCO, 2003b).

The 2005 Convention further pays special attention to the situation of minorities and indigenous peoples. The Preamble for instance refers to the importance of traditional knowledge systems, in particular of indigenous peoples, as a source of wealth. It also states that the vitality of cultures is taken into account, “including for persons belonging to minorities and indigenous peoples, manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit from them for their own development” (para. 8). Furthermore, Principle 3 as laid down in Article 2(1) recognizes the equal dignity of and respect for all

cultures, including the cultures of persons belonging to minorities and indigenous peoples.

It is interesting to note that the Convention speaks of “human rights” and does not refer to “cultural rights”. Various persons involved in the drafting process explained that it was felt by many member states that “cultural rights” could be interpreted too narrowly, as referring mainly to the protection of cultural products or artists. The broader term was used because member states preferred to place the Convention in a broader human rights framework (Donders, 2012, p. 177).

Although no substantive human rights or cultural rights were included in the Convention, several provisions have a clear link with these rights. Article 6(b), for instance, refers to measures that may be taken by states to protect cultural diversity. These include, for instance, to “provide opportunities for [...] the creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services, including provisions relating to the language used for such activities, goods and services”. Article 6(f), (g), and (h), furthermore, speak of measures to establish and support public institutions, to support artists and others involved in the creation of cultural expressions, as well as measures to enhance the diversity of the media, including through public service broadcasting. States should furthermore encourage individuals and groups to create, produce, disseminate, distribute, and have access to their own cultural expressions, “paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples” (Article 7(a)). All these measures show significant similarities with measures that might be taken to advance and implement cultural rights.

The Operational Guidelines

The text of the 2005 Convention already foresaw the adoption of so-called Operational Guidelines. Article 23 includes that the Intergovernmental Committee shall “prepare and submit for approval by the Conference of Parties, upon its request, the Operational Guidelines for the implementation and application of the provisions of the Convention”. Article 22 includes that one of the functions of the Conference of Parties is to adopt the Operational Guidelines.

Soon after the Convention entered into force in March 2007, the Conference of Parties elected 24 states parties to form the Intergovernmental Committee (IGC) (UNESCO, 2007a, pp. 11–12). It asked the IGC to

prepare proposals for the Operational Guidelines, to begin with Article 7 and Article 8, which both concern measures to protect cultural expressions, Article 11 concerning participation of civil society, Articles 12 to 17 concerning international cooperation, and Article 18 concerning the International Fund for Cultural Diversity (UNESCO, 2007b, p. 13).

The IGC held its first session in December 2007 and decided to start with Articles 7, 8, and 17 (UNESCO, 2007c, p. 16). The working methods to draft Operational Guidelines include setting up working groups and drafting groups within the committee, holding expert meetings and commissioning studies on specific themes, inviting states parties to comment on draft texts, and consulting public and private institutions (UNESCO, 2007d, p. 3).

The Operational Guidelines are, as the Convention indicates, to provide general guidelines for the implementation and application of the provisions of the Convention. As such, they provide a more detailed elaboration of the background, scope, and normative content of the Convention's provisions. The first Operational Guidelines were adopted in June 2009 on Articles 7, 8, and 17, grouped under measures to promote and protect cultural expressions; Article 11 concerning the role and participation of civil society; Article 13 concerning the integration of culture in sustainable development; Article 14 concerning cooperation for development; and Article 15 on partnerships. Subsequently, Operational Guidelines were adopted in June 2011 on Article 9 concerning information-sharing and transparency; Article 10 concerning public awareness; Article 19 concerning exchange, analysis, and dissemination of information, and on the visibility and promotion of the Convention. Revised Operational Guidelines were adopted on Article 18 concerning the International Fund for Cultural Diversity.

No Operational Guidelines will be adopted for Articles 1 and 2 concerning the objectives and guiding principles of the Convention, and on Articles 3 and 4 concerning the scope of application and definitions, since these provisions do not demand concrete actions and are therefore considered not to need Operational Guidelines.³ Article 6 concerning the rights of states parties at the national level was also considered not to lend itself to Operational Guidelines. States parties found Article 6 to be a provision that concerns mainly the national level and has a broad perspective, which is further elaborated in the following provisions. In the future, Operational Guidelines may be adopted on Article 20, the famous provision on the interrelation of the 2005 Convention with other conventions, notably those of the WTO.

Within UNESCO, the instrument of Operational Guidelines adopted by states parties is common; they also exist for the UNESCO heritage conventions. Operational Guidelines are drafted and adopted by the states parties and as such provide an important insight in the way they interpret the provisions of the Convention. Their purpose, providing guidelines for the implementation and application of the Convention, is similar to, for instance, the “General Comments” or “General Recommendations” in international human rights law. However, General Comments are adopted by the UN treaty bodies, which are composed of independent experts, set up to monitor the implementation of and compliance with the human rights treaties. Unlike human rights treaties, the UNESCO Conventions do not have such independent monitoring bodies. These Conventions set up conferences of parties and intergovernmental committees that conduct the monitoring of the implementation of the treaty. This shows that states prefer to keep the supervision of the treaty in their own hands, including the drafting and adoption of Operational Guidelines.

The General Comments by UN human rights treaty bodies are based upon their experience in dealing with state reports and individual complaints. This means that the General Comments may reflect changed perceptions and perspectives on the normative content of treaty provisions. Human rights treaties are often called “living instruments”, to be interpreted in present-day circumstances, instead of following merely the intention of the drafters at the time of adopting the treaty. This is different in UNESCO, where operational guidelines are adopted rather soon after the entry into force of the Convention, which means that they are adopted by the drafters themselves and reflect their original intention. States parties use the Operational Guidelines to provide more detailed substance to the Convention’s provisions. There is, however, the possibility of revising the Operational Guidelines, which already happened with those on the International Fund for Cultural Diversity. It is therefore possible that new insights or changing perspectives may eventually find their way into revised Operational Guidelines.

As stated above, the Operational Guidelines provide a more detailed interpretation of the normative content of the provisions in the 2005 Convention. The text of the articles is often rather broad and vague and Operational Guidelines may provide more explicit substance in terms of the normative content as well as state obligations. For this chapter, the texts of the Operational Guidelines were analysed, searching for the terms “right”, “human right”, “cultural right”, and “freedom”.

Notably, these terms could hardly be found in the Operational Guidelines on the different provisions. The most prominent use of the term “rights” was the rights of states to formulate and implement measures and policies to protect the diversity of cultural expressions, following the general purpose of the 2005 Convention. For instance the Operational Guidelines on Articles 7, 8, and 17 concerning measures to promote and protect cultural expressions reiterate the sovereign right of states to formulate and implement cultural policies (UNESCO, 2009f, p. 2).

Human rights are referred to in the Operational Guidelines in relation to the integration of culture in sustainable development, linked to Article 13 of the 2005 Convention (UNESCO, 2009e, p. 1). In these Guidelines it is indicated that such integration makes it possible to maintain social cohesion and “fight violence through cultural activities that promote human rights”. Human rights seem to be referred to here as a broad underlying purpose of this provision. However, the Operational Guidelines on closely related provisions, such as Article 14 on cooperation for development, and Article 15 on partnerships, do not contain a reference to human rights or fundamental freedoms (UNESCO, 2009b, 2009c). Neither are human rights references included in the Operational Guidelines concerning Article 16 on the preferential treatment for developing countries (UNESCO, 2009d), Article 18 concerning the International Fund for Cultural Diversity (UNESCO, 2011f), and Article 19 (UNESCO, 2011c) concerning the exchange of information. Even the Operational Guidelines on education (Article 10) do not make a link to human rights, even though some of the measures suggested have a clear link with human rights, in particular the right to education. Examples of such measures mentioned in the Operational Guidelines are: strengthening the ties between culture and education; including the diversity of cultural expressions in school curricula adapted to local contexts and cultures; inviting artists and cultural professionals to participate in the activities of schools and other educational institutions; enhancing the capacities of teachers to raise students’ awareness about the diversity of cultural expressions (UNESCO, 2011d).

The Conference of Parties has also adopted Operational Guidelines on the reporting procedure, providing guidelines to states on how to report on their implementation of the 2005 Convention (UNESCO, 2011b). These guidelines provide detailed information on the format of the state reports and the preparation procedure of these reports, in which civil society should be involved. No reference to human rights, for instance, as one of the possible elements to be reported

on, is included. At the same time, the guidelines indicate several possible measures to report on that link to human rights, in particular the right to take part in cultural life, such as support for mobility of artists and cultural professionals abroad (under international cooperation and preferential treatment), integrating culture in development policies, and assistance programmes (under sustainable development policies).

From the above it can be concluded that the Operational Guidelines do not give a prominent place to human rights in relation to the 2005 Convention. They confirm that the promotion and protection of human rights was not the main purpose of this Convention. Freedom of expression, supported so strongly by the United States during the negotiations, does not return in the Operational Guidelines. This may be caused by the fact that the United States is not party to the Convention and therefore not a member of the Conference of Parties or the IGC. The Operational Guidelines also do not pay attention to the notion in the Convention that nothing in this treaty may be used to excuse unlawful infringements of human rights.

As stated above, the Operational Guidelines were adopted rather soon after the entry into force of the Convention, which means that they mostly reflect the intention of the drafters of the Convention at the time of adoption, whereby subsequent practice was not (yet) taken into account. Such practice may become clearer from the state reports discussed in the next section.

State reports

According to Article 9 of the 2005 Convention, states parties are obliged to report four years after the entry into force of the Convention and then every four years “on the measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level”. States parties agreed that the reports should follow a thematic approach, dealing with cultural policies and measures, international cooperation and preferential treatment, integration of culture in sustainable development, protecting cultural expressions under threat, and awareness-raising and participation of civil society (UNESCO, 2013d, p. 5).

In 2012 and 2013, 65 states submitted their reports. These reports are only available on the website of the Secretariat of UNESCO.⁴ Most of them follow the reporting format as provided by the Secretariat, some are in different formats and forms. For this chapter, all submitted state

reports were analysed searching for the terms “human right”, “cultural right”, and “freedom”.

Broadly speaking most state reports include one or more references to the general notion of human rights and fundamental freedoms. There are hardly any state reports that do not mention human rights at all. A schematic overview of the main examples of different references to human rights in state reports is given in Table 8.1.

Most of the references mention human rights as one of the underlying or supporting notions of the implementation measures and activities, for instance under Article 6 of the 2005 Convention. These measures are reported under the first thematic item, cultural policies and measures, and to a lesser extent under international cooperation and sustainable development in the yearly states reports. Bulgaria, for instance, reported that “a key principle of the country’s cultural policy is guaranteeing human rights and fundamental freedoms, expressed by access to information, communication, free choice of forms of cultural expression” (2012, p. 3). China included that “the Chinese government [...] devotes intense effort to building up the public cultural infrastructure network in rural and urban areas, so as to satisfy people’s needs and guarantee people’s cultural rights and interests” (2013, p. 4). Ecuador stated that “the main objective of this measure was to recognize the importance of culture through the creation of a governing institution in culture that has the capacity to guarantee the cultural rights of the citizens, including the diversity of cultural expressions” (2012, p. 6). The EU also indicated that “awareness-raising and advocacy as regards the Convention is essential in dissipating misunderstandings about its core principles and concepts (i.e. diversity, cultural expressions) and reaffirming that these principles are enshrined in the fundamental framework of human rights instruments” (2012, p. 32). Sweden stated that “other objectives that also affect Swedish cultural policy are, for example, the Swedish Government’s long-term goal to ensure full respect for human rights” (2012, p. 6). General references to human rights can also be found in the reports of, for instance, Andorra (2013, pp. 9, 24), Argentina (2012, p. 9), Bolivia (2012, p. 10), Burkina Faso (2013, p. 4), Cuba (2012, pp. 2, 5), Italy (2012, p. 19), Mongolia (2012, p. 21), Peru (2012, pp. 4, 34), Serbia (2013, p. 6), Slovakia (2012, p. 2), Slovenia (2012, pp. 4, 45), Spain (2012, pp. 11, 14), Switzerland (2012, pp. 8, 11, 14), and Uruguay (2012, p. 8).

Some states refer to the fact that human rights, or more specifically cultural rights, are included in their national constitutions. For instance, the Dominican Republic indicated that “en janvier 2010, la culture

Table 8.1 Overview of examples of references to human rights in state reports

Reference to	Specific issue	States
Human rights in general	Human rights as underlying or supporting notion of design and implementation of cultural policies	Andorra, Argentina, Bolivia, Bulgaria, Burkina Faso, China, Cuba, Ecuador, EU, Italy, Mongolia, Peru, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Uruguay
	Human rights or cultural rights as included in National Constitution	Armenia, Bangladesh, Cyprus, Dominican Republic, Mexico, Namibia, Spain
Specific human rights	Right to take part in cultural life	Austria, Cuba, Dominican Republic, Ecuador, Montenegro, Namibia, Serbia, Sweden, Syria, Uruguay, Vietnam
	Right to (access to) education	Bangladesh, Cuba, Cyprus, Italy
	Freedom of creative and artistic expression	Dominican Republic, EU, Germany, Montenegro, Peru, Serbia, Sweden, the United Kingdom
	Freedom of expression and (pluralistic) media	EU, Germany, Montenegro, Norway, Peru, Portugal, Serbia, Vietnam
	Linguistic rights	Bosnia and Herzegovina, China, Latvia, New Zealand, Slovenia, Sweden, Vietnam
Specific groups or communities	Women and children	Bangladesh, Cuba, Dominican Republic, Ireland, Serbia, Sweden
	Minorities and indigenous peoples	Argentina, Armenia, Bangladesh, Bosnia and Herzegovina, Ecuador, Latvia, Mexico, Mongolia, New Zealand, Peru, Poland, Serbia, Slovakia, Slovenia, Sweden
	Disabled persons	Lithuania

dominicaine a vécu un moment historique, lorsque les droits culturels de toute la population ont été inscrits dans la nouvelle Constitution de la République dominicaine, et qu'a ainsi été reconnue la diversité des expressions culturelles"⁵ (2013, p. 3). Armenia included that "bases for the implementation of the cultural policy aimed at the application of the Convention are the Articles of the Constitution of the Republic of Armenia on the freedom of speech (Article 27), freedom of thought, conscience and religion (Article 26), right to education (Article 39), freedom of creation (Article 40), right to preserve national traditions" (2013, p. 2, para. 2.1). The reports of Bangladesh (2013, p. 5), Cyprus (2012, p. 4), Mexico (2012, p. 11), Namibia (2012, p. 17), and Spain (2012, p. 9) also show such a reference to the national constitution.

Sometimes, cultural policies and measures are specifically linked to the dissemination of cultural goods and services, and on participation in cultural life, whereby states refer to specific human rights. For instance, the right to cultural participation or to take part in cultural life is mentioned by Austria (2012, p. 10), Cuba (2012, pp. 4–5), Dominican Republic (2013, p. 5), Ecuador (2012, p. 3), Montenegro (2012, p. 5), Namibia (2012, p. 17), Serbia (2013, p. 6), Sweden (2012, p. 6), Syria (2012, p. 1), Uruguay (2012, p. 24), and Vietnam (2012, p. 6). The right to (access to) education is included in the reports of Bangladesh (2013, p. 9), Cuba (2012, p. 5), Cyprus (2012, p. 16), and Italy (2012, p. 11). Some states mention women and children specifically as groups that need extra protection of their cultural rights, for instance Bangladesh (2013, pp. 10–11), Cuba (2012, p. 7), Dominican Republic (2013, p. 3), Ireland (2012, p. 7), Serbia (2013, p. 11), and Sweden (2012, pp. 6, 20). Lithuania mentions disabled persons (2012, p. 14).

Freedom of expression is mentioned by several states. It is linked to creative and artistic expression, for instance in the reports of the Dominican Republic (2013, p. 6), the EU (2012, pp. 13, 32), Germany (2012, p. 6), Montenegro (2012, p. 2), Peru (2012, p. 34), Serbia (2013, pp. 6, 28–29), Sweden (2012, p. 22), and the United Kingdom (2013, p. 12). Freedom of expression is also referred to in relation to (pluralistic) media, for instance by the EU (2012, p. 15), Germany (2012, p. 9), Montenegro (2012, pp. 6, 13), Norway (2012, p. 22), Peru (2012, p. 34), Portugal (2012, p. 8), Serbia (2013, p. 8), and Vietnam (2012, p. 6). The link between freedom of expression and free trade, as was at the time strongly promoted by the United States, is not referred to in the state reports. The United States is not a party to the Convention, and other states do not seem to follow this idea.

Several states pay specific attention to certain cultural communities and their rights. Minorities and indigenous peoples are mentioned in

several reports, for instance those of Argentina (2012, p. 2), Armenia (2013, p. 11), Bangladesh (2013, p. 8), Bosnia and Herzegovina (2013, p. 24), Ecuador (2012, p. 11), Latvia (2012, pp. 11, 39), Mexico (2012, p. 30), Mongolia (2012, p. 30), New Zealand (2012, pp. 4, 53), Peru (2012, pp. 4, 36), Poland (2012, p. 22), Serbia (2013, p. 21), Slovakia (2012, p. 11), Slovenia (2012, pp. 4, 7, 8, 27, 45), and Sweden (2012, p. 12). Most of these inclusions state that the cultural rights of these communities are respected by law and in policies, without linking it to specific provisions of the 2005 Convention. In some reports, references can be found to language rights of these communities, for instance in the reports of Bosnia and Herzegovina (2013, p. 24), China (2013, p. 4), Latvia (2012, pp. 11, 39), New Zealand (2012, pp. 30, 59), Slovenia (2012, pp. 4, 17), Sweden (2012, p. 12), and Vietnam (2012, pp. 3–4).

States hardly link the 2005 Convention concretely to international human rights instruments. With some exceptions, such as the United Kingdom, no state refers to the Universal Declaration on Human Rights or human rights treaties. The United Kingdom indicated that:

[I]n relation to Articles 2 & 5 of the Convention, the UK is a party to the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, which implemented the provisions of the Universal Declaration of Human Rights. The UK is also party to the European Convention on Human Rights, which is incorporated into domestic law by the Human Rights Act 1998.

(2013, p. 8)

Only one state, namely Mexico, referred in its report to the principle in the 2005 Convention that its provisions may not be invoked to infringe human rights and fundamental freedoms. Mexico mentioned, under the question of what indicators it used to measure the impact of actions undertaken, that it used the number of attendees, as the recipients of the message to be transmitted, being cultural diversity and respect for cultural differences, “provided it does not threaten human rights” (2012, p. 15).

The Secretariat of UNESCO has prepared analytical studies on the state reports, providing an overview of issues reported on, good practices, and challenges identified in the implementation of the Convention (UNESCO, 2012b, 2013d). These studies confirm that human rights are referred to, not as substantive rights or concrete obligations, but more as supporting notions for certain policies developed and measures taken under the Convention.

Conclusion

Ten years' practice of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions confirms to a large extent the conclusions drawn soon after its adoption, based on the drafting history and the text of the Convention. The Operational Guidelines, providing more detailed normative content of the provisions of the Convention, hardly mention human rights, neither as a substantive issue nor as an underlying notion. In the state reports, however, human rights are often referred to, mostly as one of the underlying notions of cultural policies or specific measures taken to implement the Convention. The reports show that states link their policies and measures to promote and protect diversity of cultural expressions to human rights. In other words, states do see a relationship between (parts of) the Convention and human rights, but, as concluded earlier, they do not consider and did not wish the Convention to be a human rights instrument *per se*. This also follows from the text of the Convention, which does not enshrine substantive rights and concrete human rights obligations, but where human rights serve as one of the underlying principles.

The link between the 2005 Convention and human rights is more specifically noticeable in the state reports in relation to development policies, as well as in relation to indigenous peoples and minorities. In principle, these are communities that may need special protection of their cultural expressions or measures to advance their participation in cultural life. The link with human rights is therefore more obvious. States keep emphasizing their sovereign right, however, as the cornerstone of the 2005 Convention, to draft and adopt legislation, policies, and measures to protect the diversity of cultural expressions.

At the same time, it is firmly included in the Convention that its provisions to promote and protect cultural expressions may not be used against human rights. Unfortunately, the Operational Guidelines as well as the state reports remain silent on this matter. States parties perhaps consider this as a given and do not see the need to report on specific issues or challenges they face in this regard. It would have been interesting to get more insight on which (type of) expressions this could concern.

In short, the conclusions drawn on the basis of the drafting history and the text of the 2005 Convention largely remain. The Convention is not a human rights or cultural rights instrument and does not include substantive rights and obligations in this regard. At the same

time, the Convention confirms the importance of cultural rights as human rights and could as such support existing international human rights instruments. This link between the Convention and human rights treaties could, however, be further strengthened. This would benefit the cohesion between international instruments but, more importantly, it would benefit the promotion and protection of human rights, in particular cultural rights. The approach to the link between the 2005 Convention and human rights should therefore not only be a negative one, emphasizing that the provisions of the Convention should not be used to infringe upon human rights. The Convention should also positively contribute to the advancement of human rights, in particular cultural rights. Although its provisions may not directly imply substantive rights, the spirit of the Convention should be one of reaffirming and strengthening the legal foundation of cultural rights, thereby helping to further implement them at national level through various laws, policies, and measures. Most states parties seem to be willing to embrace this idea.

Notes

1. For a long time, it was argued that cultural rights were a neglected and underdeveloped category of human rights. In the last decades, more interest is shown by academics, states, and monitoring bodies (see, *inter alia*, Donders, 2002; Francioni & Scheinin, 2008; Hansen, 2002; Marks, 2003; Meyer-Bisch, 1993; Reidel, 2010). See, also, the *Déclaration des droits culturels*, drafted by the Fribourg Group of experts and launched in Geneva on 8 May 2007 (<http://www.unifr.ch/iiedh/fr/publications/declaration-de-fribourg>). An important development in the further elaboration of cultural rights is the mandate of the Special Rapporteur in the Field of Cultural Rights, which was extended in April 2012 by the Human Rights Council: UN Doc. A/HRC/RES/19/6, 3 April 2012. See also Isar & Pyykkönen, Chapter 1; and Clammer, Chapter 7 (this volume).
2. See, for an analysis of the link between intellectual property and human rights, for instance the statement by the UN Committee on Economic, Social, and Cultural Rights on human rights and intellectual property, UN Doc. E/C.12/2001/15, 14 December 2001.
3. As expressed by the delegation of China during the first session of the ICG (UNESCO, 2008, p. 20).
4. All state reports are available on the website of UNESCO. [http://www.unesco.org/culture/cultural-diversity/2005convention/en/periodicreport/list/_](http://www.unesco.org/culture/cultural-diversity/2005convention/en/periodicreport/list/)
5. “[I]n January 2010, the Dominican culture has experienced a historical moment, when the cultural rights of the entire population were included in the new Constitution of the Dominican Republic, whereby the diversity of cultural expressions was recognized.”

9

Performativity and Dynamics of Intangible Cultural Heritage

Christoph Wulf

Introduction

The practices of intangible cultural heritage are central to the cultural heritage of humanity, which comprises practices from a plethora of different cultures as well as monuments listed as world cultural heritage. These oeuvres and practices play an important role in the cultural identity of human beings: “The ‘intangible cultural heritage’ means the practices, representation, expressions, knowledge skills – as well as the instruments objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage” (UNESCO, 2003a, Article 2). These practices are manifested in the following domains:

(a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship.

(UNESCO, 2003a, Article 2; italics original)

The practices of intangible cultural heritage are a specific expression of cultural diversity and as such also protected by the more general UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005a). They can promote interhuman processes of mediation and initiate educational development on many levels, which convey cultural heritage to the next generation. Engaging with these practices under the conditions of globalization permits us to engender important experiences of heterogeneity and otherness (Wulf, 2006).

The importance of the monuments listed by UNESCO as world cultural heritage for the cultural self-understanding of man is undisputed – by contrast, the role of the practices of intangible cultural heritage is subject to more controversial debate. This is all the more surprising given that the monuments have arisen out of man's intangible cultural practices. After ten years, more than 160 countries have signed the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, which can be understood as a precursor of the 2005 Convention in one domain of cultural practices.

In the context of the growing influence in modern societies of individualization and personal autonomy, we are at times confronted with the view that many practices of intangible cultural heritage have today become superfluous and could be replaced by other practices. Just like in the old days, however, communal life is impossible without the practices of intangible cultural heritage. This heritage is made up of historical and cultural products, and in studying them, the cultural determination of the phenomena themselves and the culturally determined character of the research perspectives brought to them come to be superimposed upon one another (Wulf, 2002b, 2013).

In this chapter, seven aspects highlighting the specific character and relevance of the practices of intangible cultural heritage of the 2003 ICH Convention are treated in turn: (1) the human body as medium; (2) practices of communication and interaction; (3) mimetic learning and practical knowledge; (4) the performativity of cultural practices; (5) central structural and functional elements; (6) difference and otherness; and (7) intercultural learning.

The human body as medium

Architectural monuments are arguably more easily identified and protected than forms of intangible cultural heritage, which in contrast are much more difficult to pick out, to convey, and to conserve. Whereas the architectural oeuvres of world cultural heritage are fashioned from relatively durable material, the forms of intangible cultural heritage are subject to historic and cultural change to a far higher degree. While architecture produces material cultural objects, *the human body is the medium* of the forms and figurations of intangible cultural heritage. If we wish to grasp the specific character of intangible cultural heritage, we need above all to reflect and acknowledge the fundamental role that the human body plays as its carrier.

A number of consequences ensue from this fact. Bodily practices are determined by the passage of time and the temporality of the human body. They depend on the dynamics of time and space. The practices of intangible cultural heritage usually are not completely fixed. They are subject to processes of transformation linked to social change and exchange. Interlaced with the dynamics of life, they are characterized by their process-like nature and are more susceptible to the pull of homogenizing tendencies.

Practices of intangible cultural heritage are stagings and performances of the body, and tend to have greater social weight than mere discourses. For with their bodily presence, the cultural actors invest the community with “something extra” in addition to the spoken word. This “extra” is rooted in the materiality of the body and man’s very existence with its concomitant bodily presence and vulnerability. Through the staging of practices of intangible cultural heritage, cultural communalities are produced, not only linguistic and communicative, but also bodily and material. People stage themselves and their relations, and in so doing produce culture. In staging and performing intangible cultural practices, they bring forth cultural orders, which express, among other things, power relations between the members of various social strata, between generations and between the sexes. By virtue of being performed and expressed in bodily arrangements, practices of intangible cultural heritage – such as religious rituals and ceremonies for example – take on the appearance of being “natural” and generally accepted. By inviting us to “join in and play along”, they facilitate the unquestioning acceptance of the cultural orders that show themselves in them. Whoever declines the invitation to “join in and play along” in a cultural community puts himself beyond the pale, is excluded, and can become a scapegoat and thus a surface for the projection of negativity and violence (Girard, 1982).

Practices of communication and interaction

For the genesis and practice of religion, society and community, politics and the economy, culture and art, learning and education, practices of intangible cultural heritage are essential. With their help, the world and the modalities of human life are ordered and interpreted; within them, they are experienced and constructed. They connect past, present, and future; they enable continuity and change, structure and society, as well as experiences of transition and transcendence.

In the current political situation, which is characterized in many parts of the globe by debates about the disintegration of the social, the loss of

values, and the search for cultural identity, these practices are increasingly gaining in importance. There is an expectation that they will bridge the gap between individuals, communities, and cultures. They create cultural coherence by virtue of presenting forms, which, by their ethical and aesthetic content, offer security in times where the big picture is easily lost from sight. They hold out the promise of compensating for the experience of losing contextualization in a community – an experience associated with modernity; of compensating for the experience of losing a sense of cultural identity and authenticity – associated with the tendencies to individualization, virtualization, and simulation as well as with the erosion of social and cultural systems.

Cultural communities constitute themselves through verbal and non-verbal forms of interaction and communication. Many of the practices of intangible cultural heritage are, as it were, performed on “stages”; by means of staging and performing, forms of cohesiveness and intimacy, and of communal solidarity and integration, are produced. Communities are distinguished not only by a collectively shared symbolic knowledge, but to an even greater degree by cultural action, in which they stage and perform such knowledge in the practices of intangible cultural heritage, thereby expressing the self-projection and reproduction of culture. Communities are dramatized fields of action, which are constituted as symbolic stagings within spheres of experience through intangible practices of cultural heritage, forming a system of communication and interaction (Geertz, 1973; Grimes, 2010; Turner, 1995).

Human beings communicate and interact in practices of intangible cultural heritage. These practices are bodily, performative, expressive, symbolic, rule-based, non-instrumental, and efficient; they are repetitive, homogenous, playful, public, and operational; in them, collectively shared knowledge and collectively shared practices of action are staged and performed, and the self-projection and self-interpretation of cultural orders reaffirmed.

Performances of practices of intangible cultural heritage have a beginning and an end, and thus a temporal structure of communication and interaction. They take place in cultural spheres, which they in turn help shape; they have a pronounced character, they are conspicuous and determined by their respective framing (Goffman, 1986).

Mimetic learning and practical knowledge

Practices of intangible cultural heritage are largely learnt and appropriated in mimetic processes, in which the practical knowledge necessary for their staging and performance is acquired (Bell, 2009; Butler, 1997;

Sahlins, 1978). These learning processes take place first and foremost when people participate in cultural *mises-en-scène* and performances, in which mimetic processes unfold as processes of creative imitation. Those behaving mimetically attempt to become like their role models. These processes of mimetic likening differ from one person to the next and depend on the way of relating to the world, to other persons, and to oneself. People take an “imprint” of the cultural world and in so doing make it a part of themselves. At the same time, the practices of intangible cultural heritage are thus passed on to the next generation (Gebauer & Wulf, 1995, 1998).

The importance of mimetic processes for the transfer of social practices can hardly be overestimated. These processes are sensual; they are tied to the human body, they relate to human behaviour, and seldom unfold consciously. Through mimetic processes, human beings incorporate images and patterns of practices of intangible cultural heritage, which subsequently become part of their inner world of images and imaginations. Mimetic processes, thus, contribute to a cultural enrichment of this inner world and broaden it, furthering man’s development and education. The practical knowledge necessary for the staging and performance of cultural actions is acquired. This culturally diverse knowledge develops in the context of the staging of the body and plays a special role in the creation of cultural performances in modified form. As a practical form of knowledge, it is a result of a mimetic acquisition of performative behaviour, which in itself develops out of a bodily form of know-how.

As practical knowledge, mimesis and performativity are mutually intertwined – for example in the cases of rituals, dances, or gestures – repetition of cultural practices plays a big role in the transfer of intangible cultural knowledge. Cultural competence only develops in cases in which socially formed behaviour is repeated, and in being repeated, modified. Without repetition, without the mimetic rapport to something present or past, no cultural competence can come into being. For that reason, repetition is a central element of transferring intangible cultural heritage to the next generation.

The performativity of cultural practices

The performativity of practices of intangible cultural heritage comprises at least three dimensions (Butler, 1997; Wulf, Göhlich, & Zirfas, 2001; Wulf & Zirfas, 2007). Such practices may be grasped, first, as communicative *cultural performances*. As such, they are the result of stagings and

bodily performance. Their unfolding deals with the cultural arrangement of social scenes, in which the actors fulfil different functions. As speaking and acting relate to one another, their interaction produces cultural scenes. Just like works of art and literature, the practices of intangible cultural heritage may be construed as the outcome of cultural actions, in the course of which even divergent social forces are subsumed into an accepted cultural order.

Second, the *performative character of speech* is of crucial significance, made explicit for example in rituals of baptism and communion, of transition and investiture, instances in which the words spoken during the performance of the ritual practices contribute substantially to the creation of a new reality. The same is true for cultural practices in which the relation of the sexes to one another is organized and in which repeatedly addressing a child as “boy” or “girl” contributes to the development of gender identity.

Finally, the performative also comprises an aesthetic dimension, constitutive of artistic *performances*. Without taking this dimension into account, many other practices of intangible cultural heritage cannot be made transparent. This aesthetic perspective points to the limits of a functionalist view of the performativity of cultural acts. Just as the aesthetic regard upon artistic *performances* prohibits reducing them to acts determined merely by the intention of attaining functional goals, so it reminds us that the practices of intangible cultural heritage are “more” than the manifestations of concrete intention.

The staging of bodily performances of intangible cultural heritage often exhibits important differences. Among the reasons are general historical conditions, cultural and social conditions, and, finally, conditions associated with the uniqueness of the protagonists. The interplay of both kinds of factor produces the performative character of linguistic, social, and aesthetic action in cultural stagings and performances. At the same time, the limits of the predictability and manageability of practices of intangible cultural heritage are made transparent when we consider their specific, event- and process-like character. By taking into account their aesthetic dimension, the significance of the style of cultural practices is made visible. The difference between conscious purposefulness and the manifold layers of meaning accruing to the scenic arrangement of bodies is obvious. The performative character of practices of intangible cultural heritage invites many different interpretations and readings, without this difference of interpretation diminishing the effect of the cultural arrangements as such (Schechner, 1977; Tambiah, 1981; Turner, 1982). On the contrary: part of the effects of those practices flows

precisely from the fact that the same practices admit of different readings, without detrimental consequences for the *magic of their practice* (Bourdieu, 1972; Frazer, 2009).

Communication crucially depends on *how* people make use of their body in their culturally determined behaviour and action, which body distances they keep, which body postures they adopt, which gestures they develop. By these means, people communicate much about themselves and their approach to life, about their way of seeing, feeling, and experiencing the world. Despite their central importance for the effects and consequences of cultural action, these aspects of bodily performativity are missing from many traditional theories of action (e.g. Parsons, 1937), in which the actors are still reduced to their cognitive dimension, while the sensual and contextual conditions within which they act are ignored. In order to avoid such reductionism, we have to remind ourselves, and keep in mind, how the practices of intangible cultural heritage emerge, how they are linked to language and imagination, how their uniqueness is made possible through social and cultural patterns, and how their event-like dimension relates to their repetitive aspects (Wulf, 2006; Wulf et al., 2010).

Central structural and functional elements

The practices of intangible cultural heritage have many different functions, which they can nonetheless never quite be reduced to in any exhaustive sense. Their importance for human communities consists of the ten points listed below (Wulf, 2004b, 2010, 2011; Wulf et al., 2001; Wulf & Zirfas, 2007).

Producing culture

Communities are formed and transformed in and through cultural processes and practices, so they can hardly be imagined without the practices of intangible cultural heritage. Via the symbolic content of many forms of interaction and communication, and especially via the performative processes of generating interaction and meaning, practices of intangible cultural heritage guarantee and stabilize the community itself. The community is the basis, the performance, and the effect of cultural action. Many practices of intangible cultural heritage transform, by their specificity, non-determined into determined behaviour. The techniques and practices associated with this transformation serve the repetition of the necessary enactments, their being amenable to

direction and control and making identifiable causes, effects, and disturbances.

Communities are distinguished not only by the common sphere of a collectively shared symbolic knowledge, but above all through forms of cultural interaction and communication, in which and through which they stage this knowledge. Such staging can be understood as the attempt to guarantee the self-representation, reproduction, and integrity of the cultural order, to produce symbolic knowledge by communicating and above all to generate spheres of interaction, dramatic fields of action. Many practices of intangible cultural heritage produce community emotionally, symbolically, and through performance; they are stage-like, expressive actions, in which the participants, via mimetic processes, reciprocally attune the worlds of their perception and imagination to one another's – without a *comprehensive* accord as to the ambiguity of the symbolism involved being possible. By guaranteeing the integration of a cultural context of action, practices of intangible cultural heritage aim at the formation of community.

Generating order

As cultural templates for action, practices of intangible cultural heritage develop a specific regularity, conventionality, and correctness implying a practical horizon of apperception and knowledge for communities. It is impossible to determine whether cultural practices arise from the social order or whether the social order is generated in the first instance through cultural actions. The practices of intangible cultural heritage are bodily practices, which determine form and content of experiencing, thinking, and remembering, and which reduce and extend, channel, and transform them. For that reason, they generate a special form of reality. Within them, the point is not truth, but taking the right action. The correctness of communal action means that the protagonists are able to decode the symbolic content of a situation according to specific rules produced through the practices of intangible cultural heritage. These practices aim at correctness and thus at ordering communal action in a way compulsory for all participants. If the common practice of cultural action is based upon a structural asymmetry, practices of intangible cultural heritage may also serve adaptation, manipulation, or suppression.

Enabling identification

The potential for identification and transformation of practices of intangible cultural heritage stems from their symbolic and performative

character, it resides in their creative and reality-generating dimension. A new order is produced, the achievement of a new state of being, the emergence of a new cultural reality – a cultural reality which looks as though it were natural and which for that reason makes distancing oneself from (or resisting) it difficult. In many cultural practices, things revolve around an “evocation”, that is to say, around the ascription of a competency – an ability. These identificatory practices are performances which bring forth what they denote, by enjoining humans to an ability which they do not yet possess, and by at the same time recognizing them as those which they are yet to become. In this process, cultural being emerges through ascriptions, denotations, and categorizations.

Embodying remembrance and projection

Practices of intangible cultural heritage serve the purpose of time and again reassuring oneself of the presence of a community, of reasserting through repetition its order and its potential for transformation, and of giving both permanence. They aim as much at the staging of continuity, timelessness, and immutability as at the process-like character and the future- and projection-orientation of communities. They synthesize social memories and communal projections of the future. The cultural mediation of dealing with time fosters temporal and social competence. Ordered temporal patterns are a medium of social life – *viz.* the way the cultural order of time structures the entirety of life in industrial society. The time of the practices of intangible cultural heritage is the co-presence of the community members, whose time is in turn itself divided into temporal sequences by these practices. In this way, cultural action promotes certain memories and exposes others to withering away. By their repetitive structure, many practices signal durability and immutability, and thus produce and control social memory. Cultural performances bring past events into the present, make them accessible to present experience. With the aid of efforts at cultural remembrance, a connection may be formed between the presence (threatened with being forgotten) and that past which is meaningful, as tradition and history, to the community. Practices of intangible cultural heritage evolve because they can never be performed as an exact reproduction. Rather, they are always mimetic, and in these mimetic processes the creative potentialities are, through repetition, already built-in (Gebauer & Wulf, 1995, 1998).

Overcoming crises

When communities experience differentiation and face situations of crisis, many practices of intangible cultural heritage can contribute to

channelling and even overcoming of the crisis scenarios. They may promote a communicative mediation and understanding of a novel situation experienced as threatening and as rupturing the framework of the everyday. These practices do not form instrumental blueprints for action and cannot serve as technical means to solving concrete problems. The force achieved in communal cultural action exceeds the possibilities of the individuals and leads to the creation of community and solidarity.

Relating to the sacred

In many practices of intangible cultural heritage, situations are rehearsed and practiced which escape comprehensive control in “real life” contexts. For that reason, these practices can serve to relate the self to its “externality”, by drawing dividing lines, by bridging distances, and by believing that the mimetic and performative forces unleashed in cultural practices act not just inwards but also outwards, upon “reality”. In this way, in certain practices one becomes someone entirely “different”, that is to say relates as such, transformed, to the “utterly different”, to the sacred. The sacred provides cultural interactions with an organizing solidarity, endows them with taboos and draws borderlines which in turn imbue time, space, objects, and actions with extraordinary significance. The sacred may be understood as the idea of a specific form of transcendental effectiveness and power relating to objects, actions, writing, people, communities and so on, shrouded with sentiments of diffidence and awe and surrounded by a codex of norms, rules, and taboos (Eliade, 1959). The community depends upon the sacred, in the sense that the cultural relatedness to the sacred fulfils the function of governing integration, delimitation, and exchange within the community. By the same token, many practices of intangible cultural heritage are based upon a specific belief in the transcendent, in the sacred dimension of community, hence the significance of sacred holidays and festivities for communities (Durkheim, 2003).

Dealing with difference

Many practices, and rituals especially, are action-guiding systems for dealing with difference. By guaranteeing the integration of an interactive context for action, rituals aim at integration and the formation of community. The concept of a community of performance does not refer to a prior, organic, or natural entity, to an emotional sense of belonging, to a symbolic system of significance, or to collective value-consensus, but rather to cultural patterns of interaction. The question as to how communities engender, assert, and transform themselves brings to the fore cultural forms of *mise-en-scène*, bodily and linguistic practices,

spatial and temporal frameworks, as well as various forms of mimetic circulation. Community from this perspective appears less as a homogeneous, integrative, and authentic sphere of proximity but rather as an experiential range of tensions, limitations, and processes of mediation and bargaining. We term a community of performance a cultural sphere of action and experience characterized by stage-like, mimetic, playful, and power-related dimensions (Wulf, 2004a, 2004b, 2010, 2011).

Initiating mimetic processes

Cultural action does not bring forth a mere copy of actions undertaken previously. Each performance of a cultural practice is based upon a new *mise-en-scène* which leads to modifications of prior cultural actions. Between past, present, and future cultural actions a mimetic relationship exists, within which new actions are produced with reference to previous ones. In mimetic processes, a relationship to an existing cultural world is established, frequently based upon a link of likeness: a likeness of occasions, of protagonists or of the social functions of the cultural actions. The decisive element is not, however, the likeness, but producing a relationship to the other world. When a cultural action is linked to a previous one and performed in likeness to it, a wish exists to do something like the protagonists to whom this relationship refers, to liken oneself to them. This wish is rooted in the desire to become like the others, but at the same time to differentiate oneself from them. In spite of the desire to become alike, a desire for difference and autonomy persists. Many practices of intangible cultural heritage tend, simultaneously and with equal urgency, towards repetition *and* difference, thus setting free energies which drive the staging and performance of cultural actions, and from this dynamic stems their productivity. Whilst maintaining continuity, they offer scope for discontinuity and open up a field for the negotiation of the relation between continuity and discontinuity.

Imparting practical knowledge

In order to act with cultural competence, not so much theoretical as practical knowledge is necessary. This is what enables people to act in accordance with the respective requirements in various social spheres, institutions, and organizations. In large parts, such practical knowledge is acquired in mimetic processes, through which the actors integrate images, rhythms, schemes, and movements of ritual patterns into the world of their imagination. Mimetic processes are the conduits for staging and performing the cultural action required in new contexts.

Mimetic acquisition engenders a practical knowledge within the protagonists, which can be transferred onto other situations. As a consequence, the mimetically acquired practical knowledge is practised, developed, and adapted through repetition. Practical knowledge, thus incorporated, is historical and cultural in character and as such intrinsically open to change (Wulf, 2002a, 2013).

Elaborating subjectivity

For a long time, traditional cultural practices (such as rituals) and individuality/subjectivity were held to be contradictory. It is only recently that it has become accepted that this is not the case in modern societies. The actions of individuals are the result of practical knowledge, for the development of which numerous cultural practices are essential. That is not to say that there are no tensions and conflicts between community and individuals, the irreducible difference between the two is too marked. Nevertheless, the two are mutually dependent, one is the precondition of the other. A fulfilled individual life is possible only where individuals are able to act and communicate competently in cultural communities. Likewise, a community requires differentiated individuals able to behave in a socially and culturally competent way, and acquiring, developing, and adapting these abilities in the corresponding practices of intangible cultural heritage.

Difference and otherness

Protecting the practices of intangible cultural heritage requires the development of a sensitivity for “the other”. To avoid reducing cultural difference to sameness, to avoid utterly homogenizing cultural diversity requires the development of a sensitivity for cultural heterogeneity, that is, for difference and otherness. By fostering a sense for otherness we can move beyond the idea that the standardization of culture inevitably results from homogenizing processes of globalization (Bhabha, 2004; Said, 1978). Both outstanding instances of practices of intangible cultural heritage and their daily social routine are of central importance for the experience of difference and otherness.

The impression, which some may have gained at a certain point, that difference and otherness were bound to gradually dissolve, has been decisively negated by the developments of recent years. Things, situations, and people in the heart of our familiar everyday world suddenly become strange and unknown. Norms of life, binding for a long time, are questioned and lose their validity. The attempt to grasp the

other through an extension of reasoned understanding has not led to the expected results. On the contrary, more and more people are experiencing that the familiar everyday life with which they are so well acquainted is accompanied by insecurity, out of which time and again experiences of the strange and unknown arise. Contexts and relationships long held to be valid appear suddenly transformed and unreliable. The more we know, the greater the complexity of the world, of social contexts and of our own lives. The more we know, the greater the extent of our ignorance. Even though we frequently attempt to reduce the other to someone identical, we invariably fail. The strange is a precondition of cultural diversity, just as it always has been.

Globalization has developed the following three strategies for reducing otherness: egocentrism, logocentrism, and ethnocentrism.

Egocentrism

The processes which contribute to constituting modern subjectivity and to the genesis of egocentrism have been studied from a great variety of perspectives (Elias, 1997; Foucault, 1995). Technologies of the self abet the development of individual subjects. Many of these strategies are tied to the idea of a self-sufficient self, which is meant to lead its own life and must develop its own biography. The unintended side-effects of a self-sufficient subjectivity are nevertheless manifold. The processes of self-determination frequently overstretch people's capacities. Other processes defy self-determination and strain against the hope of autonomous action. On the one hand, egocentrism constitutes modern subjectivity, confers powers of survival, of domination, and adaptation upon the individual subject. On the other hand, it does not allow for differences, and reduces diversity. The attempts of the individual subject to reduce the other to their utility, functionality, and availability are efficient – and yet simultaneously fail time and again. This insight opens up new perspectives for dealing with difference and otherness as a new field of knowledge and research.

Logocentrism

As a consequence of logocentrism, we perceive the other solely through the prism of criteria derived from European rationality. We accept only what accords to the laws of reason; all else is excluded. He who sides with reason is right, even when the reason in question is reductionist and functional. Thus, parents are mostly right vis-à-vis their children, civilized people vis-à-vis the so-called primitives, the healthy vis-à-vis the sick, and so forth. Those in possession of reason are superior to

those endowed with lesser forms of rational action. The more someone's language and reason deviates from the general norm, the more difficult it becomes to approach and understand them. Nietzsche, Freud, Adorno, and many others have criticized this self-sufficiency of reason and pointed out that human life is only partly accessible to reason.

Ethnocentrism

In the course of history, ethnocentrism has destroyed for good many forms of difference and otherness. The processes that have led to the destruction of foreign cultures have been analysed many times over. Among the most atrocious examples is the colonization of Central and South America in the name of Christ and the Christian kings (Greenblatt, 1992; Todorov, 1991). The conquest of South America meant the suppression of local cultures. Indigenous values, ideas, and practices of worship were replaced with the forms and content of European culture. Everything foreign, everything different, was eradicated. The natives were unable to grasp the insidiousness of the Spaniards. They had to experience that the Spaniards' friendliness was not all it purported to be. Promises, for example, were given not in order to be kept, but to mislead and deceive the natives. Each and every action served other goals than those it pretended to serve. The interests of the Crown and of the Christian mission, and the supposed inferiority of the indigenous peoples, legitimized the colonial conduct. In addition, economic motives abetted the destruction of other forms of viewing the world.

The above described phenomena, egocentrism, logocentrism, and ethnocentrism are closely intertwined, and as strategies of transforming the other they mutually reinforce one another. Their shared objective consists in destroying otherness and to replace it with something we are used to. The obliteration of the diversity of cultures is the consequence. People could only survive by accepting and taking on the culture of the victors. A special tragedy lies in those cases where the annihilation of local and regional cultures ensued.

In order to alert and sensitize people to the importance of cultural diversity, they need to experience otherness first hand. This experience puts them in a position where they are able to deal with foreignness and difference and where they may develop an interest in the non-identical. Individuals are not self-contained entities, they consist of many contradictory and fragmentary elements. Rimbaud coined an expression for this experience, which remains as valid as ever: "Myself is someone else". Freud's observation that the ego is not the master of its own house points in the same direction. Integrating those elements of subjective

individuality excluded from one's self-image internally is a precondition for perceiving and respecting otherness in the outside world. Only if people are able to perceive their own otherness are they capable of perceiving the otherness of other people, and to come to grips with it. If we succeed in perceiving the other in our own culture, an interest in the foreign aspects of other cultures will germinate and the possibility of valuing them can flourish. To do so, we need to foster the ability to take the other as the point of departure of our thought, that is to say to try and see ourselves through the eyes of other people, to think heterologically.

Conclusion: Intercultural education

In order to win people over to an appreciation of cultural diversity and the importance of protecting and advancing intangible cultural heritage, intercultural and transcultural perspectives are required, today more than ever. Today, many people no longer belong to just *one* culture, but partake of various cultural traditions. Intercultural or transcultural education is a means of supporting them in dealing with the cultural differences inherent within themselves, in their immediate surroundings, and in encounters with others. Identity cannot be conceived of without otherness, so that intercultural education implies a relational link mediating between an irreducibly fractal self and many forms of otherness. Hybrid forms of culture are becoming increasingly important. If understanding others relates to understanding oneself and vice versa, then the process of intercultural education is also a process of learning about, of educating oneself. If successful, it will establish the insight into the fundamental impossibility of understanding the other. Given the disenchantment of the world and the decrease of cultural diversity the danger arises that, in the world over, people may only encounter themselves and their own products, and that this lack of otherness will dramatically reduce the richness of experiencing oneself and the world. If the reduction of cultural diversity threatens the richness of human life, however, then fostering cultural diversity must also be a central concern of education.

Cultural and intercultural learning, respectively, must not be reduced to the ability of dealing with minorities. Rather, education today is an intercultural task in all parts of world society (Wulf, 1995, 1998) in which encountering and coming to terms with foreign cultures, with the otherness of one's own culture and with the other inherent in oneself are of central importance.

10

The 2005 Convention in the Digital Age

Véronique Guèvremont

In 2015, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions celebrates its tenth anniversary. During its first decade of existence, it witnessed an unprecedented revolution of the audiovisual landscape. Negotiated at a time when radio, television, film, and recordings on CD or DVD format were dominant, the Convention must now deal with the reality of dematerialization and the digitization of traditional cultural offer, the emergence of new tools and modes of creation, and the development of new cultural practices. The effects of digital technologies on the diversity of cultural expressions are far from neutral.

While digital technologies offer possibilities for enriching the diversity of cultural expressions, they also increase the risk of certain cultures being marginalized. Without the space and time restrictions of the “material world”, these technologies allow a growing mass of dematerialized cultural expressions to circulate more freely and be more accessible to a broader public. The arrival of the digital age thus poses new challenges to states wishing to adopt and implement effective cultural policies and measures to protect and promote the diversity of cultural expressions in their territories and on the international scene.

This chapter first addresses some of the major trends on the impact of digital technologies on the diversity of cultural expressions. Second, it summarizes the effects of this revolution on the implementation of the 2005 Convention. Third, it analyses the influence of digital technologies on the relationship between this instrument and trade agreements.

Some possible impacts of digital technologies on cultural expressions

The parties to the 2005 Convention recognize in the Preamble that “while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, they also represent a challenge for cultural diversity, namely in view of the risks of imbalances between rich and poor countries”. The evolution of digital technologies necessarily plays a role in this dynamic by providing possibilities for the creation and dissemination of cultural expressions, while increasing the risk of certain cultures remaining on the sidelines in these processes. In this respect, certain trends can be observed.

An increase in and diversification of cultural offerings

It is generally acknowledged that the growth of digital technologies has enriched the cultural content on offer, referred to by one researcher in French as “hyper offre” (super offer) (Benghozi, 2011, p. 113). Since the space provided by the digital environment is unlimited, cultural expressions accumulate in a perpetually expanding world. The progressive disappearance of the limits inherent to the material world is not just about the capacity to “store” or “archive” these expressions, but also how to access them. All it takes is an internet connection to make cultural expressions accessible anywhere and at any time, regardless of where they have been produced. Further, cultural content is enhanced by the phenomenon of the democratization of production and dissemination tools. Since digital technologies are generally affordable (not only in terms of acquiring digital tools, but also with regard to the cost of producing, distributing, disseminating, and promoting digital cultural expressions), they open up new possibilities for creators. A broader diversity of cultural expressions has therefore emerged, generated not only by professionals but also by amateurs (see Coulangeon, 2010, pp. 84–88) and budding artists.

A transfer of power from creators to the public?

Digital technology has created a new ecosystem of cultural expressions, a meeting place for creators and the public. It dilutes and even transfers power from the creators of cultural content to the public. Once the public has the means to use the tools that enable them to access digital cultural content, they hold considerable power, much more than

the “physical” world offers them. They can access cultural expressions of their choice, whenever and wherever it suits them, using whatever medium available to them. They are no longer limited to information submitted and controlled by a traditional disseminator; they can have access to that information (although aggregators tend to promote specific contents). Their power is amplified by the new interactivities provided by digital technologies and the social networks they generate: from passive recipient or consumer, the public has become a commentator, critic, promoter, and even creator of cultural content. The public can also participate in the creation, production, and dissemination process. Sometimes they even master these processes, as in the case of production and dissemination models that essentially rely on the participation of the public to create, disseminate, and promote new cultural expressions. Lastly, the public can decide to interact with creators, or circumvent them, by sharing or exchanging cultural expressions. Ultimately, it is the public that decides whether or not they will compensate the creator given that a “freebie culture” is already widespread on the internet.¹

A reconfiguration of value chains

Digital technologies provide opportunities for people to self-produce and self-distribute material, thereby changing the role of traditional developers of value chains in the culture sector (Benghozi, 2011, p. 115). They alter and destabilize established structures by diluting the power of certain intermediaries (or simply causing them to disappear altogether) and by enabling the emergence of new actors (often from sectors other than culture, especially the IT sector, that are already very powerful in the cultural industry market): content aggregators (iTunes), search engines (Google), web browsers (Firefox), and operating systems (Windows, Mac OS, Linux), which offer new cultural services and have unequalled power to disseminate them. These actors have staked out a significant position in the digital world and exercise considerable influence over whether and how cultural expressions can be accessed, in turn controlling much of the cultural offerings and influencing the evolution of the diversity of cultural expressions. These actors, together with telecommunication providers, whose role and influence are constantly growing, dominate the ecosystem generated by digital technologies (OECD, 2012, p. 7).

An ever-greater dominance of the “majors”

While digital technologies are redefining the roles of the actors, certain needs remain unmet, especially in terms of marketing and promoting

cultural expressions. These operations are all the more important given that cultural offerings are constantly expanding. While this evolution can benefit diversity, certain cultures remain marginalized because a large segment of the public turns to cultural expressions that are often controlled by a handful of big players. Dominant market positions, which already exist in the material world, are being strengthened while others are emerging. While they have the potential to generate an unlimited quantity and variety of cultural expressions, digital technologies could, paradoxically, become the vehicle of a globalized mass culture controlled by large companies, leaving a very small place for the expression of other cultures. Creators, broadcasters, and aggregators with more limited means or less expertise can have difficulty in reaching a broad public. On the other hand, when faced with an overabundance of cultural expressions, consumers may have trouble seeking a diversity of cultural expressions. The challenges facing the diversity of cultural expressions in the digital age must therefore not only be considered in terms of the quantity of available cultural content (deployment of measures to support the creation of digital cultural expressions), but also in terms of the accessibility and visibility of the content (formulation of measures to support the promotion and dissemination of digital cultural expressions and measures to educate and raise public awareness). While many actors may profit from digital technologies, from the giants of the cultural industry to artists working on their own,² access to digital technology alone does not seem to guarantee a reliable income stream for all creators.³ Lastly, the challenge of adapting cultural content to multiple digital platforms that may be used (computer, tablet, phone, and so on) requires investments that are beyond the reach of some actors, which could also result in the cultural expressions generated by the most powerful groups being more readily accessible to the public.

A persistence and widening of digital divides and inequalities

Generally speaking, the “digital divide” refers to the disparity in the material needed to access digital technologies, that is, the infrastructure and equipment required for internet access. Traditionally associated with the global North–South gap, the “digital divide” may also refer to other realities, notably the disparity in access to materials between urban and rural populations, or between the well-off and underprivileged communities within a state. These divides raise concerns because of the impact that access to digital technologies has on all aspects of life in a society, especially on economic development. Disparities in the progress of these technologies between countries, regions, and

populations are likely to maintain and even deepen the existing technological divide (Campbell, 2001, p. 157). Specifically with regard to the challenges related to the diversity of cultural expressions, limited access to digital technologies reduces the possibility of entering into contact with the mass of digital cultural expressions and of using these technologies to create, disseminate, and promote new cultural expressions. Cultural policies aimed at protecting and promoting the diversity of cultural expressions thus are closely linked to infrastructure development policies aimed at making digital technologies accessible to all.⁴

However, “access” is not an end in itself because it does not guarantee “usage”. “Digital inequalities” are also part of the “digital divide” (Brotcorne, Damhuis, Laurent, Valenduc, & Vendramin, 2011). This is not simply a matter of having access to technologies but also involves mastering the skills required to benefit from them. This other divide can be geographic or economic, it can separate young people from their elders and it can separate men from women. The existence of such inequalities confirms the fundamental role of educating and training the public in general, and artists and cultural professionals in particular.

The effects of digital technologies on the implementation of the 2005 Convention

The 2005 Convention “applies to the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions” (Article 3). The text does not address the environment in which this diversity is likely to occur. As such, nothing prevents the Convention from applying policies and measures aimed at protecting and promoting the diversity of cultural expressions produced and disseminated by means of digital technologies. The objectives set by the parties to the Convention encourage them to examine the impacts of digital technology on the evolution of this diversity and take the necessary measures to preserve it in the digital environment.

The definition of “cultural diversity” in the Convention reinforces this interpretation. According to this definition, “cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, *whatever the means and technologies used*” (Article 4.1, my emphasis). It thus seems obvious that cultural diversity and, even more so, the diversity of cultural expressions can be manifested, enriched, and

transmitted by digital technologies. In addition, while the text of the Convention contains no explicit reference to “digital technology” and does not specifically address the issues related to the diversity of cultural expressions in the digital environment, the evolution of cultural industries resulting from the development of these technologies should naturally lead the parties to explore the specific characteristics of this environment, observable trends, and implications of such changes on the pursuit of the objectives set out in the 2005 Convention. And while the few references to “information and communication technologies” are only found in the provisions dealing with international cooperation, it is clear that the challenges of digital technology go beyond this framework. Although developing countries may have specific concerns in this regard that deserve to be fully considered, the challenges posed by the digital revolution with respect to the protection and promotion of the diversity of cultural expressions affect all parties.

The general rule regarding the rights and obligations of the parties set out in Article 5, that is, the reaffirmation of “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” (Article 5.1), encompasses the cultural policies and measures applicable to digital cultural expressions and the digital cultural ecosystem. These policies and measures can be “focused on culture as such or can be designed to have a direct effect on cultural expressions of individuals, groups or societies, including on the creation, production, dissemination, distribution of and access to cultural activities, goods and services” (Article 4.6). In this regard, the digital revolution raises several questions about the way that a party may, and must, intervene to protect and promote the diversity of cultural expressions. Of course, all these questions do not have to be addressed in the framework of the implementation of the Convention.⁵ However, the topics that are closely tied to the challenges facing the diversity of cultural expressions and that are crucial for the preservation of this diversity in the digital age fall within the scope of the “cultural policies and measures” covered by the Convention. This does not simply involve discussions on how to adapt those policies and measures designed to support creation, distribution, dissemination, and promotion to the digital environment. It also means looking at issues that go to the very heart of the digital cultural ecosystem such as “taking into account the growing interdependence of the various sectors or the capacity of competition legislation to bring the technical and content industries into sync” (Chantepie & Le Diberder, 2010, p. 73). Digital

technology is thus spurring the parties to take a fresh look at the meaning of “cultural policies and measures” within the meaning of the 2005 Convention.

Cultural policies and measures must remain consistent with the provisions of the Convention (Article 5.2). The concept of “protection” caused quite a stir during the negotiations of this legal instrument, pushing the negotiators to clarify it in order that the meaning be understood as “the adoption of measures aimed at the preservation, safeguarding and enhancement of the diversity of cultural expressions” (Article 4.7). The principles set out in Article 2 of the 2005 Convention also serve as a guide for the interpretation of “protection”, especially the principles of equitable access (Article 2.7) and openness and balance (Article 2.8). This definition and these principles can be transposed to protection policies and measures aimed at digital cultural expressions.

However, in practice, certain approaches that have been proposed to date to “protect” cultural expressions are difficult to transpose to the digital environment. While the state keeps its rights and obligations with respect to the diversity of cultural expressions, its borders are no longer sufficient to control dematerialized flows. In addition, the notions of “openness” and “balance” must be adapted to the digital environment, since in a virtual world where borders are being overwhelmed by a globalized space, state control over such considerations tends to be much more limited than in the environment in which the cultural industries first appeared and evolved.

Lastly, one may ask whether the definitions set out in Article 4 of the 2005 Convention, which define the scope of application of the instrument, are sufficient to allow the effective implementation of the Convention in the digital age. The issue as to whether it is advisable to define the term “digital” is also worth raising. Until now, there has been no generally accepted legal definition of the term “digital” in international law. There are some national laws and European legislation and directives that govern specific activities in the digital environment. In some cases, the digital products or elements in question can be defined.⁶ In other cases, the general formulation of the legal statement may be sufficient to render the legal text applicable to this environment. It seems that this is the case for the provisions of the Convention, which do not require any amendments for issues relating to digital technology to be fully taken into account by the parties when implementing their obligations.

Thus, the challenges surrounding the implementation of the 2005 Convention in the era of digital technologies affect all provisions of

the Convention. These provisions can be grouped under four topics: the first is the adaption of national cultural policies to the particularities of the digital environment; the second is the necessity to take the reality of the digital world into account when deploying measures to educate and raise the awareness of the public, increase the participation of civil society, and integrate culture into sustainable development; the third is the cooperation to accelerate the digital shift in developing countries, especially by transferring digital technologies, strengthening the capacity to use these technologies, and increasing the availability of digital cultural expressions from these countries; and the fourth is the promotion of the objectives of the Convention in other relevant negotiation forums, especially in negotiations of bilateral, regional, and multilateral trade agreements whose scope of application extends to digital products.⁷ Although each of these issues deserves to be thorough, the third and final section of this chapter is devoted to the relationship between the 2005 Convention and trade agreements.

The influence of digital technologies on the relationship between the 2005 Convention and the trade agreements

The 2005 Convention is evolving in a constantly shifting legal environment. Even before the Convention saw the light of day, agreements negotiated and implemented in various fields of international law were already having an impact on the diversity of cultural expressions, which raised the international community's awareness of its fragility and vulnerability. It is against this backdrop that negotiations on a binding legal instrument to protect and promote the diversity of cultural expressions began in 2003.

Ten years after the adoption of the UNESCO Convention, the diversity of cultural expressions remains fragile and vulnerable. Prior and subsequent treaties continue to have an impact on the policies and measures implemented by states to protect and promote this diversity. Articles 20 and 21 of the Convention devoted to the "relationship to other treaties" are thus crucial for managing the interactions and overlaps between relevant legal instruments.

In this regard, digital technologies encourage the parties to revisit instruments that may have an impact on the diversity of digital cultural expressions. Considering the evolution of the international legal environment in the field of international law, particular attention must be paid to trade agreements, not only the multilateral ones, but also and mainly the bilateral and regional free trade agreements which

incorporate innovative provisions on electronic commerce that could affect the diversity of cultural digital expressions. This third section of the chapter focuses on this last category of trade agreement.

The paralysis of the Doha round of negotiations, launched in 2001 and at the time of writing still unachieved, which was to lead to new multilateral trade commitments from WTO members, contrasts with the effervescence of bilateralism and regionalism in the same field of international law. The dynamism of the states is reflected not only in the number of agreements reached and the number of negotiations launched since the early 2000s, but also in the emergence of new trade agreement models based on ground-breaking bilateral and regional agreements. Unlike the multilateral trade system within which states must grapple with existing rules to seize the opportunities offered by digital technologies, bilateral and regional approaches give trade agreement negotiators much more flexibility to formulate rules adapted to the particularities of e-commerce. This flexibility in negotiating new agreements undoubtedly explains why many bilateral and regional agreements contain provisions that specifically deal with e-commerce.⁸ This bilateral and regional flexibility does not, however, eliminate the risk inherent to negotiations between a limited number of trading partners, especially when the negotiations are between developing and developed countries. As it is closely linked to the rights of states to protect and promote the diversity of cultural expressions in the digital environment, the rules governing e-commerce of cultural goods and services warrants special attention in this respect.

Indeed, the challenge facing the parties to the 2005 Convention remains unchanged, that is, to preserve their flexibility in adopting and implementing cultural policies intended to protect and promote the diversity of cultural expressions, an objective that requires that provisions be formulated to reflect the dual nature of cultural goods and services. So, while this objective remains unchanged, the reality of digital technologies combined with the evolution of bilateral and regional agreement models affect efforts to achieve it.

Although the agreements reached over the course of 2005–2015 have employed various techniques to preserve this flexibility, only the inclusion of a general cultural exemption have allowed states to preserve their right to adopt and implement the cultural policies and measures of their choice, a right that the parties to the Convention recognize. This approach, while certainly the most prudent, does not, however, preclude the parties to the Convention from being cautious about scoping such a cultural exception. The impact of digital technologies on the evolution

of cultural content, including the emergence of new types of cultural goods and services, should encourage the promoters of cultural exception to envisage a relatively broad definition of the goods and services targeted by a general cultural exception enshrined in a trade agreement. This is why the idea of drawing up an exhaustive list of “cultural goods and services” or “cultural industries” covered by the cultural exception may have to be discarded in favour of a more flexible and more evolutionary approach such as the adoption of a definition that encompasses all types of cultural content that can be disseminated by any means, including by digital technologies.

The cultural exemption traditionally incorporated by Canada in its free trade agreements has long seemed sufficient to protect Canadian cultural policies. This exemption excludes the “cultural industries” from the scope of an agreement, these industries being defined by a relatively short list of activities, goods, and cultural services.⁹ However, with the emergence of digital technologies in the field of cultural industries, such a definition now seems outdated and raises a number of interpretation problems.

In contrast, some recent agreements concluded by New Zealand contain a cultural exemption whose scope seems particularly extended, thus having the effect of excluding a large category of cultural goods and services.¹⁰ The wording reads: “subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in these Chapters shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value”. A footnote states that “Creative arts” include “the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative online content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts; and the study and technical development of these art forms and activities .” As a result, the scope of the cultural exemption is relatively broad, covering a wide range of goods, services, and cultural activities, including some digital cultural products and cultural practices. This type of clause is particularly protective of the right of states

to intervene in favour of the culture, not only because it applies to all chapters of the agreements it incorporates, but also because it covers both cultural goods and services that could be described as “traditional” (that is, goods and services produced, distributed, and disseminated in a traditional way) and also digital cultural products. For these reasons, the cultural exemption that can be found in the last free trade agreements concluded by New Zealand should be considered as best practice and inspire the states involved in the negotiation of bilateral or regional trade agreements. Since New Zealand has previously supported the liberalization of audiovisual services, as evidenced by its commitments under the GATS, this new approach is particularly interesting and certainly reflects its awareness concerning the effects of free trade on its cultural sovereignty.

The vast majority of the regional and bilateral trade agreements reached between 2000 and 2015 have no cultural exemption. Many of them contain rules that are formulated without regard for the specific nature of the cultural goods and services being traded between the parties, subject occasionally to a few very limited exceptions or exclusions (Vlassis & Richieri Hanania, 2014).¹¹ In addition, these agreements generally cover digital products, reducing the flexibility of its parties to intervene to support the diversity of cultural expressions in the digital environment. Some other agreements are based on *à la carte* liberalization of cultural goods and services, whether traditional or digital or both, or on a “partial” exclusion of certain cultural goods and services rather than on the complete exclusion of cultural goods and services and the total or near-total liberalization of such goods and services. These agreements could thus contain one or several cultural exceptions specific to one or more sectors (e.g. telecommunications or investment), or applicable to a specific rule (such as a cultural exception to the national treatment applicable to trade in goods and/or services, traditional and/or digital), or to a specific chapter of the agreement in question.¹² Such trade agreements could also include annexes or protocols that outline special treatment for cultural products.¹³ While agreements of this type can be fully consistent with the rules of the 2005 Convention, they rarely guarantee to states parties the right to intervene in all areas of culture.

Conclusion

The 2005 Convention has several objectives, which include the recognition of the dual nature of cultural goods and services, and the protection

of the right of states to intervene in favour of culture. These objectives are to be achieved in the traditional environment of creation, transmission, and dissemination of cultural expressions. They must also be achieved in the immaterial world that is generated by digital technologies. The parties to the Convention thus face new challenges.

No amendment to the actual text of the Convention is necessary. However, the impact of the digital technologies on the diversity of cultural expressions has to be taken into account in the implementation of every article of this instrument. To do so, the parties will have to show the political will to work on a new “digital agenda”. This could mean the elaboration of new operational guidelines or other tools necessary to guide the states in this direction.

Above all, this agenda must include the promotion of the objectives and principles of the Convention in other international fora, as stated in Articles 20 and 21 of the 2005 Convention. On this point, the proliferation of trade agreements should encourage member states to exercise special vigilance, first because they generally cover cultural goods and services, but also because they tend to extend to electronic commerce. States that wish to preserve their right to intervene in favour of culture, one of the main objectives of the Convention, should thus turn to the technique of cultural exemption, and more specifically to the exemption model developed by New Zealand in its most recent regional and bilateral trade agreements.

Notes

1. “Surveys report that most members of the public say that they would refuse to pay for arts online and suggest that persuading people to pay for arts online will require guarantees of exclusive content and consistent quality” (Poole & Le-Phat Ho, 2011, p. 5).
2. A trend reflected by the theory of the long tail. See Chris Anderson (2006), *The Long Tail: Why the Future of Business is Selling Less of More*. Some people are predicting “an increase in ‘independent’ content with respect to the majors” and “a rebalancing of markets and practices in favour of ‘small works’ ” (Chantepie & Le Diberder, 2010, pp. 50–51).
3. The long tail theory has been criticized: “The long tail may simply mean that an artist can get visibility for himself and their work, but it does not necessarily suggest a viable revenue source.” (Poole & Le-Phat Ho, 2011, p. 16).
4. “Network infrastructure considerations therefore must be viewed as important considerations in discussions about digital content policies” (OECD, 2011, p. 7).
5. For instance, intellectual property rights are excluded from the 2005 Convention’s scope of application.

6. This is the case, for example, for the definition of “digital book” used in French legislation governing the price of digital books (see *Act No. 2011–590 of 26 May 2011, with respect to the price of digital books*, JORF No. 0124 of 28 May 2011, p. 9234, which “applies to the digital book when it is an intellectual work created by one or more authors and when it is commercialized in a digital format and published in a print format or when it may, because of its content and composition, be printed” or the definition of “digital content” proposed by a European Directive on consumer rights (see Article 2 of Directive 2011/83/UE of the European Parliament and of the Council of 25 October 2011, and OJ L 304 of 22 November 2011, p. 64, which defines digital content as “data which are produced and supplied in digital form”).
7. For further analysis of these four categories of provisions, see: V. Guèvremont (dir.) et al. (15 November 2013) Report “Implementation of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions in the Digital Age: Challenges, Priority Actions and Recommendations”, presented to the Intergovernmental Committee of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Seventh Ordinary Session, Paris 10–13 December 2013, p. 69.
8. According to the OECD (2011, p. 10): “We estimate that 30 to 40 [regional trade agreements] contain provisions related to electronic commerce.” For a typology of these provisions see pp. 12–13.
9. For example, Article 2208 of the Canada-Colombia Free Trade Agreement defines cultural industries as: “(a.) The publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing; (b.) The publication, distribution, sale or exhibition of film or video recordings; (c.) The production, distribution, sale or exhibition of audio or video music recordings; (d.) The publication, distribution or sale of music in print or machine readable form; or (e.) Radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services; (f.) Production and presentation of performing arts; (g.) Production and exhibition of visual arts; or h. Design, production, distribution and sale of handicrafts.” Paragraph (a.) does not seem to cover the publication, distribution, or sale of e-books, magazines, periodicals, or newspapers. If such an interpretation were accepted, these cultural products would fall under the scope of the agreement.
10. See for example, *Free Trade Agreement between the Government of the People’s Republic of China and the Government of New Zealand and Agreement establishing the ASEAN-Australia New Zealand Free Trade Area*.
11. These agreements differentiate between “traditional” goods and services and “digital products” and contain a chapter on e-commerce whose commitments are generally more restrictive than those provided for in the chapters on the liberalization of “traditional” trade of goods or services.
12. This approach could be the one used by Canada and the European Union under CETA, that is, incorporating cultural exceptions into each chapter.
13. This is the approach used by the European Union in its agreements with South Korea and the Caribbean Forum (CARIFORUM) countries.

Part IV

Looking Ahead

11

Cultural Diplomacy and the 2005 UNESCO Convention

Carla Figueira

Introduction

Cultural diplomacy is not explicitly mentioned in the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. However, the Convention itself can be viewed as a classic normative instrument of multilateral cultural diplomacy harbouring, nevertheless, a potentially transformative metanarrative of accepted patterns of diplomatic relations. The Convention, dealing with the protection and promotion of the diversity of cultural expressions and emphasizing balanced partnerships between developed and developing countries, as well as making links between culture and other policy areas, challenges traditional cultural diplomacy, often associated with the uniform representation of discrete cultural nation-states and their imbalanced relations in narrowly defined areas. The Convention presents a unique opportunity to transform cultural diplomacy.

This chapter reflects on the future role of the 2005 Convention in relation to cultural diplomacy, understood here as culture used as a tool of foreign policy.¹ The first section looks at select disposition of the Convention and seeks to establish how the Convention can be an alternative to traditional forms of conceptualizing and practising relations between state actors, and if the Convention can perform a structuring role in the development of cultural diplomacy. This first section also discusses the connections between the Convention and cultural diplomacy in terms of economic interests, multiculturalism, and links to other normative instruments. The second section focuses on how the Convention is working in practice in what concerns cultural diplomacy. It determines how concepts of cultural diversity and ideas of free flow, exchange, and interaction, embedded in the 2005 Convention, are working with

principles of sovereignty and national interest that underpin the international system and cultural diplomacy. Evidence is sought by critically examining the reports of implementation of the Convention and other documentation from UNESCO, as well as governmental, academic, and media sources.

Cultural diversity is an inescapable reality of our world and the 2005 Convention has instigated passionate debates about culture, identity, diversity, and cultural trade. As of April 2014, 133 states and the EU have ratified the Convention and 65 parties have submitted their quadrennial report on its implementation. Although still limited, this is evidence that the Convention has developed as a credible framework for the cultural concerns and praxis of many states and of other actors in international cultural relations. Further, there is evidence that the Convention is being used as an overall frame for the governance of culture (UNESCO, 2013c). The parties have in practice enlarged its scope of application, by reporting on the area of intangible cultural heritage and/or the entire spectrum of their cultural policy.

The 2005 Convention is a normative instrument of international cooperation, carrying “a sense of the just, the good and the ethical” (Singh, 2011b, p. 2). It aims at ensuring that artists, cultural professionals, practitioners, and citizens worldwide can create, produce, disseminate, and enjoy a broad range of cultural goods, services, and activities, including their own. The Convention stemmed from the concern of some countries with the extension of notions of free trade to culture that led to the establishment of the World Trade Organization, and so it deals not with general cultural diversity but specifically with the protection and promotion of the diversity of cultural expressions. As part of a larger array of international agreements, it contributes to international standard-setting and the building of a code of conduct for the relations between states that have direct impact on cultural diplomacy.

Before proceeding with my analysis of the 2005 Convention in relation to cultural diplomacy, I must clarify my terminology and positioning. I use the term cultural diplomacy to refer to the use of culture by states and their agents in the pursuit of soft power (Figueira, 2013). Cultural diplomacy is thus viewed as part of the broader area of international cultural relations (Mitchell, 1986). While international cultural relations encompasses different types of agents and therefore is a truer reflection of the current multiple agencies, activities, and interactions played out in the field, cultural diplomacy centres the analysis on the state actors. It is undeniable that nowadays non-state actors and their

activities are an increasingly important part of cultural relations (Isar, 2010); however, states (and the organizations they construct and participate in) remain one of the most important structuring agents of the international system, which has become a global state system with the spread of the state institution worldwide (Jackson & Sørensen, 2007).

Questioning the future of the 2005 Convention in relation to cultural diplomacy implies also questioning the future of UNESCO as an organization. Scepticism in relation to the work of UNESCO is not an uncommon stand. Some would say that the idealism of its principles and their achievement is utterly compromised by the flaws of its foundations (Bolton in Hoggart, 1978). Are they right?

Magic words

In this section, I analyse and critique select dispositions of the 2005 Convention in terms of meanings relevant for cultural diplomacy. The objective is to ascertain if the Convention can contribute to a metanarrative with the power to transform traditional forms of conceptualizing and practising cultural diplomacy.

The Convention does not explicitly mention cultural diplomacy of states; however, that is implicit as it can be seen as part of international cooperation activities, and several of the objectives and guiding principles of the Convention can be directly related to accepted principles of conduct of cultural diplomacy. Some of the objectives mentioned in Article 1 are: interaction of cultures in a free and mutual beneficial manner; dialogue among cultures ensuring wider and balanced cultural exchanges; respect for the diversity of cultural expressions and the raising of awareness of its value. In terms of principles (Article 2), the Convention reaffirms the principle of openness and balance regarding other cultures of the world. This echoes definitions of public diplomacy, viewed as an alternative to traditional diplomacy, and thus moving away from one-way, state-to-state relations: public diplomacy is “about building relationships: understanding the needs of other countries, cultures and peoples; communicating our points of view; correcting misconceptions; looking for areas where we can find common ground” (Leonard, Stead, & Smewing, 2002, p. 8). Cultural diplomacy can be seen as part of public diplomacy, and similar definitions that echo the same principles as the Convention, can be found: cultural diplomacy “refers to the exchange of ideas, information, art and other aspects of culture among nations and their peoples in order to foster mutual understanding” (Cummings, 2003, p. 1). However, these principles need to function

with the national interests of states. Defending their national strategies, the actions of states are often more egoistic than altruistic, resulting in imbalanced exchanges and interactions that are not mutually beneficial. I return to this topic later.

UNESCO is an organization of states and the 2005 Convention is an agreement between states. The parties to the Convention agreed to dispositions applying to their policies and measures relating to culture with the objective to protect and promote the diversity of cultural expressions of individuals, groups, and societies. The subscribes to the principle of sovereignty and states have the sovereign right to adopt measures within their territory and also in their bilateral, regional, and international cooperation (Article 2, no. 2 and Article 12). Thus, as UNESCO, the Convention maintains and reinforces the role of states in the international system, and consequently in international cultural relations.

Associated with the framing role of states in the international system are the concepts of the nation-state and of the cultural nation developed around a territory (Anderson, 1983; Smith, 1991). The processes involved in the building of the nation-state frequently include the suppression of diversity (e.g. through the establishment of national language regimes and cultural canons), as states strive to achieve a bonding uniformity that provides a base for national citizenship. However, the ideal of the nation-state does not capture the reality of all states, which may harbour different nations (such as the countries of Spain or the UK). Additionally, in our contemporary world of globalized networks of money, travel, and communications, where migrations and exchanges between people are less and less contained by state frontiers, the concept of "national" is being reinterpreted by new imagined communities (e.g. through diasporic public spheres or translocal communities in the terminology of Appadurai, 1996), and the (relative) homogeneity of national cultures is being challenged (Rassool, 1995). Certainly nation-building processes also embrace inclusive national identity, and cultural diversity is intrinsic to the concept of state of many countries (e.g. Australia, Bolivia, Canada, South Africa, Switzerland). In this setting of states and nations, cultural diversity is often used to indicated the existence of variety of cultural expressions that need to be promoted and protected, but we should ensure that the concept is not camouflaging, as Bhabha (1995, p. 206) suggests, "the representation of a radical rhetorical of the separation of totalized cultures that live unsullied by the intertextuality of their historical locations, safe in the Utopianism of a mythic memory of a unique collective identity". To create an international environment more conducive to cultural diversity, we need to work towards the

building of human cultural citizenship. Investing in and relying further in institutions and instruments of global governance – and reforming, when necessary, the existing ones, such as UNESCO – can achieve this. The Convention does provide a framework for countries to participate in the construction of global citizenship, as it is clearly aimed at the protection and promotion of cultural expressions within a territory (Article 6) while encouraging the establishment of links with those from other countries of the world (Article 7b).

The ideals of cosmopolitanism should not cloud the reality that an international instrument such as the 2005 Convention is the result of an agreement between states, as noted before, and thus the outcome of particular power plays between countries. State actors, by refraining to agree to the Convention will prevent or negatively impact its acceptance as a new metanarrative for cultural diplomacy. The Convention has well-known opposition given its aim of protecting culture from perceived harmful consequences of free trade. The US and Israel voted against the Convention, and Australia, Honduras, Liberia, and Nigeria abstained (Voon, 2006). Japan also has not ratified the Convention. UNESCO itself has for a long time been the setting of very public international disagreements: between 1984 and 2003 the US withdrew from the organization over UNESCO's support for a New World Information and Communication Order and in 2011 again the US, the biggest contributor, withdrew its financial support to the organization due to the admission of Palestine. The lack of financial resources for the operation and delivery of the programmes of the organization greatly damages its reach (see De Beukelaer and Freitas, Chapter 13). The Convention suffers from this resource scarcity, as we shall see when looking at the International Fund for Cultural Diversity (IFCD). However, it should also be noted that even when a country has not ratified the 2005 Convention it may still be implementing its ideals and dispositions (at least in some form) – for example Colombia acceded the Convention in 2013 but cultural diversity was already considered a fundamental factor of development in its 2000–2010 national cultural plan. Conversely, countries that have ratified the Convention may not have the means to implement it – a challenge often reported by UNESCO. Some countries that have not acceded the Convention, may have difficulties in preparing the accession process, others may not see an advantage in being part of the Convention, as probably the benefits – for example access to the IFCD – are judged insufficient. The Intergovernmental Committee of the Convention works hard on the visibility of the instrument and in strategies for enlarging ratification, particularly in under-represented parts of the

world such as Asia and Africa, to make the Convention universal and truly international (UNESCO, 2011a).

Returning to the topic of changes in the global state system in relation to cultural diplomacy, and as I have argued elsewhere, “the freeing of the attributes of the self [of which nationality is one] with globalization and the bypassing of the state in many activities has [...] had important consequences in the traditional representation of ‘national’ culture and in the relations between ‘national’ cultures” (Figueira, 2013, p. 104). Thus a shift in paradigm from traditional cultural diplomacy to a “more genuine” international cultural cooperation has been tentatively advanced by some (Fisher & Figueira, 2011) – I would argue that the 2005 Convention can be seen as part of that process of change, particularly with its emphasis in partnerships between developed and developing countries. It is significant that the preamble of the Convention notes the risk of imbalance of interactions between rich and poor countries and thus proposes to strengthen international cooperation in a spirit of partnership with a view to enhancing the capacities of the developing countries (Article 1, i). It is also important to highlight that the Convention promotes a mainstreaming of culture by linking it with development policies and the UN Millennium Declaration, as well as with peace, security, and human rights.

In parallel with these transformations, there are other challenges to traditional cultural diplomacy, which include, for example, the question of whose culture is being represented (Fisher & Figueira, 2011). Sophisticated stereotyping (Osland & Bird, 2000), as accepted and simplified conceptualizations of “national culture”, is fairly prevalent in the external representations of many countries in the international system. However, the complexification of these one-dimensional images is being fostered by: the increase of people-to-people cultural relations, which highlights the importance of individual activity; the emergence and diffusion of social media, stressing the presence of the digital in our contemporary societies; and the overwhelmingly important part played by commercially driven culture (The Ditchley Foundation, 2012). The Convention acknowledges the processes of globalization facilitated by the rapid development of information and communication technologies (preamble, Article 12d) and notes the importance of ensuring wider and balanced cultural exchanges (Article 1 c); explicitly names individuals (artists and others), groups, and societies as creators of cultural expressions (e.g. Article 7, no. 2); recognizes cultural activities, goods, and services as vehicles of identity, values, and meaning and not just commercial value (preamble, Article 1g); encourages the active participation

of civil society in achieving its objectives (Article 11); and highlights the importance of partnerships with and among civil society, NGOs, and the private sector (Article 12c). The Convention thus puts forward ideas and concepts that have the potential to transform the practice of cultural diplomacy (something that was already happening previous to the Convention in some cases).

Cultural diplomacy and economic interests

An important backdrop to the understanding of the 2005 Convention in relation to cultural diplomacy is the use of culture in the pursuit of a country's economic foreign policy objectives. In this time of crisis, the classic debate of art for art sake versus the instrumental use of culture is strongly affected by economic concerns. A key function of cultural diplomacy is "the accrual by nation-states of symbolic capital through the placing of their ideas and cultural properties in the global economy of prestige" (Isar, 2010, p. 30). Increasingly, public expenditures on the arts, particularly on the cultural and creative industries, are justified as investments in protecting and promoting cultures (Isar, 2010, p. 33), among other objectives. The Convention makes that connection: cultural diversity as a rich asset for individuals and societies (Article 4, no. 6), cultural industries as means of cultural expression that need to be created and strengthened (Article 2, no. 4), alongside a very clear linkage between culture, sustainable development, and poverty reduction (e.g. Article 14). We should remind ourselves that the Convention's explicit scope of application is the narrow area of the diversity of cultural expressions (Article 3) – namely cultural activities, goods, and services – not cultural diversity in general (as is the case of the 2001 UNESCO Universal Declaration on Cultural Diversity).

The 2008 economic crisis, unemployment, and diminishing public resources, at the same time as reinforcing the economic objectives of cultural diplomacy, have favoured a resurgence of nationalism in many countries. This has translated on prominence being given to the export of national cultural products and an increased emphasis on the cultural and creative industries as a means of promoting a nationally centred profile of a country, while in many states cultural policy is being used for identity policy (Palmer, 2011). This situation can be detrimental to the fostering of cultural diversity. Further, cuts in cultural policy budgets have the potential to negatively affect the implementation of the 2005 Convention as the provision of public financial assistance and support to public institutions (Articles 5 and 6) will be limited, as indicated by Wiesand (2011).

Cultural diplomacy and multiculturalism

Support to multiculturalism appears to be threatened, particularly in many European countries, as famously indicated by German Chancellor Angela Merkel, when, in October 2010, she stated that attempts to build a multicultural society in Germany had “utterly failed”. This statement has echoed for example in the UK and the Netherlands. However, narratives for the “rise and fall” of multiculturalism need to be critically analysed and placed in a global perspective: research (Kymlicka, 2012) indicates that multiculturalism policies have grown in Europe, and that multicultural citizenship is fundamental to many countries (e.g. Canada, Australia, India, Brazil, South Africa) and an inescapable reality of our globalized world. Nevertheless, the somewhat negative and inward outlook of some states may be an important challenge to the dispositions of the 2005 Convention. These encourage states to interact in a mutually beneficial manner (Article 1b), ensuring balanced cultural exchanges (Article 1c), developing international cooperation in a spirit of partnership (Article 1, i), and to support the developing countries in their cooperation (Article 14) – including granting “preferential treatment to artists and other professionals and practitioners, as well as cultural goods and services from developing countries” (Article 16). We should also remember that even when states have ratified and are implementing the 2005 Convention, particular events may hinder progress. For example, back in February 2014, a referendum supported by a slim majority of the Swiss population approved new regulations introducing a quota system for immigration, limiting the number of residence permits granted to different categories of foreigners (and asylum seekers). The initiative goes against the principle of free movement of people between the EU and Switzerland (the country is part of Europe’s passport-free Schengen regime). Previously, in 2009, Swiss voters had banned the building of minarets, which can be interpreted as a rejection of Muslim immigrants’ culture and identity. The events had a shock effect in the international image of the country and its reputation for openness and tolerance. The eventual long-term consequences of these events on Switzerland’s cultural engagement abroad are to be seen. This briefly demonstrates how the implementation of the Convention and its acceptance as a metanarrative for cultural diplomacy is directly linked to developments in the national political and social arenas of the parties. Increasingly, and not just in the area of cultural diplomacy, the erosion of the frontiers between the international and national contexts of international relations needs to be acknowledged.

Links with other instruments

The 2005 Convention seeks to ensure its implementation by establishing a relationship of mutual supportiveness, complementarity, and non-subordination with other international instruments (Article 20). This, theoretically, protects the Convention from threats issuing from free trade agreements affecting the area of culture. However, Article 20 (no. 2) notes that the Convention does not modify “rights and obligations of the Parties under any other treaties to which they are parties” – which is a getaway clause (Singh, 2011a, p. 85). The parties are also obliged to promote the Convention in other international forums (Article 21). These provisions potentiate a deep structural role of the Convention in the development of international cultural relations through a multiplier effect. As mentioned at the beginning of this chapter, the Convention has a healthy number of ratifications, which continue to progress. The work UNESCO has developed in raising awareness of cultural rights and cultural diversity has (slowly) been adopted by national governments in bilateral and multilateral instances, transforming their discourses, principles, and (some) practices of cultural diplomacy. This is particularly noticeable for example in the work of linguistically based intergovernmental organizations, such as the International Organization of La Francophonie or the Community of Portuguese Language Countries, which have evolved in the representational discourse of their politico-linguistic-cultural spaces from highlighting linguistic uniformity to stressing diversity – albeit the consequences of their work in support of linguistic and cultural diversity may be open to critique (Figueira, 2013). These types of organizations are strong supporters of the implementation of the 2005 Convention and the International Organization of La Francophonie has even established as a condition of membership the ratification of the Convention.

As we have seen, the Convention has the potential to transform international cultural relations through its dispositions encouraging states to develop cultural diplomacy according to principles of mutual benefits, balanced exchanges, and respect of diversity. Now, it is time to ask if the potential is translating into practice.

Walk the talk

In this section, I analyse how concepts of cultural diversity and ideas of free flow, exchange, and interaction embedded in the 2005 Convention are working in practice with principles of sovereignty and national

interest that underpin the international system and cultural diplomacy, by examining some examples of the implementation of the Convention submitted by the parties. This is analysed on two levels: first, at internal level, I discuss how language can be an instance of (confrontational) cultural diplomacy in the implementation of the Operational Guidelines of the Convention and how this situation is at odds with the spirit of the Convention; second, at an external level, I focus on cultural diplomacy activities reported by individual states, and on the financing of the International Fund for Cultural Diversity, to illustrate different types and levels of engagement with the implementation of the Convention by the parties.

In terms of the reporting of the implementation of the Convention, issues have arisen regarding language and national interest. According to the Convention's operational guidelines on information-sharing and transparency, the quadrennial periodic reports submitted by the parties to the Secretariat have to be in one of the working languages of the Intergovernmental Committee, English or French (UNESCO, 2011b). Thus the reporting of evidence can be seen to be reinforcing the status quo of these languages – advantaging the international representation of countries or linguistic/cultural/political blocs (e.g. Francophonie) that have these as national/official languages – and impinging (negatively) in the promotion of linguistic diversity. This is, to an extent, promoted and protected by the Convention: linguistic diversity is presented as a fundamental element of cultural diversity in para. 14 of the Preamble; and Article 6 (no. 2, b) mentions measures related to the language used for cultural activities, goods, and services. Additionally the parties explicitly mention measures and activities promoting linguistic diversity in their periodic reports (UNESCO, 2013d) and the IFCD funds projects in that area (as exemplified ahead).

At the meeting of the parties where the approval of the Operational Guidelines was discussed in June 2011, the delegation of Cuba recommended adding Spanish as a language of submission “to make it easier for many developing countries, which need to translate their documents into French and/or English” (UNESCO, 2011b, p. 14). This would imply a rewording of Article 9, para. 10 (e) of the guidelines. Interestingly, Canada, supported by Tunisia (both part of La Francophonie), opposed Cuba rewording suggestions (language was only one of the suggested changes) noting that “the Guidelines were the result of significant Committee discussions and consensus building and thus should not be open to discussion. In response, the delegation of Cuba agreed but stated that it would like to see its comments reflected in the report”

(UNESCO, 2011b, p. 14). This moment of tension clearly illustrates that even international agreements proposing paradigmatic changes in the development of cultural relations cannot escape inequalities (in this case linguistic) of the systems that produce them – a global system of states with particular power balances and linguistic interests.

More recently, the Intergovernmental Committee notes that in 2012 some parties were delayed in submitting their report due to “lack of resources to translate the report from the national language into English or French” (UNESCO, 2012b, p. 4). At the same time it is worth noting that of the registered reports in 2012 “76% were submitted in English, 18% in French and 7% in both English and French. In addition to English and French, the Secretariat received 3 reports in Spanish [Argentina, Chile and Cuba] and 2 reports in Portuguese [Brazil and Portugal]” (UNESCO, 2012b, p. 4). So we can see that particular countries, although fulfilling the language requirements, are also pushing their linguistic interests by presenting the report of implementation in their national language. This is a behaviour of competitive/ confrontational cultural diplomacy played by the parties within UNESCO. In the latest round of evidence submission, the language saga continues, as the Intergovernmental Committee reports: “The Secretariat has not been able to reflect Guatemala’s report in its analytical summary, as no English or French translation was provided” (UNESCO, 2013d, p. 5). English and French are still the dominant working languages in most international organizations, but countries that have Spanish, or Portuguese, as their official language appear determined to change the international linguistic power balance. Practical and financial justifications related to the restricted funds of UNESCO can be advanced for the 2005 Convention’s language requirements. However, we should ask if these justifications are acceptable, given the implicit responsibilities of the Convention regarding linguistic diversity (in the Preamble), which are tacitly accepted by the parties (in their reporting), as previously demonstrated.

Focusing on the implementation of the Convention by the parties, we can identify clear links to cultural diplomacy in the Secretariat’s analytical summary of the reports. These are references to activities that individual states develop themselves at bilateral and multilateral level that demonstrate how the dispositions of the Convention are being followed and developed. In the 2012 report, the Secretariat reports these activities, for example, under the heading “Operation of cultural institutes abroad” (UNESCO, 2012b, p. 16). In this case there is mention of the long history by some countries of the use of cultural institutes

abroad to develop “cultural cooperation” and “to promote the culture of a particular country as well as facilitate cultural exchange and dialogue at different levels, from government to civil society” (UNESCO, 2012b, p. 16). The Alliance Française, the Instituto Cervantes, and the Goethe Institut, and others such as Culture Ireland, are indicated to have begun to develop new programmes relevant to the 2005 Convention in the area of cultural policy, and culture and development. The examples provided are the Goethe Institut’s Culture and Development Initiative, which provides capacity-building programmes for cultural entrepreneurs and cultural institutions, and fosters co-productions and exchange with third countries; and the Swedish Institute’s programme Creative Force, which supports cooperation in the culture and creative sectors. These programmes are examples of new areas covered by cultural diplomacy, but the extent to which the Convention influences the deployment and pursuit of these type of programmes is debatable.

The 2005 Convention embodies and crystallizes ideas that had been championed before in UNESCO, the UN system, and in many countries worldwide. The reporting of the implementation attests that these ideas are still relevant and developing in contemporary practices. It is the case that many of the measures reported by the parties were adopted before the Convention’s entry into force (UNESCO, 2013d, p. 22). Nevertheless, some examples of good practices of policy measures “have been explicitly inspired by or set up because of the Convention” (Sekhar & Steinkamp, 2010, p. 15).

In the 2013 Secretariat’s report there is a direct mention to cultural diplomacy: “many countries underline the importance of cultural diplomacy as a structuring element of their foreign policy” (UNESCO, 2013d, p. 15). The Netherlands are given as an example, with reference to the 2012 Dutch international cultural policy by the then State Secretary Zijlstra who in a specific policy letter lays out a policy framework for improving international links between culture, diplomacy, and economy, and strengthening the international market position of Dutch artists and organizations. This included the financing of DutchCulture, a centre for international cooperation that operates a broad programme including cultural diplomacy programming activities, exchanges and mobility of experts and artists, and tasks assigned to the discontinued Netherlands Institute for Heritage. This new organization was formed in July 2013 resulting from a merger of SICA, Trans Artists, and MEDIA Desk Netherlands, within a climate of severe cuts to public expenditure on culture and attempts to promote cultural entrepreneurship and the role of private sponsorship and

donation – something that is not mentioned in the Secretariat report. This highlights my previous observation on a trend towards economically driven cultural diplomacy that the 2005 Convention also embodies.

A good measure of how much the parties are willing to “walk the talk” is to analyse the International Fund for Cultural Diversity (IFCD) (Article 18), which enables the 2005 Convention to make a real impact by financing projects in developing countries to promote sustainable development and poverty reduction. I would like to highlight two projects that have received funds from IFCD that I find to be good examples in relation to cultural diplomacy because they foster people-to-people communication and relations, acknowledging implicitly that individual citizens, artists, and cultural professionals are a cornerstone of contemporary cultural diplomacy: the primacy of the state actor in international cultural relations is giving way to a complex galaxy of international state and non-state actors. The first example is the National Translation Centre in Tunisia, where Tunisian works are translated into other languages, and important works from other languages are translated for the Arab reader. The project also includes a multilingual reference library to become a gateway to foreign culture for all Tunisians, and the offer of foreign language courses. Knowledge of different languages and cultures are crucial for the fostering of fair, equitable, and balanced contexts in which to develop cultural relations and cultural diplomacy. The second project is *Récréâtrales*, an initiative of the African contemporary theatre company *Compagnie Théâtrale Falinga*, based in Burkina Faso, which creates a unique space for professionals from the region to gain experience, skills, and inspiration. IFCD contributed with funds for the 7th edition of the festival, 2011–2012. The projects highlight the importance of communication between countries and cultures and signal to the international community the “right” way forward in the implementation of the 2005 Convention, as they are intended to facilitate flows and support exchanges and interactions.

However, despite the importance of its role, IFCD is scarcely funded. This provides insight into the importance of multilateral and bilateral engagement for states and their commitment to the implementation of the 2005 Convention. The fund consists mainly of voluntary contributions and gifts, unlike the funds of the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, and the 2003 Convention for the Safeguarding of Intangible Cultural Heritage, which include compulsory contributions. So who has “demonstrated its commitment to fostering a new form of international cooperation based on equal partnership, mutual respect and support” (UNESCO, 2014b)?

The IFCD has received contributions from 45 parties and 7 individuals (UNESCO, 2014b). This represents just over 30% of the parties, which I find disappointing. The breakdown of the total cumulative amount received from 2007 to 2014 is US\$6,657,566.00 and the top three donor states to IFCD are: Norway (US\$1,45, 087.92), France (US\$1,260,027.70), and Finland (US\$510,865.00). How can we explain these contributions? We can advance that Norway and Finland have a history of linking culture to development in their (often multilateral) development aid, and the promotion of the “national” image is not a primary concern in their engagement with other countries. In the case of France, which has always been a champion of the 2005 Convention and has great interest in sustaining and developing the culture and development linkages in the Francophone world, the national interest and funds available are enough to allow for engagement at multilateral level (France is also the main contributor to the Organization Internationale de la Francophonie) and at bilateral level, without having to compromise on “traditional” cultural diplomacy. In the breakdown of the fund donors, I noted the absence of the UK. How to explain the absence of contributions to IFCD from a country that ratified the Convention in 2007 and is at the forefront of the use of cultural and creative industries in cultural diplomacy? This can be explained by the importance of bilateral over multilateral engagement, in a clear protection of national interests.

The British Council, the UK’s international organization for cultural relations, has had since 1999 a Creative Economy Unit, part of the Arts Department. In this unit, the Creative and Cultural Economy Programme forges connections between the growing creative industries in the UK and overseas by developing projects such as international policy seminars, training programmes in business skills, creative entrepreneurs networks, and developing leadership in global cultural issues. As of April 2013, the programme has been given additional resources, representing an investment of £35.5 million (US\$59,367,700) by 2015 (British Council, n.d.). If we compare it with the IFCD cumulative amount, the latter is no more than a meager 11% of the UK funds. Interestingly, no mention to the 2005 Convention was identified on the programme’s website. At the same time, the UK periodic report (UNESCO, 2012a) makes no reference to the IFCD and the information on the Convention in UK governmental websites is close to non-existent. Even the UK National Commission for UNESCO report, *Wider Value of UNESCO to the UK 2012–13*, makes no direct reference to the 2005 Convention. The above can be considered a good indication that the UK privileges bilateral to multilateral engagement.

This argument is further confirmed by evidence compiled by the House of Lords' Soft Power and the UK's Influence Committee. In the context of a discussion about the role of organizations in "building a strong brand for Britain around the world", the UK's Secretary of State for Culture, Media, and Sport, Maria Miller (House of Lords, 2014, p. 566), while acknowledging the importance of the UK's "membership of wonderful organisations like the UNESCO or the UN", added: "I think it is important that as a nation we also stand by ourselves and are able to be individualistic, as well as part of larger groups and bodies." During the oral evidence session she was also asked:

Can the Minister perceive a way for us to provide a much bigger image for Britain through a much greater intervention in UNESCO's work internationally? Would it be in our interests to do so?

Maria Miller MP: I think it is in our interests to make sure that, when we are projecting a reputation or our brand image internationally, we are clear that it is Britain that we are selling. That is important. If we are members of other organisations, whether it is the EU or UNESCO, that can always be of benefit, but ultimately the campaign that we are projecting is in support of our individual country's trade.

(House of Lords, 2014, p. 567)

This example illustrates well the current nationalistic and economic concerns of many states that render the task of the 2005 Convention - to foster balanced, equal, and mutually beneficial forms of international cooperation - difficult to put in place.

Preferential treatment is another topic worth investigating. In 2012 the Secretariat's summary analysis of the reports indicated that the parties tended to give preferential treatment to countries located in the same or near geographic region (e.g. some EU member states in relation to countries of Eastern and South-Eastern Europe) and to countries with which they had linkages based on culture, language, and/or a colonial past (France, Portugal, and Spain). The Secretariat also indicated that some parties stated "they do not have the capacity to offer support to developing countries and therefore the type of assistance they can provide is limited" (UNESCO, 2012b, p. 18). The dismal state of affairs is not surprising. The area of preferential treatment is one through which the Convention could achieve a true transformation of cultural diplomacy, however its main obstacle is the predominantly "realist" ways, in the international relations theory sense, in which the

relations between states operate. I exemplify with the case of “fortress” Europe.

The European cultural landscape is characterized by an inclusive rhetoric, while its borders are well defended (Matarasso, 2013, p. 13). The openness to the mobility of artists is often constrained by strict visa policies. Here, again, the UK is a good example – a wealth of other examples can be found at <http://artmobility.interartive.org/>. Getting international artists to the UK can be a complex and difficult process, as recognized by Visiting Arts, previously a British Council department and now a charitable organization devoted to strengthening intercultural understanding through the arts. The UK Border Agency is often accused of damaging the arts scene with their visa clampdown and heavy-handed treatment of international artists. Stories abound of artists invited to participate in cultural events that on arrival in Britain are held in cells and deported. In 2011 the situation led to a protest boycott and, in a recent development to remedy the situation, the Arts Council England and the British Council signed a Memorandum of Understanding (MoU) in July 2013 that has as one of its objectives to “work together to create a joint plan of the actions needed to stimulate greater artistic international exchange, bring the best of world culture here [to the UK] and take the best of English culture to the world” (British Council & Arts Council England, 2013, p. 6). One of the programme areas identified by the MoU was “[c]ampaigning on technical issues that are barriers to artists’ mobility and cultural import and export (including visas for artists)” (British Council & Arts Council England, 2013, p. 6). However, remediation of the situation faces a negative context, as visas for artists invariably relate to migration policies which suffer from a general climate of opposition to immigration in the UK.

However, there are similar worrying signs that raise questions regarding the commitment of the country to cultural diversity and openness, even for countries such as Switzerland, which contribute to IFCD or have actively participated in the elaboration of the 2005 Convention and in which cultural diversity is intrinsic to their concept of state. The Swiss Agency for Development and Cooperation (SDC), Switzerland’s international cooperation agency within the Federal Department of Foreign Affairs, adopted in 2010 a Strategic Orientation for the Promotion of Intercultural and Artistic Exchange with the South and East (2010–2015) aimed at access for artists from developing and transitional countries to the Swiss cultural market and the Swiss public, cultural promotion of partner countries, and development of intercultural competences (Swiss Agency for Development and Cooperation, n.d.). SDC has reaffirmed the

principles in its 2013–2016 strategy, which in concrete terms encourages the implementation of the principle of the “cultural percent”, which sees 1% of the budget of operations in the field to be invested in initiatives “to strengthen local cultural identity, social cohesion and intercultural exchanges in partner countries” (Swiss Agency for Development and Cooperation, 2012, p. 2). These are intended to represent a contribution to the richness and diversity of local cultural life and “not to increase Switzerland’s visibility, even though this may often be a side effect” (*ibid.*). This is an admirable policy measure and a laudable approach to cultural diplomacy. However, SDC’s work (and that of other governmental institutions such as ProHelvetia) of fostering the mobility of artists may be affected in the future by anti-migration legislation (or Islamophobia?), as indicated previously.

Overall, Europe is still a fortress, although there are (limited) signs that some doors could be opening. One of those signs is the interest of the EU in developing a strategy for culture in their external relations.² However, the report *Engaging the World*, which is the main outcome of the preparatory action for that strategy, also notes the existence of stringent restrictions on the granting of visas by EU member states to third country cultural actors, and the reverse, and calls for a reviewing of the visa regimes (European Union, 2014).

Conclusions

Undoubtedly good work is being developed in the spirit of the 2005 Convention. However, contradictory forces are also evident. Looking ahead, what can we expect from the Convention in relation to cultural diplomacy?

The Convention can be viewed as contributing to a metanarrative for cultural diplomacy that has been able to stimulate a range of positive actions. Many countries are providing support to the cultural industries of the developing countries through technical assistance schemes, partnerships, information-sharing, and exchanges. The analytical reports also indicate that developed countries are directing their development assistance to the growth of the cultural economy in the recipient countries. In terms of preferential treatment, some measures are in place, focusing on promoting the mobility of artists from the developing countries and their works. Additionally, the engagement with civil society has been formally recognized as fundamental for the protection and promotion of the diversity of cultural expressions. However, the reports also note that there is lack of awareness and resources (human and financial),

which constitute fundamental challenges to the implementation of the Convention.

As a normative instrument putting forward a particular narrative, the Convention is obviously open to scepticism regarding its totalizing nature, which is reflected in the fact that it is not a universal agreement. Nor is UNESCO the intellectual organ of a universal governance body – the UN system does not reflect the contemporary variety of actors with different agendas and various political and economical interests that dominate international relations.

Cultural diplomacy policies and practices intrinsically harbour a static (or at least very stable) element of “national” culture, a symbol of the presence of the country in the global state system. Although research (e.g. Fisher & Figueira, 2011) has identified changes in cultural diplomacy, such as the inclusion of alternative and diverse voices in the promotion of a country abroad, a long path still needs to be trailed to honour cultural diversity. Additionally, reaching an equitable balance of benefits in cultural exchanges between countries is another area that needs developing, as currently, although articulated in discourse, and present in the text of the Convention, this is not much more than wishful thinking.

Non-state actors and their practices in international cultural relations are the true agents of cultural diversity. Nowadays they have a higher impact on the definition and promotion of notions of the “national” and are, thus, far more relevant than the activity of states in connecting people through culture. State actors should concentrate in being mostly facilitators in this area. As Rittenhofer (2014, p. 146) rightly indicates: “cultural exports may no longer be located nationally or locally as they develop partly independent of location, are affected by activities occurring elsewhere, and are neither place nor institution bound”. The case of the cultural and creative industries, which are a focus for the 2005 Convention, is paramount, as they are now challenged “to manage the transgressive quality of cultural forms and genres in ways that apply “culture” as a topic” (Rittenhofer, 2014, p. 146). The “cultural nation” is open to many influences, and although the construction of nationalism is still daily reinforced by the state, national (cultural) identity has to compete on a free market of identities (Billig, 1995). Cultural diversity, reinforced by processes of globalization, has challenged the dominance of the state.

The 2005 Convention is a building block in the achievement of an international environment conducive to the construction of human cultural citizenship. One that, I agree, should be founded on “*international*

culture, based not on the exoticism or multiculturalism of the *diversity* of cultures, but on the inscription and articulation of culture's *hybridity*", through which "we may elude the politics of polarity and emerge as the others of our selves" (Bhabha, 1995, p. 209; italics original). This is a difficult endeavour but one worth pursuing. The Convention proposes dispositions to be followed by the states that have ratified it and ultimately its future will be what they make of it. Considering some of the evidence provided in the reports, what we can expect looking ahead is uneven and patchy progress in the promotion and protection of cultural expressions around the world. The implementation of the Convention depends greatly on the state actors' agendas and the general and specific economic, political, and social contexts in which national governments have to operate. Certainly, civil society and other actors can play a role, but there is no escaping the fundamental structuring role of state actors of the international system.

It is possible that the shrouding of the "nation" accommodates cultural diversity in cultural diplomacy, as proposed by the Convention. There are, nevertheless, traces of conflict between national interests and the ideals of UNESCO, which like other organizations of the UN system features theatres where the power game of cultural diplomacy is played at a multilateral level. The translation into practice of the ideals of the Convention has to contend with the negotiation processes ongoing in different multilateral arenas (as is the case of the World Trade Organization), but also with the bilateral agreements between states (e.g. trade agreements with cultural implications) which can easily circumvent the weak procedures protecting the implementation of the Convention by the parties. Ultimately, stakeholders have to be able to place the diversity of cultural expressions high enough in the priorities of most countries to prompt a concerted strong action regarding its promotion and protection.

Notes

1. I dedicate this chapter to the memory of Richard Hoggart, the Warden of Goldsmiths, University of London, between 1976 and 1984 and previously Assistant-Director General at UNESCO (1970–1975) – he wrote a critical book about UNESCO, *An Idea and Its Servants* (2011 [1978]). Hoggart died on 10 April 2013 at the age of 95, while I was finishing this chapter at Goldsmiths.
2. <http://cultureinexternalrelations.eu/>.

12

The 2005 UNESCO Convention and Civil Society: An Initial Assessment

Helmut K. Anheier and Michael Hoelscher

Introduction

The 2005 Convention explicitly requires member states to involve civil society in its implementation. Indeed, the Convention “is the first international instrument of its kind to recognize the very specific nature of cultural goods and services, having both an economic and a cultural dimension” (UNESCO, 2013a; see also Merkel, 2012). A main objective of the Convention is to combine economic approaches to culture and creativity with a perspective that values culture in its own right, and to reaffirm the responsibilities of member states to develop appropriate cultural policies.

For UNESCO, the 2005 Convention has a special focus on developing countries for two related reasons. First, their cultural industries are seen as being especially under pressure from current trade agreements, dominated by the West. To this end, UNESCO highlights the “distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning” (UNESCO, 2013a, Article 1g). Second, culture is seen as an important means for development generally, stressing its economic as well as normative potential to create both growth and social cohesion. However, since reconciling those two views on culture is often challenging, politically as well as economically, the Convention stresses the importance of including a broad range of stakeholders, in particular civil society, as outlined in more detail below.

The 2005 Convention has an instrumental approach to civil society: it is a tool for bridging the cultural and the economic sphere for purposes

of development on the one hand, and providing a political platform to connect different stakeholders on the other hand. Such an approach, however, rests on a major assumption: that civil society exists in the first place or that it is at least developed enough to serve as tool and platform for the implementation of the Convention. While this assumption remained largely implicit in the negotiations leading to the Convention as well as in the final text, the various guidelines issued afterwards by UNESCO make the role of civil society more explicit, as we will see further below.

The purpose of this chapter is to shed some empirical light on the role of civil society in the implementation of the 2005 Convention by putting the above assumption to an initial empirical test. One can assume that civil societies of all countries are interested in the implementation, however, their capacity (a) to push their governments to sign the Convention, and (b) to serve as a connecting platform in the process of implementation, differs greatly. A central hypothesis leading our analysis is, therefore, that the strength of civil society in a country has an important impact on the implementation process.

Specifically, we ask:

Do countries with developed, stronger civil societies join the 2005 Convention earlier, and subsequently also show greater civil society involvement in the implementation of the Convention?

Conversely, do countries with less developed, weaker civil societies tend to join later? And is the implementation of the Convention less advanced in such countries?

An empirical base for this test will be the reports by the parties to the Convention. The parties have to provide reports on the “measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level” (UNESCO, 2013a, Article 9a). Importantly, the guidelines to the Convention demand the involvement of civil society in their preparation. The way and extent to which civil society actors are, or have been, involved in the reports is therefore a good indicator of their overall role in the implementation of the Convention.

Another important source of information comes from the International Fund for Cultural Diversity (IFCD). Its purpose is the promotion of sustainable development and poverty reduction in developing countries by fostering an often-emergent cultural sector and therefore

unleashing its creativity and dynamics. It supports initiatives promoting cultural diversity as well as cultural industries and thereby covers both aspects of the Convention, as mentioned above. One specific aim of the IFCD is to promote the cooperation between partners from the global South as well as from the South and the North. Another aim is the involvement of civil society in its work.

The chapter proceeds in the following way. In a first step, UNESCO's understanding of civil society as an important factor for fostering cultural diversity is outlined. Second, civil societies' role in the preparation, adaption, and implementation of the 2005 Convention is assessed both by reviewing existing research and analysing the country reports. A third part describes the results of multivariate analyses, looking at the correlation between the strength of civil societies overall and their role in the Convention on the basis of the two mentioned data sources. The results reported in the chapter confirm the hypotheses on which the questions are based, although we also found some important cases where countries deviated from the general pattern. The chapter ends with some concluding thoughts.

What is civil society? The UNESCO approach

Within the 2005 Convention civil society is defined broadly, but less as an institutional sphere of social self-organization outside the political and markets system; rather, it is defined with an explicit reference to actors, be they individuals or organizations, and a focus on the cultural component: "For the purposes of this Convention, civil society means non-governmental organizations, non-profit organizations, professionals in the culture sector and associated sectors, groups that support the work of artists and cultural communities" (UNESCO, 2014a).

It is worth considering this definition more closely. The term civil society has a long intellectual history, reaching back to the Enlightenment period in 18th-century Europe. It played an important role in intellectual debates about the role of the state and its citizens until the early 20th century, but was then caught in the ideological battles of the times, namely between authoritarianism and liberalism, fell into disuse, and seemed relegated to the history of ideas, with little contemporary relevance (see Anheier, 2014).

The term civil society was rediscovered in the 1980s among Eastern European and Latin American intellectuals and civil rights activists, who were looking for an alternative public sphere outside that of a dominating, autocratic state. The basic insight of these Eastern European

and Latin American intellectuals was that society needs “space” for citizens to engage with each other, and that this space or sphere should be respected and not controlled by any state. This notion included, of course, artistic freedom of expression. Generally, the term brought forward the idea that society is more than government, markets, or the economy, and individual citizens and their families. There had to be society – a civil society – where citizens, under the rule of law but otherwise self-organizing and self-directed, could come together to pursue their interests and values (see Keane, 1998, for an overview), prominently including culture and the arts.

Gellner (1994) sees civil society as a countervailing force keeping the forces of market and state in check: “That set of nongovernmental institutions, which is strong enough to counterbalance the state, and, whilst not preventing the state from fulfilling its role of keeper of peace and arbitrator between major interests, can, nevertheless, prevent the state from dominating and atomising the rest of society” (Gellner, 1994, p. 5). Similarly Keane (2010, p. 461) defines civil society as a “complex and dynamic ensemble of legally protected nongovernmental institutions that tend to be non-violent, self-organising, self-reflexive, and permanently in tension, both with each other and with the governmental institutions that ‘frame’, constrict and enable their activities”.

Civil society is self-organization of society outside the stricter realms of state power and market interests. For Habermas (1991), civil society is made up of more or less spontaneously created associations, organizations, and movements, which find, take up, condense, and amplify the resonance of social problems in private life, and pass it on to the political realm or public sphere. Dahrendorf (1991) sees the concept of civil society as part of a classical liberal tradition and as characterized by the existence of autonomous organizations that are neither state-run nor otherwise directed from the centre political power.

It becomes clear that the notion of civil society as a self-organizing sphere in tension with the state and the markets, as well as internally, stands against the instrumental approach UNESCO has chosen. In fact, the UNESCO definition is basically about NGOs and non-profit organizations in the field of culture broadly defined. The definition then adds a reference to professionals without specifying if they work in, and for, business, government, or civil society. What is more, these professionals and other groups are to support artists and cultural communities. Irrespective of the conceptual ambiguity, UNESCO’s view of civil society could be summarized as follows: civil society is the sum of non-profit organizations and professionals supporting artists and cultural groups.

It is an imprecise, normative, and ultimately subservient (to the instrumental approach mentioned above) definition. Its purpose is to be broad enough to make sure that non-market, non-state actors, useful to the implementation of the 2005 Convention, can be called upon under the generic label civil society rather than by reference to the special interests they may represent.

The Convention gives different reasons for the role of civil society. First, civil society – or rather civil society organizations – are seen as innovators in the field of cultural policies and activities. Second, the organizations function as change-agents in the process of implementing the Convention and help overcome potential gridlocks (UNESCO, 2009a, p. 2). Third, they are seen as important channels for improved information flows between citizens and governments by passing on citizen's concerns to public authorities, and by taking over a general watchdog role looking over the state of artistic and cultural freedom and other basic policy concerns (UNESCO, 2004).

Accordingly, civil society has been assigned a central role in the Convention, which is highlighted in Article 11: "Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention." Reference to civil society is made, explicitly or implicitly, in several other provisions of the Convention, including Articles 6, 7, 12, 15, 19 (UNESCO, 2009a, p. 1; see Merkel, 2012 for the drafting history).

The potential role and ways of participation for civil society in the context of the Convention is explained in more detail in the Operational Guidelines to Article 11, especially Guideline 6. The following points are mentioned:

1. Elaboration and implementation of cultural policy.
2. Capacity-building and data-collection.
3. Promoting cultural expressions by minorities.
4. Advocating the ratification and implementation of the Convention.
5. Input to the quadrennial reports.
6. Partnerships and international cooperation with public and private sectors as well as with civil society of other regions in the world.

Against this background, and before entering into analysis, it would be useful to get a grasp of the kind of civil society involvement that parties to the Convention included in the quadrennial reports to UNESCO. The following examples are not representative in a statistical sense

but serve to illustrate the range of activities taking place, with an emphasis on developing countries. They are good practices collected by UNESCO, and therefore also representative for the kind of civil society involvement envisioned under the Convention (UNESCO, 2014a):

In Brazil civil society and government jointly worked on the development of the National Plan for Culture 2011–2020, which is legally based on the 2005 Convention. The government put substantive efforts in promoting the Convention throughout Brazil and involved cultural actors of all kinds.

In Ecuador, the government seeks to enhance civil society participation, involvement and information through the establishment of the Citizen Participation Council. Within this council a culture information system, as well as a Culture Participation Programme were integrated.

In 2010 Paraguay set up the National Council of Culture, which gathers not only actors from the government, but also stakeholders from across the whole cultural scene to discuss and debate on culture-related themes.

Despite scarce financial resources, Burkina Faso's government developed a strategy to support civil society's engagement with regard to the Convention. In 2009, together with the civil society, the government developed a cultural policy and put it into action. Moreover through information-sharing of the Ministry of Culture, civil society gets informed about funding opportunities.

Initial assessments

Civil society matters in three different phases of the 2005 Convention: its preparation, its adoption, and its implementation. It could be argued that strong and broad civil society involvement in the first two phases would facilitate the kind of action required under the Convention in its implementation.

The formation of the Convention benefited from initiatives of Canada, France, Germany, Greece, Mexico, Monaco, Morocco, and Senegal, supported by the French-speaking group of UNESCO (see Merkel, 2012). Available material does not allow us to reconstruct to what extent these governments were "pushed" or held back by civil society actors in their respective countries, and to what extent civil society shaped the initial debates leading to the Convention. Yet we suggest that path dependencies, that is, early involvement of civil society in the

preparation and adoption of the Convention, may well be a good predictor of its current and future role. By contrast, cases where civil society played little or no role prior to the implementation phase may well face greater operational difficulties.

The 2001 UNESCO Universal Declaration on Cultural Diversity laid the groundwork for the 2005 Convention to come true (UNESCO, 2001). With regard to the preparation of the 2005 Convention within UNESCO, an important early initiative was the "Preliminary study on the technical and legal aspects relating to the desirability of a standard-setting instrument on cultural diversity" (UNESCO, 2003c), first mentioned on the agenda of the Executive Board of UNESCO in 2002, and then discussed at its 166th session in 2003. In this study, different international initiatives are mentioned as encouraging "reflection on the desirability of reinforcing standard-setting action in relation to cultural diversity" (UNESCO, 2003c), including some with explicit civil society participation (e.g. the International Network on Cultural Policy).

Civil society's role in the context of the 2005 Convention and its inclusion into the process was already mentioned in the first meeting of experts for the Convention (December 2003). Additionally, the third meeting "underlined the importance of involving civil society and NGOs in the follow-up to the Convention" (UNESCO, 2004, p. 8).¹ Guèvremont reports that "representatives of civil society [...] were actively involved at every stage of the drafting of the new Convention" (Guèvremont, n.d., p. 1).²

The same seems to hold for the level of adoption. Formally, the Convention is adopted by UNESCO and ratified by governments that then become formal party to the Convention. Here, too, civil society might have pushed governments to ratify the Convention. Therefore: "Even after the adoption of the Convention in October 2005, civil society continued to play an important role. Coalitions for cultural diversity immediately rallied to urge UNESCO member states to ratify the text" (Guèvremont, n.d., p. 1).

However, the available quadrennial reports do not contain explicit information on the preparation phase. One indirect indication, but far from claiming any causal relationship, might be a correlation between the strength of civil society, as featured in the reports, and the extent and timing of ratification, as we will test further below: "Since the legitimacy of the new instrument depends on the number of states who are party to it, the pressure exerted by members of civil society will have a definite impact on the process" (Guèvremont, n.d., p. 1).

The Intergovernmental Committee for the Protection and the Promotion of the Diversity of Cultural Expressions analysed various reports

submitted by parties to the 2005 Convention for 2012 and 2013 (UNESCO, 2013c, p. 6). While parties did indeed acknowledge the fundamental role of civil society in the protection and promotion of the diversity of cultural expressions, the committee also identified a number of challenges.

Not surprisingly, given its innovative thrust, a major challenge was to implement the new framework of the governance of culture according to the principles and objectives of the Convention itself. This innovative element of the Convention requires the participation of non-state actors, rather than the dependence on the competent authorities in member states, as it is the case in other international treaties. Some difficulties might therefore be well expected in this kind of “public-private partnership” which shapes its implementation process. Specifically, the committee identified several weaknesses relating to civil society in the Convention’s implementation (UNESCO, 2009a, p. 21):

- the lack of, or poorly envisioned and designed, national strategies for the promotion of the Convention, and with no or little systematic evaluation efforts in place (Burkina Faso, Romania);
- the overcentralization of policy measures (Albania, Armenia, Dominican Republic);
- poor communication between government, civil society and the private sector (Albania, Bosnia and Herzegovina);
- insufficiently organized cultural sectors and lack of professionalization (Côte d’Ivoire, Romania, Togo); and
- little and insufficient involvement of civil society generally (Armenia).

Three clusters seem to emerge from a look at these “early adaptors” of the 2005 Convention. In essence, implementation difficulties occur because:

- either civil society or the cultural sector is organizationally or professionally weak;
- government and public agencies pursue a top-down, controlling approach; and
- none or weak communication channels and practices exist between government, the cultural sector, and civil society.

Three years later, van Graan (2012) used the national reports submitted to UNESCO and analysed the responses to Article 11 of the 2005 Convention. He focused on the ways in which the stipulations of Article 11

and the Operational Guidelines had been implemented de facto. His aim was to identify patterns and trends, highlight best practices, and inform future actions.

Van Graan notes that 81% of the reports originate from Europe/North America and Latin America/Caribbean, that is, generally promising countries with some democratic political system and a civil society presence. Accordingly, the trends and recommendations reflect the experiences of these countries, and not those of other regions in the world, which have different political systems and weaker, even absent, civil societies. Van Graan identifies numerous key challenges for the implementation of the 2005 Convention (2012, pp. 2–3), which are regrouped into four main issue clusters as follows:

1. **Awareness, knowledge, and understanding:** lack of knowledge of the Convention within all tiers of government, public agencies, cultural institutions as well as civil society generally; there seems to be a frequent absence of coordinated and sustained information strategies as well as activities to inform stakeholders about the Convention in general, and their respective roles in specific. Civil society actors do see little benefits of the Convention for them, and incentives remain ill understood. While not all countries provide support for civil society in the same manner, the Convention nonetheless requires civil society to be active and equipped with agency and voice.
2. **Political support:** lack of political support for, or importance attached to, the cultural sector on behalf of governments; this meets with a resistance of both the cultural sector and civil society to reduce the arts to their economic value primarily. In some countries, trust levels among stakeholders are low across sectors, and too low for fruitful consultations. This results in persistent communication problems between government agencies and civil society on the one hand, and between government agencies and the cultural sector on the other. While a variety of ways for capturing the voice of civil society in the periodic reports seem to exist, there is not only one correct way. What matters are transparency and open communication (UNESCO, 2011e).

These issue clusters are clearly located at “deeper” levels of state–society relations. They point to two additional ones that were also identified in the UNESCO Committee report above:

3. **Communication:** a lack of functioning communication channels between government and civil society for the purposes of implementing the Convention domestically.

4. **Capacity:** a lack of capacity within government and civil society to devote sufficient administrative and organizational resources to the implementation of the Convention.

Related to capacity but going well beyond it, is a cluster of issues that addresses resources:

- **Funding and access:** both cultural and civil society institutions see funding, or the lack thereof, as a major impediment; what is more, specifically cultural actors complain about limited market access for their services or products.
- **North–South relations,** featuring prominently in the guidelines for implementing the Convention, are seen as problematic as well: Only a few reports tell about sustainable, impactful relationships between countries in the global north and counterparts in the global south in ways that have a meaningful effect on the relevant Convention articles. It is also of concern that reports from Africa, Asia, the Caribbean, Pacific and Arab regions accounted for less than 20% of the total received ones (van Graan, 2012, p. 3).

Until the end of 2013, 65 parties, or around half of countries belonging to the 2005 Convention, had submitted a report.³ The Convention requires (operational Guideline 7 on Article 9) the “involvement of civil society in the preparation of the reports according to jointly agreed modalities. The reports shall indicate the way in which civil society participated in the drafting process.”

However, within the 64 reports analysed less than half (29% or 45% of the reports submitted) explicitly mention the involvement of civil society in preparing the report.⁴ This is a clear sign of where the implementation realities of the 2005 Convention fall short of the stipulations of the guidelines. This gap was already mentioned by UNESCO’s “Analytical summary report 2012” (UNESCO, 2013c). The reasons for this, and whether they are primarily located within civil society or the reporting parties, should be analysed in more depth in future research, for example, the planned surveys and interviews. A team of international experts that assessed the reports and annexes in 2012 indicated the following reasons regarding civil society (UNESCO, 2013c, p. 27):

- the timeframe for reporting was too short to engage in a comprehensive consultation process;
- civil society was not solicited to participate in the process;

- they did not have an opportunity to participate due to breakdown in trust and communication between the government; [...]
- a certain lethargy on the part of civil society to engage as they do not yet see the direct benefits of the Convention to them.

However, for the purposes of the research question stated at the onset, it is necessary to take a systematic look at what countries have actually done in order to involve civil society in the implementation of the 2005 Convention. Specifically, we looked for the following when analysing various reports submitted by parties to the Convention for 2012 and 2013 (these aspects or features of civil society involvement are based on the Convention and subsequent guidelines):⁵

- A dedicated organization was created for the purpose of implementation of the Convention.
- There are financial state subsidies for civil society organizations in order to implement and strengthen civil society's role.
- Measures are taken to foster the access to, and exchange of, cultural goods, especially in trade (import, export) in the spirit of the Convention.
- Partnerships are in place or being forged with civil society actors and: state agencies, private sector or business, and other civil society organizations.
- Civil society actors are engaged in North–South development programmes.
- Civil society actors attended and were or are involved in UNESCO hearings.
- Civil society actors were and are engaged in capacity-building and related (surveying, monitoring, or building up informational infrastructure).
- Civil society actors were or are engaged in public relations in international forums.
- Civil society actors took part in preparing and drafting quadrennial reports.
- Civil society actors act as political interest broker for local and/or national minorities.

Table 12.1 gives an overview of how many of these activities on and about civil society were documented in the different reports. Six reports (Côte d'Ivoire, Dominican Republic, Ireland, Kuwait, Syrian Arab Republic, Tunisia) do not mention civil society in any respect, and three

Table 12.1 Number of activities mentioned in country reports

Number of activities mentioned	Number of country reports	Per cent of all country reports
0	6	9.4
1	3	4.7
2	9	14.1
3	9	14.1
4	11	17.2
5	8	12.5
6	8	12.5
7	2	3.1
8	3	4.7
9	2	3.1
10	1	1.6
11	1	1.6
12	1	1.6
Total	64	100.0

reports (Cyprus, Nigeria, Oman) list only one activity. By contrast, three countries mention ten or more (Canada, Togo, and the EU). The median number of activities mentioned is four and the mean number is 4.1. Most reports mention between two and six different aspects, and only a minority of ten reports (16%) mentions seven or more. No single report mentions all aspects

The single most mentioned activities are: cooperation between civil society and partners from state, private sectors, and civil society (43), with state–civil society partnerships (38) being by far the most popular relationship (private organizations/businesses: 5; other civil society organizations: 12).⁶ Political interest brokerage for minorities (39) and financial state subsidies for civil society organizations (33) are also mentioned more frequently.

Mentioned by less than half of the reports, but still relatively often, are the following aspects (in descending order):

- Civil society involved in the reporting (29).
- Civil society organizations engaged in capacity-building (27).
- Civil society organizations created for the Convention's implementation (24).
- Civil society involved in legislation needed for implementing the Convention in domestic policies and laws (23).

- Civil society engaged in global North–South development programmes (22).
- Civil society active in public relations in international forums and similar events (19).

Rarely mentioned are the issues of: “Strengthen the access to and the exchange of cultural goods (8 times)” – a main objective of the 2005 Convention itself – as well as “Participation in UNESCO hearings” (2 times).

However, with regard to the last aspect from the lists of participants of the Conference of Parties to the Convention, we know that many more actors from civil society took part (12 organizations in 2013; 15 in 2011). One reason for this might be that many of these actors are from international NGOs rather than nationally-based organizations. Thus, no single country may account for their involvement.

Civil society and the 2005 Convention

With respect to the ratification of the 2005 Convention, and the instrumental role of civil society, we expect countries with a strong civil society to become party to the Convention earlier than countries with a weaker civil society. We used the Enabling Environment Index by CIVICUS to measure the strength of civil society using a range of social, economic, and political indicators in terms of capability. The index ranges from 0 (lowest level of capability) to 1 (highest level of capability) (CIVICUS, 2013).

Early ratification took place between 2005 and 2007 and late ratification between 2008 and 2009.⁷ As indicator of the civil society participation, we use the cumulative index of civil society involvement in the quadrennial reports.⁸ In total, 63 countries are analysed.⁹ The results confirm the hypothesis: the mean value of civil society strength of countries ratifying early is much higher (mean of 4.3) than of countries doing so at some later date (mean of 3.3).

Another general hypothesis is that countries with stronger and more developed civil societies would be in a better position to live up to the expectation of the 2005 Convention more fully than those parties to the Convention with weak, underdeveloped, or even absent civil societies. A more specific hypothesis is that countries with strong state–civil society relations would especially be more likely to show many and more of the kinds of activities involving civil society as foreseen under the Conventions and its directives.

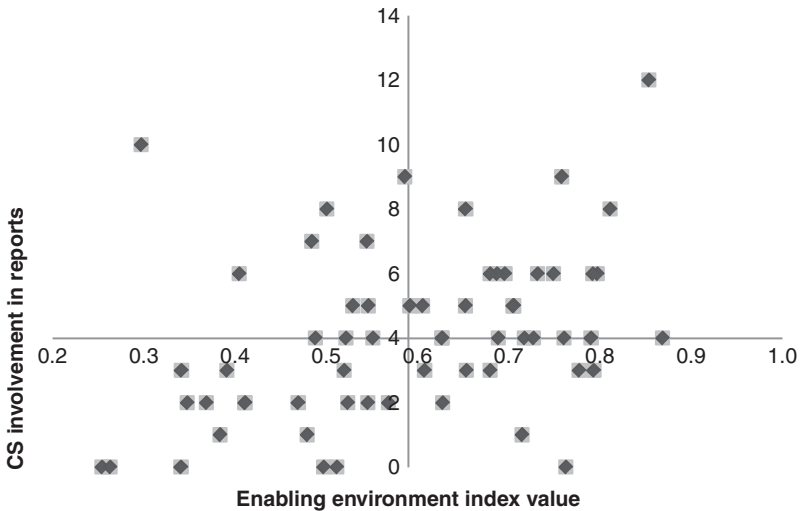


Figure 12.1 Correlation between overall civil society strength (EEI) and actual civil society involvement as reported by the party reports

To explore these questions, we operationalized the expected civil society involvement by the Enabling Environment Index (EEI),¹⁰ examining the conditions under which civil society works. The EEI ranks more than 200 countries by three dimensions and 17 subdimensions. The socio-economic, sociocultural, and governance dimension display the enabling environment of civil society (CIVICUS, 2013). Figure 12.1 displays the EEI values on the horizontal axis. The actual involvement is measured by the civil society's involvement in the Convention's implementation as reported by quadrennial reports. This is shown in the vertical axis of Figure 12.1 (see also Table 12.2).

As one can see, in Figure 12.1 and summarized in Table 12.2, there is a clear correlation between the strength of civil society (EEI) and the reported strength of civil society's involvement in the implementation of the 2005 Convention. While 60% of those countries that are labelled as having a weak civil society by the EEI also show a weak involvement in the reports, this figure is only 26% for those with a strong civil society as measured by the EEI. However, there are also deviating cases, which we look at further below.

Table 12.3 shows some exemplary countries for the expected and actual involvement of civil society in quadrennial reports. For each of the variables, the three categories "low", "medium", and "high"

Table 12.2 Cross-tabulation of civil society strength (as measured by the EEI) and actual involvement in the country reports (measured by aspects mentioned)

		Actual involvement		
		Low (0–3 aspects)	High (4 aspects and more)	Total
Enabling Environment Index	Low (<0.6)	18 (60%)	12 (40%)	30 (100%)
	High (≥ 0.6)	8 (26%)	23 (74%)	31 (100%)
	Total	26	35	61

Table 12.3 Cross-tabulation; salient country examples for high/low expected and actual involvement of civil society in quadrennial reports

		Actual civil society involvement (reporting)	
		High	Low
Expected civil society involvement	High	Denmark Canada Austria	Finland Ireland The Netherlands
	Low	Burkina Faso Egypt Togo	China Guinea Vietnam

Notes: Expected involvement of civil society high: EEI ≥ 0.70 .

Expected involvement of civil society low: EEI ≤ 0.50 .

Actual involvement of civil society high: country mean of CS involved in reports ≥ 7 .

Actual involvement of civil society low: country mean of CS involved in reports ≤ 3 .

have been chosen with regard to the distribution of all countries. Only salient countries with “low” and “high” values are listed. There are some countries that conform to the expectation of the hypothesis above. For example, Denmark, Canada, and Austria have developed civil societies with strong state–civil society relations and reveal a pronounced involvement of civil society in implementing the Convention. Others such as China, Guinea, or Vietnam are exemplars of the opposite pattern.

Then there are inconsistent cases: the low actual involvement of civil society in Finland, Ireland, and the Netherlands. By contrast, the high civil society involvement in Burkina Faso, Egypt, and Togo is also

notable. The crucial question therefore is: why is civil society involved in cases that feature “inhospitable” environments, while it is missing in some cases, where the environment is very friendly?

Clearly, a closer examination would be needed at this stage to understand the reasons behind this finding. It may well be that measures were not needed, since they are already in place, or that measures were not reported for one reason or another. There are also potential policy measures that come to mind: clearly, if those countries with developed, active civil societies could be encouraged to involve civil society more fully, the implementation record of the 2005 Convention would improve significantly and therefore with relatively few resources. Vice versa, how do countries with weaker civil societies manage to implement the Convention’s objectives and *modus operandi* more fully than other? What are the lessons there, and could they be transferred?

As mentioned above, a second interesting data source for analysing the relationship between civil society’s strength and its impact on the 2005 Convention is the International Fund for Cultural Diversity (IFCD). It was established in 2010 in order to support developing and least-developed countries (LDCs) in the implementation of the Convention and to support civil society involvement as part of this process. Between 2010 and 2014, the IFCD has funded 71 projects from 43 countries with around US\$4.6 million (see also De Beukelaer and Freitas, Chapter 13). In the following we present an analysis of civil society’s involvement in funded Convention-related activities in developing countries and LDCs.

The information given for each funded project allows us to assess whether civil society on different levels (e.g. INGO or NGO) has been involved in the project. Table 12.4 depicts the expected and actual role of civil society in terms of *funded projects with civil society involvement* in developing countries and LDCs. The EEI was adjusted to this country group. Again, the mixed cells are of special interest. There is no country that features an unexpectedly low civil society involvement. By contrast, Kenya, Madagascar, Senegal, and Zimbabwe stand out, having an unexpectedly high actual involvement in terms of funding. Unfortunately, these countries have not handed in any reports so far.

Table 12.5 shows the distribution of all parties to the Convention according to funding received from the IFCD and reporting, and Table 12.6 reports the combined outcome of civil society involvement in reports and in funding in developing countries and LDCs. This

Table 12.4 Examples for expected and actual involvement of civil society in funding (only developing countries and LDCs)

		Actual civil society involvement (funding)	
		High	Low
Expected civil society involvement	High	Argentina Macedonia South Africa	
	Low	Kenya Madagascar Senegal Zimbabwe	Tajikistan

Notes: Expected involvement of civil society high: EEI > 0.60.
 Expected involvement of civil society low: EEI < 0.45.
 Actual involvement of civil society high: NGOs involved in fund-taking >= 1.
 Actual involvement of civil society low: NGOs involved in fund-taking = 0.

Table 12.5 Funding and reporting by parties to the 2005 Convention

		Funding	
		Yes	No
Report	Yes	12	52
	No	14	55

examination might give hints as to what kind of relationships between state and civil society are prevalent. Again, the “mixed” cases are of special interest. As already mentioned above, we assume that the reporting reflects the state’s point of view on civil society and the fund-taking reflects the actual civil society involvement with national NGOs as self-directed actors. However, Burkina Faso and Togo, where the context is difficult, as measured by the EEI, perform very well in funding as well as in reporting. These countries might also be interesting cases to look at in more detail (see Figuera on Burkina Faso and cultural diplomacy, Chapter 11).¹¹

The high figure of countries with reports but without funding is due to the good reporting compliance of the developed countries that are not allowed to apply for funding.

Table 12.6 Actual civil society involvement with regard to the reports and in funding (only developing countries and LDCs that have already handed in reports)

		Civil society involvement based on reports	
		High	Low
Civil society involvement in funding	High	Burkina Faso Togo Brazil	Argentina Peru
	Low	Bangladesh Namibia	Cambodia Tunisia Namibia Nigeria

Note: Actual involvement of civil society high: country mean of CS involved in reports ≥ 7 .
 Actual involvement of civil society low: country mean of CS involved in reports ≤ 3 .
 Actual involvement of civil society high: NGOs involved in fund-taking ≥ 1 .
 Actual involvement of civil society low: NGOs involved in fund-taking = 0.

Concluding thoughts

The purpose of this chapter was to look at the role of civil society in the implementation of the 2005 Convention by exploring two closely related sets of questions. We asked if countries with developed, stronger civil societies joined the Convention earlier and also showed greater civil society involvement in its implementation, and vice versa. The results reported above confirmed the various hypotheses that these questions imply, although we also found some important cases where countries deviated from the general pattern.

UNESCO employs an instrumental view towards civil society, and this is also why the overall results are somewhat unsurprising. The conflicts and tensions inherent in civil society and its relations with the state and the market are largely out of scope under such an instrumental approach. An instrumental approach requires civil society to accept the ways and means of how authority operates at the national level and how international organizations function in, for example, Paris, New York, or Geneva. As a result, “normal” civil society comes to the forefront, and such civil societies are more likely found in the “global North”, though by no means exclusively, as we have seen. These NGOs come with issues and interest politically acceptable to the mainstream. They soon fall into routine patterns.

Therefore, a challenge to UNESCO is not only to make sure that the 2005 Convention is adopted and implemented by as many member states as possible, but also that its outreach to civil society is not captured by established NGOs. The above-mentioned Operational Guidelines were a first important step, but more would be needed. In this respect, the meetings of governing bodies decided in the sixth session of the Committee (2012) and the fourth session of the Conference of Parties (2013) that civil society organizations and representatives can report to the Intergovernmental Committee for the Protection and the Promotion of the Diversity of Cultural Expressions and the Secretariat on important aspects of the Convention:¹²

Decision 6.JGC 17 Para 5. ii). Invites the Parties that so wish as well as civil society to report to the Committee during its seventh session on aspects of the development of digital technologies that have an impact on the Convention and proposals for future action.

Res. 4.CP 13 Para 6. Invites the Parties that so wish as well as civil society to report to the Secretariat on aspects of the development of digital technologies that have an impact on the Convention and proposals for future action for examination of the Committee during its seventh session, and requests the Committee to transmit the results of its work to its fifth ordinary session.

These decisions do indeed represent important milestones in opening channels for voices of cultural diversity beyond those of established NGOs. The digital opening will facilitate the participation of those groups that would find it difficult otherwise to take part in meetings and proceedings.

No doubt, the implementation of the 2005 Convention, and especially the Convention's Operational Guidelines of its relevant articles, constitute "new ground" for the international community; they pose challenges to UNESCO, the competent authorities of parties to the Convention as well as to civil society actors alike. Prior assessment pointed to the problems encountered in the implementation and especially in state-civil society relations. Some of the findings here resonate with these previous assessments, but we also found indications for progress and achievement in the extent and the way in which civil society actors have become involved.¹³

There is, however, one major limitation: The 2005 Convention requires "measures taken to protect and promote the diversity of cultural

expressions within their territory and at the international level". Based on the national reports, it is not clear to what extent civil society actors actually achieve, or contribute to, the objective of protection and promotion of cultural diversity. In other words, the national reports say little about outcomes. The best practices, too, need to be screened in this respect: do better processes also lead to better outcomes in the light of the Convention?

The same could be said about the 75 IFCD-funded projects. What have they achieved so far in relation to the objectives of the Convention? It could also be argued that some US\$4.6 million spread around 43 countries is too little to affect sustained change. At the same time, the Convention's Operational Guidelines for encouraging local, "grass-roots" involvement seems to have been met, as most funding goes to civil society actors. The overall sum of funds involved appears modest given the scale and scope of the Convention and the implementation task involved.

Measures on how to improve the involvement of civil society are as old as the Convention itself, and were already posed by authors such as Merkel (2012) while the Convention was being forged. Indeed, Merkel argues that "this Convention would not have become what it is today had there not been the parallel self-organizing process of the cultural and artistic professions on a national, regional and transnational process" (Merkel, 2012, p. 348). But in the course of its drafting, ratification, and implementation, civil society has become instrumentalized, and narrowed down too much in its focus on established NGOs and their networks. To counteract this tendency, we should no longer ask what civil society can do for the Convention; rather, the more pertinent question now is: what can the Convention ultimately do for civil society?

Notes

1. See the full Procedural History of the Convention in the Audiovisual Library of International Law at <http://legal.un.org/avl/ha/cppdce/cppdce.html>.
2. However, a full analysis of the inclusion of civil society and its role in the preparation process of the 2005 Convention would need a detailed analysis of the minutes and lists of participants of the main meetings.
3. 15 parties have to submit their reports only in 2014 (Azerbaijan, Czech Republic, Democratic Republic of the Congo, Equatorial Guinea, Haiti, Honduras, Korea (Republic of), Lesotho, Malawi, Trinidad and Tobago, and Ukraine) or 2015 (United Republic of Tanzania, Costa Rica, Gambia, and Palestine) due to their later ratification. The 2005 Convention website provides plenty of help for the preparation of the reports (electronic templates,

video-tutorials, a FAQ-section, and so on). Nonetheless, the format and the amount of information provided by the competent authorities of parties vary significantly. Most are submitted in English, some in French (14) or Spanish (1), and answers vary in length, specificity, and depth. Some provide extensive data and feature elaborate appendices, but most don't. The Austrian report is often mentioned as an example for good practice in this context.

4. The Spanish report from Guatemala was not included.
5. As the different points are not always selective, some were merged. This is why the aspects listed do not match directly with the mentioned points. The coding does not consider the quality of the involvement or whether different actors from civil society were involved. If a report mentions civil society with regard to a certain aspect, the country was coded as 1 (yes), if civil society was not mentioned, the code is 0 (no).
6. The total figure deviates from the sum of the following three, as many countries mentioned more than one such partnership.
7. The results contain only ratifications until 2009 because the strength of the civil society can only be calculated for countries that have already handed in quadrennial reports.
8. Cumulative Index; ranges from 0 to 12; low figures represent low civil society involvement and vice versa; mean value = 4.1, std = 2.6.
9. The European Union as a very specific party to the 2005 Convention has been excluded from this analysis.
10. See <http://www.civicus.org/eei/downloads/Methodological%20note%20on%20the%20CIVICUS%20Civil%20Society%20Enabling%20Environment%20Index.doc>.
11. We would, however, recommend to first have a closer look at the EEI, as it might be that the index is mis-specifying one or both of them.
12. <http://www.unesco.org/new/index.php?id=115725>.
13. We should also keep in mind that the national reports vary in detail, meaning that civil society may have played a bigger role de facto.

13

Culture and Sustainable Development: Beyond the Diversity of Cultural Expressions

Christiaan De Beukelaer and Raquel Freitas

The 2005 UNESCO Convention provides an explicit link between the protection and promotion of the diversity of cultural expressions and sustainable development in Article 13 and development cooperation in Articles 14–18. However, the Convention leaves out broader notions of cultural diversity, which include culture as a way of life and cultural rights (for latter, see Donders, Chapter 8). Therefore, we argue, the reductionist understanding of culture does not necessarily or intrinsically have the potential for sustainable development that is claimed in the 2005 Convention. As a result, the link between the diversity of cultural expressions and sustainability has limited potential for transformative action towards sustainable development.

With respect to culture and sustainability in general, we discern two kinds of sustainable development. On the one hand, there is a mainstream definition with three integrated pillars: economic, social, and environmental. This approach is prone to instrumentalization. Sustainable development is driven ultimately by concerns about sustainable economic growth, and it was included in the Convention for instrumental reasons. For example, this may have included France's move to protect against open markets and the introduction of Articles 13–18 as give away to developing countries' claims on funding for development. On the other hand, sustainable development can be seen as transformative. In this regard, sustainability is not a universal blueprint, but rooted in cultural contexts. At the same time, it requires a metagovernance level that focuses on transformation (Meuleman, 2013).

This chapter analyzes the 2005 Convention's claim on the link between protection and promotion of cultural diversity and sustainable development from the early stages of the Convention's formulation, along with the interpretation and the operationalization of relevant articles that establish the link. It shows that the potential of the Convention for sustainable development is limited because the specific conception of sustainable development is a narrow, instrumental approach, in which the link between culture and sustainable development dominates the operationalization of the Convention's contribution to development. Despite efforts being undertaken at the time of writing in 2014 to introduce culture in the discussion on the future sustainable development goals, the Convention should contribute to linking cultural diversity in a structural way to sustainable development through a culturally sensitive, reflexive, and dynamic approach to cultural diversity (Meuleman, 2013). Thereby we mean that cultural diversity should go beyond the "diversity of cultural expressions" in order to accommodate the normative diversity of cultural practices in which thinking about sustainability is rooted.

Context

Over the past decades, a general understanding has emerged that cultural expressions have social and economic potential for development. Even before the beginning of the drafting process of the 2005 Convention there was already ample attention to the importance of development cooperation in the context of cultural diversity (dos Santos-Duisenberg, 2012, pp. 373–374). The United Nations, and UNESCO in particular, have been at the forefront of debates linking culture and development. The World Commission on Culture and Development underlined the link between culture and development in the report *Our Creative Diversity* (WCCD, 1996) following its establishment by UNESCO in 1992. The Convention itself reiterates the idea that culture and cultural expressions are instrumental to developing countries (Article 1, Objective f) and to sustainable development (Article 2, Principle 6).¹ There has been little contestation to this idea as such, yet transforming *potential* into *result* remains a challenge due to several factors of which we highlight the most significant.

First, there is a lack of conceptual agreement on what sustainability is and on how it should be attained. Even though there are many practices and ideas on what it *could* be, a general and universal vision is lacking; sustainability as a concept has been eroded considerably since its use became common after the publication of the Brundtland Report in 1987,

whose simple, though ambitious, definition has since then considerably shifted in connotation:

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

(WCED, 1987)

Second, the concept of culture in the 2005 Convention is restricted to the protection and promotion of diverse cultural expressions. If “cultural expressions” can be considered a public good (Throsby & Withers, 1986), justifying public funding, it lacks sufficient scope to be linked with development: linking this restricted focus on culture as a measurable public good, to development in general, requires a broader understanding of development that does not exclusively focus on economic growth but encompasses human, personal, and cultural development, and of culture as a way of life, that are inherently related to sustainability.

Third, linking culture and development is operationalized differently if we are talking of sustainable development, applicable at the global level, or of development cooperation where developed countries assist developing countries. The current debate on the future Sustainable Development Goals (SDGs) will revise this schism, but so far the Convention reinforces it and that is why its contribution to development thinking can be seen as partial at best.

Fourth, there is a lack of a clear commitment to transformative sustainable development models, as development focuses on “cultural industries” instead. By this we mean the transformations required in mental framings, institutional settings, and research practices that change policies and public interactions in the face of global environmental change and unsustainable development (Jaeger, Tàbara, & Jaeger, 2011). Such transformations include the discursive attention to the “cultural turn”, which meant to take culture (as a “way of life”) into account in development studies and practice (Nederveen Pieterse, 1995). This did not translate easily into practice, because it necessarily remained an approach that was more reflexive than constructive, in the sense that it is stronger on critique than on practical solutions. Taking culture into account works well in theory, but the practical application continues to be a challenge. When the discourse shifted from culture in general terms to culture-as-industry, the “cultural turn” was seized by the same utilitarian considerations of mainstream consumerism that reproduce global and social inequalities (Sacco, Ferilli, & Blessi, 2013). This means

that the meaning of culture was reduced from a way of life to a far narrower understanding through the cultural industries (De Beukelaer, 2015).

In order to expose these contradictions and conceptual ambiguities, we explore the framework that derives from the 2005 Convention, which aims to operationalize a link between culture and (sustainable) development. We do this through a historical account of the link between culture and sustainable development in the Convention; an overview of what the Convention currently adds to the debate and a reflection on what it can still add in the global development agenda. The absence of any engagement with culture in the Millennium Development Goals (MDGs) and the struggle to include culture in the post-2015 development agenda illustrate this challenge.²

The potential: A brief history of culture and sustainable development

The 2005 Convention contains two distinct approaches to the link between culture and sustainable development: the first approach is reflected in Article 13 and refers to culture integrated in sustainable development, while the second approach is reflected in Article 14 and refers to culture as an instrument or a means to development.

Culture in sustainable development

Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions.

(Article 13 of the Convention)

Three distinct but not mutually exclusive notions of development are present in documents that frame the link between culture and development at the international level, including in the 2005 Convention: development as economic growth in line with neo-classical economics; development as human capacity expansion, in line with the human development approach; and development in relation to present and future generations, in line with notions of sustainable development. It is crucial to understand these differences, because the Convention uses them interchangeably, and they can be contradictory.

Development as economic growth has most currency in international public policies of the type promoted by the international financial institutions (IFIs), some agencies within the UN, or the OECD, and is discernible in several documents that establish the link between culture and development. This is the market-oriented perspective, where progress is measured in terms of gross domestic product (GDP), leaving to a secondary role more refined concerns about sustainability such as equity, the quality of growth, and its impact on the environment (Fioramonti, 2013). In order to counterbalance the predominance of the economy-driven notion of development, Principle 5 of the Convention (Article 2) levels the playing field by raising culture to the same status of importance as the economy, and specifically ascribing individuals a right to participate and enjoy its fruition. In the context of the 2005 Convention the protection and promotion of cultural diversity becomes just as important as ensuring free trade in cultural goods and services. However, in practice the Convention has less capacity and instruments to uphold such principles than other normative apparatuses such as the WTO, which has more effective jurisdictional instruments (Graber, 2006).

The two other perspectives can be seen largely as reactions to this overdetermination of economic aspects on development. The World Commission on Culture and Development (WCCD) in 1996 advanced an approach to sustainable development where culture would have a key role in pushing for new approaches to development. It proposes people-centred development models that include the cultural dimension beyond economic growth (WCCD, 1996). Articles 13 and 14 seemingly incorporate the message of the WCCD, but it builds on a much weaker notion of sustainability. Although the key role of culture in development is explored in Articles 13 and 14 of the Convention, in practice culture stands mostly in an enabling role to development rather than culture as an end in itself contributing to sustainable development.

Realizing that not only humanity but also the environment were being forgotten in the race for growth, the Brundtland Report brought forth the notion of sustainable development as the development that meets the needs of the present without compromising the possibility of future generations to meet their own needs (WCED, 1987). This notion is present in Principle 6 (Article 2) and Article 13 of the 2005 Convention, which clearly establishes cultural diversity as an essential requirement towards the achievement of sustainable development, according to the definition of the World Commission on Environment and Development (WCED).

The concept of sustainable development has evolved significantly since it was first coined, integrating a multiplicity of interrelated areas. The implementation of Article 13 shows evidence of the complex involvement of different policy and governance areas that are inter-linked and of very difficult operationalization. In fact, as pointed out by Meuleman (2013), the existing governance frameworks seem to deny this social complexity and uncertainty, operating in a business-as-usual mode characterized by highly centralized and institutionalized decision processes. Diversity and complexity are not effectively incorporated in governance strategies for the implementation of Article 13, which is left standing more as a principle to be achieved in some vague ideal future than as an operative norm of the 2005 Convention.

The recognition of culture as a pillar of sustainability (Hawkes, 2001) and its integration with the economic and social-environmental perspectives in parties' commitments to the Convention implies expected changes in public policies at the national level. These changes are bidirectional in the sense that culture is conceived as a driver and as an enabler of development. This means that different cultural and contextual aspects inform sectoral policies, while culture as a sector is valued in itself as an element of sustainable development. While all parties to the Convention are bound by Article 13, in practice its most visible outcome is limited to an operational instrument that UNESCO has developed, the Culture and Development Indicator Suite (CDIS), which is to serve as a guiding tool for policy changes in developing countries, as will be discussed below.

The whole context of the 2005 Convention essentially ensures the preservation of a status quo in terms of economic, social, and environmental development, which does not necessarily operationalize a role for "culture" and "diversity" in significantly changing the paradigm of sustainable development. Culture is much more than the identity of peoples. It is the fabric from which transformative ideas emerge, breaking boundaries and establishing new human and social development paths. Cultural diversity is about integrating these different dimensions into sustainability strategies in a coherent manner. However, Article 13 ends up being about the possibility of "the diversity of cultural expressions" sustaining development. The upside is that the Convention is a concrete measure about cultural expressions. The downside, however, is that more holistic normative engagements with culture and cultural diversity (that always remained vague) are only implicitly present. This means that in practice, culture assumes essentially an instrumental value and its constitutive dimension falls largely behind the scenes. In a

transformative model cultural diversity would be an integral dimension of sustainable development, while retaining a focus on the compatibility of diverse values instead of being just diluted in the same development model dominated by instrumental concerns and policy divergences that treat culture merely as goods.

Cooperation for development

The 2005 Convention provides a framework to include the promotion and protection of the diversity of cultural expressions in development cooperation between parties to the Convention. In theory, this means collaborating on cultural projects, yet in practice this mostly means that “donor” countries set agendas for “partner” countries for activities and approaches. Article 14 focuses explicitly on cooperation for development and bridges Article 13 with the following articles: Articles 15 (Collaborative Arrangements), 16 (Preferential Treatment for Developing Countries), 17 (International Cooperation in Situations of Serious Threat to Cultural Expressions), and 18 (International Fund for Cultural Diversity) are particularly relevant in the light of international development.

Article 14 stipulates that “parties shall *endeavor* to support cooperation for sustainable development and poverty reduction” (emphasis added) at four levels: (1) strengthening the cultural industries; (2) capacity-building; (3) technology transfer; and (4) financial support. A distinction is made between what is aimed for, and how these aims should be attained: strengthening cultural industries should help sustainable development and poverty reduction, which is an empirically suspicious claim (see e.g. UNCTAD & UNDP, 2008, 2010). And in this process, the diversity of cultural expressions is reduced to the cultural industries.

The previous section stressed how the complex notion of sustainable development is not easy to translate into commitments and practice. This is no different for poverty-reduction. First, reducing (let alone eliminating) poverty is no easy feat (see, for example, Collier, 2007), and framing it as an issue that can be overcome with essentially technocratic measures is thus misleading at best. Second, there is little proof that economic activity in the cultural sector is instrumental in reducing poverty. Quite on the contrary, evidence shows that while the sector may help some, it often exacerbates the precarious position of the poorest (Oakley, 2006).

The 2005 Convention foregoes this evidence, and focuses on technical measures to instrumentalize cultural diversity for sustainable development and poverty reduction. Yet cooperation for development cannot

solely be seen as a transfer of skills, technology, and resources from the global North to South. There is a well-recognized need to build more on expertise and approaches across the diverse global South where policies and practices could be more transferable than between North and South. An exclusive focus on South–South cooperation could also be perceived as, and even generate, a further weakening of the commitment of the North, which is not desirable. Moreover, the aims of Article 14 are poverty reduction and sustainable development. They are, however, crippled by a crucial word in the article: *endeavor*. As the commitment is limited to “endeavoring”, parties to the Convention can easily bypass this crucial article. However, if the profound and long-standing inequality in the production and distribution of cultural *texts* is to be addressed, a firm commitment to cooperation is crucial. This largely follows Article 10 of the Universal Declaration on Cultural Diversity (UNESCO, 2002), where “cooperation and solidarity” are proposed as ways to establish viable and competitive cultural industries on national and international levels, with particular attention to developing countries.

In many ways, Article 14 illustrates long-standing contradictions concerning traditional development cooperation. While it has long been argued that skills and technical know-how are available to make development work and eradicate poverty, the problem resides not in intention but in implementation. The idea that voluntary cooperation will be decisive in assuring not only the diversity of cultural expressions, but also its positive influence on development as a whole, is optimistic. The prevailing imbalance between the resources available to developed and developing countries cannot be solved by mere technical and minor financial intervention.

This article of the 2005 Convention echoes the optimism conveyed in Truman’s approach to development in 1949, where “[f]or the first time in history, humanity possesses the knowledge and the skill to relieve suffering”, stressing that “greater production is the key to prosperity and peace. And the key to greater production is a wider and more vigorous application of modern scientific and technical knowledge” (Truman 1949 in Escobar, 1995, p. 3). The implicit claim made by Truman, and by extension Article 14, is twofold. First, the problem is not systemic, but particular, as the relatively weak position of many “developing” countries is intrinsic, and not extrinsic to their condition. Second, solving these intrinsic issues can be accomplished by investing in known solutions (as suggested in Article 14), and the ways cultural expressions are created and circulated should adjust in order to become viable and part of a global economic marketplace. This entails no transformative idea

of development, only the reproduction of a status quo that developing countries are to attain.

This does not mean, however, that no cooperation is possible or useful, or that no transfers of ideas, skills, or practices are desirable. There is, actually, ample space for this, as evidenced in a volume that addresses the negotiation processes and backgrounds of all articles of the Convention in detail (von Schorlemer & Stoll, 2012). Regarding Article 14, dos Santos-Duisenberg (2012) clarifies that the place of cooperation for development was firmly established from the start of the notations of the Convention, through the drafts and towards the final version. While debates were held on the application of this idea in practice, it was clear that both North–South and South–South cooperation would feature in this approach. Yet, the implementation does not correspond to the scale of the matters that the Convention is meant to address, which brings us to the issues of scope. The following section expands on these concrete dimensions and their limitations in greater detail.

Operationalization: What does the UNESCO Convention add?

This section explores four of the main ways that the 2005 Convention actively engages or influences the link between culture and sustainable development. The first part, on the International Fund for Cultural Diversity, is directly linked to the Convention, whereas the other parts address efforts that exist in conjunction, rather than in direct relation, to the Convention. The latter parts are the Culture and Development Indicator Suite (CDIS), the Millennium Development Goals Achievement Fund (MDG-F), and UNESCO’s “special edition” of the Creative Economy Report (UNESCO and UNDP, 2013).

International Fund for Cultural Diversity

The International Fund for Cultural Diversity (IFCD) is the direct operational instrument of the 2005 Convention, which serves to support its aims in developing countries that are parties to the Convention. The IFCD has been active since 2010. By the end of 2013, it had raised a total US\$6.4 million of which US\$4.6 million has helped to support 71 projects from 43 countries (UNESCO, 2014c). The demand for support from the fund, however, far exceeds its capacity. In 2013 alone, only 10 out of 56 eligible proposals have been funded, and 140 more were dismissed as ineligible.

The IFCD primarily relies on voluntary contributions from states parties to the 2005 Convention, although it also welcomes donations from individuals. The limited availability of funds is largely due to such voluntary nature of the commitments. While Article 18(7) clearly stipulates the aim to provide contributions on a regular basis, it remains voluntary and parties only commit to “endeavor” to do so. They are, however, encouraged to provide an annual contribution to the IFCD of at least 1% of their overall contribution to UNESCO, as is done on a non-voluntary basis for the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) and the Convention for the Safeguarding of Intangible Cultural Heritage (2003). Contributions to the IFCD have recently been considered as fully eligible as official development assistance (ODA), which constitutes an additional incentive for donor countries to channel funding through this mechanism.

The IFCD supports activities of a variety of actors, including civil society (NGOs), state parties, and international NGOs. Funded activities are classified as “cultural policies” or “cultural industries” initiatives, receiving respectively some US\$1.5 million and US\$2.4 million (UNESCO, 2014c). There is also a considerable disparity and fluctuation in funds received per segment of the cultural sector, see Table 13.1. (For a list of projects funded, see UNESCO, 2012a; UNESCO & UNDP, 2013.)

While compelling initiatives and activities have come to fruition thanks to the IFCD, the limited resources available constrain the initiatives towards the implementation of the 2005 Convention in the developing countries that are parties to the Convention. Moreover, the contrast between the high number of funding applications (196 in 2013) and the limited number of eligible projects could indicate that the procedure may be too complex and thus limiting, and that the focus and the activities envisaged by the Conference of Parties (Article 22) may not correspond to the needs perceived by governments and other stakeholders. This indicates that actions related to the 2005 Convention are essentially donor-driven and insufficiently rooted in bottom-up action (see Anheier and Hoelscher, Chapter 12).

Culture-Development Indicator Suite (CDIS)

The CDIS emerges out of a decade-old background of different efforts at developing cultural indicators, some of them explicitly linking culture to development.³ The CDIS was created by UNESCO after consultations with several experts and bears an explicit objective of linking operational and advocacy activity with research work.

Table 13.1 Project funding per cultural domain and per cycle (in US\$)

	2010	2011	2012	2013	2014	TOTAL
Music	235,164.00	360,115.00	143,986.00	166,442.93	255,763.00	1,161,470.93
Cinema/Audiovisual	321,797.00	213,280.00	0.00	273,332.00	135,418.00	943,827.00
Publishing	124,985.00	26,000.00	0.00	283,878.00	100,000.00	534,863.00
Performing Arts	281,088.00	95,115.00	93,101.00	171,767.56	100,000.00	741,071.56
Media Arts	79,500.00	0.00	0.00	0.00	0.00	79,500.00
Visual Arts	169,500.00	65,000.00	181,806.00	73,514.93	0.00	489,820.93
Design/Crafts	26,563.00	146,000.00	32,701.00	0.00	99,600.0	304,864.00
TOTAL	1,238,597.00	905,510.00	451,594.00	968,935.42	690,781.00	4,255,417.42

Source: <http://en.unesco.org/creativity/ifcd/statistics-funded-projects>.

The CDIS comprises seven interlinked socioeconomic dimensions that should guide policy-making. Interestingly, the first dimension that comes up is always the economy, whose weight in the process runs contrary to the implicit understanding in the 2005 Convention that the different dimensions of culture (social, environmental, political) have just an equal weight as the economy. The economic dimension is then followed by indicators on education; heritage; communication; governance; social participation; gender equality. Each of these dimensions, or policy areas, has a number of subdimensions, which are then operationalized into indicators.

The CDIS proceeds through the implementation of a number of pilots in different developing countries. While it is explicitly designed to implement Article 13 of the Convention, its application is restricted to developing countries and is (as of 2014) funded exclusively by the Spanish Agency for International Development Cooperation (AECID). This has two implications in terms of interpretation and analysis of the consequentiality of this instrument. It perpetuates the schism between the developed world and the developing world, by building on Article 13 as if it were meant for developing countries alone. The underlying assumption that justifies this is that policies in the developed world already effectively operationalize the link between culture and development, which is by no means a given.

A major limitation of the CDIS is the discrepancy between the vast aims and the limited funding (with Spain as sole donor), while several countries have strategies on operationalizing culture in development (Switzerland, Denmark, Sweden, Finland, Norway, Canada). This made the CDIS dependent on one donor and, in the context of a changing development aid landscape, the continuation of this initiative will depend on the extent to which it is able to harness a critical mass of support among other donors, global civil society, and developing countries themselves.

The CDIS can be described as an attempt to take into account diversity and complexity, which stumbles upon an economistic and rationalist logic that segments reality in ways that are incompatible with its proclaimed holistic thinking. The resulting ambivalence creates operational and political difficulties, as it also explicitly tries to operationalize the link between culture and development beyond “cultural expressions”.

While presenting a biased tendency towards the developing world, the CDIS nevertheless has the merit of effectively inscribing the link between culture and development on the international agenda. It proposes concrete operational ways of linking different areas, and filtering

in cultural indicators into the governmental agendas and statistical offices through its proposed methodology and toolkits. However, its level of complexity, with matrixes, indicators, and holistic approaches makes it difficult to implement by partner countries in a spontaneous manner without external technical assistance and political stimulus. It should also be noted that the CDIS is one competitor among a fierce market of international institutions trying to “sell” their statistical toolkits.

Millennium Development Goals Achievement Fund (MDG-F)

The MDG-F was established in 2006 as a substantial contribution from Spain to the achievement of the MDGs that were defined as targets for development to be implemented between 2001 and 2015. One of this fund’s thematic windows is the link between culture and development, through which 18 joint UN programmes were implemented in developing countries. The underlying normative agenda, as stated on MDG-F’s website, was to assist countries in the implementation of UNESCO’s Conventions on culture.⁴ The link of this thematic window with the 2005 Convention was officially established through Article 14, focusing almost exclusively on the creative industries’ potential of expanding “the economic and trade potential of local creativity, talent and expertise”.⁵ The underlying political agenda was meant to compensate for the absence of culture as one of the MDGs and through this programme show that culture is an integral part of development and a contributor to job creation, economic growth, and even to MDG Goal 1 of eradicating extreme poverty and hunger. This thematic window has enabled the link between culture and development to filter in to the UN agenda, although ambiguities remain regarding the actual level of commitment of both donors and beneficiary countries to this agenda.

Despite Spain’s heavy investment, and its positive spin-offs into the UN institutional system and with governments of developing countries, the MDG-F thematic window on culture and development is still, at the time of writing, a drop in the ocean and its momentum may end up having very little political impact. This observation is also in line with remarks made above concerning the CDIS, and justifies a question about the state of European development cooperation, which despite efforts at harmonization, has not reached consensus to take advantage of scale and catalytic opportunities in this area. Initiatives are scattered between countries with different levels of engagement in the culture and development agenda and the EC, which also has ambiguous commitment to this area, and has also funded some efforts independently.

Creative economy reports (CER)

The Creative Economy Reports (CER) are not directly linked to the 2005 Convention. They do, however, illustrate efforts by different United Nations agencies to place the creative economy on the international agenda. This can be seen largely at two levels. On the one hand, under the initial reports (UNCTAD & UNDP, 2008, 2010), the focus has largely been on the diversification of national exports by strengthening the creative economy. Thereby, the focus has been on trade in creative goods and services, emanating from the cultural and creative industries. In 2013, the special edition of the CER, “Widening Local Development Pathways” (UNESCO & UNDP, 2013), opened up an approach that is far more culture-oriented than previous reports. The underlying aim of this change was to support advocacy efforts to take culture seriously in the global development agenda, which would replace the MDGs that expire in 2015. As such, the scope and engagement of the special edition of the CER widened considerably. While the engagement with culture is extended beyond the diversity of cultural expressions, the link of the CER with sustainable development remains weak. Even though they argue that culture should be the *central* pillar of sustainable development (UNESCO & UNDP, 2013, p. 51), it is not clear what this means in practice.

What the 2005 Convention and the CER have in common at this point, is that they both tend to conflate claims commonly made about “culture” as a way of life and a pattern of living with an agenda focused on cultural (or creative) industries, even though the Convention does not ostensibly focus on the former notion of culture. Yet, precisely because these notions of culture are different, the claims about the role of culture in the anthropological sense do not necessarily apply to culture as expression (or industry). It is, however, in the broader cultural understanding of culture that transformational changes towards sustainable development are likely to take place. While cultural expressions can help to make such transformations (through explicitly environmentally aware expressions), many do not contribute to advancing a transformative sustainability in praxis (Maxwell & Miller, 2012) or in their message (most pop-music, for example, promotes lifestyles antithetical to sustainability). In the link between cultural or creative industries and sustainable development, two buzzwords find each other. But, upon closer examination, the link between the concepts is thin.

In sum, the four mechanisms and initiatives above (IFCD, CDIS, MDG-F, and CER) in fact operate within what we called the “mainstream model” of sustainable development and development cooperation, and their transformative potential is limited.

The potential, revisited: What can the 2005 Convention still add?

As stated above, the 2005 Convention combines the goal of sustainable development and of development cooperation. The current global agenda is moving towards an actual merger of these two distinct but related realms. There is little doubt that a global agenda should continue to assert the catalytic role of international instruments towards development. However, the development debate is no longer exclusively focused on developing countries. It has shifted to embrace a global agenda of development post-2015 where all countries are implicated, some as donors, some as agents of their own development, some as both, and all with responsibilities regarding sustainability. At the time of writing, an intergovernmental open working group (OWG) is debating which areas should be included with specific goals and indicators for the future SDGs that will follow the MDGs.

The MDG framework was a powerful driving force of development cooperation efforts, with positive aspects and also downsides: it catalysed efforts and funding to essential needs but it also established universal standards that were not always well adjusted to the specific needs and initial conditions of developing countries. It also did not sufficiently focus on environmental sustainability and was largely donor-driven.

Despite some uncertainty that culture will be taken up explicitly in the SDGs, there are now indications that this may happen.⁶ Given the globally important normative and agenda-setting nature of these goals, inclusion or exclusion of culture makes all the difference for the future implementation of commitments in the area of culture and cultural diversity, including the allocation of funds.

In the race towards this new global development framework, UNESCO has led an ambitious strategy of including culture as a fundamental dimension of development, with mixed results. On the one hand it successfully negotiated several General Assembly (GA) resolutions stressing the link⁷; it placed the issue for discussion as a major topic in 2013's Annual Ministerial Review of the Economic and Social Council (ECOSOC); it secured funding for IFCD recognized as valid

ODA accounting in the OECD Development Aid Committee; it organized with China a major international conference on the issue in Beijing in 2013; and it included the topic as a major issue in the World Culture Forum in Bali in 2013.

On the other hand, UNESCO let culture slip off the high-level panel (HLP) report (High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, 2013) that produced the initial agenda for the post-MDG period, despite the open commitment to the issue from the President of Indonesia and co-chair of the HLP. The link between culture and development is likely to appear in some form in the future SDG agenda, as recommended in the latest General Assembly resolution on the issue, but the possibilities of actual funding are slim, with Spain reducing its development cooperation funding, and the rest of Europe downsizing its commitments and becoming more hawkish in terms of development and unclear about joint priorities. It is uncertain who will take over operational support to continue showing the relevance of the agenda.

As mentioned above, the continued engagement with the link between culture and sustainability in development will be dependent on emerging economies that may also take a more significant place as donors, such as China or Indonesia, whose interest in social development is also open to question and clarification. Moreover, their political and economic interests dominate the practical and strategic focus on the operationalization of the link between culture and the SDGs. Given the difficulties in many developing countries in implementing inter-ministerial communication and coordination channels, together with the preponderance of finance ministries in policy-making and the almost non-existence of culture ministries with weight inside governments, it is difficult to predict that these countries will on their own continue to implement a culture-development-focused agenda if it is dominated by economic or diplomatic interests, with cultural diplomacy becoming predominant (see Figueira, Chapter 11). In such a scenario, unless countries see an interest in culture, and such potential interest is normally argued through the creative industries or tourism, continued emphasis on the link will decline.

In the midst of all this emphasis on culture, it also remains to be seen what will be the role of cultural diversity. Considering that the debate is focusing on the creation of yet another set of universalizing indicators, it is hard to see how cultural diversity will contribute to a transformative sustainable development. The link between culture and development is expanding to the global sustainable development agenda but is still prey

to the same economy-driven model. It is necessary to go beyond strict categorizations in order to explore explicitly normative questions about the role of culture and of cultural diversity in promoting transformative sustainable development.

Merging sustainability and development agendas at global level, however, represents an opportunity for UNESCO to go beyond the traditional strict distinctions of developed and developing countries and to argue for a bold agenda that firmly encompasses all countries in the implementation of Articles 13 and 14. One way of seeing this opportunity is by exploring the explicitly normative questions that can be asked, and *should* be asked when discussing sustainable development in a global context. Appadurai (2004, 2013), for example, focuses on the *capacity to aspire* as a way to (re)think the future. Culture, he argues, has been placed too much in the past, as it has been equated with terms such as habit, custom, heritage, and tradition (Appadurai, 2013, p. 180). This, in contrast with economics, that “has become the science of the future” (Appadurai, 2013, p. 180). Taking culture more seriously as a locus of imagination could help to open up a greater normative diversity towards the future. Appadurai, however, warns against the inequality in the distribution of the capacity to aspire:

[The capacity to aspire] is a sort of meta-capacity, and the relatively rich and powerful invariably have a more fully developed capacity to aspire. It means that the better off you are (in terms of power, dignity, and material resources), the more likely you are to be conscious of the links between the more and less immediate objects of aspiration.
(2013, p. 188)

As such, efforts should be made at the international level to engage particularly those who are less inclined, used to, or able to engage in debates about the possibilities (and limitations) of the future. This is even more important given the tendency of “development” issues to shift from a geographic realm to a social realm. At this point, the upper middle classes of Lagos, Mumbai, La Paz, or Jakarta have more in common with the social elites in London, Moscow, or New York than many of their fellow urbanites, and the same goes for the subaltern populations of these cities. Bearing in mind this social stratification, the need to consider the importance of the capacities of *all* sociocultural groups to engage in the imagining of the future, through their respective capacities to aspire, is the challenge that binds culture and sustainability today.

Conclusion

While the 2005 Convention explicitly links cultural diversity to sustainable development and development cooperation, this link is insufficient and weak. The way that Articles 13 and 14–18 focus on this link is a necessary step, but it fails to incorporate transformative sustainability that does not rely on the classical economic and utilitarian models. As a result, it focuses merely on mainstream sustainability, where the economic still dominates all other fields. The operationalizing efforts of the Convention and related initiatives, such as the IFCD, the CDIS, the MDG-F, and the CERs largely fail to move beyond this realm as well. Yet, culture particularly matters in relation to the transformational potential of sustainability-thinking. The link between culture and sustainable development (Article 13) and cooperation for development (Article 14) in the 2005 Convention are not serious attempts to engage with either sustainability or the global political economy of cultural production. These buzzwords “diversity” and “sustainability” hide the actual aim of the Convention: providing a legal framework for the *exception culturelle* against WTO negotiations.

However, beyond the 2005 Convention, the link between culture and sustainability is not without contradiction. As a result, it bears obstacles to the fulfilment of the Convention’s potential, such as a degree of ambivalence in its object, lack of sufficient scope, and of real commitment to transformative development models. This is due partly to the fact that the link between culture and development has been acknowledged more widely than is the case with the link between culture and sustainability. Yet the ambivalence is both the weakness and the strength of the Convention: while there is no clear prescription to engage with sustainability, the legal framework allows for action in a variety of ways.

While the Convention oscillates between centralized decision-making and market approaches to the governance of diversity, there is in fact greater need for more networked governance that builds on interdependence and empathy towards a culture of pluralism and tolerance (Meuleman, 2013, p. 55). The Convention provides visibility for the link between cultural diversity and sustainable development, but does not have the breadth to deal with sustainability in a transformative way and with cultural diversity beyond cultural expressions. While the Convention provides a framework that allows for transformative shifts towards sustainable development, decisive action in this regard remains

voluntary and dependent on the willingness of parties to read these elements in the text.

Notes

1. "Cultural diversity is a rich asset for individuals and societies. The protection, promotion and maintenance of cultural diversity are an essential requirement for sustainable development for the benefit of present and future generations" (UNESCO, 2005a, p. 4).
2. The MDGs are the UN development agenda for the period 2000–2015. This framework provides eight quantifiable goals: (1) eradicate extreme hunger and poverty; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria, and other diseases; (7) ensure environmental sustainability; and (8) global partnership for development. The negotiations for the follow-up of this agenda is tentatively called the "post-2015" development agenda, because it covers the period after the expiration of the MDGs and no definitive delineation of these aims (as of June 2014) has been decided.
3. For a comprehensive overview, see UNESCO (2010), *Towards a UNESCO Suite of indicators on Culture and Development (2009–2010) Literature Review*, available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Conv2005_CDindicators_Literature.pdf, accessed 7 June 2014.
4. The Joint Programmes and the UNESCO Culture Conventions, available at <http://www.unesco.org/new/en/culture/achieving-the-millennium-development-goals/Conventions/> accessed 5 February 2014.
5. Millennium Development Goals Fund (MDG-F) Terms of Reference, available at http://www.mdgfund.org/sites/default/files/MDGFTOR_Culture_FinalVersion%2017May%202007_English.pdf, accessed 5 February 2014.
6. UNGA A/68/440/Add.4, *Globalization and interdependence: culture and development*, 13 December 2013, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/68/440/Add.4, accessed 5 February 2014.
7. Despite differences of perspective at the global level, the topic was clearly recognized as important at the UN Summit on the MDGs in 2010, http://www.un.org/en/mdg/summit2010/pdf/outcome_documentN1051260.pdf, accessed 18 August 2014, and reiterated in the following year on a General Assembly resolution on culture and development, available at http://www.un.org/en/mdg/summit2010/pdf/outcome_documentN1051260.pdf, accessed 18 August 2014. Another fundamental resolution was http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/223, accessed 18 August 2014.

Conclusions: Theories, Methods, and Evidence

J. P. Singh

The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions provides an international policy lens for analysing broad debates on issues of cultural globalization and development. The authors in this volume bring to the fore an interdisciplinary set of understandings while examining cultural globalization conceived in terms of artistic expressions and entertainment industries, or broadly portrayed in an anthropological way, as the rituals, symbols, and practices of everyday life. The broad gamut of theories, methods, and evidence collected in this volume outline UNESCO's accomplishments, shortcomings, and future policy prospects.

Theorizing culture and cultural diversity

In theorizing culture, the collective heritage and practices of groups, the authors in this volume have dealt with boundary issues of culture as art and everyday life, power and exclusion, and the context of broad debates within which cultural policies such as the 2005 Convention are foregrounded.

Almost all the authors in this volume agree that as representational forms, culture as art and culture as everyday life are related. Christoph Wulf (Chapter 9) notes that both can be understood as performative practices. Nevertheless, understanding what culture or cultural diversity means depends on context – historical and institutional (Saouma and Isar, Chapter 4). Isar and Pyykkönen (Chapter 1) refer to the confusion around the term culture and the polysemy that surrounds notions of cultural diversity. Given this context, the 2005 Convention is an international bureaucratic triumph bringing rule-making to a slippery concept.

Another area of agreement is that despite the differences in meaning, power undergirds any notion of culture, including that of creative artefacts. For example, the 2005 Convention reveals the power of nation-states to impose their meanings over those of other cultural groups. Nevertheless, it has also empowered international organizations through its implementation, for example, UNESCO through its data and reports collection (Anheier and Hoelscher, Chapter 12; De Beukelaer and Freitas, Chapter 13). Anheier and Hoelscher also note that civil society may be important for understanding implementation. Thus, while the 2005 Convention reveals state interests, in an instrumental fashion, it also empowers other actors in its distributive impacts.

Power is not just instrumental: it has a social and transformational dimension – it is a process of meaning-making and can serve to discipline subjects through subtler means. I have argued in the past that highly interactive processes are conducive to changes in meaning, a process that I have termed “metapower” (Singh, 2013). Negotiations are an example. The meaning attached to cultural diversity in the 2005 Convention can be understood as arising from the negotiation interactions that created the convention and its predecessor, the 2001 Declaration on Cultural Diversity. Isar and Pyykkönen (Chapter 1) call attention to another aspect of the social power embedded in these negotiations. The multiple meanings embedded in the term cultural diversity were important for the convention’s ratification. However, the convention has created a series of rules and procedures that make culture governable and specify who is to be governed, thus invoking Foucault’s notion of governmentality. They cite Pyykkönen (2012, pp. 548–549) to argue the following: “Governmentalization of culture refers to all those practices, actions and processes through which culture as a subject and object becomes governable better and more comprehensive than before according to the leading rationalities, such as market economy or diversity of expressions.”

The West remains another locus of power in the creation and implementation of the 2005 Convention. Clammer (Chapter 7) conveys the sentiment directly, calling the convention “an oddly Western document” reflecting the imbalances among states from globalization. De Beukelaer and Freitas (Chapter 13) examine this process from the global South’s perspective to argue that the document insufficiently engages issues of development, let alone sustainable development.

The meaning-making and power processes inherent in the convention are also about trying to incorporate or, in a few cases, avoid broader issues. Therefore, cultural diversity is more or less defined in terms of

cultural products, leaving aside broad issues of how societies themselves might view diversity. France and many European nations, protagonists pushing for the convention, have questionable records on cultural diversity within their borders, constitutionally barred in some cases from keeping “data” on religious or ethnic minorities, the very groups that often feel excluded in many other ways from governance and various forms of citizenship. Saouma and Isar (Chapter 4) note that the convention was not designed to deal with the “right to be different” or “to cover cultural diversity per se, understood as cultural differences between human groups”. However, in being a convention that nevertheless speaks to cultural diversity, there are other issues here that warrant mention, especially those concerning human and cultural rights, both of which can be conceptualized in universal or particularistic terms and not just about the “right to be different”. Donders (Chapter 8) takes a view that supplements that of Isar and Pyykkönen to argue that the convention is about human rights: “It is interesting to note that the convention speaks of ‘human rights’ and does not refer to ‘cultural rights’. Various persons involved in the drafting process explained that it was felt by many member states that ‘cultural rights’ could be interpreted too narrowly.”

The 2005 Convention’s ontological confusions become apparent as multiple perspectives are brought to bear upon its theoretical foundations. Culture is broadly conceived but cultural products are, in practice and for data collection, narrowly defined. Cultural diversity is explicitly mentioned, but cultural rights are overlooked. A universal language of human rights backs the convention’s claims, but Western powers and ontologies guide its creation and implementation. Of course, these issues extend beyond UNESCO and also reflect the debates of global governance in a flatter world than that of the immediate post-war era. The 2005 UNESCO Convention, then, merely marks another moment in our current global governance debates, rather than resolve any of them. However, for a 21st century debating cultural diversity in terms of cultural rights and identities at global levels, its omission in these terms in the convention text casts suspicion on the equations of power and bureaucratic functionalities that informed its creation.

Methods and evidence

Another conclusion to emerge from this book is that understanding the 2005 Convention entails multiple disciplines, methods, and forms of evidence. A partial list from this book’s investigations includes the

following fields: performance studies (Wulf, Chapter 9); history (Isar and Pyykkönen, Chapter 1; Saouma and Isar, Chapter 4; and Singh, Chapter 2); law, economics, and public policy (Loisen and Pauwels, Chapter 3; Neuwirth, Chapter 6; Donders, Chapter 8; and Guèvremont, Chapter 10); development studies (Anheier and Hoelscher, Chapter 12; De Beukelaer and Freitas, Chapter 13); and political theory (Clammer, Chapter 7). Similarly, evidence includes primary and archival sources from history, public policy, and law, as documented above, but also methods ranging from ethnography (Soini and Blanc, Chapter 5), to quantitative analysis (Anheier and Hoelscher, Chapter 12).

Despite the broad reach of the authors' perspectives, it is premature to assay the evidence from the impact of the convention even at its tenth anniversary, for the same reasons as noted in the previous discussion: the debates have just begun. Some policies in the future may need to be created on the principles of justice, fairness, or administrative efficiency. For example, the convention merely begins our investigations on whether cultural diversity, however conceived, is increased or decreased with cultural policies or protections. There is simply not enough data before or after the convention to settle this debate.

Policy options

Cultural products and cultural diversity policies are linked and part of global governance policies. This is despite tussles in the European Union over subsidiarity and national privileges over culture, or attempts in the developing world to rethink and reshape cultural identity and diversity at the local levels. Three policies areas are discussed here: trade and culture, intellectual property, and culture and development.

The impetus for the 2005 Convention arose from trade in cultural products. Evoking "cultural exception", the European Union sought to exclude cultural products from liberal trade. Many chapters in this volume, especially those from Neuwirth (Chapter 6), and Loisen and Pauwels (Chapter 3), demonstrate how these binaries do not hold. The EU also changed its framing from exceptionalism to diversity to appeal to a broad set of actors, but nevertheless the fault lines remained problematic. This is even more problematic in the current context, where the salient policy issue for cultural industries is no longer trade but intellectual property, in an age of digital media (See Guèvremont, Chapter 10). In the case of intellectual property, the European Union, the United States, and Canada have featured common interests in, for example, anxieties and material concerns about piracy within and outside of its

borders. In their trade agreements with developing countries, the United States and the EU have both imposed TRIPs-plus-type trade provisions. This refers to the added-on measures to an already stringent – from the perspective of the developing world – Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) implemented through the World Trade Organization.

Cultural production in an era of digital technologies also makes moot cultural policies that reflect “analog” technologies. As I have noted in Chapter 2, the 2005 Convention was not formulated to account for 1.4 billion Facebook users, 1 billion YouTube users per month, or the 650 million Twitter users. The trials and tribulations of a global humanity in digital spaces, or its homophily effects to include and exclude groups, takes on dimensions at most times quite different from the national logic of the convention. Cultural and public diplomacy does take advantage of social media and digital technologies to produce favourable impressions of the nation-state (see Figueira, Chapter 11), but equally these technologies also reveal the nation-state’s fissures and emergent forms of social and political organization. The cultural productions in these social media reveal national imaginaries, but also those that are transnational, diasporic, or local. The Tamil song “Why This Kolaveri D” has garnered 87 million views on YouTube, Gangnam style 2.2 billion, and various videos of the samba-dancing baby from Brazil had over 10 million views.¹ Furthermore, all three of these videos produced mimetics and productions in various languages and cultures. This is a fairly crude and simplistic way to outline the cultural diversities and syntheses of a digital era, but they underscore an important element: cultural diversity in an era of digital technologies and social media is hardly understood.

Trade and cultural production make explicit issues of development in a way that culture provides the foundation for development. Cultural production might entail the ability of the oppressed to name their world (Freire, 1993; Singh, 2008) or for them to traverse a path that is both economically and culturally sustainable (De Beukelaer and Freitas, Chapter 13). Culture is thus the underlying layer upon which the edifice of development is constructed, rather than another variable to be included. As many authors note here, the convention continues the work begun at the 1982 World Conference on Cultural Policies in Mexico City, the UN World Commission on Culture and Development appointed in 1991, and the latter’s report entitled *Our Creative Diversity* (WCCD, 1996).

The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions helps us deconstruct the ontologies and epistemologies of globalization, culture, and development. As a lens, the Convention provides a focus for understanding the interconnections among these broad issues. Any perspective, by definition, is limited in its boundaries. This conclusion suggests that issues of power, exclusion/inclusion, technologies, evidence, and impact are far from settled. In another ten years, we may have further enriched our understandings.

Note

1. For Why This Kolaveri D, see: <https://www.youtube.com/watch?v=YR12Z8f1Dh8>. For Gangnam Style, see: <https://www.youtube.com/watch?v=9bZkp7q19f0>. For Samba-dancing baby, see: <https://www.youtube.com/watch?v=-X0AamE1Bxs>, accessed 15 December 2014.

Appendix: The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions

The General Conference of the United Nations Educational, Scientific, and Cultural Organization, meeting in Paris from 3 to 21 October 2005 at its 33rd session,

Affirming that cultural diversity is a defining characteristic of humanity,

Conscious that cultural diversity forms a common heritage of humanity and should be cherished and preserved for the benefit of all,

Being aware that cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for communities, peoples and nations,

Recalling that cultural diversity, flourishing within a framework of democracy, tolerance, social justice and mutual respect between peoples and cultures, is indispensable for peace and security at the local, national and international levels,

Celebrating the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments,

Emphasizing the need to incorporate culture as a strategic element in national and international development policies, as well as in international development cooperation, taking into account also the United Nations Millennium Declaration (2000) with its special emphasis on poverty eradication,

Taking into account that culture takes diverse forms across time and space and that this diversity is embodied in the uniqueness and plurality of the identities and cultural expressions of the peoples and societies making up humanity,

Recognizing the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion,

Recognizing the need to take measures to protect the diversity of cultural expressions, including their contents, especially in situations where cultural expressions may be threatened by the possibility of extinction or serious impairment,

Emphasizing the importance of culture for social cohesion in general, and in particular its potential for the enhancement of the status and role of women in society,

Being aware that cultural diversity is strengthened by the free flow of ideas, and that it is nurtured by constant exchanges and interaction between cultures,

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

Recognizing that the diversity of cultural expressions, including traditional cultural expressions, is an important factor that allows individuals and peoples to express and to share with others their ideas and values,

Recalling that linguistic diversity is a fundamental element of cultural diversity, and reaffirming the fundamental role that education plays in the protection and promotion of cultural expressions,

Taking into account the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, as manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit them for their own development,

Emphasizing the vital role of cultural interaction and creativity, which nurture and renew cultural expressions and enhance the role played by those involved in the development of culture for the progress of society at large,

Recognizing the importance of intellectual property rights in sustaining those involved in cultural creativity,

Being convinced that cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value,

Noting that while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, they also represent a challenge for cultural diversity, namely in view of risks of imbalances between rich and poor countries,

Being aware of UNESCO's specific mandate to ensure respect for the diversity of cultures and to recommend such international agreements as may be necessary to promote the free flow of ideas by word and image,

Referring to the provisions of the international instruments adopted by UNESCO relating to cultural diversity and the exercise of cultural rights, and in particular the Universal Declaration on Cultural Diversity of 2001,

Adopts this Convention on 20 October 2005.

I. Objectives and guiding principles

Article 1 – Objectives

The objectives of this Convention are:

- (a) to protect and promote the diversity of cultural expressions;
- (b) to create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner;

- (c) to encourage 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;
- (d) to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples;
- (e) to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels;
- (f) to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of the true value of this link;
- (g) to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;
- (h) to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;
- (i) 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.

Article 2 – Guiding principles

1. Principle of respect for human rights and fundamental freedoms

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.

2. Principle of sovereignty

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.

3. Principle of equal dignity of and respect for all cultures

The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.

4. Principle of international solidarity and cooperation

International cooperation and solidarity should be aimed at enabling countries, especially developing countries, to create and strengthen their means of cultural expression, including their cultural industries, whether nascent or established, at the local, national and international levels.

5. *Principle of the complementarity of economic and cultural aspects of development*

Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy.

6. *Principle of sustainable development*

Cultural diversity is a rich asset for individuals and societies. The protection, promotion and maintenance of cultural diversity are an essential requirement for sustainable development for the benefit of present and future generations.

7. *Principle of equitable access*

Equitable access to a rich and diversified range of cultural expressions from all over the world and access of cultures to the means of expressions and dissemination constitute important elements for enhancing cultural diversity and encouraging mutual understanding.

8. *Principle of openness and balance*

When States adopt measures to support the diversity of cultural expressions, they should seek to promote, in an appropriate manner, openness to other cultures of the world and to ensure that these measures are geared to the objectives pursued under the present Convention.

II. Scope of application

Article 3 – Scope of application

This Convention shall apply to the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions.

III. Definitions

Article 4 – Definitions

For the purposes of this Convention, it is understood that:

1. *Cultural diversity*

“Cultural diversity” refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies.

Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

2. Cultural content

“Cultural content” refers to the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities.

3. Cultural expressions

“Cultural expressions” are those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.

4. Cultural activities, goods and services

“Cultural activities, goods and services” refers to those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services.

5. Cultural industries

“Cultural industries” refers to industries producing and distributing cultural goods or services as defined in paragraph 4 above.

6. Cultural policies and measures

“Cultural policies and measures” refers to those policies and measures relating to culture, whether at the local, national, regional or international level that are either focused on culture as such or are designed to have a direct effect on cultural expressions of individuals, groups or societies, including on the creation, production, dissemination, distribution of and access to cultural activities, goods and services.

7. Protection

“Protection” means the adoption of measures aimed at the preservation, safeguarding and enhancement of the diversity of cultural expressions.

“Protect” means to adopt such measures.

8. Interculturality

“Interculturality” refers to the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect.

IV. Rights and obligations of Parties

Article 5 – General rule regarding rights and obligations

1. The Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, reaffirm 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.

2. When a Party implements policies and takes measures to protect and promote the diversity of cultural expressions within its territory, its policies and measures shall be consistent with the provisions of this Convention.

Article 6 – Rights of parties at the national level

1. Within the framework of its cultural policies and measures as defined in Article 4.6 and taking into account its own particular circumstances and needs, each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory.
2. Such measures may include the following:
 - (a) regulatory measures aimed at protecting and promoting diversity of cultural expressions;
 - (b) measures that, in an appropriate manner, provide opportunities for domestic cultural activities, goods and services among all those available within the national territory for the creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services, including provisions relating to the language used for such activities, goods and services;
 - (c) measures aimed at providing 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;
 - (d) measures aimed at providing public financial assistance;
 - (e) 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;
 - (f) measures aimed at establishing and supporting public institutions, as appropriate;
 - (g) measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions;
 - (h) measures aimed at enhancing diversity of the media, including through public service broadcasting.

Article 7 – Measures to promote cultural expressions

1. Parties shall endeavour to create in their territory an environment which encourages individuals and social groups:
 - (a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples;
 - (b) to have access to diverse cultural expressions from within their territory as well as from other countries of the world.

2. Parties shall also endeavour to recognize the important contribution of artists, others involved in the creative process, cultural communities, and organizations that support their work, and their central role in nurturing the diversity of cultural expressions.

Article 8 – Measures to protect cultural expressions

1. Without prejudice to the provisions of Articles 5 and 6, 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.
2. Parties may take all appropriate measures to protect and preserve cultural expressions in situations referred to in paragraph one in a manner consistent with the provisions of this Convention.
3. Parties shall report to the Intergovernmental Committee referred to in Article 23 all measures taken to meet the exigencies of the situation, and the Committee may make appropriate recommendations.

Article 9 – Information sharing and transparency

Parties shall:

- (a) provide appropriate information in their reports to UNESCO every four years on measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level;
- (b) designate a point of contact responsible for information sharing in relation to this Convention;
- (c) share and exchange information relating to the protection and promotion of the diversity of cultural expressions.

Article 10 – Education and public awareness

Parties shall:

- (a) encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, inter alia, through educational and greater public awareness programmes;
- (b) cooperate with other Parties and international and regional organizations in achieving the purpose of this article;
- (c) endeavour to encourage creativity and strengthen production capacities by setting up educational, training and exchange programmes in the field of cultural industries. These measures should be implemented in a manner which does not have a negative impact on traditional forms of production.

Article 11 – Participation of civil society

Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active

participation of civil society in their efforts to achieve the objectives of this Convention.

Article 12 – Promotion of international cooperation

Parties shall endeavour to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions, taking particular account of the situations referred to in Articles 8 and 17, notably in order to:

- (a) facilitate dialogue among Parties on cultural policy;
- (b) enhance public sector strategic and management capacities in cultural public sector institutions, through professional and international cultural exchanges and sharing of best practices;
- (c) reinforce partnerships with and among civil society, non-governmental organizations and the private sector in fostering and promoting the diversity of cultural expressions;
- (d) promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions;
- (e) encourage the conclusion of co-production and co-distribution agreements.

Article 13 – Integration of culture in sustainable development

Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions.

Article 14 – Cooperation for development

Parties shall endeavour to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector by, inter alia, the following means:

- (a) the strengthening of the cultural industries in developing countries through:
 - (i) creating and strengthening cultural production and distribution capacities in developing countries;
 - (ii) facilitating wider access to the global market and international distribution networks for their cultural activities, goods and services;
 - (iii) enabling the emergence of viable local and regional markets;
 - (iv) adopting, where possible, appropriate measures in developed countries with a view to facilitating access to their territory for the cultural activities, goods and services of developing countries;
 - (v) providing support for creative work and facilitating the mobility, to the extent possible, of artists from the developing world;
 - (vi) encouraging appropriate collaboration between developed and developing countries in the areas, inter alia, of music and film;

- (b) capacity-building through the exchange of information, experience and expertise, as well as the training of human resources in developing countries, in the public and private sector relating to, inter alia, strategic and management capacities, policy development and implementation, promotion and distribution of cultural expressions, small-, medium- and micro-enterprise development, the use of technology, and skills development and transfer;
- (c) technology transfer through the introduction of appropriate incentive measures for the transfer of technology and know-how, especially in the areas of cultural industries and enterprises;
- (d) financial support through:
 - (i) the establishment of an International Fund for Cultural Diversity as provided in Article 18;
 - (ii) the provision of official development assistance, as appropriate, including technical assistance, to stimulate and support creativity;
 - (iii) other forms of financial assistance such as low interest loans, grants and other funding mechanisms.

Article 15 – Collaborative arrangements

Parties shall encourage the development of partnerships, between and within the public and private sectors and non-profit organizations, in order to cooperate with developing countries in the enhancement of their capacities in the protection and promotion of the diversity of cultural expressions. These innovative partnerships shall, according to the practical needs of developing countries, emphasize the further development of infrastructure, human resources and policies, as well as the exchange of cultural activities, goods and services.

Article 16 – Preferential treatment for developing countries

Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.

Article 17 – International cooperation in situations of serious threat to cultural expressions

Parties shall cooperate in providing assistance to each other, and, in particular to developing countries, in situations referred to under Article 8.

Article 18 – International Fund for Cultural Diversity

1. An International Fund for Cultural Diversity, hereinafter referred to as “the Fund”, is hereby established.
2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.
3. The resources of the Fund shall consist of:
 - (a) voluntary contributions made by Parties;
 - (b) funds appropriated for this purpose by the General Conference of UNESCO;

- (c) contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organizations; and public or private bodies or individuals;
 - (d) any interest due on resources of the Fund;
 - (e) funds raised through collections and receipts from events organized for the benefit of the Fund;
 - (f) any other resources authorized by the Fund's regulations.
4. The use of resources of the Fund shall be decided by the Intergovernmental Committee on the basis of guidelines determined by the Conference of Parties referred to in Article 22.
 5. The Intergovernmental Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by it.
 6. No political, economic or other conditions that are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.
 7. Parties shall endeavour to provide voluntary contributions on a regular basis towards the implementation of this Convention.

Article 19 – Exchange, analysis and dissemination of information

1. Parties agree to exchange information and share expertise concerning data collection and statistics on the diversity of cultural expressions as well as on best practices for its protection and promotion.
2. UNESCO shall facilitate, through the use of existing mechanisms within the Secretariat, the collection, analysis and dissemination of all relevant information, statistics and best practices.
3. UNESCO shall also establish and update a data bank on different sectors and governmental, private and non-profit organizations involved in the area of cultural expressions.
4. To facilitate the collection of data, UNESCO shall pay particular attention to capacity-building and the strengthening of expertise for Parties that submit a request for such assistance.
5. The collection of information identified in this Article shall complement the information collected under the provisions of Article 9.

V. Relationship to other instruments

Article 20 – Relationship to other treaties: mutual supportiveness, complementarity and non-subordination

1. Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly, without subordinating this Convention to any other treaty,
 - (a) they shall foster mutual supportiveness between this Convention and the other treaties to which they are parties; and

- (b) when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention.
2. Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.

Article 21 – International consultation and coordination

Parties undertake to promote the objectives and principles of this Convention in other international forums. For this purpose, Parties shall consult each other, as appropriate, bearing in mind these objectives and principles.

VI. Organs of the Convention

Article 22 – Conference of Parties

1. A Conference of Parties shall be established. The Conference of Parties shall be the plenary and supreme body of this Convention.
2. The Conference of Parties shall meet in ordinary session every two years, as far as possible, in conjunction with the General Conference of UNESCO. It may meet in extraordinary session if it so decides or if the Intergovernmental Committee receives a request to that effect from at least one-third of the Parties.
3. The Conference of Parties shall adopt its own rules of procedure.
4. The functions of the Conference of Parties shall be, *inter alia*:
 - (a) to elect the Members of the Intergovernmental Committee;
 - (b) to receive and examine reports of the Parties to this Convention transmitted by the Intergovernmental Committee;
 - (c) to approve the operational guidelines prepared upon its request by the Intergovernmental Committee;
 - (d) to take whatever other measures it may consider necessary to further the objectives of this Convention.

Article 23 – Intergovernmental Committee

1. An Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions, hereinafter referred to as “the Intergovernmental Committee”, shall be established within UNESCO. It shall be composed of representatives of 18 States Parties to the Convention, elected for a term of four years by the Conference of Parties upon entry into force of this Convention pursuant to Article 29.
2. The Intergovernmental Committee shall meet annually.
3. The Intergovernmental Committee shall function under the authority and guidance of and be accountable to the Conference of Parties.
4. The Members of the Intergovernmental Committee shall be increased to 24 once the number of Parties to the Convention reaches 50.
5. The election of Members of the Intergovernmental Committee shall be based on the principles of equitable geographical representation as well as rotation.

6. Without prejudice to the other responsibilities conferred upon it by this Convention, the functions of the Intergovernmental Committee shall be:
 - (a) to promote the objectives of this Convention and to encourage and monitor the implementation thereof;
 - (b) to prepare and submit for approval by the Conference of Parties, upon its request, the operational guidelines for the implementation and application of the provisions of the Convention;
 - (c) to transmit to the Conference of Parties reports from Parties to the Convention, together with its comments and a summary of their contents;
 - (d) to make appropriate recommendations to be taken in situations brought to its attention by Parties to the Convention in accordance with relevant provisions of the Convention, in particular Article 8;
 - (e) to establish procedures and other mechanisms for consultation aimed at promoting the objectives and principles of this Convention in other international forums;
 - (f) to perform any other tasks as may be requested by the Conference of Parties.
7. The Intergovernmental Committee, in accordance with its Rules of Procedure, may invite at any time public or private organizations or individuals to participate in its meetings for consultation on specific issues.
8. The Intergovernmental Committee shall prepare and submit to the Conference of Parties, for approval, its own Rules of Procedure.

Article 24 – UNESCO Secretariat

1. The organs of the Convention shall be assisted by the UNESCO Secretariat.
2. The Secretariat shall prepare the documentation of the Conference of Parties and the Intergovernmental Committee as well as the agenda of their meetings and shall assist in and report on the implementation of their decisions.

VII. Final clauses

Article 25 – Settlement of disputes

1. In the event of a dispute between Parties to this Convention concerning the interpretation or the application of the Convention, the Parties shall seek a solution by negotiation.
2. If the Parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.
3. If good offices or mediation are not undertaken or if there is no settlement by negotiation, good offices or mediation, a Party may have recourse to conciliation in accordance with the procedure laid down in the Annex of this Convention. The Parties shall consider in good faith the proposal made by the Conciliation Commission for the resolution of the dispute.
4. Each Party may, at the time of ratification, acceptance, approval or accession, declare that it does not recognize the conciliation procedure provided for above. Any Party having made such a declaration may, at any time, withdraw this declaration by notification to the Director-General of UNESCO.

Article 26 – Ratification, acceptance, approval or accession by Member States

1. This Convention shall be subject to ratification, acceptance, approval or accession by Member States of UNESCO in accordance with their respective constitutional procedures.
2. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director-General of UNESCO.

Article 27 – Accession

1. This Convention shall be open to accession by all States not Members of UNESCO but members of the United Nations, or of any of its specialized agencies, that are invited by the General Conference of UNESCO to accede to it.
2. This Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but which have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.
3. The following provisions apply to regional economic integration organizations:
 - (a) This Convention shall also be open to accession by any regional economic integration organization, which shall, except as provided below, be fully bound by the provisions of the Convention in the same manner as States Parties;
 - (b) In the event that one or more Member States of such an organization is also Party to this Convention, the organization and such Member State or States shall decide on their responsibility for the performance of their obligations under this Convention. Such distribution of responsibility shall take effect following completion of the notification procedure described in subparagraph (c). The organization and the Member States shall not be entitled to exercise rights under this Convention concurrently. In addition, regional economic integration organizations, in matters within their competence, shall exercise their rights to vote with a number of votes equal to the number of their Member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice-versa;
 - (c) A regional economic integration organization and its Member State or States which have agreed on a distribution of responsibilities as provided in subparagraph (b) shall inform the Parties of any such proposed distribution of responsibilities in the following manner:
 - (i) in their instrument of accession, such organization shall declare with specificity, the distribution of their responsibilities with respect to matters governed by the Convention;
 - (ii) in the event of any later modification of their respective responsibilities, the regional economic integration organization shall inform

the depositary of any such proposed modification of their respective responsibilities; the depositary shall in turn inform the Parties of such modification;

- (d) Member States of a regional economic integration organization which become Parties to this Convention shall be presumed to retain competence over all matters in respect of which transfers of competence to the organization have not been specifically declared or informed to the depositary;
 - (e) "Regional economic integration organization" means an organization constituted by sovereign States, members of the United Nations or of any of its specialized agencies, to which those States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to become a Party to it.
4. The instrument of accession shall be deposited with the Director-General of UNESCO.

Article 28 – Point of contact

Upon becoming Parties to this Convention, each Party shall designate a point of contact as referred to in Article 9.

Article 29 – Entry into force

1. This Convention shall enter into force three months after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession, but only with respect to those States or regional economic integration organizations that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.
2. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by Member States of the organization.

Article 30 – Federal or non-unitary constitutional systems

Recognizing that international agreements are equally binding on Parties regardless of their constitutional systems, the following provisions shall apply to Parties which have a federal or non-unitary constitutional system:

- (a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those Parties which are not federal States;
- (b) with regard to the provisions of the Convention, the implementation of which comes under the jurisdiction of individual constituent units such as States, counties, provinces, or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal

government shall inform, as necessary, the competent authorities of constituent units such as States, counties, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 31 – Denunciation

1. Any Party to this Convention may denounce this Convention.
2. The denunciation shall be notified by an instrument in writing deposited with the Director-General of UNESCO.
3. The denunciation shall take effect 12 months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the Party denouncing the Convention until the date on which the withdrawal takes effect.

Article 32 – Depositary functions

The Director-General of UNESCO, as the depositary of this Convention, shall inform the Member States of the Organization, the States not members of the Organization and regional economic integration organizations referred to in Article 27, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 26 and 27, and of the denunciations provided for in Article 31.

Article 33 – Amendments

1. A Party to this Convention may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all Parties. If, within six months from the date of dispatch of the communication, no less than one half of the Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the Conference of Parties for discussion and possible adoption.
2. Amendments shall be adopted by a two-thirds majority of Parties present and voting.
3. Once adopted, amendments to this Convention shall be submitted to the Parties for ratification, acceptance, approval or accession.
4. For Parties which have ratified, accepted, approved or acceded to them, amendments to this Convention shall enter into force three months after the deposit of the instruments referred to in paragraph three of this Article by two-thirds of the Parties. Thereafter, for each Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into force three months after the date of deposit by that Party of its instrument of ratification, acceptance, approval or accession.
5. The procedure set out in paragraphs three and four shall not apply to amendments to Article 23 concerning the number of Members of the Intergovernmental Committee. These amendments shall enter into force at the time they are adopted.
6. A State or a regional economic integration organization referred to in Article 27 which becomes a Party to this Convention after the entry into force of

amendments in conformity with paragraph four of this Article shall, failing an expression of different intention, be considered to be:

- (a) Party to this Convention as so amended; and
- (b) a Party to the unamended Convention in relation to any Party not bound by the amendments.

Article 34 – Authoritative texts

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, all six texts being equally authoritative.

Article 35 – Registration

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of UNESCO.

ANNEX

Conciliation Procedure

Article 1 – Conciliation Commission

A Conciliation Commission shall be created upon the request of one of the Parties to the dispute. The Commission shall, unless the Parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2 – Members of the Commission

In disputes between more than two Parties, Parties in the same interest shall appoint their members of the Commission jointly by agreement. Where two or more Parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3 – Appointments

If any appointments by the Parties are not made within two months of the date of the request to create a Conciliation Commission, the Director-General of UNESCO shall, if asked to do so by the Party that made the request, make those appointments within a further two-month period.

Article 4 – President of the Commission

If a President of the Conciliation Commission has not been chosen within two months of the last of the members of the Commission being appointed, the Director-General of UNESCO shall, if asked to do so by a Party, designate a President within a further two-month period.

Article 5 – Decisions

The Conciliation Commission shall take its decisions by majority vote of its members. It shall, unless the Parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the Parties shall consider in good faith.

Article 6 – Disagreement

A disagreement as to whether the Conciliation Commission has competence shall be decided by the Commission.

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