

Cultural Diversity in International Law

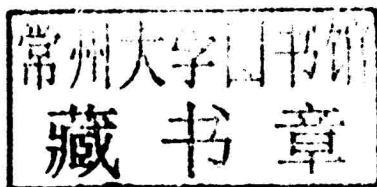
The effectiveness of the UNESCO
Convention on the Protection and
Promotion of the Diversity of Cultural
Expressions

Edited by
Lilian Richieri Hanania

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Cultural Diversity in International Law

The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDCE) was adopted in 2005 and designed to allow States to protect and promote cultural policies. This book examines the effectiveness of the CDCE and offers ways by which its implementation may be improved to better attain its objectives.

The book provides insight into how the normative character of the CDCE may be strengthened through implementation and increasingly recurrent practice based on its provisions. Hailing from various fields of international law and political and social sciences, the book's contributors work to promote discussions on the practical and legal influence of the CDCE, and to identify opportunities and recommendations for a more effective application. Part I of the book assesses the effectiveness of the CDCE in influencing other areas of international law and the work conducted by other intergovernmental organizations through the recognition of the double nature (cultural and economic) of cultural goods and services. Part II focuses on the practice of the CDCE beyond the recognition of the specificity of cultural goods and services in international law by addressing the CDCE's call for greater international cooperation and stronger integration of cultural concerns in development strategies at the national and regional levels.

The book will be of great use and interest to academics and practitioners in law, social and political sciences, agents of governmental and international organizations, and cultural sector stakeholders.

Lilian Richieri Hanania is an attorney (Brazil and France) and Associate Researcher at the University Paris 1 – Panthéon-Sorbonne. She graduated from the University of São Paulo Law School (USP, Brazil) and holds a Master's Degree and a PhD from the University Paris 1. Her PhD thesis (2007) and recent works address International Economic Law and International Cultural Law. She worked at the French Ministry of Foreign and European Affairs from 2009 to 2011 in the International Economic Affairs Division and presently works as legal counsel for a global technology company in Houston, TX.

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In memory of my dear brother Fabio Richieri Hanania, an everlasting example of tolerance, love, perseverance, intelligence and honesty.

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Foreword

Hélène Ruiz Fabri

The Convention on the Diversity of Cultural Expressions (CDCE) has been, from the very beginning, an intriguing instrument. It was born from the will of a few States used to developing – and wishing to protect and preserve – their voluntaristic cultural policies but which had lost the fight for a “cultural exception” at the WTO. It belongs to a legal strategy which has led UNESCO to host negotiations the intensity of which was not usual. It is all the more understandable if one recalls that the prospect of these negotiations prompted the US return toward an organization it had left at the beginning of the 1980s due to its attempts to promote a New World Information and Communication Order. The US did not succeed in interrupting the process engaged before their return and notably marked by the adoption of the Universal Declaration on Cultural Diversity in 2001, and, as the introductory chapter of this book mentions, the CDCE has been adopted by an overwhelming majority of votes. A political as well as symbolic fight had been soundly won by the promoters of the CDCE. But the issue which arose immediately was not only whether the Convention would be amply ratified but mostly whether it would not have exhausted its possible effects in its own negotiation. In other words, the Convention had to pass the test of implementation and practice, with the aim of becoming a reference instrument.

It was and still is a challenge. As often, the price to pay during negotiations in order to reach a compromise had been a whitening of the text, in which numerous provisions are worded in soft law terms and rather fall within incentives and possibilities than obligations. But this should not be misleading. On the one hand, the CDCE has never been intended to compel States to adopt interventionist cultural policies, only to preserve their possibility. And in a positive perspective, it furthers cooperation in order to help countries that have only weak means to develop cultural policies, including regarding their cultural industries. On the other hand, the legal fortune of a text depends not only on its intrinsic strength but also on how the actors in the field seize it and the momentum they instill in its implementation. Nevertheless, the agreement avoids addressing a number of issues which are essential for cultural diversity and may influence its

implementation or more-or-less directly threaten its effectiveness. To name a few, the intellectual property issues are so difficult and so sensitive that States persistently prefer not to mention them. The exponential growth of the internet is also challenging, the principle of technological neutrality not being sufficient to put the issue at rest. Of course, everyone is not logged in yet, but patterns of consumption of cultural goods and services have dramatically changed over a short period and this renews numerous other issues, including intellectual property. So, things are intertwined.

The aim of this book is precisely not to deliver an additional comment of the Convention but to assess the extent to which the Convention has faced these challenges in practice. They are probably not all overcome, and others may occur. But nearly a decade of practice already provides a well thought-out idea of the space that the Convention has received in national and international landscapes. This approach, focused on practice and effective implementation, is new, informative, and helps in identifying the packages of the Convention which held – or not – their promises, while providing food for thought on future practices. Thanks to the stimulating analyses it provides, this book helps to identify ways by which the actors of cultural diversity can have a better and improved use of the CDCE.

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Abbreviations

ACP countries	African, Caribbean and Pacific countries
AECID	Spanish Agency for International Development Cooperation
AFT	Aid for Trade Initiative
AG	(CJEU) Advocate General
ANCINE	(Brazil) <i>Agência Nacional do Cinema</i> (Brazilian National Film Agency)
APEX	(Brazil) <i>Agência Brasileira de Promoção de Exportações e Investimentos</i> (Brazilian Exports and Investment Agency)
ARROW	Accessible Registries of Rights Information and Orphan Works
ASEAN	Association of Southeast Asian Nations
AVMS	(EU) Audiovisual Media Services Directive
CCP	(EU) Common Commercial Policy
CDCE	UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions
CEB	United Nations Chief of Executives Board for Coordination
CJEU	Court of Justice of the European Union
COSECCTI	South American Council for Education, Culture, Science, Technology and Innovation
CPUCH	Convention on the Protection of the Underwater Cultural Heritage
CSICH	Convention for the Safeguarding of Intangible Cultural Heritage
DG	(EU) Directorate-General
DG Trade	European Union Directorate-General for Trade
DSB	(WTO) Dispute Settlement Body
DSU	(WTO) Dispute Settlement Understanding
EBU	European Broadcasting Union
ECOWAS	Economic Community of West African States
EEAS	European External Action Service
EU	European Union

EUNIC	European Union Institutes of Culture
FTA	Free Trade Agreement
FYROM	The Former Yugoslav Republic of Macedonia
G20 DWG	G20 Development Working Group
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GTCNL	(UN General Assembly) <i>Groupe de travail à composition non limitée</i>
IBES	(Ecuador) Intercultural Bilingual Education System
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICT	Information and Communication Technology
IFACCA	International Federation of Arts Councils and Culture Agencies
IFCD	International Fund for Cultural Diversity
IFCIC	<i>Institut pour le Financement du Cinéma et des Industries Culturelles</i> (Institute for the Financing of Film and Cultural Industries)
IFPC	International Fund for the Promotion of Culture
IGO	Intergovernmental organization
ILO	International Labor Organization
INCD	International Network for Cultural Diversity
INCP	International Network on Cultural Policy
INPPICAB	(Bolivia) Indigenous native peasant people, intercultural communities and Afro-Bolivians
MAI	Multilateral Agreement on Investment
MPAA	Motion Picture Association of America
NAFTA	North Atlantic Free Trade Agreement
NES	(Ecuador) National Education System
OAS	Organization of American States
ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
OG(s)	Operational Guideline(s)
OIF	<i>Organisation internationale de la Francophonie</i> (International Organization of Francophonie)
PCC	(EU) Protocol on Cultural Cooperation
PRONAC	(Brazil) <i>Programa Nacional de Apoio à Cultura</i> (Brazilian National Program of Support for Culture)
RECAM	(Mercosul) <i>Reunião Especializada de Autoridades Cinematográficas e Audiovisuais do Mercosul</i>
SACD	(France) <i>Société des Auteurs et Compositeurs dramatiques</i>
SNC	(Brazil) <i>Sistema Nacional de Cultura</i> (Brazilian National System of Culture)
SPF	Social Protection Floor
STRI	(OECD) Services Trade Restrictiveness Index