

THE UNESCO CONVENTION ON THE DIVERSITY  
OF CULTURAL EXPRESSIONS



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ON THE DIVERSITY OF  
CULTURAL EXPRESSIONS

A Tale of Fragmentation  
in International Law

Toshiyuki KONO  
Steven VAN UYTSEL  
(eds.)



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## FOREWORD

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

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

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

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

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

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

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Toshiyuki Kono & Steven Van Uytsel  
Fukuoka, 1 May 2012

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## LIST OF ABBREVIATIONS

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

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

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

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