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.)
The UNESCO Convention on the Diversity of Cultural Expressions. A Tale of Fragmentation in International Law
Toshiyuki Kono and Steven Van Uytsel (eds.)

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Cambridge – Antwerp – Portland
www.intersentia.com | www.intersentia.co.uk

D/2012/7849/94
NUR 820


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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...
Foreword

Intersentia for his continued belief in the project. Together with the professionalism and dedication of his staff, he has contributed greatly to the successful completion of it.

Toshiyuki Kono & Steven Van Uytsel
Fukuoka, 1 May 2012
## CONTENTS

*Foreword* ................................................................. v  
*List of Abbreviations* .................................................. xvii

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

The Convention on the Diversity of Cultural Expressions. Beyond a Trade and Culture Convention  
Toshiyuki Kono and Steven Van Uyt sel ........................................... 3

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

Rostam J. Neuwirth .................................................. 45

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

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

1. Introduction: The Debate over Applying Trade Rules to Motion
   Pictures .................................................. 71
2. Preparations to Negotiate Trade in Services .......................... 72
   2.1. The United States Report on Trade in Motion Pictures .......... 72
   2.2. The Trade Argument .................................... 73
   2.3. The Culture Argument ................................... 75
3. The Uruguay Round ............................................. 76
   3.1. Confrontation with the EU ................................ 76
   3.2. Focus on Economic Issues .................................. 77
   3.3. Outcome of the Uruguay Round .............................. 79
4. The Doha Development Agenda and the Audiovisual Sector .......... 80
   4.1. The Audiovisual Objectives Paper ........................................ 80
   4.2. Change in Tone ................................................................. 81
   4.3. Change in Substance ......................................................... 82
   4.4. Impact .................................................................................. 83
5. The Convention for the Protection of the Diversity of Cultural
   Expressions ................................................................................. 84
   5.1. A Disguised Trade Negotiation within UNESCO ................. 84
   5.2. U.S. Perspective on Trade Implications of the Convention .... 85
   5.3. Human Rights Implications of the Convention on the
        Diversity of Cultural Expressions ........................................... 88
   5.4. Outcome of the Negotiation .................................................. 89
6. Assessment of the U.S. Position in the Trade and Culture Debate .... 89
7. Conclusion: Impact of the U.S. Position on the
   Convention on the Diversity of Cultural Expressions in International Trade Negotiations . . 91

The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions. A Cultural Analysis
Ivan Bernier ................................................................. 95

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

The 1972 World Heritage Convention and the Convention on the Diversity of Cultural Expressions
Federico Lenzerini ................................................................. 127
1. Introduction ................................................................. 127
2. The Evolution of International Law on Culture: From Cultural Property, Through Cultural Heritage, to a Holistic Vision of Culture . . 128
3. The World Heritage Convention and Its System of Implementation . . 131
   4.1. Mutual Supportiveness in Interpretation .......................... 136
   4.2. Complementarity ...................................................... 138
   4.3. Potential Conflicts .................................................. 140
5. Conclusion ................................................................. 142

Intangible Cultural Heritage and the Convention on the Diversity of Cultural Expressions
Steven Van Uytsei and Toshiyuki Kono ............................... 143
1. Introduction ................................................................. 143
2. Establishing a Common Framework .................................... 144
   2.1. Intangible Cultural Heritage, Cultural Expressions and Safeguarding ......................................................... 144
   2.2. Communities: Part of the Convention on the Diversity of Cultural Expressions? .................................................. 146
3. Interaction at the Operational Level .................................... 148
   3.1. Mutually Supporting Obligations and Conflicting Ones ...... 148
   3.2. Conflict Regulating Provisions .................................... 150
   3.3. Mutual Supportiveness by Implementing a Double Scheme . 151
   3.4. The ICH Convention Will Take Priority in Cases of Conflict . 152
      3.4.1. The role of civil society ...................................... 152
      3.4.2. Poverty eradication ........................................... 154
4. Interaction at the Interpretation Level ............................... 157
   4.1. Existing International Law for Interpreting New Treaties ...... 157
   4.2. Little Space for Evolutionary Interpretation because of Shared Premises ......................................................... 159
5. Conclusion ................................................................. 161
PART III.
HUMAN RIGHTS & THE CONVENTION ON THE DIVERSITY OF CULTURAL EXPRESSIONS

Cultural Rights and the Convention on the Diversity of Cultural Expressions. Included or Ignored?
Yvonne Donders .......................................................... 165

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

Civil and Political Rights and the Convention on the Diversity of Cultural Expressions
Eva Brems ............................................................... 183

1. Introduction ............................................................... 183
   2.1. Drafting Process .................................................... 184
   2.2. The Convention on the Diversity of Cultural Expressions .... 186
   2.3. Analysis ............................................................... 188
      2.3.1. Room for state discretion in the implementation of obligations to fulfil .............................................. 188
      2.3.2. Mandatory measures to implement obligations to fulfil ................................................................. 189
      2.3.3. The free marketplace of ideas .................................. 190
   3.1. The Convention on the Diversity of Cultural Expressions and Its Critics ..................................................... 192
   3.2. Analysis ............................................................... 194
      3.2.1. Legitimate restrictions ............................................. 194
The Convention on the Diversity of Cultural Expressions. What is Its Added Value for Minorities and Indigenous Peoples?  
Anna Meijknecht .................................................. 201

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

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

Rostam J. Neuwirth .................................................. 229

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

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

Substantive WTO Law and the Convention on the Diversity of Cultural
Expressions
Tania Voon .................................................................................. 273

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

Intellectual Property and Cultural Diversity. Two Views on the
Relationship between Market and Culture
Branislav HAZUCHA ................................................................. 291

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

Intersentia  xiii
Contents

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

PART V.
DEVELOPMENT & THE CONVENTION ON THE DIVERSITY OF
CULTURAL EXPRESSIONS

International Cooperation on Development and the Convention on the
Diversity of Cultural Expressions
   Lilian Richieri Hanania and Hélène Ruiz Fabri ...................... 333

1. Introduction .............................................................................. 333
3. Cooperation on Development in Favour of Cultural Diversity .... 340
   3.1. General Cooperation Modalities ..................................... 340
   3.2. Cooperation in Favour of Development ......................... 344
      3.2.1. Preferential treatment ........................................... 345
      3.2.2. Financial assistance ............................................ 348
         A. Assistance in the framework of Article 18 of
            the Convention on the Diversity of Cultural
            Expressions ....................................................... 348
         B. General financial assistance .................................. 350
      3.2.3. Collaborative agreements ...................................... 351
   4. Conclusion .............................................................................. 352

Sustainable Development and the Convention on the Diversity of Cultural
Expressions
   David Throsby ................................................................. 353

1. Introduction .............................................................................. 353
2. Sustainable Development ..................................................... 354
3. Cultural Diversity ............................................................... 356
4. The Convention on the Diversity of Cultural Expressions ....... 358
5. Conclusion .............................................................................. 361
PART VI.
IMPLEMENTATION OF AND VIEWS ON THE CONVENTION ON
THE DIVERSITY OF CULTURAL EXPRESSIONS

The Convention on the Diversity of Cultural Expressions and the
European Union. The Quest for Competence and Implementation
Evangelia Psychogiopoulou .................................................. 365

1. Introduction ................................................................. 365
2. European Union Cultural Competences: Delineation and Exercise .... 369
3. the Convention on the Diversity of Cultural Expressions and the
EU’s Involvement in Its Drafting ........................................... 373
4. The Convention on the Diversity of Cultural Expressions as a
Test-Bed for the Demarcation of Cultural Powers between the
European Union and Its Member States .................................. 377
5. Implementing the Convention on the Diversity of Cultural
Expressions: The Way Ahead ................................................. 382
  5.1. Free Movement, the Internal Market and the Convention on
       the Diversity of Cultural Expressions .............................. 383
  5.2. Competition Law and the Convention on the Diversity of
       Cultural Expressions .................................................. 386
  5.3. External Relations and the Convention on the Diversity of
       Cultural Expressions .................................................. 390
6. Concluding Remarks ..................................................... 393

Implementation of the Convention on the Diversity of Cultural
Expressions in South Africa. Perspectives from a ‘Developing Country’
Christa Rautenbach .......................................................... 395

1. Introduction ................................................................. 395
2. South Africa’s Role Leading up to the Convention on the Diversity
   of Cultural Expressions .................................................. 398
   Expressions in South Africa .............................................. 402
        Expressions in General .............................................. 402
   3.2. South Africa’s Expectations in Terms of the Convention on
        the Diversity of Cultural Expressions ........................... 406
   3.3. South Africa as a Developing Country ................................ 414
   3.4. Mobilization of Civil Society in South Africa ...................... 419
   3.5. Implementation of the Convention on the Diversity of
        Cultural Expressions in South Africa ............................ 421
4. Concluding Remarks ..................................................... 427
Table of International Treaties and Conventions .............................................. 431
Table of Charters, Declarations, Recommendations, and Resolutions .......... 435
Table of Operational Guidelines ................................................................. 437
Table of Free Trade Agreements ............................................................... 439
Table Of European Legislative Acts, Conclusions, Recommendations and Resolutions ................................................................. 441
Bibliography ................................................................................................. 443
### LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>AD Agreement</td>
<td>Anti-dumping Agreement or Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994</td>
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<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<td>AsgiSA</td>
<td>Accelerated and Shared Growth Initiative for South Africa</td>
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<td>AVMS</td>
<td>Audiovisual Media Services Directive</td>
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<td>AU</td>
<td>African Union</td>
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<td>Cariforum</td>
<td>Caribbean Forum of ACP States</td>
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<td>CEDAW</td>
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<td>CESCR</td>
<td>Covenant on Economic, Social, and Cultural Rights</td>
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<td>CIA</td>
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<td>CLAC</td>
<td>Centres de lecture et d’animation culturelle</td>
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<td>CNUCED</td>
<td>Conférence des Nations Unies sur le commerce et le développement</td>
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<td>COP</td>
<td>Conference of Parties</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CSCE</td>
<td>Commission on Security and Cooperation in Europe</td>
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<td>CT</td>
<td>Custom Territories</td>
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<td>CUSFTA</td>
<td>Canada-United States Free Trade Agreement</td>
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<td>Cultural Diversity Declaration</td>
<td>Universal Declaration on Cultural Diversity</td>
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<tr>
<td>DAC</td>
<td>Department of Arts and Culture</td>
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<td>DACST</td>
<td>Department of Arts, Culture, Science and Technology</td>
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<td>DSB</td>
<td>Dispute Settlement Body</td>
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<td>DSU</td>
<td>Understanding on Rules and Procedures Governing The Settlement of Disputes</td>
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<td>DTI</td>
<td>Department of Trade and Investment</td>
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<td>EC</td>
<td>European Community</td>
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<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
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<td>EIA</td>
<td>Economic Integration Agreement</td>
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<td>Hellenic Foundation for European and Foreign Policy</td>
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<td>FESTAC</td>
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<td>(International) Covenant on Economic, Social and Cultural Rights</td>
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<td>ICH Convention</td>
<td>Convention for the Safeguarding of Intangible Cultural Heritage</td>
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<td>ICIC</td>
<td>International Committee for Intellectual Cooperation</td>
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<td>ICRMW</td>
<td>International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families</td>
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<td>INCP</td>
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<td>ITO</td>
<td>International Trade Organization</td>
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<td>JIPSA</td>
<td>Joint Initiative for Priority Skills Acquisition</td>
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<td>European Charter for Regional or Minority Languages</td>
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<td>Multilateral Agreement on Investment</td>
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<td>(South African) Ministers and Members of the Executive Council</td>
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<td>REIO</td>
<td>Regional Economic Integration Organizations</td>
</tr>
<tr>
<td>RTA</td>
<td>Regional Trade Agreement</td>
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<tr>
<td>SACAN</td>
<td>South African Chapter of Arterial Network</td>
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<tr>
<td>SACCD</td>
<td>South African Coalition for Cultural Diversity</td>
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<tr>
<td>SADC</td>
<td>South African Development Community</td>
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<tr>
<td>SAMRO</td>
<td>South African Music Rights Organization</td>
</tr>
<tr>
<td>SCM Agreement</td>
<td>Agreement on Subsidies and Countervailing Measures</td>
</tr>
<tr>
<td>SPS Agreement</td>
<td>Agreement on the Application of Sanitary and Phytosanitary Measures</td>
</tr>
<tr>
<td>TEC</td>
<td>Treaty on the European Community</td>
</tr>
<tr>
<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
</tr>
<tr>
<td>TIC</td>
<td>(South African) Technical Intergovernmental Committee</td>
</tr>
<tr>
<td>TRIPS</td>
<td>Agreement on Trade-Related Aspects of Intellectual Property Rights</td>
</tr>
<tr>
<td>TWF</td>
<td>Television without Frontiers Directive</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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</table>
List of Abbreviations

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 Televisores Comerciales Asociadas
v. versus
Vienna Convention Vienna Convention on the Law of Treaties
WIPO World Intellectual Property Organization
World Heritage Convention Concerning the Protection of the World Cultural and Natural Heritage
WTO World Trade Organization