THE UNESCO CONVENTION ON THE DIVERSITY
OF CULTURAL EXPRESSIONS
THE UNESCO CONVENTION
ON THE DIVERSITY OF
CULTURAL EXPRESSIONS

A Tale of Fragmentation
in International Law

Toshiyuki KONO
Steven VAN UYTSEL
(eds.)
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 Intersentia.
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
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<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>
<td>International Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<td>CESCR</td>
<td>Covenant on Economic, Social, and Cultural Rights</td>
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<td>CIA</td>
<td>Central Intelligence Agency</td>
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<tr>
<td>CLAC</td>
<td>Centres de lecture et d’animation culturelle</td>
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<tr>
<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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<tr>
<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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<tr>
<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>ECJ</td>
<td>European Court of Justice</td>
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<td>EC Treaty</td>
<td>Treaty establishing the European Community</td>
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<td>ECHR</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
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<tr>
<td>EIA</td>
<td>Economic Integration Agreement</td>
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<td>ELIAMEP</td>
<td>Hellenic Foundation for European and Foreign Policy</td>
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<td>EU</td>
<td>European Union</td>
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<td>FCC</td>
<td>Federal Communications Commission</td>
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<td>FCNM</td>
<td>Framework Covenant for the Protection of National Minorities</td>
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<td>FESTAC</td>
<td>Festival of the Arts and Culture</td>
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<td>FICDC</td>
<td>International Federation of Coalitions for Cultural Diversity</td>
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<td>FTA</td>
<td>Free Trade Agreement</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>GATS</td>
<td>General Agreement on Trade in Service</td>
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<td>GNI</td>
<td>Gross National Income</td>
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<td>GSP</td>
<td>Generalized System of Preferences</td>
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<td>HDI</td>
<td>Human Development Index</td>
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<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICERD</td>
<td>International Covenant on the Elimination of All Forms of Racial Discrimination</td>
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<td>(I)CESCR</td>
<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>IFCD</td>
<td>International Fund for Cultural Diversity</td>
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<td>IGC</td>
<td>Intergovernmental Committee</td>
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<td>IICI</td>
<td>International Institute of Intellectual Cooperation</td>
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<td>ILM</td>
<td>International Legal Materials</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>ILO Convention No.169</td>
<td>ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries</td>
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<td>INCP</td>
<td>International Network on Cultural Policy</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>IPRs</td>
<td>Intellectual Property Rights</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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<tr>
<td>KORUS FTA</td>
<td>Korea-US Free Trade Agreement</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<td>Languages Charter</td>
<td>European Charter for Regional or Minority Languages</td>
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<td>litera</td>
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<td>LNTS</td>
<td>League of Nations Treaty Series</td>
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<td>MAI</td>
<td>Multilateral Agreement on Investment</td>
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<td>Marrakesh Agreements</td>
<td>Marrakesh Agreements Establishing the World Trade Organization</td>
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<td>MFN</td>
<td>Most-Favoured Nation</td>
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<td>MINMEC</td>
<td>(South African) Ministers and Members of the Executive Council</td>
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<td>MPAA</td>
<td>Motion Picture Association of America</td>
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<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
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<td>NEPAD</td>
<td>New Partnership for Africa’s Development</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
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<td>OIF</td>
<td>Organisation Internationale de la Francophonie</td>
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<td>Protocol on Cultural Cooperation</td>
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<td>Regional Trade Agreement</td>
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<td>SACAN</td>
<td>South African Chapter of Arterial Network</td>
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<td>South African Coalition for Cultural Diversity</td>
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<td>SADC</td>
<td>South African Development Community</td>
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<td>SAMRO</td>
<td>South African Music Rights Organization</td>
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<td>SCM Agreement</td>
<td>Agreement on Subsidies and Countervailing Measures</td>
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<td>Agreement on the Application of Sanitary and Phytosanitary Measures</td>
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<td>TEC</td>
<td>Treaty on the European Community</td>
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<td>Treaty on the Functioning of the European Union</td>
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<td>(South African) Technical Intergovernmental Committee</td>
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<td>TWF</td>
<td>Television without Frontiers Directive</td>
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<td>Universal Declaration of Human Rights</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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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 Televisiones 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 Heritage
Convention Cultural and Natural Heritage
WTO World Trade Organization