

Working Paper No 2008/8

MAY 2008

## **Substantive Rights and Obligations under the UNESCO Convention on Cultural Diversity**

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Draft 18 September 2007, to be published in: Peter van den Bossche and Hildegard Schneider (eds.), Protection of Cultural Diversity from an International and European Perspective, 2008.

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# Substantive Rights and Obligations under the UNESCO Convention on Cultural Diversity<sup>1</sup>

Christoph Beat Graber

## 1. Introduction

The adoption of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CCD) can be perceived as the reaction of a group of states to certain negative effects of economic globalisation<sup>2</sup> on culture. The promoters of the new instrument originally assigned to it the ambitious role to filling a lacuna in public international law with regard to cultural values. Whereas the values and interests of trade liberalisation are strongly institutionalised in the Marrakesh Agreement establishing the World Trade Organization (WTO), and the thereto belonging GATT, GATS and TRIPS Agreement, cultural values and interests had not been a priority of the international law makers.<sup>3</sup> With the creation of the CCD, the “friends of culture” within the international community of states thus wanted to tame the expansionist powers of economic globalisation and to create a counterbalance to the WTO.<sup>4</sup> Two key objectives were designed as cornerstones of the CCD architecture: first, the recognition of the dual nature of cultural goods and services as objects of trade and cultural artefacts and second, the recognition of the cultural sovereignty of the Parties, encompassing the right to adopt measures on cultural policy.<sup>5</sup>

During the negotiations, however, it became clear that the majority of states promoting the creation of a treaty on cultural diversity was opposed by a powerful minority, led by the United States,<sup>6</sup> who, from the outset, charged the CCD with being an instrument of disguised protectionism and a restriction on the free flow of information.<sup>7</sup> The strong opposition of the US and its allies was successful in so far as it resulted in considerable watering down of the normative impact of the Convention as it was finally adopted. Instead of enforceable obligations, most of the provisions of the CCD consist of best-effort engagements and assertions of rights.<sup>8</sup> Since rights, however, are “entitlements that require (...) correlated duties”,<sup>9</sup> this outcome critically endangers the ability of the CCD to fit the role that it was originally supposed to play in the relationship between values and interests of trade liberalisation and cultural values and interests.

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<sup>1</sup> This chapter was written in the framework of the eDiversity project, a part of the Swiss National Centre of Competence in Research (NCCR) “Trade Regulation”, funded by the Swiss National Science Foundation. The support of the Ecoscientia Foundation is gratefully acknowledged. An earlier version was presented in March 2007, at the Conference on “The Protection of Cultural Diversity from an International and European Perspective”, organised by the University of Maastricht. The author thanks Susan Kaplan for editorial assistance and Mira Burri-Nenova for comments on an earlier draft.

<sup>2</sup> Economic globalisation has been defined as a “gradual integration of national economies into one borderless global economy” as a result of decreased costs of communication and transportation. See Van den Bossche 2005, p. 3.

<sup>3</sup> For an overview of existing international instruments related to cultural issues and a critical analysis of the weak institutionalisation of cultural values and interests at the international level see Graber 2003, p. 76-109 and 113-120.

<sup>4</sup> See Hahn 2006, p. 534 and Craufurd Smith 2007, p. 27 and 48.

<sup>5</sup> See Graber 2006, p. 553 and 559.

<sup>6</sup> See Voon 2007, p. 194.

<sup>7</sup> During the 33rd Session of the General Conference of UNESCO, where the CCD was adopted, the United States put on record its view that “we have serious concerns about the potential of the Draft Convention to be misinterpreted in ways that might impede the free flow of ideas by word and image as well as affect other areas, including trade”. UNESCO, Records of the General Conference, 33rd session, 3-21 October 2005, Volume 1, p. 221.

<sup>8</sup> Ruiz Fabri 2006, p. 80, Craufurd Smith 2007, p. 53, Graber 2006, p. 563.

<sup>9</sup> Sen 1999, p. 228.

## 2. The Concept of Culture Underlying the Convention

### 2.1 Theoretical Considerations

A study on the rights and obligations of signatories to a treaty on cultural diversity should start with a reflection of the concept of “culture” underlying this treaty. But, defining culture proves to be extremely difficult – problematical even for theoretically well-versed social scientists.<sup>10</sup> According to Dirk Baecker, a sociologist, culture is a principally undetermined notion – due to the characteristics of its subject matter.<sup>11</sup> Such indeterminacy must also be taken into account in a legal context. Hence, with a view to clarifying the legal concept of culture, a phenomenological approach makes sense, looking at the typical ways in which the notion is used in international law and policy making.

Empirically, one can identify three different versions of the concept of culture as used in the contexts of international law and policy:

- 1) In the Anglo-Saxon world, in particular, culture is often used as a synonym for civilization (e.g. in Samuel Huntington’s well-known book “The Clash of Civilisations”). Used in this sense, culture encompasses all spiritual, intellectual and practical activities of distinct social groups.
- 2) A second version equates culture with the cultural heritage of humankind. This version focuses on outstanding treasures of art and archaeology of past epochs. UNESCO has adopted *inter alia* the Convention on World Cultural and Natural Heritage<sup>12</sup> and the Convention on Intangible Cultural Heritage<sup>13</sup> to protect culture in this sense of the word.
- 3) Third, culture is sometimes used to denote a process of creativity in all areas of knowledge production, such as art and, to a limited extent, the sciences. Culture as used in the context of artistic creativity can be further subdivided into fine art and folklore, i.e. creative expressions emerging from a traditional context.<sup>14</sup> With regard to all three versions one should note that culture and art are two distinct concepts. Sociological systems theory allows this distinction to be understood as outlined below.

Art is an autonomous functional system of society.<sup>15</sup> Its function consists in the opening of new communicative perspectives within society. Art confronts the everyday world with the contingency of contrasting worlds and enables escape from the confines of existing communicative forms to produce variation.<sup>16</sup> In its works, art makes society and the world of this society visible, palpable and audible. At the same time, art demonstrates that such perceptions are always contingent. Since art produces the perceptions of society, it is the social system with the greatest importance for culture. Culture, in contrast to

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<sup>10</sup> For a discussion of the concept of culture within sociology and law see Graber, 2003, p. 11-14.

<sup>11</sup> Baecker 2001, p. 7.

<sup>12</sup> Convention concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972, entry into force 17 December 1975. Available at <[http://whc.unesco.org/world\\_he.htm](http://whc.unesco.org/world_he.htm)>, last visited 30.8.2007.

<sup>13</sup> Convention for the Safeguarding of the Intangible Cultural Heritage, adopted by the General Conference on 17 October 2003, entry into force 21 April 2006. Available at <<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>>, last visited 30.8.2007.

<sup>14</sup> The CCD, in recital 13 of the Preamble, recognises that diversity of cultural expressions, including “*traditional cultural expressions*”, is an important factor that allows peoples and individuals to express and to share with others their ideas and values. See also UNESCO’s 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore, adopted by the General Conference at its 25th session, Paris, 15 November 1989. Available at <[http://www.unesco.org/culture/laws/paris/html\\_eng/page1.shtml](http://www.unesco.org/culture/laws/paris/html_eng/page1.shtml)>, last visited 30.8.2007.

<sup>15</sup> Luhmann 1995.

<sup>16</sup> Graber 1994, p. 130, with references to basic features of Niklas Luhmann’s systems theory.

art, is not a social system. According to Niklas Luhmann, culture is the memory of society.<sup>17</sup> It is a filter allowing operation of the distinction between forgetting and remembering and enabling use of the past in order to define the framework of future communicative variations.<sup>18</sup> It should be noted that this concept of culture is not static but dynamic. Hence, culture is not about reifications but rather about communicative processes.<sup>19</sup>

Luhmann's concept of culture explains well that all three variations identified empirically are interrelated. Contemporary generations of artists and creative persons wish to benefit from legal or political conditions offering the best chances in the production and dissemination of creative expressions. However, contemporary artistic production does not take place in a historical void, since new art is always influenced by pre-existing creative expressions. The memory of society allows art to observe the past, to notice the contingency of these observations and to confront them with alternative ways of observation. Finally, a given civilization in as far as it establishes a framework for producing, disseminating and collecting creative expressions, can serve as an entity that allows distinguishing and comparing different forms of knowledge and social organisations in terms of time or space.<sup>20</sup>

## 2.2 The CCD's Pragmatic Approach

The Convention does not provide for a direct definition of "culture". Rather, "cultural diversity" is circumscribed in Article 4 CCD as referring to "the manifold ways in which the cultures of groups and societies find expression". This indirect approach rightly avoids the ambiguities of UNESCO's standard definition of "culture", in use since the 1982 UNESCO World Conference on Cultural Policies in Mexico City. The so-called MONDIACULT conference adopted a Declaration on Cultural Policies, which - in its preamble - defined "culture" as encompassing "the whole complex of distinctive spiritual, material, intellectual and emotional features that characterise 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".<sup>21</sup> This definition is ambiguous in so far as it does not determine whether it is intended to protect a community's cultural expressions or rather its characteristic forms of social organisation.<sup>22</sup> To rely on this definition in a Convention on cultural diversity<sup>23</sup> would have been dangerous since some cultural practices of certain social groups, including female circumcision, ritual killing or physical punishment, are gross violations of international human rights standards. To avoid such ambiguities, the CCD refrains from any substantial definition of culture and focuses instead on the creative *expressions* of groups and societies.<sup>24</sup> Recital 12 of the Preamble to the CCD establishes a direct link between "cultural expressions" and "freedom of thought, expression and information" and thus emphasises the human rights foundations of this

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<sup>17</sup> Luhmann 1997, p. 588.

<sup>18</sup> Luhmann 1997, p. 588.

<sup>19</sup> Graber 2003, p. 13.

<sup>20</sup> Graber, 2003, p. 14.

<sup>21</sup> See Mexico City Declaration on Cultural Policies, World Conference on Cultural Policies Mexico City, 26 July-6 August 1982, available at <[http://www.unesco.org/culture/laws/mexico/html\\_eng/page1.shtml](http://www.unesco.org/culture/laws/mexico/html_eng/page1.shtml)>, last visited 30.8.2007.

<sup>22</sup> Bernier 2004, p. 66-67.

<sup>23</sup> During the negotiations there was a debate on whether to rely on the broad concept of "cultural diversity" or the narrower concept of "diversity of cultural contents and artistic expressions". See Metze-Mangold & Merkel 2006, p. 367 and Fuchs 2006.

<sup>24</sup> "Cultural expressions" are described in Article 4(3) CCD as "expressions that result from the creativity of individuals, groups and societies, and that have cultural content". "Cultural content" is described in Article 4(2) as "symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities".

notion.<sup>25</sup> Focussing on expressions, the Convention makes it clear that it is intended to further the diversity of media – media being understood in a broad sense as the means to convey creative information.<sup>26</sup>

By characterising culture in relation to its expressions, taking into account the modalities of their production, dissemination, distribution and enjoyment, the Convention permits one to analyse culture in the context of the markets where it is represented. In my view, such a pragmatic approach would make sense in an international environment, where today the diversity of creative expressions is endangered primarily by market failures.<sup>27</sup> Although the CCD does not state this explicitly, its primary focus is trade in audiovisual goods and services.<sup>28</sup> From a perspective of political economy, governmental interventions in audiovisual media markets are only legitimate where market inefficiencies prevent an existing audience from gaining access to a certain type of cultural expression.<sup>29</sup> Conversely, if a decrease in cultural diversity on a given market is the consequence of the free will of the individuals who shape its dynamics, no intervention would be legitimate.<sup>30</sup> An assessment of market structures and processes would presuppose the availability of statistical data on the basis of which the need for governmental interventions could be determined. Such an empirical approach to the diversity of cultural expressions would contribute to making the debate on culture versus trade more rational since it would allow scrutinising the legitimacy of policy measures designed to further cultural diversity.

Such a reading of the concept of diversity favours an objective assessment of the need for and legitimacy of governmental measures on cultural policy. In line with the theoretical reflections above,<sup>31</sup> one should however hasten to note, that the picture drawn by compiling empirical data should not be mixed up with a reification of culture, since it cannot offer more than a snapshot of the relevant markets for creative expressions. Culture is a dynamic concept<sup>32</sup> and cultural expressions must not be reduced to goods and services.<sup>33</sup> However, it is in the context of international trade rules where governmental measures on cultural policy are most likely to be challenged. As will be further argued below, a proportionality test of the CCD's *modus operandi* would be the best defence against accusations of its being merely a means of protectionism. The following sections will show that the CCD and in particular its rights and obligations chapter have failed to provide such mechanisms since there are no criteria allowing one to distinguish between licit and illicit policy measures.

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<sup>25</sup> Furthermore, recital 5 of the Preamble celebrates “the importance of cultural diversity for the full realization of human rights and fundamental freedoms” and Article 2(1) stresses that “[n]o 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.”

<sup>26</sup> See below text accompanying n. 38.

<sup>27</sup> With regard to traditional cultural expressions (TCE), which are explicitly covered by the CCD (see *inter alia* recital 13 of the Preamble), one needs to specify that abuses of TCE have multiplied as a consequence of economic globalisation. Moreover, collisions between the global economy and traditional cultural practices are at the root of most of the challenges faced by TCE today. See Graber 2007a, p. 45, and Graber 2007b, at section 1.

<sup>28</sup> Craufurd Smith 2007, p. 26, Graber 2006, p. 561.

<sup>29</sup> See Baker 2000, p. 1386, Graber 2003, p. 65.

<sup>30</sup> Craufurd Smith 2007, p. 35; for a discussion of diversity issues in liberal philosophy see Kymlicka 2003, p. 229-273, Waldron, 1995, p. 93-121.

<sup>31</sup> Section 2.1.

<sup>32</sup> See above the text accompanying n. 19.

<sup>33</sup> See recital 18 of the Preamble and Article 1(g) of the CCD.

### 3. Brief Overview of the Relevant Provisions (Articles 5 through 19)

The rights and obligations of the Parties under the Convention are specified in chapter IV, encompassing the 15 provisions from Article 5 to Article 19. The actual content of the rights and obligations under the CCD was among the most disputed issues in the negotiations (together with the relationship between the CCD and other international agreements). The main discussion on this issue took place at the second and third intergovernmental expert meetings in January/February 2005 and in May/June 2005.<sup>34</sup>

The rights and obligations chapter is the core of the CCD. It can be subdivided into three pillars:

- 1) First pillar: Articles 5 and 6, providing for the Parties' sovereign right to undertake measures on cultural policy;
- 2) Second pillar: Articles 7 to 11, providing for incentives for the Parties to engage in the promotion of the diversity of cultural expressions in their territory;
- 3) Third pillar: Articles 12 to 19, addressing the cooperation of the Parties to create favourable preconditions for the promotion of cultural diversity.

#### 3.1 First Pillar: Articles 5 and 6

Article 5 is the general rule regarding rights and obligations. It provides for the sovereign right of the Parties to formulate and implement their own cultural policies and to adopt measures on cultural policy both internally and on the international level. Article 6 is a specification of this sovereign right with regard to measures promoting and protecting cultural diversity in a Party's territory. Paragraph 2 of Article 6 provides a non-exhaustive list, enumerating eight categories of regulatory, institutional and financial measures every Party may choose to adopt.<sup>35</sup> The list is not only non-exhaustive, but the categories and types of measures mentioned here are extremely broadly defined;<sup>36</sup> they include all kinds of regulatory and financial measures supporting the development, production, dissemination and enjoyment of cultural expressions and support schemes for individual artists, domestic cultural industries, public institutions and non-governmental organisations.

In this respect one should note that public service broadcasting is explicitly mentioned as a means to promote the diversity of media.<sup>37</sup> Media diversity in the sense of the CCD not only relates to a plurality of media *companies* (as would be the understanding of competition law) but includes media *content* as well, assuring a diversity of opinion.<sup>38</sup> This reference to public service broadcasting may influence the shaping of the future media landscape in many parts of the world.<sup>39</sup> In Europe, during recent years, there has been a heated debate between the European Commission and certain EU Member States regarding the legitimacy of financial regimes in support of public service broadcasting. The fundamental question underlying these disputes has always been whether and how far the contribution of public service broadcasting towards assuring diversity of opinion and high quality information would qualify for an exemption from EC

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<sup>34</sup> For a detailed description of the negotiating history of the Convention see Raschèr & Fischer 2006, p. 815-819; see also Voon 2007, p. 183-194.

<sup>35</sup> According to Ruiz Fabri 2006, p. 80, this illustrative list sets out "with variable clarity, the principal types of measures that Parties may use."

<sup>36</sup> Craufurd Smith 2007, p. 40.

<sup>37</sup> See Article 6 (2)(h) CCD.

<sup>38</sup> See recital 12 of the CCD's Preamble, reaffirming that "freedom of thought, expression and information, as well as diversity of the media, enable cultural expressions to flourish within societies".

<sup>39</sup> Wiedemann 2006, p. 103 and Metze-Mangold & Merkel 2006, p. 370.

competition law.<sup>40</sup> With a view to determining the future role of public service broadcasting in the age of the Internet, the CCD reference will most certainly be invoked by all those lobby groups interested in preserving existing privileges.<sup>41</sup>

### **3.2 Second Pillar: Articles 7 to 11**

As a quid pro quo for the sovereign right to adopt measures on cultural policy, Articles 7 to 11 provide for an “obligation”<sup>42</sup> of the Parties to engage in the promotion of the diversity of cultural expressions in their territory.<sup>43</sup> However, these provisions consist of incentives rather than binding obligations. They merely invite the Parties to the Convention to adopt a number of measures, including promoting access to and dissemination of cultural expressions, preserving cultural expressions which are under serious threat of extinction, providing an appropriate exchange of relevant information, and encouraging an enhanced public awareness and understanding of the need to protect cultural diversity.

### **3.3 Third Pillar: Articles 12 to 19**

In contrast to the second pillar, Articles 12 to 19 relate to the *international* level. They address the cooperation of the Parties with a view to creating favourable preconditions for the promotion of cultural diversity. This pillar contains a series of provisions that favour meeting the needs of developing countries, including an obligation to facilitate exchanges of artists and cultural products with developing countries (Article 16), and voluntary contributions to an International Fund for Cultural Diversity. Although these provisions (with the exception of Article 16)<sup>44</sup> are good faith declarations rather than binding obligations<sup>45</sup> they are proving to be attractive to developing countries willing to make use of these instruments. This may explain why many developing countries ratified the Convention at an initial stage.<sup>46</sup>

## **4. Critical Assessment of Strengths and Weaknesses of These Provisions**

### **4.1 Lack of Binding Obligations**

Most of the provisions in chapter IV are good faith or best-effort obligations; i.e. the Parties are called to do their best to achieve the goals and purposes mentioned. Article 5 Paragraph 1 CCD reaffirming the sovereign right of the Parties “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

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<sup>40</sup> In April 2007, the European Commission closed an investigation regarding the financing regime for German public service broadcasters ZDF and ARD, and Germany has been given two years to align its system with two main conditions. First, funding for public service broadcasters must in future be limited to what is necessary for the fulfilment of the public service remit and commercial activities shall not benefit from any state aid.

Second, the future financing regime must provide for a more precisely defined public service remit. In particular, new media activities of public service broadcasters must pass a so-called “contribution to editorial competition”-test. This test reflects the relevance of a given offer for opinion-shaping in the light of other offers available on the market. See European Commission, State aid: Commission closes investigation regarding the financing regime for German public service broadcasters, IP/07/543, Brussels, 24 April 2007.

<sup>41</sup> Verena Wiedemann, head of the liaison office of the German public service broadcaster “ARD” in Brussels, claims that “the legal principle contained in the Convention that public service broadcasting may contribute to cultural diversity and media pluralism may be regarded as something of a global equivalent to the 1997 Amsterdam Protocol on Public Service Broadcasting adopted by European member states as part of the EC Treaty”. Wiedemann 2006, p. 106.

<sup>42</sup> The title of chapter IV of the CCD reads as “Rights and Obligations of Parties”.

<sup>43</sup> Bernier & Ruiz Fabri 2006, p. 13-14.

<sup>44</sup> See below, at 4.1.

<sup>45</sup> Ruiz Fabri 2006, p. 80.

<sup>46</sup> For an analysis of the aspects of the CCD appealing to developing countries see Craufurd Smith 2007, p. 52-53.

achieve the purposes of this Convention” is an illustrative example.<sup>47</sup> This language, providing for *rights* rather than *obligations* of the Parties, differs from the Preliminary Draft of the Convention,<sup>48</sup> which was prepared by the International Group of Experts. This first draft not only included provisions reaffirming the sovereign *rights* of the Parties but also emphasised their *obligations* to protect and promote cultural diversity (within their territories and internationally).<sup>49</sup> However, these obligations were deleted from later drafts since they failed to gain the consent of the negotiating Parties. A second example relates to Articles 8 and 17 CCD, safeguarding cultural expressions at risk of extinction. Whereas the “Composite Text”<sup>50</sup> provided that Parties could be obliged by the Intergovernmental Committee to take appropriate measures to preserve vulnerable cultural expressions, in the final text this *obligation* was replaced by a *right* of the Parties to take appropriate measures “to protect and preserve cultural expressions” “at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding”.<sup>51</sup>

Similarly, the other two pillars of chapter IV consist not of obligations but merely of a number of good faith engagements of the Parties.<sup>52</sup> Such engagements may imply action on the international or the national level. With regard to the international level, the International Committee (elected by the Conference of Parties according to Article 23 CCD) will be responsible for collecting and disseminating information in order to facilitate cooperation among Parties. In fulfilling this task, the International Committee will be assisted by the UNESCO Secretariat (Article 24 CCD). Whereas the Preliminary Draft provided for the establishment of a Cultural Diversity Observatory<sup>53</sup> and an Advisory Group of experts<sup>54</sup> to independently monitor the state of cultural diversity worldwide, these provisions were removed at an early stage of the negotiations since they were considered to be excessively ambitious.<sup>55</sup> Moreover, the contributions to the International Fund for Cultural Diversity, designed to support the needs of developing countries, are voluntary and thus uncertain. With regard to the national level – although there are basically no enforceable obligations – the Parties are nonetheless expected to make “best efforts” to implement the Convention. Implementation here means to engage in adopting adequate measures on cultural policy. Since the adoption of adequate measures is likely to be costly, effective implementation of these provisions will probably depend on the availability to governments of sufficient financial resources. As long as there are no clear-cut obligations of international law, the “cultural lobbies” active on the domestic level will thus often be too weak to convince the national regulator to take effective action.

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<sup>47</sup> Ruiz Fabri 2006, p. 80, has called this provision “the normative heart of the Convention”.

<sup>48</sup> CLT/CPD/2004/CONF-201/, Paris, July 2004.

<sup>49</sup> Ruiz Fabri 2006, p. 81.

<sup>50</sup> Both a “Composite Text” and a “Consolidated Text” (171 EX/INF.18) were subject to the negotiations during the third intergovernmental meeting of experts from 23 May to 4 June 2005. Whereas the “Composite Text” consisted of a compilation of all proposals and amendments offering different options for certain disputed provisions, the “Consolidated Text” was a consolidation of previous amendments and proposals prepared by the president of the intergovernmental meeting of experts on the basis of “the largest support during preceding negotiations”. Wouters & De Meester 2007, at 2.B. The conference eventually decided to transmit the “Consolidated Text” to the Executive Council of UNESCO. On 11 August 2005, the Director-General of UNESCO published its report on the progress achieved during the third session of the intergovernmental meeting of experts (UNESCO Doc. 33 C/23). The Executive Council of UNESCO, in its session of September 2005, approved the report and recommended the General Conference of UNESCO to adopt the “Consolidated Text” during its 33rd session in October 2005 without amendments. Raschèr & Fischer 2006, at 818.

<sup>51</sup> See Wouters & De Meester 2007, para 2.B.

<sup>52</sup> Ruiz Fabri 2006, p. 81.

<sup>53</sup> Article 15 of the Preliminary Draft (supra, n. 48).

<sup>54</sup> Article 22 of the Preliminary Draft (supra, n. 48).

<sup>55</sup> Craufurd Smith 2007, p. 38.

It is important to note that, according to Article 9(a) CCD, members *shall* report to UNESCO every four years on the measures taken at the national and international levels. The experience from other areas of international law (in particular human rights) shows that such reporting requirements are difficult to implement.<sup>56</sup> Nevertheless, they may have some political effect in convincing the Parties to abide by the basic objectives of the Convention since no government would like to appear on a “shame list” of non-complying Parties. However, as Rachel Craufurd Smith rightly observes, the reporting requirements of the CCD are limited to the measures a Party has actually taken and there are no general requirements to report on the state of the diversity of cultural expressions in a certain country. Hence, “if a state does nothing to protect or enhance diversity, there will be simply nothing to report”.<sup>57</sup> Since there is no obligation for a Party to provide information about decreases in cultural diversity in its territory there is a danger that reports will convey misleading information. Since the projected Cultural Diversity Observatory did not survive the negotiations, no effective oversight of the reports by an independent body is provided. Currently, supervision is merely incumbent on the Intergovernmental Committee that is obliged, according to Article 23(6)(c) CCD, to collect, summarise and comment on the reports. Provided the Committee takes its task seriously and is accorded sufficient administrative support from the UNESCO Secretariat, it may nonetheless “inject a degree of political bite into the reporting procedure”.<sup>58</sup>

The only provision with clear normative impact is Article 16 CCD stating that developed countries *shall* accord “preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.” In contrast to most other provisions of chapter IV, which are of a non-binding nature, this is a clear-cut obligation.<sup>59</sup> Since this obligation is in line with the “Enabling Clause” for Developing Countries of the GATT<sup>60</sup> and the overall spirit of WTO law encouraging its Members to pursue differential and more favourable treatment for developing countries, it is unlikely that a conflict with WTO obligations will arise out of this provision.

All in all, the existence of two isolated Articles having a certain normative impact does not much change my conclusion that the CCD overall does not impose binding and enforceable obligations on the Contracting Parties. Similarly, Hélène Ruiz Fabri states that “there is no trace of any truly binding formula” in the CCD and that the formulas of “fostering”, “encouraging” or “endeavouring” used by the CCD are typical for soft law.<sup>61</sup> Nevertheless, she takes the view that “the measures envisaged play an important part

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<sup>56</sup> Rachel Craufurd Smith 2007, p. 38, has pointed out that reporting requirements are unlikely to have much of an effect where a state does not fully accept the objectives underlying a given regulation.

<sup>57</sup> Craufurd Smith 2007, p. 38.

<sup>58</sup> Craufurd Smith 2007, p. 39.

<sup>59</sup> In opposition to this view, Hahn 2006, p. 537, argues that Article 16 is “mitigated to a bona fide effort obligation” since “all pertinent applications will have to pass through the appropriate institutional and legal framework”. However, the need to find the necessary political support in legislative processes at the national level is a general problem when ratification by parliament is required and nothing specific to enhancing cultural exchanges with developing countries. Moreover, the view put on record by New Zealand during the 33<sup>rd</sup> session of the General Conference of UNESCO confirms that Article 16 is perceived as a binding obligation. New Zealand stated its understanding “that the obligation in Article 16 (...) is not intended to affect the content or implementation of domestic legislation, policies or individual decisions on the entry of persons into New Zealand territory and other immigration matters”. UNESCO, Records of the General Conference, 33<sup>rd</sup> session, 3-21 October 2005, Volume 1, p. 221.

<sup>60</sup> The “Enabling Clause” is provided by the 1979 GATT Decision on “Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries”, which is now part of the GATT 1994. The “Enabling Clause” essentially operates as an exception to the Most Favoured Nation Obligation of the GATT 1994 since it authorises WTO Members to grant preferential market access to products from developing countries. See Van den Bossche 2005, p. 679-681.

<sup>61</sup> Ruiz Fabri 2006, p. 81.

in the maintenance and development of the diversity of cultural expressions and their identification, and hence recognition as such, is useful in itself.”<sup>62</sup> In my view, however, it cannot be denied that the normative shortcomings identified clearly weaken the relevance of the Convention. Rights without corresponding duties may have some political weight but do not have much legal effect<sup>63</sup> – for instance when invoked as a defence in a conflict between trade and culture arising within the framework of a WTO dispute settlement procedure.<sup>64</sup> Hence, if compared with the original intention behind the CCD project, i.e. to create a counterweight to the WTO for cultural purposes, the result is disappointing.

#### 4.2 Is the Convention an Instrument of Disguised Protectionism?

Throughout the negotiations, the United States vehemently opposed the new Convention.<sup>65</sup> One of the main criticisms put forward by the United States was that the Convention is an instrument of disguised protectionism.<sup>66</sup> Regrettably, a close analysis of the substantial provisions of the Convention makes it difficult to rebut this accusation.

Article 5 (the general rule regarding rights and obligations) and all the other articles in chapter IV of the Convention, give unlimited discretion to the Parties to decide autonomously which cultural policy measures they deem appropriate for protecting and promoting cultural diversity. Article 5(2) provides for a general obligation of the Parties to adopt measures which are consistent with the Convention and Article 6(2) sets out an illustrative list of types of measures a Party may use. According to H el ene Ruiz Fabri, the list has an important function since it allows the Convention to avoid “the trap of being simultaneously too vague and too restrictive”.<sup>67</sup> However, neither Article 6(2) and the rest of chapter IV nor the provisions setting out the basic principles and objectives of the CCD (Articles 1 and 2) provide criteria to distinguish between licit and illicit (i.e. protectionist) cultural policy measures. Above all, no attempt is made to identify possible criteria for the allocation of state aid. Although “domestic independent cultural industries”, “public institutions”, “non-profit organizations”, the “informal sector” or “public service broadcasting” are explicitly mentioned among the beneficiaries of governmental measures on cultural policy in Article 6(2), no definition of these notions is offered.<sup>68</sup> Generally, the Convention does not set out any clear conditions that governmental measures should respect in order to be legitimate and there is no language saying that protectionist measures would be excluded from the scope of the CCD.

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<sup>62</sup> Ruiz Fabri 2006, p. 81.

<sup>63</sup> Conversely, Tania Voon 2007, p. 212, argues that obligations should not be elevated over and above rights since a conflict of law may arise where an obligation of WTO law would impede the exercise of a right provided by the CCD. However, this argument fails to consider that according to the principle of *pacta sunt servanda* any treaty in force is binding upon all its Parties (see Article 26 Vienna Convention on the Law of Treaties (VCLT), adopted on 22 May 1969, entered into force on 27 January 1980, United Nations Treaty Series, Vol. 1155, 331). Hence, *vis   vis* other Parties to a treaty, a government has no choice other than to comply with the obligations provided by the treaty, whereas it is not prevented from renouncing a right. A conflict of law arises when acting in observance of an obligation would result in the violation of another obligation without the possibility of interpreting the two obligations as complementary. See Van den Bossche 2005, p. 49.

<sup>64</sup> On the question of the extent to which non-economic treaties of international law can be relevant within a WTO dispute settlement procedure see below, n. 83.

<sup>65</sup> Graber, 2006, p. 560.

<sup>66</sup> See Public Briefing of the US State Department, 27 July 2005, regarding negotiations of the UNESCO Convention on Cultural Diversity, Free Press, 'State Dept. Holds Second Briefing on UNESCO Convention', Washington, 29 July 2005, <[http://www.freepress.net/global/update\\_print.php?id=92](http://www.freepress.net/global/update_print.php?id=92)> (last visited 30.8.2007); Quebec Ministry of Culture, 'Newsletter, Vol. 5, No 29, 11 October 2005', <<http://www.mcc.gouv.qc.ca/diversite-culturelle/eng/events/events05-10-11.html>>, last visited 30.8.2007.

<sup>67</sup> Ruiz Fabri 2006, at 80.

<sup>68</sup> See also Ruiz Fabri 2006, p. 80.

In order to explain what a “protectionist” measure of cultural policy is, it is probably best to give an example. On 27 January 2007, the Italian Senate was assigned to vote on a project for a new Cinema Act submitted by the “Partito della Rifondazione Comunista”, a radical left party.<sup>69</sup> The projected law was intended to fight the predominance of Hollywood films on the Italian market with a plethora of measures, including a rule that for every US film distributed in Italian cinemas two newly-released Italian or EC films must be distributed (Article 8). Furthermore, according to Article 11, any cinema operating during more than 200 days per year was obliged to exhibit newly-released films of EC origin during at least 120 days and newly-released Italian films during at least 60 days per year. In order to qualify as “Italian” not only the director, the scriptwriter, the actors, directors of photography and all the technicians must be Italian, but also the film must be mainly shot in Italian locations (Article 5(4)). In the case of violation of these rules the projected law provided severe sanctions including temporary close-down of the distribution company or the cinema concerned (Article 8(4) and Article 11(3)). Other rules obviously directed against Hollywood blockbusters imposed a tax of 500 Euro on any print exceeding the total number of 500 prints per film (Article 10(5)) and prohibited the showing of the same film on more than 8 per cent of the screens available in a given city (Article 12).

This proposal has been criticised as protectionist, *inter alia* by Dino Risi, one of the grand old men of the Italian cinema. According to Dino Risi, this proposal is the expression of a general hostility against the American cinema. He said “I grew up with milk and Billy Wilder, and Chaplin’s ‘City Lights’ was my benchmark”.<sup>70</sup>

We do not know whether the promoters of this proposal invoked the CCD to defend its legitimacy. The phrasing of the core provisions of the Convention would certainly not stand in the way of such a strategy.<sup>71</sup> In fact, there is nothing in the CCD inhibiting the Parties from invoking the Convention even in cases where the policy measures at stake are clearly protectionist as in the Italian example or the culture quotas of the EC Audiovisual Media Directive. Under the latter, “Big Brother”-type programmes financed with European money fit perfectly the criteria to qualify as both, a “European work” and an “independent production” within the meaning of the directive.<sup>72</sup> This openness in the definition of cultural policy measures considerably weakens the legitimacy of the Convention in conflicts of trade and culture e.g. in the realm of WTO disputes or negotiations.<sup>73</sup>

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<sup>69</sup> The proposal was withdrawn on 13 July 2007. See Senato della Repubblica Italiana, XV Legislatura, Disegno di Legge N. 1131, Disposizioni in materia di cinematografia, text available at <<http://www.senato.it/leg/15/BGT/Schede/Ddliter/27058.htm>>, last visited 30.8.2007.

<sup>70</sup> *Neue Zürcher Zeitung*, 2 February 2007, p. 47 (translation by the author).

<sup>71</sup> On the contrary, the illustrative list of types of measure a Party may use, as set out in Article 6 (2) CCD, explicitly includes content quotas. See Ruiz Fabri 2006, p. 80.

<sup>72</sup> For a critique of the protectionist design of the culture quotas in the existing EC Television Without Frontiers Directive and the projected EC Audiovisual Media Directive see Burri-Nenova 2007, para 4.1.2, available at <[http://www.nccr-trade.org/images/stories/publications/twf\\_workingpaper.pdf](http://www.nccr-trade.org/images/stories/publications/twf_workingpaper.pdf)>, last visited 15.5.2007. See also Craufurd Smith 2007, p. 42, and Graber 2003, p. 251-54.

<sup>73</sup> By contrast, Hélène Ruiz Fabri 2006, p. 80, takes the view that “the disadvantages of this lack of precision are relative. On the one hand, it could make it easier to reconcile the Convention with other more detailed instruments. On the other, the list is only for guidance and thus leaves States a certain amount of discretion to choose the measures most appropriate for them, in the light of their own situation, their own resources and their other commitments.”

## 5. Can the Weaknesses be Overcome?

As explained above, the absence of a distinction between licit and illicit measures exposes the Convention to the criticism of being protectionist and also reduces its legitimacy *vis à vis* other international organisations (such as the WTO). In order to overcome such drawbacks (at least partially) it would be imperative, in my view, for a body of case law regarding the interpretation and application of the CCD to evolve. Here, the dispute settlement mechanism provided by Article 25 CCD might be relevant. As several commentators have pointed out, during the negotiations, the CCD dispute settlement mechanism was stripped of its institutional and procedural constraints.<sup>74</sup> If negotiations and mediation fail, Article 25 CCD provides for a conciliation mechanism. Pursuant to an annex to the Convention, one of the Parties may request the establishment of a special Conciliation Commission.<sup>75</sup> Unfortunately, this conciliation procedure is far from compulsory since each Party may declare at the time of ratification that it does not recognise the conciliation procedure.<sup>76</sup> What is more, the Parties to a dispute ruled by the conciliation procedure may determine in good faith whether to consider the proposal made by the Conciliation Commission.<sup>77</sup> According to Ivan Bernier and H el ene Ruiz Fabri such an opt-out provision is unlikely to work as an incentive to use the conciliation procedure.<sup>78</sup> Although this mechanism is not compulsory, the Parties to the Convention interested in overcoming its weaknesses might use it in order to give more precise meaning to some of the over general provisions of the Convention,<sup>79</sup> and develop an operational distinction between licit and illicit measures on cultural policy on a case-by-case basis. In this regard the adoption of a statistics-based approach to measuring cultural diversity as suggested above appears promising.<sup>80</sup> It would allow the introduction of a proportionality or necessity test when scrutinising the legitimacy of governmental measures on cultural policy.<sup>81</sup> Ideally, to successfully defend the legitimacy of a given trade-distortive measure, a government would have to show on the basis of empirical data that the measure at issue is *effectively aimed* at protecting and promoting the alleged goals of the CCD and is *necessary* for that purpose. In the latter respect the availability of alternative, less trade restrictive measures would have to be considered.<sup>82</sup>

Alternatively, one could suggest that the Intergovernmental Committee should engage in writing opinions or general comments regarding the interpretation of some key provisions. However, the question is: does the CCD provide for a sufficient legal basis for the Committee to engage in such interpretative functions? Article 23(6) lists the various functions of the Committee including duties regarding the implementation of the CCD by the Parties; the administration of the Parties' reporting obligations under Article 8 CCD; the

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<sup>74</sup> Bernier & Ruiz Fabri 2006, p. 24-28; Ruiz Fabri 2006, p. 82-83; Graber 2006, p. 573.

<sup>75</sup> According to Annex Article 1, the Conciliation Commission is composed of five members, two appointed by each Party concerned and a President chosen jointly by these members.

<sup>76</sup> Article 25(3) CCD.

<sup>77</sup> Craufurd Smith 2007, p. 39; Graber 2006, p. 573.

<sup>78</sup> Bernier & Ruiz Fabri 2006, p. 27.

<sup>79</sup> Craufurd Smith 2007, p. 45.

<sup>80</sup> Above, section 2.2.

<sup>81</sup> The absence of any reference in the CCD to principles such as proportionality or effectiveness has been deplored by Craufurd Smith 2007, p. 40 and 42.

<sup>82</sup> A good example for the operation of a proportionality test in the field of media, mentioned by Craufurd Smith 2007, p. 43, is the *Familiapress* Decision of the European Court of Justice. See Case C-368/95, *Vereinigte Familiapress Zeitungsverlags- und vertriebs GmbH v Heinrich Bauer Verlag* [1997] ECR I-3689.

communication of these reports to the Conference of Parties; and the establishment of procedures supporting the coordination between the Convention and other international fora. Accordingly, the CCD empowers the Committee at least to comment on the Parties reports and thus to exert pressure on non-complying governments to abide by the objectives of the CCD.<sup>83</sup> Furthermore, pursuant to Article 23(6)(f) CCD the Intergovernmental Committee shall “perform any other tasks as may be requested by the Conference of Parties”. It is questionable whether this general clause would provide for a sufficient legal basis for allowing the Committee to adopt interpretations of the CCD beyond comments on state reports. According to Article 22(1) CCD, the Conference of Parties is the “plenary and supreme body” of the Convention.<sup>84</sup> One could argue that the Conference of Parties would also be empowered to request the Intergovernmental Committee to issue comments or opinions regarding the interpretation of the CCD. However, it is easy to object that the Contracting Parties would have drafted the Convention differently, had they intended such an important role for the Committee.

The intention behind these reflections and suggestions is to contribute to the creation of a body of interpretations of CCD provisions, which would have a certain political and legal gravity and improve the normative relevance of the CCD. Ideally, decisions of the Conciliation Commission or opinions of the Intergovernmental Committee could be referred to by WTO Panels or the Appellate Body in conflicts involving cultural values under the WTO dispute settlement mechanism.<sup>85</sup> Interpretations of the CCD, drawing a line between licit and illicit measures on cultural policy, would also improve “the bargaining position of [the CCD’s] members in WTO negotiations”.<sup>86</sup>

## 6. Conclusion

The CCD is a major international undertaking that may be seen as a first step to filling the existing lacuna for cultural values and interests in international law, notwithstanding shortcomings such as its low normative impact or the absence of any distinction between licit and protectionist cultural policy measures. Currently, the provisions of the Convention regarding rights and obligations are rather fuzzy. Hence, it is difficult to see how the CCD could be taken into account by the WTO dispute settlement authorities or be referred to in WTO negotiations regarding disputes on trade and culture. In order to counteract criticism

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<sup>83</sup> Craufurd Smith 2007, p. 40. See however the caveat in the text accompanying n. 57 supra.

<sup>84</sup> In June 2007, the Conference of Parties convened for its first session at the UNESCO headquarters in Paris. During this session, the Conference of Parties elected the 24 members of the Intergovernmental Committee and reaffirmed that the Committee “will be responsible, among other things, for promoting the objectives of the Convention, encouraging and ensuring its implementation and preparing operational directives.” The Intergovernmental Committee will hold its first meeting in December 2007 in Ottawa. See UNESCO Press Release No. 2007-68, 21 June 2007, available at <[http://portal.unesco.org/en/ev.php-URL\\_ID=38525&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=38525&URL_DO=DO_TOPIC&URL_SECTION=201.html)>, last visited 30.8.2007.

<sup>85</sup> WTO dispute settlement authorities must take their decision on the basis of WTO law (Articles 1 and 11 Understanding on Rules and Procedures Governing the Settlement of Disputes, DSU). Hence, a Panel or the Appellate Body may not decide whether a certain governmental measure is in accordance with the CCD. It may only decide whether the measure violates WTO law. However, WTO dispute settlement authorities may take into account the CCD as part of the context of the WTO provision to be interpreted or applied (Article 3.2 DSU in conjunction with Article 31(3)(c) VCLT). On the question of the extent to which multilateral environmental agreements can be relevant for the interpretation of WTO law, see Van den Bossche 2005, p. 59. For a detailed account of the impact of the CCD on WTO law see Voon, 2007, at p. 194-216. Since neither Panels nor the Appellate Body can “add to or diminish the rights and obligations provided in the covered agreements” (Articles 3.2 and 19.2 DSU), the unresolved question is how WTO dispute settlement authorities can link their interpretation of WTO law with the Convention. For a discussion of possible solutions see Graber 2006, p. 571-573.

<sup>86</sup> Acheson and Maule 2004, p. 42, and Craufurd Smith 2007, p. 48.

that the CCD is without normative impact and is an instrument of disguised protectionism, the Parties interested in making the Convention work should explore mechanisms to stimulate interpretations of the Convention on a case-by-case basis. The endorsement of a market- and statistics-oriented approach to measuring cultural diversity would be a precondition for developing a proportionality or necessity test to scrutinise the Parties' measures and policies and thus to counteract protectionism. To install such a test, the dispute settlement mechanism provided by the CCD seems more suitable than the procedures where the functions of the Intergovernmental Committee are defined, since the authority of the latter to work out general interpretations of the CCD seems to be questionable. Because the dispute settlement mechanism is not compulsory, whether the CCD will develop into a significant instrument for protecting cultural values and interests will finally very much depend on the will of the Parties.

## Bibliography

### Acheson & Maule 2004

K. Acheson and Ch. Maule, 'Convention on Cultural Diversity', *Journal of Cultural Economics*, 2006, p. 243-256.

### Baecker 2001

D. Baecker, *Wozu Kultur?* Berlin, Kadmos, 2001.

### Baker 2000

C.E. Baker, 'An Economic Critique of Free Trade in Media Products', *North Carolina Law Review*, 2000, p. 1357-1435.

### Bernier 2004

I. Bernier, 'A UNESCO International Convention on Cultural Diversity', in C. B. Graber, M. Girsberger and M. Nenova (eds), *Free Trade versus Cultural Diversity: WTO Negotiations in the Field of Audiovisual Services*, Zurich, Schulthess, 2004, p. 65-76.

### Bernier & Ruiz Fabri 2006

I. Bernier and H. Ruiz Fabri, *La mise en oeuvre et le suivi de la Convention de l'UNESCO sur la protection et la promotion de la diversité des expressions culturelles*, Quebec, Gouvernement du Quebec, 2006; also available at <<http://www.mcc.gouv.qc.ca/diversite-culturelle/pdf/UNESCO-francais.pdf>>, last visited 30 August 2007.

### Burri-Nenova 2007

M. Burri-Nenova, 'The Reform of the EC Audiovisual Media Directive: Television Without Cultural Diversity', *NCCR Trade Regulation Working Paper No. 2007/06*, 2007; available at <<http://www.nccr-trade.org/ip-7/the-reform-of-the-ec-audiovisual-media-regulation-television-without-cultural-diversity-2.html>>, last visited 30 August 2007.

### Craufurd Smith 2007

R. Craufurd Smith, 'The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions: Building a New World Information and Communication Order?', *International Journal of Communication*, 2007, p. 24-55.

### Fuchs 2006

M. Fuchs, 'Kulturelle Vielfalt im kulturpolitischen Alltag. Überlegungen zur Analyse und Umsetzung der UNESCO-Konvention zur kulturellen Vielfalt', *unesco-heute online*, March/April 2006, available at <<http://www.unesco-heute.de/0306/fuchs.htm>>, last visited 30 August 2007.

### Graber 2007a

C.B. Graber, 'Traditional Cultural Expressions in a Matrix of Copyright, Cultural Diversity and Human Rights', in F. Macmillan (ed.), *New Directions in Copyright Law*, Volume 5, Cheltenham, UK, Edward Elgar, 2007, p. 45-71.

### Graber 2007b

C.B. Graber, 'Can Modern Law Safeguard Archaic Cultural Expressions? Observations from a Legal Sociology Perspective', in C. Antons (ed.), *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region*, Dordrecht, Kluwer (forthcoming).

### Graber 2006

C.B. Graber, 'The New UNESCO Convention on Cultural Diversity: A Counterbalance to the WTO?', *JIEL*, 2006, p. 553-574.

### Graber 2003

C.B. Graber, *Handel und Kultur im Audiovisionsrecht der WTO. Völkerrechtliche, ökonomische und kulturpolitische Grundlagen einer globalen Medienordnung*, Bern, Stämpfli, 2003.

**Graber 1994**

C.B. Graber, *Zwischen Geist und Geld. Interferenzen von Kunst und Wirtschaft aus rechtlicher Sicht*, Baden-Baden, Nomos, 1994.

**Hahn 2006**

M. Hahn, 'A Clash of Cultures? The UNESCO Diversity Convention and International Trade Law', *JIEL*, 2006, p. 515-552.

**Kymlicka 2003**

W. Kymlicka, 'Liberal Theories of Multiculturalism', in L.H. Meyer, S.L. Paulson and T.W. Pogge (eds.), *Rights, Culture, and Law: Themes from the Legal and Political Philosophy of Joseph Raz*, Oxford, Oxford University Press, 2003, p. 229-273.

**Luhmann 1997**

N. Luhmann, *Die Gesellschaft der Gesellschaft*, 2 Volumes, Frankfurt/Main, Suhrkamp, 1997.

**Luhmann 1995**

N. Luhmann, *Die Kunst der Gesellschaft*, Frankfurt/Main, Suhrkamp, 1995.

**Metze-Mangold & Merkel 2006**

V. Metze-Mangold and C.M. Merkel, 'Magna Charta der internationalen Kulturpolitik. Die UNESCO-Konvention vor der Ratifizierung', *Media Perspektiven*, 2006, p. 362-373.

**Raschèr & Fischer 2006**

A.F.G. Raschèr and Y. Fischer, 'Kultur und Wirtschaft im Gleichgewicht. Die UNESCO-Konvention über den Schutz und die Förderung der Vielfalt kultureller Ausdrucksformen', *Aktuelle Juristische Praxis*, 2006, p. 813-832.

**Ruiz Fabri 2006**

H. Ruiz Fabri, 'Reflections on Possible Future Legal Implications of the Convention', in N. Obuljen and J. Smiers (eds.), *UNESCO's Convention on the Protection and Promotion of the Diversity of Cultural Expressions: Making it Work*, Zagreb, Institute for International Relations, 2006, p. 73-87.

**Sen 1999**

A. Sen, *Development as Freedom*, New York, Anchor, 1999.

**Van den Bossche 2005**

P. Van den Bossche, *The Law and Policy of the World Trade Organization*, Cambridge, Cambridge University Press, 2005.

**Voon 2007**

T. Voon, *Cultural Products and the World Trade Organization*, Cambridge, Cambridge University Press, 2007.

**Waldron 1995**

J. Waldron, 'Minority Cultures and the Cosmopolitan Alternative', in W. Kymlicka (ed.), *The Rights of Minority Cultures*, Oxford, Oxford University Press, 1995, p. 93-121.

**Wiedemann 2006**

V. Wiedemann, 'Empowering audiovisual services for the future', in N. Obuljen and J. Smiers (eds.), *UNESCO's Convention on the Protection and Promotion of the Diversity of Cultural Expressions: Making it Work*, Zagreb, Institute for International Relations, 2006, p. 91-108.

**Wouters & De Meester 2007**

J. Wouters & B. De Meester, 'UNESCO's Convention on Cultural Diversity and WTO Law: Complementary or Contradictory?', *K.U. Leuven Faculty of Law, Institute for International Law, Working Paper No. 73*, updated April 2007, available at <<http://law.kuleuven.be/iir/nl/wp/WP/WP73ed2e.pdf>>, last visited 29 May 2007.