

CULTURAL DIVERSITY AND INTERNATIONAL LAW

Christa Rautenbach

North-West University (Potchefstroom Campus), South Africa

Keywords: Cultural diversity, culture; legal pluralism, multiculturalism, international law, UNESCO, globalization, development, democracy, human rights, universalism, international cultural instruments.

Contents

1. Introduction
 2. Conceptualizing "Cultural Diversity" in International Law
 3. Emergence and Evolution of Cultural Diversity as a Concept of International Law
 4. 2009 *UNESCO World Report* Setting the Trend in International Law: From Theory to Practice
 5. International Instruments on the Issue of Cultural Diversity
 - 5.1. Group 1: UNESCO Instruments
 - 5.2. Group 2: Other International Instruments
 6. Concluding Remarks
- Glossary
Bibliography
Bibliographical Sketch

Summary

This contribution provides an overview of the concept "cultural diversity" in international law. The first part is dedicated to the never-ending quest to give meaning to cultural diversity, and it is argued that the contemporary international definition of culture as a "way of life" is necessary to give recognition to the varied ways in which culture can be seen globally. An open-ended definition of culture and, more specifically, cultural diversity is sensible in the light of the fact that States need to interpret the concept in accordance with domestic needs. The second part of the contribution is a short historical overview of the development of the concept of cultural diversity in international law. UNESCO, an international organization established by the UN, is the main body responsible for fostering cultural diversity. It was originally set up to counter wars that transpired as a result of ignorance of cultural differences between people, most notably against the background of the Second World War. Historical facts reveal that cultural diversity has evolved from differences between mere external practices (works of art) to an all-encompassing concept referring to all manifestations of cultural differences. In this regard, UNESCO's policies commenced with the exchange of cultural knowledge with the purpose of sensitizing the international community to cultural differences. In line with global demands and developments its policies developed over the years to acquire other dimensions, including politics, human rights, sustainable development, democracy, and knowledge interchanges. The third part of the contribution goes over the main points of the 2009 *UNESCO World Report*, a trendsetting document aiming to put into practice what have been only theoretical discussions thus far. Before the concluding remarks are made, the fourth part presents a

sample of the most important international instruments pertaining to culture and cultural diversity.

1. Introduction

Cultural diversity, although initially not named as such, became an issue in international law after the Second World War, especially with the establishment of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in 1946. As formulated in Article 1(1) of the UNESCO Constitution, the purpose of UNESCO is to:

... contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.

In line with its function of stimulating international reflection, UNESCO has been instrumental in making cultural diversity a buzzword on the international policy-making scene. Landmark events, such as international conferences, reports and instruments, and the viewpoints of decision-makers and experts helped in acknowledging the importance of cultural diversity in fields which were not immediately identified with culture, such as knowledge, politics, democracy, development and trade.

This contribution discusses the phenomenon "cultural diversity" in international law. The first part deals with the international meaning of culture and, more particular, cultural diversity. The second part consists of an overview of the main international events instrumental in the emergence and development of cultural diversity in international law. The third part gives an overview of the contents of the 2009 *UNESCO World Report*, which is the first document reflecting the collective views of the organization on cultural diversity. The fourth part lists and briefly discusses UNESCO's and other international organizations' instruments responsible for the fostering of cultural diversity in international law. The contribution concludes with a few final remarks on future global developments envisaged in the area of cultural diversity.

2. Conceptualizing "Cultural Diversity" in International Law

Cultural diversity has become an important issue in international law, but the exact meaning of cultural diversity remains a controversial issue. In order to have an understanding of the use to which the notion has been put in international law it is necessary to attempt to briefly pin down its meaning.

The term "cultural" in cultural diversity is an adjective that stems from the noun "culture", which is almost impossible to define due to its multi-layered and context-dependent nature. Over the years, scholars from various disciplines have explored its meaning and possible parameter, but to date it remains a much contested and illusive concept. Linguistically, the term culture comes from the Latin term *cultūra* or *cultus*, which has a variety of meanings such as "cultivate", "culture", "civilization", "adoration", "worship", "way of life", "dress", "attire" and "adornment". It has been the focal point of cultural anthropologists and sociologists for many years, but lawyers are now increasingly joining in the quest to find a workable definition of culture. Whilst the

quest continues we are left with a plethora of divergent views on culture's exact meaning, nature and relevance, especially in the context of law. Culture is often understood as an abstract driver of human behavior and as such it is subject to constant change as peoples' contexts, demands, needs and understanding change. From some viewpoints, culture is seen as an abstract, albeit inherent part of human life that has to do with a subliminal pattern of thinking which describes values, norms and symbols which guide one's choices and interaction with others. This understanding of culture could explain why there are so many divergent views about the meaning of culture in the literature in general and in law-based literature in particular.

Though significant in just about all spheres of law, the application of the concept culture in international law is relevant for this discussion, and the debates on the meaning of the term culture in international law are therefore relevant. One of the first attempts to define culture in international law can be found in the broad definition in the preamble of the UNESCO *Mexico City Declaration on Cultural Policies* (the 1982 *Mexico City Declaration*) at the World Conference on Cultural Policies held in Mexico City in 1982, viz.:

... [C]ulture ... [is] ... the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize 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; that it is culture that gives man the ability to reflect upon himself. It is culture that makes us specifically human, rational beings, endowed with a critical judgement and a sense of moral commitment. It is through culture that we discern values and make choices. It is through culture that man expresses himself, becomes aware of himself, recognizes his incompleteness, questions his own achievements, seeks untiringly for new meanings and creates works through which he transcends his limitations.

In line with this definition, the World Commission on Culture and Development, as discussed in section 3 hereafter, advanced an even broader understanding of culture in their Report *Our Creative Diversity* in 1995 (the 1995 *Our Creative Diversity Report*) and views culture simply as "ways of living together". This open-ended definition is broad enough to include all of the different facets and layers of culture and enables countries to give content to culture within their own territories.

In its Final Report published in 1998, the Stockholm *Intergovernmental Conference on Cultural Policies for Development* (the 1998 *Stockholm Conference*) adopted an *Action Plan on Cultural Policies for Development*. In its preamble the Action Plan reaffirmed the definition of culture put forward by the 1982 *Mexico City Declaration*.

On 2 November 2001 the General Conference of UNESCO adopted the *Universal Declaration on Cultural Diversity* (the *CDD*). The preamble to the *CDD* describes culture in line with the definitions put forward by the 1982 *Mexico City Declaration*, the 1995 *Our Creative Diversity Report*, and the 1998 *Stockholm Conference*, and concludes that culture:

... should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.

These definitions illustrate that culture is no longer regarded as a mere commodity. It is the doings of human beings by virtue of their being members of a group (or a community). In other words, it is an expression of a person's or a group's identity. One could perhaps be over simple by saying that culture has two dimensions. One dimension is the physical characteristics of a person or group, which can be externally observed - for example, artifacts, language, religion and custom. The other dimension relates to the subjective and refers to the way of thinking and acting of a person or a group. Another way of looking at culture is to describe it as a set of attitudes, beliefs, mores, customs, values and practices which are commonly shared by a group. Such a group may be defined in terms of its politics, geography, religion, ethnicity or some other characteristic, thus using culture as a noun as for example, in the terms African culture, Asian culture, Christian culture, feminist culture, youth culture or corporate culture. Seeing culture in this way, however, does not explain other forms of culture which have to do with the activities undertaken by people and the products of those activities - which have to do with the intellectual, moral and artistic aspects of human life. The notion of culture can also be pertinent in the context of activities that lead to enlightenment and education of the mind rather than the acquisition of purely technical or vocational skills. In such cases culture is more likely to occur as an adjective than as a noun, as in cultural diversity, cultural goods, cultural institutions or cultural governance. The fact that there are so many diverse possible descriptions of the nature of culture demonstrates the difficulty implicit in attempting to pin down a single general meaning for the term, and perhaps rightly so, for it should be left to States to give context to the term relevant to their particular circumstances, especially in the context of international law.

Moving on from these attempts to establish a fixed meaning for culture, which seems to be an absurd endeavour, the next mission is to explore the meaning of the word "diversity" in the phrase "cultural diversity". The word diversity is a noun that comes from the Latin word *dīversitās* which means the state of being diverse or different. Bearing in mind that the broad understanding of culture refers to a person's or group's identity and way of living, the word diversity (a noun in this context) refers to the diverseness of such identities and ways of living. The first attempt to define cultural diversity in a legal document is found in the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* 2005 (the CDC), viz.:

... the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

UNESCO's future conception of cultural diversity will rest on this broad definition and, as it is the first of its kind in an internationally legally binding instrument, it is extremely important for the future development of the concept in international law. The definition remains, nonetheless, relevant only in the context of the CDC, which deals only with cultural expressions, and for that reason its meaning may be something totally different in another context.

The dynamic nature of cultural diversity is evident from the recent UNESCO World Report *Investing in Cultural Diversity and Intercultural Dialogue* published in 2009 (the 2009 *UNESCO World Report*), reflecting the viewpoint of UNESCO as a whole, where it is stated that "[c]ultural diversity should be defined as the capacity to maintain the dynamic of change in all of us, whether individuals or groups (p. 4)". This makes it easy to understand why the 2009 *UNESCO World Report* commences with clarifications about some misconceptions regarding cultural diversity instead of giving a definition. Cultural diversity may be evident a wide range of distinct cultural activities, although these contours are not always easy to determine. Awareness of this diversity has been facilitated by the globalization of exchanges between communities. In addition, being a social phenomenon, cultural diversity binds and distinguishes between groups, and is thus a major social concern. By bringing different lifestyles, value systems, codes of conduct, social relations, cultural expressions and so forth into play, cultural diversity becomes part and parcel of the political agenda of many countries.

One of the first difficulties identified by the 2009 *UNESCO World Report* is establishing the link between diversity and culture. It is obvious that cultures are diverse, and it is therefore important to have some idea of what culture means but, as implied above, giving an exact meaning to the term culture seems to be impossible, which may be why UNESCO chose to use as broad a definition as possible, along the lines of the 1982 *Mexico City Declaration* as quoted in section 2 above.

A second difficulty, which will not be fully canvassed here, concerns the identification of the components of cultural diversity, especially in connection with the terms "culture", "civilization" and "peoples", which terms may have different meanings depending on their context and one's ideology. For instance, a civilization may be something that affirms a people's values and world views. Those people may think of their civilization as being morally universal and therefore adopt an expansionist approach towards outsiders. The concept could thus pose a threat to the peaceful co-existence of diverse groups. UNESCO's resolve is to understand civilization to be a "work in progress", as the accommodation of each of the world's cultures, on the basis of equality, in an ongoing universal project (p. 5)".

The third difficulty pointed out by the 2009 *UNESCO World Report* concerns the variable character of culture. Societies evolve for a number of reasons, most notably in recent times as a result of globalization and the dynamic nature of the cultural identities of these societies. UNESCO recognizes the fact that the changeable nature of culture requires a fresh approach to cultural diversity, which it refers to as "managing cultural diversity". In other words, the inherent challenges of cultural diversity concern not only States (internationally) or multi-cultural societies (nationally) but also individuals, who must be able to free themselves from stereotypes and prejudices in order to accept others different from themselves. If one looks at cultural diversity in this way, it becomes a resource which could contribute to the social and economic development which is indispensable to our future peace and prosperity.

As the 2009 *UNESCO World Report* is the most recent publication of UNESCO on the issue of cultural diversity and reflects a viewpoint representative of UNESCO as a whole, the contents of the Report will undoubtedly play a prominent role in the interpretation of cultural diversity in international law in future. For that reason a more

detailed discussion of the contents of the Report is given in section 4 hereafter. The emergence and evolution of cultural diversity as a concept of international law is discussed in the next section.

-
-
-

TO ACCESS ALL THE 31 PAGES OF THIS CHAPTER,
Visit: <http://www.eolss.net/Eolss-sampleAllChapter.aspx>

Bibliography

Bernier, Ivan (2006) *Implementing the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions: Future Actions*. Imprimerie Laval Lemay: Canada. [Discusses the implementation of the CDC.]

Burri, Mira. "Cultural Diversity as a Concept of Global Law: Origins, Evolution and Prospects". In (2010) *Diversity* pp. 1059-1084. [Discusses the roots of cultural diversity and its development in global law, accessible at <http://bit.ly/gNFXEk>.]

Cerna, Christina M. "Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts". In (1994) *Human Rights Quarterly* pp. 740-752. [Discusses some of the dynamics between cultural diversity and universality of human rights.]

Donders, Yvonne M. (2002) *Towards a Right to Cultural Diversity?* Intersentia: Antwerpen. [The author discusses cultural identity in the context of human rights.]

Du Plessis, Anél A. and Rautenbach, Christa "Legal Perspectives on the Role of Culture in Sustainable Development." In (2010)(13)1 *Potchefstroom Electronic Law Journal*, accessible at <http://bit.ly/ha8MIR> [Contains a discussion of the concepts "culture" and "diversity" with a useful list of relevant sources.]

Goncalves, Maria Paola (1998) *A Cultural Decade: Reflections on the World Decade for Cultural Development 1988-1997*. Studies and Reports of the Unit of Cultural Research and Management - No. 5. [Reflects on the successes and shortcomings of the *World Decade for Cultural Development*.]

Graber, Christoph B "The New UNESCO Convention on Cultural Diversity: A Counterbalance to the WTO?" In (2009) *Journal of International Economic Law* pp. 553-574. [Discusses potential conflict between trade and culture in light of the CDC.]

Hawkes, Jon (2001) *The Fourth Pillar of Sustainability: Culture's Essential Role in Public Planning*. Cultural Development Network (Vic): Melbourne. [Reflections on the role of cultural diversity as a pillar of sustainability.]

Horst, Nathan. "Creating an Ever Closer Union: The European Court of Justice and the Threat to Cultural Diversity". In (2008) *Columbia Journal of Transnational Law* pp. 166-207. [Contains views on the unification policies of the EU which may be seen as a threat to cultural diversity.]

Kymlicka, Will (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Clarendon Press: Oxford. [Discusses the issue of cultural diversity within States.]

Kymlicka, Will. (2007) *Multicultural Odysseys: Navigating the New International Politics of Diversity*. Oxford University Press: USA. [The author examines the global diffusion of multiculturalism.]

Leuprecht, Peter. "The Difficult Acceptance of Diversity". In (2006) *Vermont Law Review* pp. 551-564. [Addresses the issue of acceptance of diversity from the view of international law.]

Liaison Bureau (2000) *List of International Instruments which make Reference to Culture*, accessible at <http://bit.ly/gF4WQA>. [Contains a general list of international documents containing culture which may be relevant to cultural diversity discussions. The list is based on research done by Bernier, Ivan of the l'Université Lavale and Stephan, Paape of the Department of Canadian Heritage.]

Moore, Margaret "Political Liberalism and Cultural Diversity". In (1995) *Canadian Journal of Law & Jurisprudence* pp. 297-310. [Theoretical discussion of Rawls' theory of political liberalism and its link with cultural diversity.]

Obuljen, Nina & Smiers, Joost. (2006) *UNESCO's Convention on the Protection and Promotion of the Diversity of Cultural Expressions: Making it Work*. Institute for International Relations: Zagreb. [Contains scholarly contributions on the CDC].

Parsons, Talcott & Shils, Edward "Values and Social Systems". In Alexander, Jeffrey & Seidman, Steven. Eds. (1990) *Culture and Society, Contemporary Debates* Cambridge University Press: New York pp.39-46. [Contains a discussion of the concept "culture".]

Ranaivoson, Heritiana (September 2007) *Measuring Cultural Diversity: A Review of Existing Definitions*. [Concept Paper reviewing definitions of cultural diversity, accessible at <http://bit.ly/g67nRK>.]

Rautenbach, Christa & Du Plessis, Anél "Fragmentation: Friend or Foe in the Effective Implementation of the Cultural Diversity Convention in South Africa." In (2009) 34 *South African Yearbook of International Law* pp. 132-158. [Discusses the potential implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005 on South Africa and contains a body of sources on cultural diversity.]

Schmale, Wolfgang (1993) *Human Rights and Cultural Diversity*. Keip: Goldbach. [Contains contributions that reassess the foundations of a universal understanding of human rights on the basis of an intercultural comparison.]

Schneider, Hildegard & Van den Bossche, Peter. Eds. (2008) *Protection of Cultural Diversity from a European and International Perspective* Antwerpen: Intersentia. [Contains contributions of the international conference on *The Protection of Cultural Diversity from an International Perspective* held on 18 and 19 March at the Maastricht University, the Netherlands].

Stenou, Katérina. Ed. (2007) *Unesco and the Question of Cultural Diversity 1946-2007: Review and Strategy* (Cultural Diversity Series No. 3). UNESCO: France. [Provides an overview of UNESCO's cultural strategies from 1946 to 2007.]

Tam, Myra & Linder, Mindy (2009) *United Nations Educational, Scientific and Cultural Organization (UNESCO) Background Paper*. Center for Community Arts and Cultural Policy: CCACP Research Interest Group for International Cultural Policy and Administration. [A detailed discussion of UNESCO, its cultural sector and its initiatives regarding culture, accessible at <http://bit.ly/fkqvHe>.]

Taylor, Charles (1983) *Social Theory as Practice* Oxford University Press: Delhi. [Contains three lectures that defend a view of social science as quite distinctive from natural science with a view to understand ethnocentricity and cross-cultural understanding.]

Tierney, Stephen. Ed. (2007) *Accommodating Cultural Diversity*. Ashgate: USA. [Contains theoretical discussions on cultural diversity.]

UN Alliance of Civilizations (2006) *Report of the High-Level Group for the Alliance of Civilizations*. UN: New York. [The Report addresses widening rifts between societies of different cultural and religious traditions which has been referred to as the "clash of civilizations".]

UNESCO (1977) *Medium-Term Plan (1977-1982)*. UNESCO: France. [Contains the objections of UNESCO's Medium-Term plan approved at the 19th session of the General Conference.]

UNESCO (1988) *A Practical Guide to the World Decade for Cultural Development 1988-1997: Celebrated Under the Auspices of the United Nations Organization and UNESCO*. UNESCO: Paris. [Contains guidelines for taking culture into account in development.]

UNESCO (1990) *World Decade for Cultural Development 1988-1997: Plan of Action*. Workshop of UNESCO. [Contains an outline plan for the realisation of the four objectives of the *World Decade for Cultural Development*.]

UNESCO (1998) *Final Report of the Intergovernmental Conference on Cultural Policies for Development*. UNESCO: Sweden. [Contains information regarding the events that took place during the conference and important decisions taken.]

UNESCO (1999) *Towards a Constructive Pluralism*. UNESCO: Paris [Contains information on the colloquium entitled "Towards a Constructive Pluralism held in Paris 1999].

UNESCO (2009) *UNESCO World Report: Investing in Cultural Diversity and Intercultural Dialogue*. UNESCO: Paris. [The Report emphasizes the role of cultural diversity in a global setting and sets out the viewpoints of UNESCO in this regard.]

Van den Bossche, P. & Dahrenhof, A. (November 2006) *Selected Bibliography on International Law and the Protection of Cultural Diversity*. WTO Law and Culture Project: Maastricht. [Contains a list of selected sources on the issue of cultural diversity, accessible at <http://bit.ly/fL2O4F>.]

Von Bogdandy, Armin "The European Union as Situation, Executive, and Promoter of the International Law of Diversity – Elements of a Beautiful Relationship". In (2008) *The European Journal of International Law* pp. 241-275 [Discusses the relationship between the EU's unification policies and the promotion of cultural diversity.]

World Commission on Culture and Development (1995) *Our Creative Diversity: Report of the World Commission on Culture and Development*. UNESCO: Paris. [Contains a detailed discussion of cultural diversity issues in an international context.]

Young, Iris M. (1990) *Justice and the Politics of Difference*. Princetown University Press: Princetown. [Discusses the link between the concept of justice and difference.]

Bibliographical Sketch

Christa Rautenbach is a professor at the Faculty of Law, North-West University (Potchefstroom Campus), South Africa, where she obtained the degrees B Iuris (*cum laude*), LLB (*cum laude*), LLM and LL.D. She teaches legal pluralism and law of succession to undergraduate and postgraduate students and is actively involved in researching issues pertaining to African customary law and legal pluralism. She has published extensively on these subjects in national and international journals. She is an Alexander von Humboldt alumnus and undertook several research visits to the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany. Other research visits include the Van Vollenhoven Institute in Leiden and the School of Oriental and African studies in London. She is co-editor and co-author of a number of textbooks or chapters in textbooks including: "Customary Law of Succession and Inheritance" Pp. 190-246 in Joubert, Willem A., Faris, J.A. & Church, Joan. Eds. (2009) *Law of South Africa*. LexisNexis: Durban; (2010) *Introduction to Legal Pluralism in South Africa*. LexisNexis: Durban; and (2009) *Law of Succession in South Africa*. Oxford University Press: Goodwood. She is also co-editor of the *Potchefstroom Electronic Law Journal*. Her current research interests include matters of cultural diversity and cultural governance in international and domestic law and the use of foreign precedent by constitutional court judges.