

Lilian Richieri Hanania (ed.), *Cultural Diversity in International Law: The Effectiveness of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (series: *Routledge Research in International Law*), Routledge, London-New York: 2014, pp. xx + 322

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Nearly ten years have passed since the adoption of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDCE).<sup>1</sup> Though this is still a new treaty within a broad range of international instruments designed to protect and safeguard cultural heritage, its conceptual framework and impact on other areas of law and policy makes it one of the most significant. In fact, the CDCE is often described as “a major step towards the emergence of an international cultural law.”<sup>2</sup> It recognizes the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning. Moreover, it advances the view that cultural activities, goods and services (embodying or conveying cultural expressions which result from the creativity of individuals, groups and societies) are not, irrespective of their important economic value, mere commodities or consumer goods that can be regarded only as objects of trade. Clearly, this latter aspect has created vivid controversies (sometimes described as a “clash of cultures”) in terms of the interpretation of obligations under international trade agreements in relation to those stemming from the CDCE.<sup>3</sup> Thus, the core issues which arise in this regard relate to the practical outcomes of the CDCE regime in distinct areas and layers of international law, and its effectiveness at the global, regional and national levels.

The book under review, edited and co-authored by Lilian Richieri Hanania, offers a number of valuable insights into the practical operationalisation of cultural diversity in international law. Moreover, by offering a consistent practical perspective, it turns out to be one of the most interesting and innovative monographs within the vast scholarship concerning cultural diversity.

The book constitutes the result of a research project carried out in 2012-2013 under the auspices of the Institute of Comparative Law of the University Paris 1 – Panthéon-

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<sup>1</sup> Adopted on 20 October 2005, entered into force on 18 March 2007, 2440 UNTS 311. To date this treaty binds 137 States Parties and one regional international organization: the European Union.

<sup>2</sup> I. Bernier & H. Ruiz Fabri, *Implementing the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions – Future Actions, Study carried out on behalf of the Government of Québec (2006)*, available at: <http://www.diversite-culturelle.qc.ca/fileadmin/documents/pdf/unesco-anglais.pdf> (accessed 30 April 2015).

<sup>3</sup> T. Voon, *UNESCO and the WTO: A Clash of Cultures?*, 55(3) *International and Comparative Law Quarterly* 635 (2006), pp. 16-17.

Sorbonne and the CNRS (*Centre national de la recherche scientifique*), gathering an international and multidisciplinary (law, political science and cultural management) team of experts from various professional backgrounds. It critically assesses selected aspects of the implementation of the CDCE and offers several analytical, well-substantiated conclusions on its effectiveness. The general introduction by Lilian Richieri Hanania and H el ene Ruiz Fabri intentionally avoids a more profound analysis of the historical background of international initiatives which led to the adoption of the CDCE. It also omits explanatory comments on individual provisions of the treaty. Instead, it offers a highly interesting conceptual framework concerning the application of the CDCE and its normative strength at the level of both treaty law and customary international law. This approach then shapes the entire structure of the book, which provides well-documented insights regarding the CDCE Parties' practice in terms of the implementation of this international instrument. In fact, the construction of the book is very clear, closely resembling a well-designed report. Accordingly, each of the nineteen chapters contains a separate section providing conclusions to the analysis carried out and offering several explicitly formulated recommendations on how to achieve the strengthening and better effectiveness of the CDCE in a particular area of international law or in a defined regional or national context.

The book is structured in two general parts, each divided into two subsections. The first part deals with the specificity of cultural goods and services in international law. Not surprisingly, the initial set of chapters refers to the impact of the CDCE on trade issues, thus exploring the "trade and culture" debate in relation to the WTO regime, the case law, and the operationalisation of the CDCE in the context of the negotiations of a Services Trade Restrictions Index at the OECD. The phenomenon of globalization constitutes both a challenge and threat to the protection and promotion of access to cultural diversity. This observation particularly refers to potential clashes between the objective of protecting cultural diversity and the efforts to liberalize and facilitate international trade and global economic development. In fact, the topics of culture and cultural heritage have long posed serious difficulties in international economic law, since cultural policies have been perceived as negative factors hampering international trade and investment.<sup>4</sup> Certain concessions have been available only under "cultural exception" clauses, giving effect to States' interests in limiting free trade in their culture in order to protect and promote their artists and other elements of their culture.<sup>5</sup> The inclusion of cultural heritage and cultural diversity in a broader human rights framework has given a new normative power to their protection and promotion. In this regard, a highly interesting and novel argument is advanced in the chapters by Steven van Uytsel and Fabio Morosini. Both authors convincingly develop and explain the idea of culture as a part of the WTO agreements. Their argumentation is founded on the concept of

<sup>4</sup> V. Vadi, *Cultural Heritage in International Investment Law and Arbitration*, Cambridge University Press, New York: 2014, pp. 93 ff.

<sup>5</sup> See generally, J. Shi, *Free Trade and Cultural Diversity in International Law*, Hart Publishing, Oxford: 2013, pp. 139 ff. and 233 ff.

sustainable development, which has already enlarged the policy space for the environment and health within the WTO regime. They claim that today it also embraces the cultural dimension, and thus culture should not be seen as foreign to the WTO legal framework, nor as modifying or changing parts of the WTO agreements. Rather, the cultural concept of sustainable development should enlarge the Members' policy space within the WTO.

The next subsection uses a systematic approach to explore and approach the CDCE provisions, examining the impact of this treaty on selected fields of international law going beyond the "trade and culture debate" (e.g. intellectual property rights, social and labour issues, the creative economy, and new digital technologies). It also discusses the normative power of the CDCE Operational Guidelines and assesses their relevance and influence on the actual implementation of the CDCE in terms of follow-up actions and programmes. This subsection of the book describes a great variety of legal contexts affected by the CDCE. However, a systemic approach to the topic of cultural diversity would require a better contextualization of the CDCE regime within the broader legal framework of UNESCO standard-setting on one hand, and the exploration of the impact of the CDCE on the interpretation of human rights guarantees, on the other. As the UNGA noted in its 2000 resolution *Human rights and cultural diversity*,<sup>6</sup> joint respect for both cultural diversity and the cultural rights of all advances the enjoyment of all human rights and fosters "stable friendly relations among peoples and nations worldwide." Importantly, the protection of cultural diversity ("a source of exchange, innovation and creativity") and access to it are seen as vital for the long-term survival of humanity in a similar way "as biodiversity is for nature".<sup>7</sup> Hence, the diversity of living cultures enters into the domain of common goods, because "all cultures form part of the common heritage belonging to all mankind",<sup>8</sup> the protection of which lays in the general interest and constitutes an obligation of the international community as a whole.<sup>9</sup> It is argued that recognition of the importance of cultural pluralism, and the rejection of cultural hegemony, facilitate intercultural dialogue and understanding, which leads to the achievement of global acceptance of common interests, legal standards, and peace and security. Therefore the protection and promotion of cultural diversity appear to be crucial for the stability of the entire international legal system. Indeed, a wider analysis of the role played by the CDCE in the area of international cultural heritage law and human rights law would provide a truly comprehensive background for all the research outcomes presented in this volume.

<sup>6</sup> Adopted on 22 February 2000, UN Doc A/RES/54/160.

<sup>7</sup> Art. 1 of the Universal Declaration of Cultural Diversity, adopted by the General Conference of UNESCO on 2 November 2001, UNESCO Doc 31C/Resolution 25, Annex I.

<sup>8</sup> See *inter alia* Art. I(3) of the Declaration of Principles of International Cultural Co-operation, adopted by the General Conference of UNESCO on 4 November 1966, UNESCO Doc 14C/Resolution 8.1.

<sup>9</sup> See also A. F. Vrdoljak, *Human Rights and Cultural Heritage in International Law*, [in:] F. Lenzerini, A. F. Vrdoljak (eds.), *International Law for Common Goods: Normative Perspectives on Human Rights, Culture and Nature*, Hart Publishing, Oxford: 2014, pp. 168-72.

The second part of the book critically assesses the implementation of the CDCE beyond the specificity of cultural goods and services. Accordingly, it is designed to evaluate the application of the CDCE regime in relation to education and public awareness, the participation of civil society, integration of culture into the concept of sustainable development, and the place of cultural diversity within national policies and international and regional cultural cooperation. The first five contributions to this part of the book deal with the “horizontal implementation” of the CDCE regime in terms of reinforcing international cooperation in the field of culture (technical and financial assistance on the basis of the CDCE; networking opportunities in cultural policies and governance; cultural relations and cultural diplomacy examined and assessed based on the example of the Mediterranean region; and the EU experience with cultural cooperation protocols and agreements with third parties, analysed as an attempt to promote and implement the CDCE within the framework of bilateral trade negotiations). In turn, the second subsection of this part of the book focuses on the “vertical implementation” of the CDCE at the regional and national levels. The European practice is of particular relevance as the European Community was actively involved in drafting the CDCE and today the EU is the only non-State Party to this treaty. Thus, the CDCE has both intra- and extra-EU legal effects. The chapter by Magdalena Ličková skilfully explores the status of the CDCE within the EU legal and institutional framework and its judicial interpretation. Other contributions in this subsection explore the practice of implementation of the CDCE in the Mercosur, Brazil, Québec, and more generally in relation to Latin America in the context of new education acts (those of Bolivia, Chile, Ecuador, Honduras and Uruguay). Interestingly, the chapter by Piatã Stoklos Kignel provides critical insights into the methods by which the private sector may more strongly contribute to implementation of the CDCE. Perhaps what is missing in this part of the book is an analytical contribution exploring and/or classifying the arguments (political, economic, structural, cultural, scientific etc.) against the promotion of cultural diversity voiced at both international and national fora. Such a chapter could provide a better explanation of the choices made with respect to the particular case-studies included in the last subsection of the book.

The above observation also seems to be valid in relation to the findings provided in the general conclusion by Richieri Hanania. The editor of the book summarizes the obstacles and difficulties in the implementation of the CDCE which undermine its global effectiveness. She focuses mainly on the weaknesses existing within the convention itself (weakly binding wording of the CDCE provisions; ambiguity of the terminology used; and the misunderstanding of the core objective of the CDCE – that is, the recurring view that this instrument constitutes an additional barrier to trade liberalization while, in fact, it is designed to promote a more balanced exchange of cultural goods and services). More general problems of cultural and political opposition to this international instrument are only briefly signaled. While such an approach is fully understandable and legitimate in the context of the analyses conducted throughout the book, it would seem that shedding more light on other problems affecting the global

effectiveness of the CDCE regime would be of great benefit for the entire analytical endeavour.

An important argument addressed by Richieri Hanania regards the postulate of comprehensive and coherent action on the part of the CDCE Parties for its full implementation. She argues that this can be achieved by the integration of culture into the concept of sustainable development. Moreover, she rightfully notes that the issue of cultural diversity relates not only to the “trade and culture” debate, but it also affects a vast range of areas of international law and policy. Thus, closer international cooperation and an increased coherence of the actions undertaken by states are crucial to bolstering the effectiveness of the CDCE. The prescriptive aspect of the book is also visible in the in-depth recommendations offered at the end of the concluding chapter, relating to: 1) strengthening the CDCE with respect to the “trade and culture” debate; 2) fostering the implementation of the CDCE objectives through a systemic approach; 3) promoting international cooperation through the CDCE; and 4) mainstreaming the CDCE into national and regional actions.

In conclusion, *Cultural Diversity in International Law: The Effectiveness of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* is a novel and comprehensive analysis of the practical aspects regarding implementation of the CDCE. It broadens the horizons of the role of the CDCE beyond the realm of international trade and towards a variety of normative, institutional and geographical contexts. Moreover, by offering a wide range of well-analysed actual practices of the CDCE Parties, supplemented by a coherent set of recommendations, it becomes an important source of information and knowledge not only for legal scholars, but also for law practitioners and cultural policy makers worldwide.

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