



Ulrike Niedner-Kalthoff

PRODUCING CULTURAL DIVERSITY

Hegemonic Knowledge in Global Governance Projects

campus

Producing Cultural Diversity

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Contents

Acknowledgements	9
Chapter 1	
Introduction: Culture and Governance	11
The Case of the Convention	15
Global Governance	16
Governmentality	24
The Convention and Neoliberalism	27
Challenges and Strategies	29
Empirical Research	34
Chapter 2	
Construction: Framing the Issue of “Cultural Diversity”	39
A Genealogy of the Convention Process	42
Framing the Convention	50
The UNESCO Frame: the Imperilment of Identity, Values, and Meaning	53
The US Frame: “This Convention Is Actually About Trade”	62
The INCED Frame: “The Right of States to Do Whatever They Want”	69
Agendas and Tensions	76
Culture and Cultures	78
Chapter 3	
Negotiation: Diplomatic Build-Up and Showdown	87
Structure of the Negotiations	88

The Key Conflict	92
Blackboxing Cultural Diversity	99
Culmination of the Conflict	104
The Great Debate	111
Making Sense of the Great Debate	119
Summing It Up	133
Chapter 4	
Mobilization: Cultural Diversity as an Empty Signifier	137
The Coalitions for Cultural Diversity	139
Unspecific Aims	143
To Commit or Not to Commit	147
Pure Communitarian Being	154
Cultural Diversity Is Us	165
Conclusion	171
Chapter 5	
Representation: Speaking for Others—Doing Cultural Diversity . .	173
Reenactment—Representation Taken For Granted	177
Complex Individuals—Simple Collectivities	184
Representation Contested—Assembling the World in a Nutshell	193
Honoring “the International Regions”	200
Representing/Performing Cultural Diversity	207
Concluding Remarks	215
Chapter 6	
Conclusion: Globalization and Anti-Globalization	217
Looking Back in Detail: Producing/Practicing “Cultural Diversity”	219
Globalization, Anti-Globalization, and the National Frame	223

List of Abbreviations	227
Works Cited	229
Institutional Documents.....	238
Index.....	243

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Chapter 1

Introduction: Culture and Governance

You can expect unexpected links between people, practices, and concepts from a policy project that has the *Syndicat national autonome des comédiens du Burkina* (Autonomous National Union of Comedians of Burkina), the Swiss *NIKE Nationale Informationsstelle für Kulturgüter-Erhaltung* (National Information Center for the Preservation of Cultural Goods), and the Association of Canadian Publishers rooting for it. At the heart of this project and thus at the heart of the present study is an international treaty that not many people have a clear impression of but that has been celebrated by those involved as an exceptional diplomatic success story: the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*¹ concluded at the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2005.

This “convention” in the international legal sense, that is, this treaty, is interesting as a “convention” in a semiotic sense, too, as a case that illustrates the shaping of the relationship between a linguistic sign and its *designatum*, or, in other words, signifier and signified (Lévi-Strauss 1963, 91–94). Looking at how the Convention came to be does not only tell us something about how public international law is made, that is, how negotiators establish a convention about what to understand by “cultural diversity” and related concepts in strictly circumscribed legal terms.² It simultaneously offers insights about how the sign “cultural diversity”, originally chosen by its supporters, if not arbitrarily, then at least by a very conscious and openly strategic move as opposed to a more ‘organic’³ development, came to impregnate

1 Herein, “Convention on Cultural Diversity”, or “the Convention” for short.

2 We will see in the following, particularly clearly in Chapter 4, that legal language is not as tightly circumscribed as laypersons tend to perceive it and as many lawyers like to portray it.

3 Throughout this narrative I will use double quotation marks for terms and phrases from other authors (scholars and actors in the field) and single quotation marks to denote the colloquial, metaphorical or ‘so to speak’ quality of a term or phrase.

the semantic content of the associated political campaign in a way that at one point the relationship between the sign and its *designatum* was stripped of all arbitrariness and became naturalized. The meaning of “cultural diversity” had at this point irrevocably become what those who coined the term had intended to convey, with deviating interpretations failing to assert themselves. The relationship between the signifier “cultural diversity” and its signified(s) had been shaped by a strong linguistic convention that became almost impossible to break.

The various efforts to write, lobby for, and put into practice the Convention on Cultural Diversity that constitute the core of the present study are fascinating in their form as well as in their contents. One reason for this is the stark contrast between what the treaty initially appears to be to the untrained eye and what it slowly unfolds to be when looked at through the eyes of its most passionate supporters and its most bitter opponents; another reason is the degree of skill with which its supporters shaped their political campaign both inside and outside the conference halls. Many (non-scientific) publications that deal with the Convention or the campaign leading up to it as well as many meetings, conferences, round tables and other events on this treaty frame the Convention using very strong visual stimuli on brochures, banners and the like—stimuli that encourage a primarily aesthetic and innocent reading of the project:



Fig. 1: Images illustrating the Convention on Cultural Diversity⁴

⁴ From left to right, *Ten Keys to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, title page from «Convention on the Protection and Promotion of the Diversity of Cultural Expressions/Convention sur la protection et la promotion de la diversité des expressions culturelles», CLT/CEI/DCE/2007/PI/32, © UNESCO 2006; cover of a

Broad ranges of vivid colors, smiling faces, beautiful people, objects and places with (viewed from a Western perspective) exotic allure; all these images could be used just as well on brochures for the discerning tourist as on the covers of publications elucidating an instrument of international public law. The innocent reading of the Convention prompted by such images would perceive it as a descriptive statement of celebratory nature praising the intrinsic beauty of the manifold varieties of artistic achievement sprung from human creativity around the globe—a ‘carnival of cultures’ stimulating the senses of those beholding this beauty in awe.

Those able to complement such an innocent reading with more detailed knowledge of UNESCO as the Convention’s sponsoring organization might confuse or equate the Convention with another recent UNESCO convention on culture: the *Convention for the Safeguarding of the Intangible Cultural Heritage* of 2003 (*UNESCO CICH*), particularly since cultural heritage has attracted more attention from anthropology, sociology, and related fields than cultural diversity.⁵ The Convention on Intangible Cultural Heritage expands the aims of what is one of UNESCO’s most widely known law-making efforts from many decades ago: the *Convention concerning the Protection of the World Cultural and Natural Heritage* of 1972, which is the legal foundation of UNESCO’s program of awarding monuments and landscapes around the world the title of cultural and/or natural “World Heritage”.⁶ The Convention on Intangible Cultural Heritage expands the notion of “cultural heritage” from bricks and rocks, so to speak, to include “living expressions

whitebook brochure on cultural diversity best practices issued by the German Commission for UNESCO (*DUK Mapping Cultural Diversity*), used by permission of the German Commission for UNESCO (photos by, clockwise from top left, Observatory of Cultural Policies in Africa, Annalisa Lazoi/Antonio Di Ciaula, Eric Van Nieuwland, Vincent Carelli); poster *Déclaration universelle de l’UNESCO sur la diversité culturelle/UNESCO Universal Declaration on Cultural Diversity*, © UNESCO 2002; cover page of «Convention on the Protection and Promotion of the Diversity of Cultural Expressions», CLT-2005/Convention Diversité-CULT REV.2. The three UNESCO documents are used by permission of UNESCO.

⁵ See, for instance, Langfield et al. (2010), Albert and Gauer-Lietz (2006), Hemme et al. (2007), and the contributions to the 2011 (Vol. 61, Issue 1) special edition of *Sociologus: Zeitschrift für empirische Ethnosozologie und Ethnopsychologie* (Journal for Empirical Ethnopsychology and Ethnopsychology) titled “*Immaterielles Kulturgut und konkurrierende Normen*” (“Immaterial Cultural Goods and Competing Norms”) for analyses of cultural heritage including the treatment of the 2003 convention.

⁶ The other four of the now seven UNESCO conventions on culture are the *Convention on the Protection of the Underwater Cultural Heritage* of 2001, the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* of 1970, the *Convention for the Protection of Cultural Property in the Event of Armed Conflict* of 1954, and the *Universal Copyright Convention* of 1952/1971.

and traditions” such as, for example, “oral traditions and expressions including language”, “performing arts (such as traditional music, dance and theatre)”, “social practices, rituals and festive events”, “knowledge and practices concerning nature and the universe”, and “traditional craftsmanship” (*UNESCO CICH*, Art. 2, Para. 2). While this treaty is also embedded in certain concepts of culture (and of heritage) that do not go uncriticized,⁷ the Convention that the present study is primarily concerned with, the Convention on Cultural Diversity, is a project that is specifically concerned with the *economic* aspects of culture, and more precisely with the international *trade* in cultural goods and services.

In a nutshell, the gist of the Convention is that it guarantees its parties, that is, the states which have ratified it,⁸ the right to adopt sovereign cultural policies allowing them to protect—mainly their own national—cultural goods and services (music recordings, film productions, education programs, etc.) from being included in an international process of trade liberalization, as agreed mainly in the frame of the World Trade Organization (WTO) treaties, notably the General Agreement on Trade in Services (GATS), but also in a host of bilateral treaties. This is in line with the conviction “that cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value” (*UNESCO CCD*, Preamble, Para. 19) and that submitting cultural goods and services to liberalized international trade would decrease the—national, ethnic, regional—diversity of expressions of culture. This constitutes a thoroughly ‘hard’ issue not transported by the ‘soft’ visualization with colorful dots and swirls, intricate patterns, and elaborate costume. The Convention is indeed intended by its supporters to be anything but innocent: to many of those involved in shaping the treaty it is expressly designed to combat what they see as dangerous global economic developments, notably the ever more complete submission

⁷ The cultural practice of “*Heritage-ifizierung*” (“heritagification”) is critically investigated from anthropological and historical perspectives in Hemme et al. (2007), where Meyer-Rath (2007) in particular puts the focus on intangible heritage. The tension inherent in attempts to preserve phenomena and practices that are necessarily dynamic and constantly changing is also treated in El-Alfy Hundsnerscher (2006).

⁸ There is in fact a provision in the Convention allowing entities that are not states to become a party to the Convention; those entities are termed “regional economic integration organizations”, and in practice, this general term so far is used exclusively to denote the European Union (EU), which has in fact ratified the Convention as a party of its own.

of economic processes to the logic of free trade, and more particularly the pressures on state governments to commit to this logic as built up by the negotiations in the framework of the GATS.

The Case of the Convention

The Convention is a very fruitful case for studying some of the processes and structures of contemporary international relations, particularly multi-lateral negotiations by state representatives, but also the complex intertwining of governmental and nongovernmental framing, drafting, and lobbying efforts outside the conference hall. For one thing, the Convention process, for all the high stakes—at least economically speaking—it involved and for the fierce debates that punctuated the negotiations, promised and turned out to be accessible to outsiders such as anthropologists. This certainly does not mean that it did not take many months and a lot of effort to actually get to a point where I could be present at the formal negotiations—more on that later —, but: since the issue area concerned was cultural policy and not, say, security policy, those conducting the negotiation process at UNESCO felt no need for strong measures of confidentiality, at least not as far as plenary discussions and larger working group discussions were concerned. It was quite plausible to many participants confronted with my presence that a cultural anthropologist should be interested in the Convention, even though a majority took my interest to be restricted to the contents of the Convention perceived to be congruent with the discipline's key subject matter, that is, questions of “culture”, and not focused on practices of negotiation and mobilization and other more ‘structural’ questions of that kind. Nonetheless, the fact that those shaping the Convention project were struggling with getting a grip on some of the same concepts that cultural anthropologists are perennially grappling with themselves—“culture(s)”, “cultural diversity”, “nation”, “society”, and “globalization”, to name but a few—does add to the allure of this particular international treaty project, allowing as it does for comparing approaches to these concepts and reflecting on one's own disciplinary practice.

Also, the Convention project was, and continues to be, considered to be a project of immediate concern to individuals and groups belonging to “civil society”, notably artists and cultural producers and their respective profes-

sional associations, and was in fact put in motion by initiatives that joined governmental and nongovernmental actors from the very start. The Convention process was thus framed by the avowed commitment of UNESCO officials and individual state representatives to also involve “civil society” in the formal drafting, negotiation, ratification and implementation procedures as much as possible. This circumstance promised good insights into exactly how governance is performed by governmental and nongovernmental actors, how they interact, how they divide their work, where and how their practices merge and where and how they diverge. Furthermore, the Convention on Cultural Diversity, like other UNESCO conventions, followed a reasonably simple protocol concerning the amount, type, and order of negotiation sessions involved and consisted in the creation of one comparatively compact treaty text. This makes it easier, particularly for novices in international negotiations, to achieve a reasonably broad overview of the process—easier at least than the related WTO agreements GATT (General Agreement on Tariffs and Trade) and particularly GATS with their complex structure of successive rounds of individually tailored commitments by single treaty parties.

Another aspect of the Convention that makes it stand out from other treaties is the fact that this is one of the rare cases where the United States, usually *the* force to be reckoned with on the international scene, actually takes the role of the principal defeated party in the conflicts that arise over the negotiation project.⁹ Taking a closer look at how this came to be offers particularly acute insights into some of the minute workings of diplomatic agenda-setting and strategic conference hall interaction and illustrates how certain path dependencies, once created, can hardly be dislodged again.

Global Governance

Multilateral international negotiation, whether it concerns cultural diversity or other issue areas, is a key part of the prevalent mechanisms of contemporary collective decision-making. This is because, as will be elucidated shortly,

9 While the United States were similarly isolated in two other cases (that of the 1997 *Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines* and that of the 1998 *Rome Statute of the International Criminal Court*) they have met the majority of their key negotiating objectives in many more significant instruments, as shown by Klein (2003, 364–376).

there are virtually no collective problems left that are not influenced by, and in turn have effects on, events and practices in geographically distant areas. Accordingly, much of the policy-making intended to tackle these collective problems is undertaken in political arenas that go beyond local communities and beyond the nation-state. And in these arenas, in spite of the increasing awareness that the nation-state cannot meaningfully and effectively bundle and concentrate agency in these policy-making efforts in the same way as only decades ago and the concomitant increasing development of new forms of cooperation between national governments and subnational as well as supranational nongovernmental actors, decision-making processes still center heavily on exchange and agreement between national governments. This exchange is conducted and agreements are reached—or sometimes not reached—via classic international negotiation, to wit, via formal representatives of national governments meeting in conference halls to discuss issues of common concern and jointly fashion some kind of legal document from their deliberations that is later transformed into individual national law by each of the national governments involved. The centrality of this procedure is maybe most obvious in European Community policy-making, arguably the most firmly institutionalized case of recurring multilateral negotiation, but it is pertinent for the “international community” as a whole as well, and most particularly for issues of trade, which play a central role in the Convention, too.

At work in international negotiations is a very peculiar political dynamic that differs markedly from conventional national democratic procedure: the dynamic is characterized by the interaction between “representatives” who take their representative capacity quite seriously, fully aware that they are speaking not with an individual but with a collective voice, but who nonetheless have not been chosen as representatives by some kind of electorate. When they reach a decision and create a broadly accepted piece of international public law—whether by often aspired-to consensus or by majority vote—this does not automatically enter into force as a new part of the legal canon of some kind of single polity but has to undergo multiplied scrutiny in tens of dozens of individual nation-states before acquiring partial force for those who have incorporated it into their national canon. There is serious power play involved that is not informed by ambitions to please a broad electorate as a guarantee to stay in office and stay in charge the way it would be for national representatives in a legislative body; those competing in multilateral international negotiations are not competing for the goodwill and

support of the same group of people. Rather, they are struggling to reconcile the more or less explicit orders given to them by members of their national government and administration, which are geared towards shaping negotiations in a way that conforms to what is defined as the respective “national interest”, with the restrictions imposed on their action by their homologues’ differing orders obeying different national interests. In other words, since they are, for all the beautifully phrased references to the common good, the international community, the fate of mankind, and the like, shaping a legal framework not for one single common polity but rather for a conglomerate of still separate polities they are perennially in search of balance and compromise. And the shape which that balance and compromise between different national interests and positions may take is difficult to predict, as are the concrete meanings accorded to these ideals over the course of negotiations.

International policy-making or lawmaking projects such as the Convention are part and parcel of contemporary mechanisms of “global governance”. I use the term “global governance” as an analytical or descriptive concept intended to capture, very generally speaking, a host of relatively recent or recently intensified and ongoing transformations in the way contemporary polities are conceived and organized and the concomitant transformations in the modes of collective decision-making. I do not intend, by contrast, to propose “global governance” as a normative concept in either a laudatory or a condemning way. Thus, I will not conceive it as “a vision of how societies *should* address the most pressing global problems” (Dingwerth and Pattberg 2006, 193) in a way that will allow them to render their practices of collective decision-making more effective, more transparent, more participatory, or more legitimate. Neither will I consider it, inversely, as “a hegemonic discourse to disguise the negative effects of neoliberal economic development on a global scale” (Dingwerth and Pattberg 2006, 196). It will simply serve as a conceptual framework for drawing together recent insights into how business is conducted in contemporary global politics.

The transformations in the organization of polities and the modes of collective decision-making concern political activity on all levels or scales of politics broadly conceived as “the regulation of social conflicts through collective decisions” (Benz and Dose 2010, 27): local,¹⁰ (subnational) regional, national, and supranational levels, the latter being variously conceived, depending on the argument to be made, as international, transnational, or

¹⁰ Rosenau (1995, 13) even includes the family as a distinct level.

global. The preference for the term “governance” reflects a concern for the multiple and changing modes of decision-making that actors engage in, particularly in interaction between each of these levels—modes that can be empirically observed and that would not be adequately captured by the related and seemingly more straightforward term “government”. This is because the term “government” is conceived to be inseparably tied to a traditional nation-state specific way of governing that is formally institutionalized, strictly hierarchical, and thoroughly legally codified. The peculiar characteristic of the practices jointly denoted by the concept of “governance”, that is, the governing, steering, and coordinating undertaken to manage interdependences between different societal actors as well as these actors’ specific modes of collective action and interaction, is that they transcend the borders conventionally drawn between different organizational units, particularly the border between state and society that has become fluid (Benz and Dose 2010, 25–26). Thus, to become a little more concrete, “governance” can be defined “as a process that involves both public and private actors, the activities of which are coordinated through both formal and informal rules and guidelines in such a way that a common or public goal is advanced” (Sending and Neumann 2006, 653).¹¹

As far as transformations in the sphere of “domestic” or national politics are concerned—a sphere that is not clearly demarcated any more, if it ever was—regulatory practices are increasingly undertaken in more horizontal (though not therefore devoid of differential relations of power) and networked relations between public and private actors; the state mostly continues to enable and to guarantee the performing of public tasks but no longer necessarily performs these tasks by itself. Instead, the state attempts to foster society’s capacities for self-regulation and to tap into private actors’ knowledge and other resources (Benz and Dose 2010, 15–16, 22–23). Furthermore—and here the notion of a separate national political sphere crumbles and the international or global level comes into play—national governments and administrations become increasingly incapable of deciding, conducting and controlling political processes on the national level alone because of the increasing interdependence and consequent need for coordination between subnational, national, and supranational levels. These levels, if the argument is radicalized, consequently cease to exist as distinct “levels” in any meaning-

¹¹ Sending and Neumann (2006) actually summarize this as a definition of *global* governance gleaned, among others, from Sandholtz (1999), Pierre and Peters (2000), and Held and McGrew (2002), but it obviously applies more generally.

ful way (Benz and Dose 2010, 15). Zürn (1998), in a similar vein, speaks of a “denationalization” of politics that occurs primarily because the spaces where collective problems develop—obvious examples would be global warming or the recent (and ongoing) financial crisis of 2008/2009—are increasingly incongruent with, in other words, much larger than, the political space that is under the direct competence of any single nation-state. Regarding transformations of international, transnational, or global politics, what has contributed to “an increasingly transboundary association in the process of globalization” (Behrens 2010, 95; translation from German UNK) by tightening the web of relationships between physically distant actors is the rapid evolution of information and communication technologies, allowing for greatly increased speed and significantly reduced costs of worldwide digital communication (Behrens 2010, 96). Changes in global decision-making processes, notably the emergence and increasing influence of nonstate actors, have also been brought about by state governments backing out of certain political fields (such as notably the field of financial regulation) and by the formation and widespread acknowledgement of political issue areas whose ubiquity and importance have only become apparent with—or whose underlying problems have even only been caused by—greater interconnectedness, such as, for instance, the problem of human rights violations or global environmental problems such as the global warming already mentioned (Behrens 2010, 97).

At this point the properly “global” of “global governance” becomes relevant. Rosenau, the dean of global governance writing, offers the following definition: “global governance is conceived to include systems of rule at all levels of human activity [...] in which the pursuit of goals¹² through the exercise of control has transnational repercussions” (Rosenau 1995, 13). In this definition, the “global” of global governance is equated with “transnational”, that is, with extending beyond the confines of the national realm, the nation-state, or even the interaction between nationally defined units. While it is customary to speak of “global governance” instead of “transnational governance”, the terms “global” and “transnational” are often directly compared for their analytical clout and there are good arguments for preferring one and discarding the other for each of the two.¹³ One of the virtues of the term

12 Dingwerth and Pattberg (2006, 190) rightly point out that there are processes that are nonintentional but that are nonetheless processes of global governance, such as social learning or the diffusion of policy innovations.

13 Florini and Simmons, for instance, writing on civil society, prefer “transnational civil society” over “global civil society”, even though the latter is much more frequently used