

The Legal and Political Context of UNESCO's 2005 Convention on the Diversity of Cultural Expressions – Will it be Good for Iran?

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Abstract

The Convention on the Diversity of Cultural Expressions was adopted by the UNESCO General Conference in October 2005 and, by July 2010, 112 States plus the European Community had become Parties to this Convention. This is a relatively healthy number but, at approximately half of the Member States of the Organisation, reflects that there remains a degree of uncertainty among States as to the potential national and international policy and legal impact on Parties. Thus far, Iran has chosen not to ratify this Convention and there continues to be a national debate on this question with a wide range of views expressed. One important aim of this article, then, is to consider and address these concerns through examining both the international (Cultural) policy context of the Convention's negotiation and the rights it grants to and the duties it places on Parties. The 2005 Convention shares an ancestry with the 2003 Convention on the Safeguarding of the Intangible Cultural Heritage in that both of them reflect different aspects of the 2001 Declaration on Cultural Diversity. Understanding this fact can provide some guidance as to the orientation and purpose of this treaty in that it addresses the rights of States and their international duty to preserve the aspect of cultural diversity that relates to the cultural marketplace. At the same time, it is by no means a 'pure' human rights text in its character or its intention as this article will show. After having examined the history of the text's development and adoption and the wider legal and political contexts within which this took place, the article will then consider the direct implications for Iran of ratification of this important international Convention.

Keywords: Cultural Expressions, Cultural Diversity, Legal and Political Contexts, Implications for Iran

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Introduction-CDCE

The Convention on the Diversity of Cultural Expressions (henceforth 'CDCE') entered into force on 18 March 2007 one year and a half after its adoption by the UNESCO General Conference in October 2005 and, by July 2010, 112 States plus the European Community had become Parties to this Convention.⁽¹⁾ This is a surprisingly fast acceptance for such a complex instrument and must reflect a strong political will on the part of the Member States of UNESCO to address the questions that it seeks to regulate. It is an unusual instrument in many ways and is one whose purpose is somewhat difficult to interpret. Although regarded as one of a series of cultural Conventions adopted by UNESCO, it is not a straightforward 'cultural heritage protection' instrument in the sense of the 1970, 1972, 2001 and 2003 Conventions nor is it a straightforwardly human/cultural rights-oriented text.

One of the problems facing anyone seeking to understand and interpret this instrument is that its purpose is not as immediately clear as, say, the 1972 World Heritage Convention, and it would appear to give a mixed message as to what this purpose is. This, in turn, presents States and their Parliaments with a difficult task in considering whether to ratify the CDCE and be bound by its obligations since the exact implications of such a decision for internal policy- and law-making as well as for the international relations of that State may not be clear.

History and Background to the CDCE

The CDCE falls generally within the category of Conventions adopted by UNESCO in the cultural field⁽²⁾ and does, of course, share with them the broad characteristic of being part of an international process of cultural policy-making. It also shares specifically with the 2003 Convention ('CICH') the fact of being a direct descendant of the 2001 Declaration on Cultural Diversity. However, it is at this



point that it is essential to make clear the important differences between these instruments, the understanding of which can greatly inform us as to the nature and intention behind the CDCE as a treaty text.

The 2003 CICH grew directly out of the notion of preserving cultural diversity as a value *per se* and the more obviously human rights-oriented aspects of the 2001 Declaration. In that sense, intangible cultural heritage is seen as an important (and frequently the most prevalent)⁽³⁾ aspect of cultural heritage and that safeguarding it contributes directly to ensuring as high a level of cultural diversity as possible. At the same time, the Representative List of the Intangible Cultural Heritage of Humanity established by that Convention⁽⁴⁾ is strongly oriented towards reflecting cultural diversity both within Parties and internationally. The human (cultural) rights aspects of the 2001 Declaration are also clearly reflected in the CICH in the emphasis it places on the centrality of cultural communities to safeguarding ICH as well as on the need to avoid those traditional practices that may violate human rights standards.

The notion of ‘cultural diversity’ as espoused by the CDCE is somewhat different, however, and less straightforward. Although it also makes clear in its Preamble that “cultural diversity is a defining characteristic of humanity ... [and] ... forms a common heritage of humanity and should be cherished and preserved for the benefit of all”, the actual subject of this instrument is not cultural diversity *per se* but, rather, the diversity of cultural expressions. This fact is the key to understanding the specific orientation of the CDCE – where the 2003 CICH concerns cultural practices and expressions that do not generally have a physical form, the CDCE is concerned with cultural expressions insofar as are *cultural products*. This distinction clearly has important implications for the interpretation of the CDCE and its intention as a text. With the CDCE, we are dealing primarily with cultural expressions that are the products of human labour and creativity and that are part of a global cultural marketplace.

International Cultural Policy Issues

The 2005 Convention was drafted in response to increasing economic and cultural globalisation and it raises many issues relating to international and national cultural policymaking. In this global context, although much of the arts, crafts, media



production etc. still retain their national character, an increasingly large proportion of cultural production is circulating through trans-national (sub-regional, regional and international) communications networks and so can no longer be seen as belonging to the territory of any particular State. Moreover, the Internet has meant that cultural communities can exist across traditional territorial boundaries – a fact that has important implications for regulating the global cultural marketplace. Cultural policies can no longer be approached as solely domestic policies to be implemented solely by national governments; this new context creates new situations, needs, and challenges and hence requires an international response of which the 2005 CDCE is a part.⁽⁵⁾

It is useful here to identify some of the major issues that need to be addressed in relation to cultural expressions and their regulation in the global marketplace. In view of the trans-national character of the contemporary cultural market as a result of cultural and economic globalisation, it is necessary to find a new and more equitable balance globally between public and private interests. There has been a growing sense of unease among those States that have found themselves to be ‘peripheral’ in this global cultural market, either because of language⁽⁶⁾ or their level of development, and that the diversity of cultural expressions - characterised in the CDCE as a common heritage of humanity - must be protected through international cooperation and solidarity. This sense of inequality has been exacerbated by the belief that the 1994 General Agreement on Trade and Tariffs (GATT) and the associated Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)⁽⁷⁾ of the World Trade Organization have failed to protect their interests and have tended to favour the dominant English-speaking cultural industries. This has led to calls for a ‘cultural exception’ to be granted for cultural products within the international trade and intellectual property system.⁽⁸⁾ In broader terms, there is a dilemma for those setting international cultural policy as to how creativity can be fostered in an age where culture tends to be increasingly viewed as a commodity, i.e. how to reconcile the often very different needs and objectives of cultural creators (especially in more ‘traditional’ arts and crafts) and the system that regulates international trade and intellectual property rights (IPRs).⁽⁹⁾

Another concern relates to inequality of access to the audiovisual industries for great numbers of people around the world as a result of technological, language-



based or educational reasons. Both the 2005 CDCE and a 2003 UNESCO Recommendation on access to cyberspace⁽¹⁰⁾ can be seen as attempts by the international community to respond to this lack of equality of access to cultural expressions and products. Among other actions, the 2003 Recommendation seeks to increase access to cyberspace worldwide through technological advances and software development that allow people to use their mother tongue in cyberspace; this obviously has significant potential for increasing the cultural diversity of cyberspace.

The drafting of the 2005 CDCE was therefore a response from UNESCO to the above issues and questions. For example, the 2005 CDCE takes a strong position on supporting cultural industries in developing countries and ensuring that they are better equipped to compete in regional as well as international markets. However, the aforementioned tension between the purely cultural and the economic aspects of cultural products has created a dilemma for treaty-making in this area. Consequently, a major challenge facing UNESCO in this endeavour was how to be consistent with other UNESCO treaties in the cultural heritage field⁽¹¹⁾ when dealing with such a commercially sensitive area. This required developing an innovative cultural approach within the current international law context governing this area where commercial considerations tend to take precedence.

As a response to this tension and in recognition of the special character of cultural goods and services as vehicles of identity and values, the 2005 Convention was therefore given a *purely cultural objective*. In an explanatory text from UNESCO to this Convention, the 2005 CDCE is described as seeking to strengthen five inseparable links in a chain, namely: creation, production, distribution/dissemination, access to and enjoyment of cultural expressions (as conveyed by cultural activities, goods and services).⁽¹²⁾ Moreover, in response to strong national sensitivities, the Convention carefully ring-fences the sovereign right of States to draw up their own cultural policies as is made clear in the text (see below).

Relationship of the 2005 Convention with other International Instruments

UNESCO's 2001 Universal Declaration of Cultural Diversity is the 'mother' text for



the 2005 Convention but, as already stated, the 2005 CDCE only deals with some aspects of cultural diversity as expressed in the Declaration (2001).⁽¹³⁾ The 2003 Convention on Safeguarding Intangible Cultural Heritage (CHCH) of UNESCO also derives from the 2001 Declaration. UNESCO's 2003 Recommendation on multilingualism in and universal access to cyberspace is a further instrument deriving directly from the 2001 Declaration. While the 2003 and 2005 two Conventions complement each other and have some potential overlaps, they deal with very different aspects of heritage. The 2003 CICH addresses intangible elements; i.e. cultural expressions that do not have any physical form. On the contrary, the 2005 CDCE addresses (a) cultural expressions that are cultural products (i.e. creations deriving from human activity/labour that have a symbolic value and the potential to generate IPRs) and (b) the cultural goods and services that are the means by which (a) are conveyed to the public.

The most significant international treaties that potentially interact with the 2005 Convention are the GATT/GATS and TRIPS Agreements of the World Trade Organization.⁽¹⁴⁾ The most relevant provision here is Article XIX of GATS (General Agreement on Trade and Services) which states that it aims at "achieving a progressively higher degree of liberalisation" of trade although this process of liberalisation "shall take place with due respect for national policy objectives and the level of development of individual members". Hence, if the 2005 Convention offered certain forms of protection for cultural products and industries, it would be in conflict with basic principles of WTO as contained in GATT and GATS, namely: gradual liberalisation of trade; restricting preferential national treatment; and the "most favoured nation" clause. For this reason, the aims, scope and basic principles of the 2005 Convention as well as its system for assistance and capacity-building have been carefully crafted to try to avoid clashes.

Definition of Some Basic Terms

It is clear that one of the fundamental issues for national policy- and decision-makers to address in relation to this Convention is the understanding of some key terminologies employed in this Convention. This is because these terms are used in a very specific manner that may differ from their common understanding and their interpretation is key to the perceived implications and the overall impact of the



treaty. Even its specific cultural character it is important that these terms are clearly understood from TWO distinct viewpoints: (a) that of cultural anthropology and (b) their exact legal content. This will require cross-disciplinary consideration, particularly in view of the great difficulties associated with accurately translating even the most fundamental terminology of “expressions of cultural diversity”. It is vital that the distinction between that notion and the much broader idea of “cultural diversity” is clearly understood by policy-makers.

The main terminologies used in the Convention are assigned the following meanings:⁽¹⁵⁾

“Cultural content” refers to the symbolic meaning, artistic dimension and cultural values *that originate from or express cultural identities*. This notion then leads us to the idea of cultural expressions.

“Cultural expressions” are those expressions that result from the creativity of individuals, groups and societies and (a) have cultural content (as above) and (b) are distributed through cultural industries (see below).

“Cultural activities, goods and services” are the means by which cultural expressions may be conveyed to the public. The *commercial* value of the expression(s) is not material in this and they do not necessarily follow the cultural logic of the cultural industries (e.g. libraries, archives, museums).

“Cultural industries” refers to the means of production and distribution of cultural goods or services (but not all).

“Cultural capital” expresses the relationship between cultural products and creativity. It is rooted in know-how, languages, heritage, landscapes etc. and may be that of the community, a nation or all humanity.

Having introduced the main terms used in the 2005 Convention, the next section provides a brief description of its main elements which will help to address certain misconceptions about the intention behind its drafting and its likely effects on Parties, both internal and external.

An Overview of the 2005 Convention Objectives and Principles of the Convention

The Preamble to any international treaty is an important indicator of the political and legal context in which it is developed and highlights the main intentions



underlying its development. Some points from the Preamble are worth noting here.

Cultural diversity is understood as an important element in the full realization of human rights and fundamental freedoms while, as a corollary, freedom of thought, expression and information along with diversity of the media enable cultural expressions to flourish within societies. Hence protecting the diversity of cultural expressions is rooted clearly in a human rights approach. Furthermore, this diversity of cultural forms both relies upon and contributes to diverse identities among peoples and societies.

The unique mixed cultural and economic character of cultural expressions is also acknowledged in the statement that cultural activities, goods and services must not be treated as having only a commercial value. This is also underlined in the recognition of the important role played by IPRs in supporting creators of culture. The 'dual-edged' character of globalization and improved ICTs in this area is also acknowledged: while the Convention is understood to have a positive side, increasing opportunities for diverse communities to access the global marketplace, it may also exacerbate and even create imbalances between rich and poor countries.

Naturally, these include protecting and promoting the diversity of cultural expression as the primary purpose, with promoting respect for such diversity at local, national and international levels. Subsidiary objectives include allowing free interaction of cultures *in a mutually beneficial manner* and ensuring not only wider but *more balanced* cultural exchanges in the world. This will involve a challenging balancing act between increased liberalisation in the trade and exchange of cultural products while attempting to protect the interests of weaker more 'peripheral' cultures. The stated objective to give recognition to the *distinct nature of cultural activities, goods and services* (i.e. not only economic but important for identity and other values) underlines this important aspect of the Convention. It aims also to reaffirm the importance of the linkage between culture and development for all countries, an objective reflected in particular in the international cooperation system and references to sustainable development in the Convention text.

Importantly for those countries still uncertain as to the impact on their internal policy-making of ratifying the 2005 Convention, Article 1 also reaffirms the



sovereign rights of States to set their own cultural policies in this area, i.e. to preserve the sovereign jurisdiction of the State in these matters. For many States, as for Iran, this is a crucial issue since cultural policy-making is viewed as a fundamental expression of self-determination as well as being central to the internal security of the State. As is common in treaty-making, developing international cooperation in the area in question is one of the Convention's stated purposes. What is interesting here is that its meaning is extended to include "and solidarity in a spirit of partnership" which emphasises the fact that this goes beyond simple cooperation to an international relationship of mutual advantage between States as sovereign and equal players. This wording also places us in the realm of 'solidarity' or 'third generation' human rights, such as the right to development. Indeed, the treaty contains several references throughout the text to the need to enhance capacities of developing countries to act in this area.

A brief look at the Guiding Principles presented in Article 2 is also a useful indication of the treaty's overall orientation. For example, the first stated principle is "respect for human rights and fundamental freedoms" which reminds us of the human rights ancestry of the treaty but, interestingly, this is immediately followed by a re-statement of the principle of sovereignty; sovereign right of Parties to adopt their own measures and policies with regard to the diversity of cultural expressions within their territory. Here, then, we see an unusual balancing of protecting human rights (which frequently involves international intervention in matters traditionally reserved to the State's jurisdiction) with protecting that very sovereignty. The third principle of "equal dignity of and respect for all cultures" again situates us in a human rights realm of action, especially with its reference to the cultures of persons belonging to minorities and indigenous peoples. The fourth principle - "international solidarity and cooperation" - as briefly discussed above, is directed here towards creating an enabling environment in which developing countries, in particular, can develop their means of cultural expression and their cultural industries at all levels.

It is interesting to see the next two principles - the "complementarity of economic and cultural aspects of development" and "sustainable development". The former has not previously been stated so explicitly in an international treaty and reminds us of the essentially cultural orientation of this instrument while the latter



introduces the notion of international social justice and equity and leads to an innovative article in Article 13 on the integration of culture in sustainable development.⁽¹⁶⁾

Rights and Obligations of States

For States deciding whether to ratify any Convention, it is essential to be clear as to what rights and obligations it assigns to States Parties. The 2005 Convention contains rights and duties operating at both national and international levels and allow for differences in the economic, social, cultural and legal conditions of States.

Article 5 presents the general position of the Convention as regards rights and duties of States and reaffirms in paragraph 1 the sovereign right of States to formulate and implement their own cultural policies and adopt measures to promote and protect diversity of cultural expressions on their territory – needless to say, in conformity with human rights principles. This, however, is balanced by the requirement in paragraph 2 that all such policies and measures to be consistent with the provisions of the Convention.

Article 6 then sets out the *rights of Parties at national level* and it is therefore interesting to note that in both this and the preceding article great care has been taken to protect the rights of States in this matter. Certain measures are proposed in this article for implementing the Convention but these are couched as advisory and not obligatory and generally involve positive actions such as enabling domestic cultural activities, goods and services, providing the necessary public financial support for this and supporting artists and other producers of culture.

Certain of these suggested measures could be difficult for some States to support in their current political, economic or cultural environment, such as encouraging non-profit organizations, public and private institutions and cultural professionals “to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities, goods and services” and enhancing the diversity of the media, including through public service broadcasting. Although these measures are presented here as discretionary, it could be argued that a Party that fails to do a sufficient number of these actions is not fulfilling the general duty placed on it by Article 5(2).



Obligations on States

The Convention does, of course, place certain obligations on the Parties and these merit examination when considering the overall strategic advantage or disadvantage for a State such as Iran of ratification. These are not presented in a single article as are the rights of the Parties but are to be found throughout the treaty text.

Article 7 establishes the obligation on Parties to "endeavour to create in their territory an environment which encourages individuals and social groups" (a) to create, produce, disseminate, distribute and have access to their own cultural expressions and (b) to have access to diverse cultural expressions from within their territory as well as from other countries of the world. Although potentially quite far-reaching if taken to its full extent, the content of the Article is expressed as a soft obligation and so it remains quite discretionary as to how far it is implemented. A duty to report to UNESCO every four years on measures taken to implement the Convention is required by Article 9, which is similar to other conventions and is designed as a mechanism to encourage Parties to conform.. Article 10 establishes an equally soft requirement to foster public understanding of the importance of the protection and promotion of the diversity of cultural expressions through educational and greater public awareness programmes etc.

The most controversial obligation is probably that in Article 11 requiring Parties to "acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions and *encourage the active participation of civil society in their efforts to achieve the objectives of this Convention*" [Emphasis added]. This suggests a degree of official recognition of and real participation by civil society in the making and implementation of national cultural policies that many States might find challenging. However, there remain many ways in which Parties can appear to be doing this without actually giving full recognition or participation to independent NGOs/civil society actors.

The requirement placed on Parties by Article 13 to "integrate culture in their development policies *at all levels* for the creation of conditions conducive to sustainable development" [emphasis added] is quite an innovative provision. This provision underlines not only the constitutive role of culture in development but also, interestingly, the dual economic and cultural character of this aspect of cultural



heritage. Notably, this participation should operate internationally as well as nationally and locally and thus is suggestive of the notion of ensuring social justice and equity in the international cultural marketplace and of the need for international “solidarity and partnership” to achieve this.

Role of Civil Society in the 2005 Convention

Article 11 contains the most explicit reference to the role of civil society in the text of the Convention.. However, there are also implicit references made in other provisions, such as: to non-profit organisations (Articles 6, 15 and 19); to the contribution of social groups, cultural communities and organisations (Article 7); and to civil society and NGO partnerships (Article 12).

In these provisions, civil society is conceived of as a form of ‘buffer zone’ between the State and market that can help to control the potential excesses of both. Various different roles are envisaged here for civil society, which include: helping to create public consensus and a sense of local ‘ownership’ of national cultural policy; improving the effectiveness of development programmes (e.g. by using local knowledge); providing professional expertise and capacity-building (especially where public sector capacity is weak); and improving public transparency and accountability.

International Cooperation and Assistance

The establishment of elaborate and effective systems of international cooperation and assistance has been a key feature of two previous UNESCO Conventions in the cultural field – the 1972 World Heritage Convention and the 2003 Intangible Heritage Convention. Likewise, a major objective of the 2005 CDCE has been to identify and develop new arrangements for international cooperation and, significantly, solidarity and these play a key role in the 2005 Convention.⁽¹⁷⁾

There are four main articles in relation to this, namely Articles 12, 14, 15 and 16. Article 13, as we have seen, deals with the integration of culture into development policies which also has an important international dimension. The main objectives of the international cooperation framework are to: provide access to all countries to the diversity of each others’ cultural expressions, i.e. to create a level playing field such as does not exist in most areas of international trade;



support developing countries in establishing cultural industries that can be competitive in the international cultural marketplace; combat commercial, cultural and social dumping by strengthening the capacities of developing countries to face competition from cultural goods and services from industrialised states; encourage the development of international partnerships between the public sector, private sector and civil society; and establish a development fund to support these objectives.

Article 12 on the promotion of international cooperation is relatively straightforward, with the possible exception of paragraph (c) on civil society and other Partnerships which promotes a new dimension to what has hitherto been seen as a primarily State-to-State operation (with the involvement of intergovernmental bodies). Clearly such a departure has implications for the future development of a more inclusive and 'democratic' international system and, as such, may be of concern to some States. The key provision in this section is Article 14 which deals with international cooperation for development. This calls for Parties "to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector." This provision again intends to promote international social justice and would appear to support some sort of duty on developed Parties to ensure a fairer and more equitable market for expressions of cultural diversity which they (and their populations) are able directly to enjoy from the economic and other benefits involved. The implementation of this provision is to be done under guidelines drawn up by the treaty's intergovernmental committee.

Article 15 calls on Parties to encourage partnerships between and within the public and private sectors and non-profit organizations towards their cooperation with developing countries in capacity-building. Again we see in this provision a heavy emphasis on responding to the practical needs of developing countries, with an emphasis on the further development of infrastructure, human resources and policies, i.e. on the sustainability of the development process. The finer details of this provision also required further definition from the treaty's intergovernmental committee. Article 16 on preferential treatment for developing countries, especially for cultural goods and services, is another fundamental provision for achieving the objectives of the 2005 CDCE. This would imply taking positive actions to



encourage the circulation in developed countries of cultural activities, goods and services originating from developing countries.

The establishment of the International Fund for Cultural Expressions, designed to promote cooperation for sustainable development and poverty reduction and to support the emergence of a dynamic cultural sector in developing countries, again points to the strong emphasis placed on developing countries as beneficiaries of this Convention. Since it is set up as a voluntary fund (unlike that of the 1972 or 2003 Conventions of UNESCO which have a compulsory element) there is less pressure on Parties to provide monies to it and one might regard this as a lack of commitment to follow through with the high ideals expressed here. However, as a multi-donor Fund it can accept contributions from States Parties, other States, regional and international organizations, public and private organizations and even private persons. This means that the work of the Convention can be practically supported by a wide range of non-state actors as well as States which reflects the emphasis placed on partnership in international cooperation.

Notably also, not only can States Parties be beneficiaries of the Fund but also international and national non-governmental organizations that fit the criteria established by the Operational Guidelines to the Convention.⁽¹⁸⁾ Moreover, representatives of vulnerable groups and other social groups (such as women, persons belonging to minorities and indigenous peoples) from developing countries that are Parties to the 2005 Convention can also be beneficiaries. If we compare this with the much narrower category of beneficiaries to the Intangible Heritage Fund of the 2003 Convention, we see an interesting development where a more inclusive approach towards a broad set of actors (both as benefactors and beneficiaries) is balanced by the voluntary character of the Fund. This is interesting since it would seem to recognize that it is no longer possible to restrict the main actors in international treaties dealing with certain aspects of cultural heritage – as with other areas of international law – to States and their representatives.

Conclusions – Addressing Some Iranian Concerns

In conclusion, it is appropriate here to address the question of whether it is in the interests of Iran to ratify this instrument, both from the point of view of internal



cultural policy-making and in terms of international effects. At a meeting held on 22 December 2008 by the UNESCO Chair for Human Rights, Peace and Democracy of Shahid Beheshti University in Tehran on the University campus as part of a series of meetings on the 2005 Convention on Diversity of Cultural Expressions (UNESCO), several concerns were raised by Iranian governmental organisations and experts as to the exact effect of ratification of this Convention within Iran.⁽¹⁹⁾ Since this question continues to be unresolved in Iran and a variety of attitudes exists within different government organs, it would seem timely to examine some of these here. Although it has its own specific internal characteristics, Iran is not alone in experiencing such uncertainty and debate as to the balance of advantage and disadvantage of becoming a Party to this Convention and so this discussion will also have a relevance beyond Iran.

Some of the main concerns that have been expressed regarding the ratification of this Convention by Iran that are worth examining here are looked at below. Despite the extensive definition of terms provided in Article 4 of the Convention (see above for the main ones), there remains a lack of clarity as to the exact subjects of this treaty which, in turn, creates a general sense of uncertainty about its aims and implications. Moreover, there is also a difficulty with translating the central term “cultural expression” into Persian, with the currently used translation being overly suggestive of “expression” in the sense of “freedom of expression”. This is rather far from the intended sense of the original English of the text which refers to any manifestation/form that cultural creativity takes (very frequently a cultural product). To address this will require work by a group of experts from an interdisciplinary set of backgrounds (Lawyers, anthropologists, sociologists, cultural specialists etc.) to find appropriate Persian-language equivalents. This is essential if the treaty is to be properly understood and interpreted for the Iranian context.

Regarding the overall ‘agenda’ of the international community in drafting and adopting the 2005 Convention, there is some suspicion in certain official quarters that it reflects an attempt by the international community to impose on Parties a culturally pluralistic system that is inimical to the Iranian system. In response to this, it was noted that there is a widely held major misconception surrounding the objectives of this convention. The aim of this convention is not primarily to



promote cultural diversity within each contracting Party and, hence, to establish let's say a Canadian-style multicultural, culturally diverse and pluralistic society - which represents a particular and peculiar national experience. It is aimed, rather, at strengthening national capacities in the areas of creation, production, distribution and dissemination, access to and enjoyment of cultural expressions, as conveyed by cultural activities, goods and services. Through this, it should protect the diversity of cultural expressions in the international environment and, as such, provide Parties with a shield against the culturally pernicious effects of globalization.

Another serious concern, no doubt shared with many other countries, is that the 2005 CDCE could lead to greater separation between the different ethnic groups and cultures inside Iran and so threaten the unity of the State. In part, the response to the previous point applies here, namely that encouraging cultural diversity can be both a cultural and economic strength for a country and provide a protection against the potentially damaging impacts of 'global' culture. Moreover, this should not be a matter of serious concern at all, since Article 27 of the 1966 International Covenant on Economic, Social and Cultural Rights of which Iran is a Party already grants a large range of cultural rights to such groups. It is also likely that the economic benefits going to various cultural groups from strengthening local cultural industries and their competitiveness (a main objective of the Convention) would probably lead to greater not less ethnic and cultural coherence within the State.

Another sensitive issue is the concern that ratification of this Convention would require recognition of some cultural issues that currently are not internally recognised by Iran. To respond to this concern, it is very important to be aware of exactly what obligations the Convention places on States with regard to setting internal cultural and other policies. In fact, it should be noted that many of the measures outlined in the Convention are not obligatory but couched as *rights* of Parties with regard to cultural policy-making (Articles 5 and 6) and that the sovereign right of States to set their own policies in this domain is protected. Although specific obligations are found in Articles 7, 9, 10, 11 and 13, the analysis above of these obligations would suggest that few of them present any real difficulty for a State such as Iran with a deep-rooted, strong cultural and religious character. Given the current state of play, the provisions contained in Articles 7 and 11



concerning the role of civil society might be more problematic. However, a close analysis of the nature of these obligations shows that they are mostly concerned with relatively uncontroversial objectives.⁽²⁰⁾

As for the international dimension, a key question is whether joining this Convention would have benefits for Iran internationally, in particular with regard to its future membership of the WTO? Iran's application to join the WTO, despite the previous politically-instigated problem of lack of consensus [US opposition] in the Organization's Council up to 2005, has been moving forward - albeit slowly - and may bear fruit in the years to come. If so, this will also require ratifying its fundamental texts such as GATS and TRIPS.. One of the primary motivations for the development of the 2005 CDCE was to shore up the claims by French-speaking Member States of WTO to a 'cultural exception' to these trade agreements.⁽²¹⁾ As such, this Convention could be very helpful in preventing potentially negative side-effects for Iranian cultural industries of joining the WTO, in particular the effects of the liberalisation of trade and opening up markets, by providing the necessary grounds for Iran to protect its cultural interests in any future WTO negotiations.

Moreover, for a country like Iran that is trying to balance the complex positives and negatives of ratification of this treaty, it is useful to look at the response of other countries to this challenge. By July 2010, 112 States plus the European Community had become Parties to this Convention which was a very healthy number within three years of the entry into force of a global multilateral treaty. It compares extremely favourably, for example, with the 2001 Convention on the Protection of Underwater Cultural Heritage that has thus far secured very few Parties. It is also notable that among the existing Parties to the 2005 Treaty are several regional – and Islamic - States (Jordan, Kuwait, Oman, Tunisia, Egypt, Syria and Tajikistan). The fact that some of the world's poorest States (e.g. Viet Nam, Namibia, Cote d'Ivoire) have also ratified it suggests that less-developed and developing countries perceive a benefit in membership of this treaty. Furthermore, some leading non-aligned States with an equally complex 'mosaic' of cultural minorities as Iran, namely India and Brazil, have also ratified this treaty. In weighing up the strategic advantages of becoming a Party to this Convention, Iran might well consider the position and policy of other States that share common cultural, economic and/or political situations and particular concerns and sensitivities.

Notes

1. With the ratification of Trinidad and Tobago on 26 July 2010. List of States Parties available online at: www.unesco.org, last accessed on 02/08/2010.
2. Universal Copyright Convention (UNESCO, 1952); 'Hague' Convention on the Protection of Cultural Heritage in the Event of Armed Conflict (UNESCO, 1954); Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, 14 November 1970); Convention concerning the Protection of the World Cultural and Natural Heritage (UNESCO, 16 November 1972); Convention on the Protection of the Underwater Cultural Heritage (UNESCO, 2001); Convention on the Safeguarding of the Intangible Cultural Heritage (UNESCO, 2003).
3. In some African States, for example, as much as 70-80% of their important cultural heritage is intangible in nature.
4. Art.16.
5. Although the 2005 CDCE is still very careful to preserve the sovereign jurisdiction of the State in making national cultural policies for its 'own' cultural expressions. For example, Art.6(1) reads: "... each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions *within its territory*." [Emphasis added].
6. Including francophone and Hispanic countries whose cultural products have been swamped by the dominance of English-language ones.
7. Appended to the 1994 GATT in Annex C.
8. An exception demanded initially by francophone countries and championed by France and Canada.
9. This is an important problem since IPRs are understood to be a part of the human rights canon and an essential component in encouraging and supporting creativity by protecting the economic and moral rights of creators and are protected under Art.15(1) of the International Covenant on Economic, Social and Cultural Rights (1966).
10. Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (2003).
11. 1952 Universal Copyright Convention (revised 1971); 1970 Convention Prohibiting Illicit Import, Export, Transfer of Ownership of Cultural Property; 1972 WHC; 2003 CICH.
12. *Ten Keys to the Convention on the Promotion and Protection of the Diversity of*



Cultural Expressions, available online at: <http://unesdoc.unesco.org/images/0014/001495/149502E.pdf> (accessed 16/08/10).

13. Articles 6, 8, 9 and 10 and paragraph 12 of the associated Action Plan are those on which it is based.
14. See Article 20 for more on this.
15. Derived from the Convention text itself and the explanatory text *Key...*
16. "Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions".
17. As seen in the Preamble and Articles 1(i), 2(4), 12, 13, 14, 15 and 16.
18. The Operational Guidelines to the 2005 CDCE state that "For the purposes of this Convention, civil society is defined as: *non-governmental organizations, nonprofit organizations, professionals in the culture sector and associated sectors, groups that support the work of artists and cultural communities*".
19. At this meeting, academics and members of such national bodies as the Islamic Human Rights Commission and the Expediency Council were present. Other key Iranian governmental organisations had been invited but did not attend which, in itself, could be reflective of deliberate official unease or lack of proper understanding of the Convention and its provisions.
20. These include: promoting public consensus and local 'ownership' of national cultural policy; strengthening and improving the impact of development programmes (e.g. by using local knowledge) and providing innovative ideas/solutions to development issues; providing professional expertise/capacity-building (especially where public sector capacity is weak); and improving public transparency and accountability.
21. L'exception culturel" refers to the idea that cultural products have a special character that means they should not be subject to the usual international regulations concerning trade and, in particular, that States should be able to protect their cultural products by such actions as limiting access to the cultural products of other States to their markets.
22. With the ratification of Trinidad and Tobago on 26 July 2010. List of States Parties available online at: www.unesco.org, last accessed on 02/08/2010.



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