

Summary

Cultural Diversity as a Challenge for International Law

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1. While lawyers should be cognizant of cultural studies in order to avoid undue simplifications, they should ultimately insist on their own interpretative expertise.
2. The UNESCO Declaration on Cultural Diversity of 2001 spells out the concept of cultural diversity for our time without, however, possessing legal force.
3. Apart from intrinsic considerations, the negotiation and the conclusion of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions were motivated by two conceptually distinct factors: the economic interests of national – private and public – audiovisual industries and worries about democratic self-governance.
4. The UNESCO Convention recognizes that other earlier treaties take formal precedence, but nevertheless claims that it should be duly taken into account in their interpretation.
5. While the UNESCO Convention is written in rather broad and balanced language it nevertheless gives expression to a certain vision of cultural diversity.
6. The idea that diversity serves mutual enrichment is significant for culture, but it plays only a secondary role for biology.
7. If the parameters and results of biodiversity research were applied to cultural diversity, different cultures would tend to be regarded as impermeable and they would be measured according to their importance for a more comprehensive „system“. This would contradict the idea that cultures should be protected for their intrinsic value.
8. The need for the protection of biodiversity should not be used to legitimize the protection of cultural diversity.
9. The UN Charter protects cultural diversity by the interplay of the prohibition of intervention in internal affairs on the one hand and human rights on the other. The revitalized European protection of minorities and the idea of multiculturalism begin to merge and, for some, they call into question the concept of the Charter.
10. Human rights limit the idea of cultural diversity insofar as they are universal. They cannot therefore easily be relativized by the invocation of „culture“. This point of departure does not, however, conclusively answer the question of how far human rights (interpretation) must take account of cultural specificities; it merely transfers the problem to another level. As far as they provide people with the freedom to live their culture human rights decisively contribute to cultural diversity.
11. The European Court of Human Rights indicated, in the Gypsy and Refah cases, the potential for, but also the limits of, taking the concept of cultural diversity into account in the interpretation of human rights in Europe.
12. Standard setting for group rights on the universal level is characterized by contradictory trends.

13. The question whether group rights and the institutionalization of cultural diversity are desirable should not be resolved without due consideration of the constitutional practice of States.

14. There are two basic models in the constitutional practice of States concerning group rights and the institutionalization of cultural diversity. These models simultaneously represent two different conceptions of cultural diversity: The Central European model is rather open towards group rights and institutionalization of cultural diversity, while the US model is rather reserved in that respect.

15. While multiculturalism is probably a wise and considerate policy for many states, it is still a rather young idea and it has already been called into question in some of its countries of origin. It should therefore not be prematurely claimed to be part of the constitutional identity of a State. The political discretion of States is rather wide in this respect.

16. International human rights bodies often face dilemmas which they can only escape by case-specific inquiries whether a particular policy or measure was taken *bona fide* and was implemented in a non-discriminatory way.

17. While States have a choice whether they want to follow the Central European or the US model, or whether they want to choose another appropriate model of cultural diversity, they must exercise this choice in a *bona fide* and non-discriminatory way.

18. The concept of cultural diversity should not be used as the sole source of new specific rules. It does, however, introduce a new sensitivity to the interpretation of existing rules and it puts them into a broader context.