

## THE DIFFICULT ACCEPTANCE OF DIVERSITY

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This Essay addresses the issue of acceptance of diversity essentially from the point of view of international law, particularly human rights law. After a brief introduction on the conflicting goals of acceptance of diversity on the one hand and homogeneity on the other, Part I of this Essay will give a quick overview of the forces hostile to diversity. Part II will show how international law has gradually recognized diversity as a value, mainly through minority rights and the rights of indigenous peoples. Part III will then deal with present threats and challenges to diversity and Part IV will present two present-day theaters where the battle for and against diversity is fought: the World Summit on the Information Society (WSIS) and the United Nations Educational, Scientific and Cultural Organization's (UNESCO) work on the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The Essay will then end with a seven-point conclusion.

### INTRODUCTION

For long periods of history, diversity has been perceived as a threat, a challenge or a nuisance, and an obstacle in the way of racially, ethnically, culturally, linguistically or religiously homogeneous states and societies. Homogeneity was perceived and pursued as a prevailing objective. The road to acceptance of diversity as an asset and a value that deserves protection and promotion by the law, including domestic and international human rights law, has been long and arduous. It could be argued, and is indeed argued by some, that accepting diversity, accepting the other and otherness, and “meeting the other's face” (to borrow from Emmanuel Lévinas)<sup>1</sup> is not a matter of course. Certain human ethologists, such as Irenäus Eibl-Eibesfeldt, Professor of Zoology at the University of Munich and a follower of Konrad Lorenz, are even trying to persuade us that it is against the animal nature of humans.<sup>2</sup> He transposes his findings on animal behavior to human behavior.<sup>3</sup> According to him, we the humans are, like other higher vertebrates, genetically programmed for xenophobia.<sup>4</sup> Theories of this kind obviously provide a scientific, or rather pseudoscientific, justification for the doctrines of extreme right wing, racist,

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1. EMMANUEL LEVINAS, ENTRE NOUS: ESSAIS SUR LE PENSER-À-L'AUTRE 221 (1991).

2. IRENÄUS EIBL-EIBESFELDT, WIDER DIE MISSTRAUENSGESELLSCHAFT 116 (1994).

3. *Id.*

4. *Id.*

and xenophobic movements.

### I. FORCES WORKING AGAINST DIVERSITY

For centuries powerful forces have been working against diversity. Some of them are still with us. Among these forces are racism, xenophobia and intolerance, ethnocentric nationalism, colonialism and imperialism, and globalization driven by paneconomic ideology. To this list one should undoubtedly add totalitarianism, which has so tragically marked the twentieth century.

There are common features in the above-mentioned phenomena: the idea of a hierarchy of human beings and groups and, as a consequence, of the existence of lesser, inferior human beings and groups; negation of what is universal in human beings and groups and therefore unites humanity; and rejection of the other and otherness and of the fundamental principle upon which the edifice of human rights is built, namely, the equal dignity of all human beings.

Minorities as well as colonized and indigenous peoples have been the principal victims of the forces hostile to diversity. These forces have been alarmingly “successful.” It is estimated that linguistic diversity reached its zenith some fifteen thousand years ago.<sup>5</sup> A world population five hundred times less numerous than today is supposed to have spoken some ten thousand languages.<sup>6</sup> A great number of languages have disappeared since the fifteenth century as a result of colonization. To quote just one example, it is assumed that seventy-five percent of the languages that were spoken in Brazil have died since the arrival of the Portuguese in 1500.<sup>7</sup>

Experience shows that like individual human beings, human groups, cultures, and languages are mortal. Many of them have died, largely as a result of imperialism and colonialism; many are threatened by extinction. “Of the 6,500 languages currently spoken in the world, half are thought to be in danger or dying out. Some experts go as far as to predict that more than 90% of all the world’s languages will [disappear] in the next century.”<sup>8</sup>

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5. Peter Leuprecht, Canadian language model – Thoughts of a European (1998) (unpublished manuscript, on file with author).

6. *Id.*

7. BRITISH TELECOMMUNICATIONS, VARIETY AND VALUES: A SUSTAINABLE RESPONSE TO GLOBALISATION? 13 (2000), available at <http://digbig.com/4qxkd>.

8. Eur. Parl. Ass., *Report of the Comm. on Culture and Educ.*, 50th Sess., Doc. No. 8173 (1998), available at <http://digbig.com/4qxke> (citing James Geary, *Speaking in Tongues: As Telecommunications, Tourism and Trade Make the World a Smaller Place, Languages Are Dying at an Alarming Rate*, TIME (Europe), July 7, 1997).

The most spectacular debate on colonialism and its effects on the human rights of colonized peoples took place among Spanish scholars, especially between Sepulveda and Las Casas. It is profoundly significant that Las Casas “discovered” human rights through the encounter with the other, the “indio.”<sup>9</sup>

## II. THE GRADUAL RECOGNITION OF DIVERSITY IN INTERNATIONAL LAW

International law has gradually recognized diversity as a value, mainly through minority rights and more recently through the rights of indigenous peoples.

Religious minorities appeared as a subject of concern before national or ethnic minorities. The Treaty of Westphalia can be considered as the first international law instrument dealing with minorities—specifically, religious minorities.<sup>10</sup> The acceptance of religious freedom and diversity has been a long and difficult process. The Catholic Church did not endorse it until the second half of the twentieth century; in Islam, many still oppose it.

International protection of national or ethnic minorities began with the first partition of Poland in 1772.<sup>11</sup> A more comprehensive protection of national or ethnic minorities was provided for by article 1, paragraph 2, of the Final Act of the Congress of Vienna in 1815.<sup>12</sup>

At the end of the eighteenth and in the nineteenth century, a powerful force entered history that was to have a profound impact on the perception of diversity as well as on the situation of minorities and colonized and indigenous peoples: ethnocentric nationalism. It was to have an overwhelming influence on political thinking and practice, both on the right and on the left of the political spectrum. It provided a justification for absorbing minorities in Europe and, going hand in hand with imperialism and colonialism, for assimilating peoples overseas where the colonial powers allegedly accomplished a “mission civilisatrice.”

Although they belonged to opposing political camps, a striking similarity exists in the writings of John Stuart Mill and Friedrich Engels on these issues. “The half-savage relic of past times,” according to J. S. Mill, or “ethnic trash,” in the words of Friedrich Engels, was doomed to be “absorbed” or “extirpated.”<sup>13</sup> Under the predominant nationalist ideology,

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9. 9 FRAY BARTOLOME DE LAS CASAS, OBRAS COMPLETAS: APOLOGIA (1988).

10. Treaty of Westphalia arts. XXVIII, CXXIII, Oct. 24, 1648, 1 Consol. T.S. 119, 271 available at <http://digbig.com/4qxxh>.

11. First Partition of Poland, Austria-Prussia-Russ., July 25, 1772, 45 Consol. T.S. 67, 73.

12. Final Act of the Congress of Vienna art. 1, June 9, 1815, 64 Consol. T.S. 453.

13. JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 314 (Electric Book Co. 2001) (1862); Karl Marx & Friedrich Engels, Hungary and Pan Slavism (1849), in THE

both liberal individualism and socialist internationalism led to a systematic denial of the most fundamental rights of small nations and minority cultures, including their very right to exist.<sup>14</sup> For both Marxists and liberals in the nineteenth century, the “great nations” were the carriers of historical development and progress. Small nations and minorities were regarded as backward and stagnant. They were expected to abandon their own identity and to assimilate into a “great nation.”<sup>15</sup> Attempts to maintain minority and indigenous cultures and languages were regarded as reactionary and misguided.

In the nineteenth and well into the twentieth century, the prevailing political thinking and practice of ethnocentric nationalism were basically hostile to minorities and to cultural and linguistic diversity. There existed some countervailing trends, particularly in the multinational Austro-Hungarian Empire, especially in Vienna among the Austro-Marxists and also among the pluralists such as Figgis and Laski.<sup>16</sup> Article 19 of the Austrian Staatsgrundgesetz (Fundamental Law of the State) of 1867 guaranteed collective rights of ethnic groups.<sup>17</sup> However, it applied only to one part of the dual monarchy, namely “Cisleithania,” and not to the territories under the Hungarian crown.

After the First World War, the League of Nations devoted considerable attention to minority protection in Europe. However, the system of minority protection it set up was limited in scope and relatively ineffective. The 1933 *Bernheim* case probably marked the beginning of the end of the League of Nations and its system of minority protection.<sup>18</sup> The Nazi ideology and its application logically led to the justification, indeed the glorification and practice, of elimination of the other, the *Untermensch* and particularly the Jews and Romas.

For quite some time after the Second World War, minority rights were excluded from the emerging international law of human rights, despite some efforts within the United Nations (UN) and the Parliamentary Assembly of the Council of Europe to include them.<sup>19</sup> However, the claim

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RUSSIAN MENACE TO EUROPE 56, 63 (Paul W. Blackstock & Bert F. Hoselitz eds., 1952).

14. DAVID NICHOLLS, *THE PLURALIST STATE: THE POLITICAL IDEAS OF J. N. FIGGIS AND HIS CONTEMPORARIES* 75 (2d ed. 1994).

15. *Id.*

16. *Id.* at 75, 78–79.

17. Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger [STGG] [Constitution] RGBI 142/1867, art. 19 (Austria).

18. For a description of the *Bernheim* case and how nothing in the end was done by the German laws that discriminated against a Jewish citizen, see ANTONIO CASSESE, *HUMAN RIGHTS IN A CHANGING WORLD* 18–20 (1990); 1 FELIX ERMACORA, *MENSCHENRECHTE IN DER SICH WANDELNDEN WELT* 357, 408, 427 (1974).

19. *Cf.* Peter Leuprecht, *Der Europarat und das Recht der nationalen Minderheiten*, 18

to self-determination appeared on the human rights agenda in the context of decolonization. The human rights approach of the international community proved to be a powerful means that helped to break down the colonial empires. Other evolving human rights concepts came into play, especially the concept of cultural integrity. Something in the nature of a human right to cultural survival and development appeared in international law. This is signaled in particular by the Genocide Convention of 1948, which defines genocide as *inter alia* “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”;<sup>20</sup> it is also illustrated by article 27 of the International Covenant on Civil and Political Rights<sup>21</sup> as well as the 1966 UNESCO Declaration of Principles of Cultural Cooperation, which affirms a right and duty of all peoples to protect and develop all cultures of humankind.<sup>22</sup> In 1992 the UN General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>23</sup> At its sixty-first session the UN Commission on Human Rights approved by consensus a new, special mechanism—a UN independent expert on minority issues who is to engage in dialogue with governments and minorities to protect and promote minority rights.<sup>24</sup>

Important developments have taken place at the European level, particularly within the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe, which adopted two legal instruments: the 1992 Charter for Regional and Minority Languages,<sup>25</sup> and the 1995 Framework Convention for the Protection of National Minorities.<sup>26</sup>

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EUROPA ETHNICA 146 (1961) (F.R.G.).

20. Convention on the Prevention and Punishment of the Crime of Genocide art. 2, *adopted* Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951).

21. International Covenant on Civil and Political Rights art. 27, *adopted* Dec. 16, 1966, 6 I.L.M. 368, 999 U.N.T.S. 171 (entered into force March 23, 1976).

22. Declaration of Principles of International Cultural Co-operation, art. 1, U.N. Educational, Scientific and Cultural Organization, 14th Sess., UNESCO Doc. 14/C (Nov. 4, 1966), *available at* <http://digbig.com/4qxkm>.

23. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, U.N. GAOR, 47th Sess., 92d plen. mtg., G.A. Res. 47/135, U.N. Doc. A/Res/47/135 (Dec. 18, 1992).

24. Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Human Rights Resolution 2005/79, ¶ 6, U.N. Comm’n on Human Rights, 61st Sess., 61st mtg., U.N. Doc. E/CN.4/RES/2005/79 (Apr. 21, 2005).

25. European Charter for Regional or Minority Languages, *opened for signature* Nov. 5, 1992, Europ. T.S. No. 148 (entered into force Mar. 1, 1998).

26. Framework Convention for the Protection of National Minorities, *opened for signature* Feb. 1, 1995, Europ. T.S. No. 157 (entered into force Feb. 1, 1998).

As far as indigenous peoples are concerned, the International Labour Organization (ILO) adopted two conventions on indigenous and tribal peoples, namely, Conventions No. 107 (1957) and No. 169 (1989).<sup>27</sup> A UN General Assembly draft Declaration on the Rights of Indigenous Peoples has been under negotiation for over ten years.<sup>28</sup>

### III. THE PRESENT SITUATION

Although in the last fifty years there has been considerable progress with regard to the recognition of the value of diversity in domestic and international law, the hostile forces mentioned above have not vanished. Some of the old forces are still at work and new ones have also appeared.

Racism, xenophobia, and intolerance are still present in our societies. It is highly significant that, at the Vienna Summit in October 1993, the heads of state and government of the member states of the Council of Europe, alarmed by the development of aggressive nationalism and ethnocentrism, adopted important decisions on minorities as well as on a policy for combating racism, xenophobia, anti-Semitism, and intolerance.<sup>29</sup> The reports of the “watchdog” body set up by the Summit, the European Commission Against Racism and Intolerance (ECRI),<sup>30</sup> show that these phenomena still exist in Europe, as they do in other parts of the world.<sup>31</sup>

In Europe, particularly in Central and Eastern Europe, there has been a resurgence of ethnocentric nationalism with tragic consequences, especially in the former Yugoslavia.

In spite of decolonization, imperialism, including cultural imperialism, has by no means disappeared. Edward Said has persuasively shown the centrality of imperialist thought in modern Western culture.<sup>32</sup> We are at

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27. Convention Concerning Indigenous and Tribal Peoples in Independent Countries, Convention No. 169, Int'l Labour Org. [ILO], 76th Sess., 1650 U.N.T.S. 383 (June 27, 1989) (entered into force Sept. 5, 1991); Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, Convention No. 107, ILO, 40th Sess., 328 U.N.T.S. 247 (June 26, 1957) (entered into force June 2, 1959).

28. U.N. Econ. & Soc. Council [ECOSOC], Commission on Human Rights, *Indigenous Issues: Report of the Working Group Established in Accordance with Commission on Human Rights Resolution 1995/32 of 2 March 1995*, ¶ 2, U.N. Doc. E/CN.4/2006/79 (Feb. 24, 2006) (prepared by Luis-Enrique Chavez), available at <http://www.ohchr.org/english/issues/indigenous/docs/ecn4-2006-79.doc>.

29. Heads of State and Government of the Council of Europe, *Vienna Declaration* (Oct. 9, 1993), available at [http://www.coe.am/en/docs/summits/vienna\\_summit.pdf](http://www.coe.am/en/docs/summits/vienna_summit.pdf).

30. *Id.* app. III.

31. *E.g.*, Eur. Comm'n Against Racism and Intolerance, *Annual Report on ECRI's Activities Covering the Period from 1 January to 31 December 2004*, 929th mtg., Doc. No. 71add2e (2005), available at <http://digbig.com/4qxkn>.

32. *See generally* EDWARD W. SAID, *CULTURE AND IMPERIALISM* (1993) (tracing the history of imperialist cultures, identifying the characteristics of such cultures, and arguing that the United States

present confronted with a much more complex form of imperialism, namely, postcolonial, hegemonic imperialism. The imperial ambition of the new world hegemon, the United States of America, is expressed with particular clarity in the National Security Strategy of September 2002.<sup>33</sup>

There has always been, and still is, a profound connection between imperialist policies and the imposition of culture. Referring to present times, Edward W. Said wrote, “[r]arely before in human history has there been so massive an intervention of force and ideas *from one culture to another* as there is today from America to the rest of the world.”<sup>34</sup> This is not simply the result of the free play of “market forces,” but of a deliberate policy, as can be shown especially in the areas of audiovisual production and information technology.

Information technology is seen and used as an essential tool of U.S. dominance. In 1996, former Assistant Secretary of Defense for International Affairs, Joseph S. Nye, and former Vice-Chairman of the Joint Chiefs of Staff, William A. Owens, who had both served in the early years of the Clinton presidency, wrote about what they considered “America’s information edge.”<sup>35</sup> They asserted that:

The one country that can best lead the information revolution will be more powerful than any other. For the foreseeable future, that country is the United States.

....

... Just as nuclear dominance was the key to coalition leadership in the old era, information dominance will be the key in the information age.

....

... In truth, the [twenty-first] century, not the twentieth, will turn out to be the period of America’s greatest preeminence. Information is the new coin of the international realm, and the United States is better positioned than any other country to multiply the potency of its hard and soft power resources through information.<sup>36</sup>

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has become such a culture).

33. See generally John E. Rielly, *America Unbound: The Future of American Hegemony*, 30 VT. L. REV. 123 (2005) (citing NAT’L SEC. COUNCIL, EXECUTIVE OFFICE OF THE PRESIDENT, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (2002), available at <http://digbig.com/4fsmj>) (discussing the United States’s role as the dominant world hegemon).

34. SAID, *supra* note 33, at 319 (emphasis added).

35. Joseph S. Nye, Jr., and William A. Owens, *America’s Information Edge*, FOREIGN AFF., March/April 1996, at 20.

36. *Id.* at 20, 27, 35.

Moreover, David Rothkopf, another former Clinton administration official and then Managing Director of Kissinger Associates, wrote in an essay entitled *In Praise of Cultural Imperialism?*:

For the United States, a central objective of an Information Age foreign policy must be to win the battle of the world's information flows, dominating the airwaves as Great Britain once ruled the seas.

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... [I]t is in the economic and political interests of the United States to ensure that if the world is moving toward a common language, it be English; . . . that if the world is becoming linked by television, radio, and music, the programming be American; and that if common values are being developed, they be values with which Americans are comfortable.<sup>37</sup>

These quotations speak for themselves; they clearly express imperialist thinking. One U.S. writer, Irving Kristol, tries to show that American imperialism is less brutal than earlier European imperialism. "Our missionaries live in Hollywood," he writes in an article entitled *The Emerging American Imperium*.<sup>38</sup> Rather than going into an assessment of the respective degrees of brutality of different forms of imperialism, it is worth emphasizing Kristol's highly significant reference to the Hollywood missionaries. Indeed, U.S. audiovisual production is another important instrument of American cultural imperialism, in addition to its economic importance. The strong negative U.S. reaction against European efforts to protect and promote the European cinematic production should be seen in this context.

Another powerful force working against diversity is predatory globalization driven by paneconomic ideology. It leads to a singularly restricted view of the human being and human rights. It reduces the human being to an economic factor or, slightly more optimistically, to a consumer and market participant. It brings with it a tendency to commodify culture, and it unleashes powerful forces of standardization and uniformity, which in turn provoke, as a reaction, a clinging to "identity," even an obsession with identity.

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37. David Rothkopf, *In Praise of Cultural Imperialism?*, FOREIGN POL'Y, Summer 1997, at 38, 39, 45.

38. Irving Kristol, *The Emerging American Imperium*, WALL ST. J., Aug. 18, 1997, at A14.



## IV. TWO PRESENT DAY THEATERS

The battle for and against diversity is being fought on many fronts. Two topical ones will be addressed here: the World Summit on the Information Society (WSIS) and UNESCO's work regarding the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

A. *WSIS*

The first part of the WSIS took place in Geneva in December 2003; its second part will be held in Tunis from November 16–18, 2005.<sup>39</sup> The proclaimed objective of the Summit is to overcome the digital divide.<sup>40</sup> This is not the place to go into the question of whether it will achieve, or at least contribute to, this aim. However, a key issue at the heart of the WSIS is whether information and communication technologies (ICTs) will be used to promote diversity and to ensure equal access to information and knowledge for all, the rich as well as the poor, or as a means of domination and standardization. Discussions on some contentious issues at the first phase of the Summit unfortunately seem to indicate that the strong and powerful, particularly the United States, are not willing to abandon their dominant position. Three of these contentious issues will be briefly addressed here.

Many, including most governments, feel that it is far from normal that the internet should be administered by a private organization based in the United States, namely, the Internet Corporation for Assigned Names and Numbers (ICANN).<sup>41</sup> The international, intellectual property rights regime seems to contradict proclaimed goals of the WSIS such as the sharing of knowledge and empowering of the poor. Many feel that it should be fundamentally reviewed, particularly with regard to current arrangements for recognition and governance of monopolized knowledge and

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39. Peter Leuprecht, *Brave New Digital World? Reflections on the World Summit on the Information Society*, 16.1 *REVUE QUÉBÉCOISE DE DROIT INTERNATIONAL* 101, 101 (2003).

40. Manon Lavoie, *Introduction to Beyond WSIS: Incorporating Human Rights Perspectives into the Information Society Debate*, 18.1 *REVUE QUÉBÉCOISE DE DROIT INTERNATIONAL* 3, 3–4 (Manon Lavoie & Peter Leuprecht eds., 2005) (quoting PIPPA NORRIS, *DIGITAL DIVIDE: CIVIC ENGAGEMENT, INFORMATION POVERTY, AND THE INTERNET WORLDWIDE* 3 (2001)). *See generally id.* (discussing how the United Nations endorses the WSIS and how it was an initiative of the International Telecommunication Union, which is a group that works to “coordinate global telecom networks and services” (quoting International Telecommunication Union, <http://www.itu.int> (last visited Oct. 10, 2006)).

41. *See* John Markoff, *Control the Internet? A Futile Pursuit, Some Say*, *N.Y. TIMES*, Nov. 14, 2005, at C4 (expressing certain countries' desires to see ICANN not be under U.S. oversight).

information. Finally, there is the question of the financial means of overcoming the digital divide. The creation of a Digital Solidarity Fund, proposed by the President of Senegal and strongly supported by countries from the South, was opposed by most developed countries and in particular the United States.<sup>42</sup> It will be interesting to observe and analyze the results of the second phase of the WSIS, especially on the three controversial issues mentioned above.

*B. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*

At its recent thirty-third session, held from October 3–21, 2005, the General Conference of UNESCO adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expression (UNESCO Convention)<sup>43</sup> by an overwhelming majority, with only two countries voting against: the United States and Israel.<sup>44</sup> Previously, in 2001, UNESCO adopted the Universal Declaration on Cultural Diversity.<sup>45</sup>

Canada and France were the main advocates of the convention; the European Union supported it.<sup>46</sup> Until the last minute, the United States did not spare any effort to prevent its adoption. On June 3, 2005, at the end of the proceedings of the UNESCO Intergovernmental Working Group that finalized the draft convention to be submitted to the General Conference, the U.S. delegation declared in a final statement:

The draft convention produced by this Working Group is deeply flawed and fundamentally incompatible with UNESCO's Constitutional obligation to promote the free flow of ideas by word and image.

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Because it is about trade, this convention clearly exceeds the mandate of UNESCO. Moreover, it could impair rights and

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42. World Summit on the Information Society, PrepCom 2: Debate on Financial Mechanisms, <http://digbig.com/4qxkp> (last visited Oct. 12, 2006).

43. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, U.N. Educational, Scientific and Cultural Organization [UNESCO], 33d Sess., 20th plen. mtg. (Oct. 20, 2005), [hereinafter Diversity Convention], available at <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>.

44. Andres Oppenheimer, Editorial, *Cultural War Takes Aim at Hollywood*, ORLANDO SENTINEL, Jan. 31, 2006, at A11.

45. Universal Declaration on Cultural Diversity, UNESCO, 31st Sess., 20th plen. mtg. (Nov. 2, 2001), available at <http://digbig.com/4qbwf>.

46. *UNESCO Poised to Protect Cultural Diversity*, CBC News, Oct. 18, 2005, <http://digbig.com/4qpts>; Oppenheimer, *supra* note 45.

obligations under other international agreements and adversely impact prospects for successful completion of the Doha Development Round negotiations. In so doing, it will set back progress toward the economic liberalization that has done so much to increase prosperity throughout the world, particularly in developing countries, where culture plays such an important role in development.<sup>47</sup>

There is a terrible irony in the position of the United States, which criticizes the convention for being about trade. In fact, the United States is the main promoter of the commoditization of culture, yet argues that culture should not be subjected to the rules on trade.

The preamble to the new convention reads like an ode to cultural diversity as “a defining characteristic of humanity” and as forming “a common heritage of humanity [that] should be cherished and preserved for the benefit of all.”<sup>48</sup> The preamble emphasizes “the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized legal instruments.”<sup>49</sup> Paragraph 18 of the preamble states 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.”<sup>50</sup>

Article 1 sets out the objectives of the convention; article 2 announces the UNESCO Convention’s guiding principles.<sup>51</sup> The first guiding principle is the “Principle of respect for human rights and fundamental freedoms”; it reads as follows:

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by

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47. The Honorable Robert S. Martin, Final Statement of the United States Delegation to the UNESCO Intergovernmental Working Group (June 3, 2005), available at <http://digbig.com/4qxxkq>.

48. Diversity Convention, *supra* note 44, pmb1.

49. *Id.*

50. *Id.*

51. *Id.* arts. 1–2.

international law, or to limit the scope thereof.<sup>52</sup>

The second principle, that of sovereignty, reads as follows: “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.”<sup>53</sup> According to the third principle: “The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.”<sup>54</sup>

Article 18 provides for the establishment of an “International Fund for Cultural Diversity,” the resources of which will consist mainly of “voluntary contributions made by Parties.”<sup>55</sup>

There seem to be two weak spots in the convention. One is article 20 concerning the convention’s relationship to other treaties. There have been heated discussions on the wording of this provision. The main issue was whether the convention should prevail over other treaties, especially those of the World Trade Organization (WTO), or on the contrary, be subordinated to them. The outcome of these discussions is reflected in the wording of article 20:

1. Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly, without subordinating this Convention to any other treaty,
  - (a) they shall foster mutual supportiveness between this Convention and the other treaties to which they are parties; and
  - (b) when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention.
2. Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.<sup>56</sup>

The gist of this provision is that the UNESCO Convention will neither prevail over, nor be subordinated to, other treaties. What can be expected is

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52. *Id.* art. 2(1).

53. *Id.* art. 2(2).

54. *Id.* art. 2(3).

55. *Id.* art. 18(1), (3).

56. *Id.* art. 20.

a coexistence between the UNESCO Convention and trade agreements, particularly those of the WTO; a coexistence that is unlikely to be harmonious. This may well be another example of the schizophrenic development of international law in watertight compartments.

What makes things worse is the weakness of the system of dispute settlement stipulated by article 25 of the UNESCO Convention. It does not go beyond negotiation, good offices, mediation, and an optional system of conciliation and does not provide for binding decisions,<sup>57</sup> contrary to the WTO system.

In order to enter into force the UNESCO Convention needs to be ratified by thirty countries.<sup>58</sup> This objective probably will be attained in the not-too-distant future, notwithstanding the strong hostility of the United States. However, the U.S. government probably will exert pressure on other countries to dissuade them from ratification. It is hastily concluding bilateral agreements with countries of the South to undercut the effects the UNESCO Convention might produce after its entry into force. One is reminded of the U.S. administration's attitude with regard to the International Criminal Court and its practice of concluding bilateral "immunity agreements."<sup>59</sup>

The UNESCO Convention is undoubtedly a strong political gesture in favor of the recognition of cultural diversity as a value to be protected and promoted and against the commoditization. It remains to be seen what legal effects the UNESCO Convention will be able to produce. What logic will prevail: that of the dealers and merchants, or that of cultural diversity and human rights including cultural rights?

#### CONCLUSION

Great efforts will be required to give the world a chance to progress on the road of acceptance of diversity while fully respecting human rights—all human rights, civil, political, economic, social, and cultural rights. Here are seven suggestions on what could and should be done for that purpose.

1. It is essential to understand and practice human rights for what they are: not only rights of each and every one of us but also and above all the rights of others.

2. Human rights law must take into account both the individual and the social dimension of human beings. The recognition of both individual and

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57. *Id.* art. 25.

58. *Id.* art. 29.

59. David Weissbrodt & Amy Bergquist, *Extraordinary Rendition: A Human Rights Analysis*, 19 HARV. HUM. RTS. J. 123, 157 (2006).

collective rights, or group rights, is necessary for the preservation and promotion of diversity and for human beings to be able to live in dignity.

3. Although there seems to be a widespread verbal consensus on the indivisibility of all human rights, in practice the social and cultural dimension of human rights is badly neglected. Cultural rights must cease to be a forgotten category of human rights.

4. It is not sufficient to accept or tolerate the other who is different. It is necessary to go beyond accepting or tolerating the other and to fully recognize him or her as equal, as endowed with equal dignity. One is reminded of the slogan of the big European campaign against racism and intolerance launched some ten years ago after the Vienna Summit: “All different, all equal.”

5. It is increasingly necessary to practice not only political but also cultural pluralism.

6. A very serious issue is how to ensure cultural pluralism without falling into the trap of cultural relativism. Are there limits to the acceptance of diversity and to the excuse of culture to justify certain practices and what are those limits? How do we reconcile universality and diversity? These very difficult issues must be addressed.

7. The struggle for the acceptance of diversity and its recognition as a value to be protected and promoted is far from being won. We should not passively accept and undergo Samuel Huntington’s alarming scenario of the inevitable clash of civilizations and cultures.<sup>60</sup> On the contrary, dialogue and exchange between cultures must be promoted (e.g., through education and intercultural learning). Peace and harmony must be built on respect for the other and for otherness, difference and diversity, on the basis of a shared ethic of humanity—that of the equal dignity of every human being. As stated in the very first sentence of the Universal Declaration of Human Rights, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”<sup>61</sup>

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60. SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* 183 (1996).

61. Universal Declaration of Human Rights, pmbl., G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 183d plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).