

# Building a digital agenda for the diversity of cultural expressions: UNESCO, new governance norms for culture and power dynamics

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Received on 15 March 2017, accepted on 12 May 2017

### Abstract

*The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDCE) adopted by UNESCO in 2005 is now a key international instrument in the global governance of culture. In December 2016, the CDCE's Committee adopted Operational Guidelines in order to align the CDCE with the development of digital technologies. In this respect, this article deals with the struggles between actors in the process for adopting new governance norms for the diversity of cultural expressions in the digital context and it seeks to understand how the interests and influence of the actors involved intersect in consensual and conflicting ways.*

### Keywords

*Cultural diversity, digital shift, UNESCO, norms, governance.*

### Resum

*La Convenció sobre la Protecció i la Promoció de la Diversitat de les Expressions Culturals (CDEC) adoptada per la UNESCO l'any 2005 és ara un instrument internacional clau per a la governança global de la cultura. El desembre de 2016, el Comitè de la CDEC va adoptar unes Directrius operatives per tal d'adaptar-la a l'evolució de les tecnologies digitals. En aquest sentit, l'article tracta de les lluites que hi ha entre els diversos actors del procés d'adoptar noves normes de governança per a la diversitat de les expressions culturals en el context digital, i vol entendre de quina manera els interessos i la influència dels actors implicats interactuen de manera consensual i conflictiva.*

### Paraules clau

*Diversitat cultural, revolució digital, UNESCO, normes, governança.*

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereafter 'the CDCE' or 'the Convention') adopted by UNESCO in 2005 –and in effect since 2007– is now a key international instrument in the global and multi-level governance of culture. As of March 2017, it has received the support of 144 Member States and the European Union (EU). The CDCE primarily recognizes the importance of cultural public policies for the diversity of cultural expressions as well as the specificity of cultural goods and services. The CDCE is also credited with integrating culture in development policies and with reinforcing international cultural cooperation (Vlassis 2015a).

Since the CDCE's adoption digital technologies have increasingly transformed the whole cultural value chain and they have represented an unprecedented change in creation, production, distribution, broadcasting and consumption of cultural goods and services as well as in the remuneration of creators. The reality of the dematerialization of cultural content, technological convergence and deterritorialisation of cultural goods and services raises tremendous challenges for the *raison d'être* of cultural policies and for international cultural

cooperation. In this respect, over the last five years the Parties to the CDCE, civil society groups, multilateral organizations and groups of experts have held a political dialogue on the opportunities and risks of the advent of the digital age and they have debated the perspective for aligning the CDCE with the development of digital technologies. Thus in December 2016, the CDCE's Intergovernmental Committee (hereafter 'the IGC') adopted 'Draft Operational Guidelines on the Implementation of the Convention in the Digital Environment' (UNESCO 2016a), which will be approved by the Conference of Parties in June 2017.<sup>1</sup>

Recent academic and multidisciplinary research offers useful insights into the CDCE's implementation and its economic, legal and social implications: the link between the CDCE and multilateral and bilateral trade agreements (Gagné 2016), the interactions between the CDCE and development issues (De Beukelaer, Pyykkonen and Singh 2015; Stupples and Teaiwa 2016), the legal challenges around the CDCE's implementation (Burri 2014; Richieri Hanania 2014), the economic and legal links between the CDCE and digital technologies (Albornoz 2016; Guèvremont 2015), and the EU's role in promoting the

CDCE (Psychogiopoulou 2015).

Even though this growing body of research illustrates the importance of the CDCE as a major international instrument for multilateral regulation of cultural goods and services, it has not sufficiently explored the political aspects of the link between the CDCE and digital technologies, the political implications of updating the CDCE into the digital environment and the key cleavages shaping policy outcomes (Vlassis 2016a). As stressed by Jeffrey Hart (2010: 60), “political institutions can influence the way in which digital technology is introduced and deployed in a variety of ways”.

In this respect, the aim of this article is to treat the CDCE as process rather than structure and to make policymaking actors central to its analysis (Avant et al. 2010; Vlassis 2015b, 2016b). This process is filled with a wide variety of actors such as national governments, representatives of civil society, groups of experts and administrations of multilateral organizations. In this regard, this article deals with the struggles between actors in the process for adopting Operational Guidelines (hereafter OGs) on the implementation of the Convention in the digital age and it seeks to understand how the interests and influence of the actors involved intersect in consensual and conflicting ways. As argued by R. Mansell and M. Raboy (2014: 4), policymaking can be “regarded as a process of persuasion and argumentation that takes place within a complex system of actors and institutions”. In fact, through socio-political analysis on the process of adopting OGs on digital issues, my article seeks to explore three key questions: who were the key actors involved in the political process? Why did the actors engage in the process and which kind of interests did each actor promote? What restricted or facilitated the process?

This article – based on document analysis of grey literature (minutes, resolutions, working and information documents) produced by UNESCO and the actors involved as well as on participant observation in the sessions of the IGC and Conference of Parties – consists of three parts: first, it focuses on the interests and strategies of the actors which took the leadership for updating the CDCE in the digital environment. Second, it emphasizes the actors involved which assumed the role of followers in the policymaking process and it highlights their specific interests. Third, it focuses on reluctance expressed by some State Parties *vis-à-vis* the perspective to align the CDCE with the development of digital technologies.

## 1. Leading the mobilization of the CDCE in the digital age

The construction of transnational issues requires political entrepreneurs with the ability not only to move the debate forward, identify and promote new issues and suggest proposals, but also to pick and choose among the range of possible emerging claims, launching some issues to prominence and sidelining others (Carpenter 2010: 204). Moreover, leadership may be exercised by several stakeholders in multilateral arenas.

This section focuses on the political entrepreneurs of the CDCE’s mobilization in the digital age, namely France, Canada-Quebec and Belgium, as well as on the major role played by several groups of experts.

### National delegations as political entrepreneurs

The first State Party which mentioned the importance of digital technologies and the need to begin discussion on digital issues within the CDCE framework was Canada during the 6<sup>th</sup> session of the IGC in December 2012. In this respect, the Canadian delegation pointed out the need to develop further analysis about the modernization of cultural policies, emphasizing the importance of taking full advantage of new technologies and digital information and ensuring the protection and diversity of cultural expressions in the new context (UNESCO 2013: 7).

Although little substantive progress was made at the sessions of the IGC and the Conference of Parties in 2013, the Parties became more aware of each other’s interests. In November 2014 the French and Canadian delegations requested the CDCE Secretariat to include a special point about digital technologies on the agenda of the 8<sup>th</sup> session of the Intergovernmental Committee held in December 2014. Thus during the 8<sup>th</sup> session the aim of France and Canada was to go beyond the step of political dialogue regarding digital technologies and to get concrete results. They sought not only to think about the issue but also to take action. Firstly, the Canadian delegation argued that “the Convention is technologically neutral and thus a relevant tool for all forms of creation” (UNESCO 2014: 66). In this respect, it is unnecessary to modify the CDCE’s goals and scope. In other words, the objective is “neither to negotiate a new legally binding instrument nor to reopen the CDCE” (UNESCO 2014: 61). On the contrary, insofar as the CDCE is “overturned by” the development of digital technologies, it is necessary to “develop competencies in the field of digital technologies” (UNESCO 2014: 67). Secondly, the French delegation explicitly stressed “the need to have something more formal about the digital challenges which Canada and France attempted to analyse” (UNESCO 2014: 62). As a result, France, Canada - and Quebec - defined several objectives to be achieved, such as to mobilize the Convention on digital technologies, share best practices related to the protection and promotion of the diversity of cultural expressions and strengthen developing countries’ ability to protect and promote the diversity of cultural expressions in the digital age.

One year later, during the 9<sup>th</sup> session of the IGC, the Canadian, French and Belgian delegations submitted concrete proposals to the Parties for developing a cross-cutting OG framed around three streams: public policies, international cooperation and exchanges of digital cultural goods and services (UNESCO 2015a, 2015b). As a result, the three delegations aimed to define the conceptual framework which was the political basis through which the actors involved debated and negotiated in order to prepare draft OGs for digital issues. Clearly, the final text on OGs adopted by the IGC was strongly influenced by their

proposals. For the three delegations, the OGs should serve four purposes:

- a. Apply the Convention principles regardless of the technological means used for their implementation;
- b. Make UNESCO a central and legitimated multilateral forum in order to discuss issues related to cultural industries and digital technologies. As argued by the Canadian delegation, a new OG “allows UNESCO to impose itself in the debate *vis-à-vis* the competition of other international organizations” (5<sup>th</sup> session of Conference of Parties, participant observation);
- c. Allow the cultural exception to be updated to the digital age. As a result, the specificity of cultural goods and services and the sovereign right of States are at the core of the delegations’ priorities (Vlassis 2011). In this respect, the OGs should allow “States to create laws regulating the digital realms to protect their cultures”, acknowledging that “digital cultural goods and services are more than economic commodities for exchange” (UNESCO 2016b: 25). In addition, the OGs should aim to “guarantee some room for manoeuvre for States when signing trade agreements” (UNESCO 2013: 41) and when creating “laws regulating the digital realm to facilitate access to other forms of cultural expression and promote the fair remuneration of artists for their work” (UNESCO 2016b: 25);
- d. Share best practices concerning digital technologies and diversity of cultural expressions and reinforce international cooperation and capacity building in this field.

Furthermore, Canada, France and Belgium aimed at building several linkages between the process of updating the CDCE into the digital age and the agenda of other multilateral organizations and at disseminating this issue in other forums and institutional arenas.

First, during the Dakar Summit held in November 2014 the International Organization of La Francophonie (OIF) -at the initiative of Quebec and the Wallonia-Brussels Federation- adopted a resolution which recognized the importance of the Convention in the digital era. In addition, the Dakar declaration underlined “the impact of digital technologies on the cultural environment and the need to take this into account in national policies and cooperation activities in relation to the implementation of the CDCE based on technological neutrality” (OIF 2014: 6). It is worth noting that during the 7<sup>th</sup> session of the IGC and in order to acknowledge the need to mobilize the CDCE in the field of digital technologies, the French delegation stressed “it is not a coincidence that the Dakar Summit invited the Parties to the Convention to do so with the resolution just adopted”.<sup>2</sup>

Second, in October 2015 the Wallonia-Brussels Federation organized an international forum in Mons as part of the celebration of the CDCE’s 10<sup>th</sup> anniversary. The aim of the forum, entitled “Cultural exception facing the challenges of the digital world: how to put new technologies at the service of the

diversity of cultural expressions?”, was to reaffirm the principles of the CDCE in the context of digital technologies. Among the participants, it is worth mentioning Michaëlle Jean, OIF’s Secretary General, Irina Bokova, UNESCO’s Director General, as well as Joëlle Milquet, Minister of Culture of the Government of the Wallonia-Brussels Federation. It is revealing that during the 9<sup>th</sup> session of the IGC the Belgian delegation pointed out explicitly that the international forum was “a preparatory step and emphasized the need to be ambitious in the treatment of digital issues and the Convention” (UNESCO 2016b: 31).

Third, on the margins of the sessions of the IGC the French National Commission for UNESCO undertook two initiatives in order to raise awareness about digital issues and cultural diversity: in December 2014, the organization of an event for launching the collective book *Critical Glossary of Cultural Diversity in the Digital Era* with the participation of Divina Frau-Meigs (University of Paris III and UNESCO Chair *Savoir devenir dans le développement numérique durable*) and Alain Kiyindou (University of Bordeaux III-Montaigne and UNESCO Chair *Pratiques émergentes des technologies et communication pour le développement*), as well as of Jean Musitelli, former French ambassador to UNESCO; and in December 2015, an international conference entitled “Manufacturing Curiosity”<sup>3</sup> and dealing with the impact of algorithms and social networks on the diversity of cultural expressions.

Lastly, in December 2016 the French and Canadian delegations – with the support of the UNESCO Secretariat – organized a ministerial panel at the 10<sup>th</sup> session of the IGC where it was intended to adopt the draft OGs. The panel entitled “Shaping digital policies for development” was to feature Mélanie Joly and Audrey Azoulay, Canadian and French Ministers of Culture respectively,<sup>4</sup> Fernando Griffith, Paraguay’s Minister of Culture, and Irina Bokova, UNESCO’s Director General.

### The role of the scientific community

Several issues on the CDCE’s agenda required scientific knowledge and expertise and many experts performed significant roles in the process of updating the CDCE into the digital age. Among them, the International Network of Lawyers for the Diversity of Cultural Expressions (*Réseau international de juristes pour la diversité des expressions culturelles* - RIJDEC) played a leading role in the process, revealing its strong link with the political entrepreneurs.

The RIJDEC was founded by Ivan Bernier (Professor Emeritus, Faculty of Law, Laval University-Quebec) and Véronique Guèvremont (Professor, Faculty of Law, Laval University-Quebec) in the context of the CDCE’s implementation. In this respect, the network produced three reports on digital technologies. In November 2013 – one month before the 7<sup>th</sup> session of the IGC – the network issued a report on the CDCE’s implementation in the digital age. Six legal experts and members of the RIJDEC drafted the report: V. Guèvremont (Laval University, Quebec/ UNESCO Chair in the Diversity of Cultural Expressions), Marie Cornu (CNRS Paris), Mira Burri (World Trade Institute-

Bern), I. Bernier (Laval University, Quebec), H  l  ne Ruiz Fabri (University Paris 1), and Lilian Richieri Hanania (University Paris 1).<sup>5</sup> The report concluded with a set of 12 recommendations for the purpose of embarking on a discussion to mobilize the Convention in the digital world.<sup>6</sup>

Furthermore, in 2015 the RIJDEC released two more reports. The first, entitled “The operational guidelines and other techniques for the implementation of the Convention on diversity of cultural expression in the digital context”, concretely dealt with the legal ways through which the actors involved should mobilize the CDCE in the digital age and it was presented during the 5<sup>th</sup> Conference of the CDCE Parties. It is revealing that during the 4<sup>th</sup> Conference of Parties in 2013, V. Gu  vremont had stated “the impact of digital technologies is a very important issue to which Parties to the Convention should pay particular attention, given the capacity of digital technology to bring radical change to cultural industries” (UNESCO 2015d: 49). The second report focusing on digital issues was entitled “The renewal of the cultural exception in the digital era”. It was drafted by seven members<sup>7</sup> of the network and presented by V. Gu  vremont at the international forum in Mons in October 2015.<sup>8</sup> The report dealt with monitoring the evolution of regional and bilateral trade agreements and their effects on the treatment of cultural goods and services in the digital context.<sup>9</sup>

Clearly, even though the legal experts remain independent, the expertise produced by the RIJDEC has been a solid legal basis for policymakers in order to legitimate their claims regarding the mobilization of the CDCE in the digital age. In other words, the authority of legal experts and their advanced technical knowledge are a key resource for arguing in favour of adopting OGs and convincing stakeholders in the multilateral arena of UNESCO.

Moreover, it is worth mentioning that the preliminary text on OGs was drafted by the CDCE Secretariat which worked together with two experts, namely V. Gu  vremont and Octavio Kulesz.<sup>10</sup> The latter, an expert from Argentina, also produced a significant number of studies which enhanced awareness of the importance of updating the CDCE into the digital age. Firstly, in 2015 O. Kulesz drew up a study about the impact of digital technologies on the diversity of cultural expressions in Spain and Hispanic America. The study was released by the UNESCO Secretariat and supported by Spain. Secondly, in 2014 and at the Secretariat’s request he analyzed the periodic reports of the Parties in order to highlight contemporary digital trends, concluding that the Parties adopted a range of measures related to the diversity of cultural expressions and digital technologies. It is revealing that these studies enable the Parties to become familiarized with digital issues and the idea of updating the Convention. As argued by Canada, “a first step of reflection has already been taken during the session with the analysis of the periodic reports by the Secretariat and Mr. O. Kulesz. These analyses are very interesting, enabling the Committee to have a new perspective on global trends in the area of digital technologies” (UNESCO 2015c: 61).

To this it should be added that two other groups of experts

showed a real interest in the Convention and digital technologies. In 2015 the Center for Integration and Globalization Studies (*Centre d’  tudes sur l’int  gration et la mondialisation-CEIM*), based at Quebec University in Montreal (*Universit   du Qu  bec    Montr  al-UQAM*), drew up a report analysing the ways of bringing the CDCE into the digital age on behalf of the French Ministry of Foreign Affairs and the French Ministry of Culture and Communications (Rioux *et al.* 2015). The scope of the study dealt with the challenges that the CDCE Parties face in the digital era with the measures and policies created to implement the CDCE in the digital environment, as well as with the added value of writing up new OGs. In the context of disseminating the study, the Research Center also organized an international symposium on ‘Cultures, societies and digital technology’ at the UQAM in October 2015. Likewise, in December 2013 the international scientific association Latin Union of Political Economy of Information, Communication and Culture (*Uni  n Latina de Econom  a Pol  tica de la Informaci  n, la Comunicaci  n y la Cultura - ULEPICC*) introduced a “Statement about the protection and promotion of cultural diversity in the digital era”, including around 20 recommendations and considerations related to the link between the CDCE and digital technologies resulting from an international workshop organized in Madrid in October 2013. Henceforth the ULEPICC was present at the CDCE intergovernmental sessions and it proposed specific amendments to the draft OGs, seeking to include more references to micro, small and mid-size enterprises in the cultural sector and to independent organizations (UNESCO 2016c, 2016d).

## 2. Following the lead: specific interests and concerns

The OGs were created by compromise and consensus and they encompass a broad array of interests of the participating actors. The latter welcomed the incorporation of digital issues in the scope of the Convention, embraced the initiative to adopt OGs and gave strong support to the proposals of France, Canada-Quebec and Belgium. For the majority of participating actors, though, the OGs should also serve several specific purposes. It is worth identifying three issue areas stressed by multiple actors:

- a. Lithuania and Austria mentioned the preservation and development of local cultural content for worldwide distribution and the need to ensure that local content is made accessible and visible in the digital age. In the same vein, the Argentinean delegation underlined the need to have access to the algorithms of Internet players in order to give adequate visibility to cultural expressions. Finally, following Canada’s proposals, the Finnish delegation and the International Federation of Coalitions for Cultural Diversity<sup>11</sup> insisted on the fact that the Convention should promote the ‘discoverability’ of cultural expressions.<sup>12</sup>
- b. Several actors, such as Austria, Germany, Argentina, Brazil, the International Music Council,<sup>13</sup> and the World Intellectual Property Organization, explicitly underscored

the fair remuneration of creators as a main condition for the promotion of diversity of cultural expressions in the digital environment. More concretely, in December 2015 the Brazilian delegation, evoking its joint statement made with Argentina during the UNESCO General Conference on remuneration and artistic freedom, stated “remuneration is a challenge, especially in industries such as music and literature in which artists feel insecure about remuneration in the digital age” (UNESCO 2016b: 29). In a similar vein, the International Music Council highlighted the weak bargaining power of artists with the large corporations dominating distribution, which is further undermined in the digital environment (UNESCO 2016b: 33).

- c. Several national delegations, such as Morocco, Saint Lucia, Slovakia and Uruguay, highlighted the unbalanced environment in which many countries do not have advanced digital capacities and they emphasized the importance of technical assistance and the reinforcement of international cooperation. In this respect, the Slovakian delegation supported the inclusion of concrete examples of good practices in an Annex to the OGs.

More concretely, analysis of the amendments introduced by the Parties and civil society in the preliminary draft of the OGs (UNESCO 2016c, 2016d) illustrates the dynamic action of Brazil and UNESCO's Francophone Group, which added six main paragraphs to the final text: paragraph 12 related to the strengthening of the digital competencies of the cultural sector; paragraph 14.2 about the fair remuneration of creators and performers; paragraph 16.2 on transparency in the collection and use of data that generates algorithms and the creation of algorithms ensuring a greater diversity of cultural expressions; paragraph 16.7 about cooperation between online platforms and rights holders of these goods and services in order to improve the online distribution of cultural goods and services and to better find the content being disseminated; paragraph 22 (in collaboration with Nigeria) on the strengthening of national and international capacity-building activities, the transfer of know-how and sustainable technologies (hardware and software), and the development of infrastructure; and finally paragraph 23.1 related to the promotion of consumption of local cultural content.

### 3. Calling the OGs' scope and content into question

It would be naïve to think that all the participating actors were in favour of the initiative to update the CDCE to the digital context. In this respect, some Parties derive great benefits from changing the scope and orientations of the OGs. They signalled reluctance and requested several concessions in order to approve the final text.

First, the United Kingdom (UK) delegation focused on the absence of clear evidence about the impact of digital

technologies on the diversity of cultural expressions. In other words, the UK questioned the necessity of regulation related to digital issues, insofar as “there is no evidence so far that the situation of cultural diversity is worse as a result of these digital platforms” (UNESCO 2015c: 65). At the same time, the UK delegation expressed its fears that the French and Canadian initiative could be “a form of protectionism through the use of this Convention”, revealing a worrying tendency to package the big Internet companies as “some kind of ‘big internet evil’” (UNESCO 2015c: 64-65). In a similar vein, during the 9<sup>th</sup> session of the IGC in 2015 the UK underscored the inappropriate language of the guidelines, widely criticizing their prescriptive character through the use of words such as ‘shall’ and ‘guarantee’ in multiple paragraphs. In this respect it suggested “all of the words ‘shall’ and ‘guarantee’ be changed to appropriate conditional terms” (UNESCO 2016b: 27). To this it should be added that the draft text on the OGs included the proposal to create inter-ministerial groups on digital technologies and the Convention which would bring together representatives of the Ministries of Culture, Trade, Telecommunications and Competition. The UK delegation, however, expressed its strong reluctance to create inter-ministerial groups on digital technology, requesting “a cost-benefit analysis on the proposal in order to ensure the added value of such a group in the context of the austerity programmes in many governments” (UNESCO 2016b: 27).

Second, in support of the UK's suggestions the Australian delegation aimed to avoid the use of language potentially implying legal obligations. In this respect, during the 10<sup>th</sup> session of the IGC Australia introduced several amendments to the draft OGs (UNESCO 2016c, 2016d) in order to avoid mandatory verbs and give a less prescriptive content in the final text.

It is worth mentioning five amendments introduced by the Australian delegation: in paragraph 9 related to the policies to protect and promote the diversity of cultural expressions in the digital environment, the delegation proposed the term “shall aim to promote” instead of “shall adopt”; in paragraph 18 related to the introduction of preferential treatment provisions to ensure more balanced flows of digital cultural goods and services, Australia proposed the term “shall aim to introduce” in place of “shall introduce”; in paragraph 19 concerning the promotion of the Convention in other international forums, it suggested the term “Parties are encouraged to promote” in place of “requires Parties to promote”; in paragraph 19.4 about cultural clauses in international agreements, the Australian delegation proposed the softer term “the consideration of introducing” instead of “introduction”; and in paragraph 20 regarding policies and programmes which recognize the cultural aspects of development in the digital environment, Australia introduced the term “may elaborate” instead of “shall elaborate”

Likewise, the OGs section entitled “Rebalancing the flow of cultural goods and services” gave rise to a contentious debate at the 10<sup>th</sup> session of the IGC. Whereas the Australian delegation suggested replacing the term “rebalancing” by the

term “promote”, France and UNESCO’s Francophone Group expressed their reluctance, pointing out that the Australian suggestion would change the specific purposes of this section. In the end the Parties kept the initial title.

Lastly, even though the United States (US) and Japan are not Parties to the CDCE, they participated as observers in the 8<sup>th</sup> session of the IGC and they signalled their concerns about the initiative to update the CDCE in the digital age. In this respect, the US delegation expressed its reservations about the French and Canadian initiative by stating “no cultural goods or services evolve or develop in isolation (...) and no cultural convention exists in a vacuum” (UNESCO 2015c: 66). In this respect, it acknowledged the relevance of the World Summit on the Information Society in order to discuss digital issues and it questioned the legitimacy of the CDCE forum for dealing with digital technologies. In the same vein, the Japanese delegation insisted on the fact that UNESCO should coordinate its efforts with the World Intellectual Property Organization and the International Telecommunications Union (ITU) which “have the mandate to establish legal frameworks” related to digital issues. Clearly, the comments of the two delegations made reference to a paradigmatic distinction which dominates multilateral debates on the regulation of media and cultural industries. “Within the UNESCO logic, media are cultural institutions, part of the process of human development. Within the ITU logic, media are technical systems for information delivery” (Cammaerts 2014: 131). In other words, according to the US and Japanese approach audiovisual media goods and services have nothing to do with culture and any regulation must be the least restrictive possible, respecting an open market environment.

### **Concluding remarks: creating a digital agenda for the diversity of cultural expressions**

The aim of the OGs has been to update the CDCE’s framework in order to take into account the new economic and industrial environment created by digital technologies and reaffirm the main principles of the Convention in the digital context. However, the existence of pressing issues related to digital technologies and cultural diversity does not automatically give rise to governance arrangements to meet them (Carpenter 2010: 236).

In this respect this article has identified a transnational network composed of three states parties (France, Canada and Belgium), subnational governments such as Quebec and the Wallonia-Brussels Federation and several groups of experts such as the RIJDEC which provided instrumental and intellectual leadership with a firm commitment to promptly addressing digital issues within the CDCE framework. With their dedication, multiple resources and diplomatic skill, these actors played an important role in all stages of the policymaking process and shifted the nature of the debate. They introduced new issues into the CDCE’s agenda, drew up draft OGs and provided concrete proposals about the CDCE and digital technologies. In short,

they were remarkably influential in discussions. They also raised awareness, building several linkages between the process of updating the CDCE into the digital age and the agenda of other multilateral forums and intergovernmental organizations such as the OIF.

However, it is important to recognize that the Parties to the CDCE by no means speak with one voice. I have argued that the initiative was supported by both developed and developing countries as well as civil society groups, which also expressed several pressing needs in the digital context such as promotion of local cultural content, fair remuneration of artists as a key policy pathway for the promotion of diversity of cultural expressions in the digital environment, and the importance of technical assistance. More specifically, Brazil and UNESCO’s Francophone Group came to the multilateral discussions with concrete solutions to the issue and played a highly dynamic role in extensively shaping the final OGs.

By contrast, two countries – the UK and Australia - were reticent about drawing up new guidelines on digital issues and explicitly stressed the fear of protectionism and of creating new obligations for the Parties to the CDCE. Firstly, they called into question the legitimacy of adopting OGs on digital issues, insofar as the evidence about the effects of online players on the diversity of cultural expressions is not clear. Secondly, they sought to ensure a more declaratory character for the OGs in order to allow complete freedom for the Parties to develop the content of the OGs and to implement them.

By way of conclusion, the adoption of the OGs revealed that UNESCO – and more specifically the CDCE – is an appropriate and legitimated multilateral forum to address the challenges raised by digital technologies. Even though the implementation of the OGs will be a contested process, requiring actors to exercise a great deal of political autonomy to translate them into concrete practices (Avant et al. 2010: 15), the final text of the OGs received full support from the majority of Parties to the CDCE and it could be perceived as a digital agenda for the diversity of cultural expressions by developing common ways for stakeholders to address cultural policies and international cultural cooperation in the digital context.

### **Notes**

1. The Conference of Parties is the plenary and supreme body of the CDCE and it meets every two years in order to receive and examine reports sent by the IGC, approve operational guidelines drawn up at its request by the IGC and take whatever other measures it may consider necessary to further the objectives of the CDCE. The IGC is composed of 24 Parties who meet annually.
2. The Council of Europe is another multilateral organization which deals with digitization and culture. In February 2016, the Council of Europe Recommendation on the Internet of Citizens was issued making explicit reference to the CDCE. It focused on: a. the modernization of cultural institutions;

- b. the empowerment of citizens as consumers, creators and prosumers and c. fostering multi-literacy skills education for access to, creation and management of digital culture (Council of Europe 2016).
3. The organization of the conference was supported by the French Ministry of Culture and Communications, Vivendi, Google, SACEM (*Société des Auteurs, Compositeurs et Éditeurs de la Musique*), Yandex and Storycode.
  4. In the end the French minister did not attend the panel. Instead, Laurent Stéfani, Ambassador and Permanent Delegate of France to UNESCO, did.
  5. It is interesting to note that the legal expertise related to CDCE is characterized by strong continuity. In the late 1990s, Ivan Bernier and Héléne Ruiz Fabri set up the French-Quebecois group for cultural diversity (*Groupe franco-québécois sur la diversité culturelle*). In this respect, in 2002 the latter drew up a report analyzing the legal feasibility of an international instrument on cultural diversity which widely influenced the content of the CDCE's final text (Vlassis 2015a).
  6. The preparation of the report was supported by the Government of Quebec.
  7. V. Guèvremont (Laval University, Quebec), I. Bernier (Laval University, Quebec), Géraud de Lassus Saint-Geniès (Laval University, Quebec), Rostam J. Neuwirth (Macao University, China), L. Richieri Hanania (University Paris 1), Ivana Otasevic (Laval University, Quebec), H. Ruiz Fabri (University Paris 1).
  8. The preparation of the report received financial support from the Wallonia-Brussels Federation.
  9. In the context of this report and following the request of the CDCE IGC, V. Guèvremont and I. Otasevic also conducted a study highlighting the implementation of the CDCE, articles 16 and 21, in 51 bilateral and regional trade agreements concluded since 2005.
  10. The two experts are part of the pool of experts established by the Expert Facility Project funded by the EU and the Swedish Agency for International Development Cooperation in order to put in place technical assistance missions.
  11. Created in 2007, the Federation brings together 43 national coalitions for Cultural Diversity grouping in the aggregate more than 600 professional culture organizations representing creators, artists, producers, distributors, editors, etc. The Federation is based in Montreal, Canada.
  12. Note that 'discoverability' has recently become a buzzword for Canadian media policymakers. In this respect, a Summit entitled 'Discoverability: content in the age of abundance' was held in Toronto in May 2016 and co-hosted by the National Film Board and the Canadian Radio-Television and Telecommunications Commission. According to the Summit's program, discoverability is the key principle "in a world of choice and in the age of abundance". It is interesting to recall that in 2013 the Canadian Media Production Association produced a research study entitled "Discoverability: Strategies for Canada's Digital Content Producers in a Global Online Marketplace".
  13. Founded in 1949, the International Music Council is a world membership-based professional organization dedicated

to developing sustainable music sectors worldwide and upholding music rights in all countries. It is based at UNESCO headquarters in Paris.

## References

- ALBORNOZ, L. "Dix ans après l'entrée en vigueur de la Convention sur la diversité culturelle: déséquilibres dans le marché international des biens et services culturels et défi numérique". *Les enjeux de l'information et de la communication*, 17, 2016, 11-24.
- AVANT, D.; FINNEMORE, M.; SELL, S. (eds). *Who governs the globe?* Cambridge: Cambridge University Press, 2010.
- BURRI, M. "The UNESCO Convention on Cultural Diversity: an appraisal five years after its entry into force". *International Journal of Cultural Property*. 20 (2014), 357-380.
- CAMMAERTS, B. "Power Dynamics in Multi-stakeholder Policy Processes and Intra-civil Society Networking". In: MANSELL R.; RABOY M. (eds). *The Handbook of Global Media and Communication Policy*. Oxford: Willey Blackwell, 2014, 131-146.
- CARPENTER, C. "Governing the global agenda: gatekeepers and issue adoption in transnational advocacy networks". In: AVANT D.; FINNEMORE M.; SELL S. (eds). *Who Governs the Globe?* Cambridge: Cambridge University Press, 2010, 202-237.
- COUNCIL OF EUROPE. *Recommendation of the Committee of Ministers to member States on the Internet of citizens*. CM/Rec(2016)2, Strasbourg, 10 February 2016.
- DE BEUKELAER, C.; PYYKKONEN, M.; SINGH, J.P. (eds). *Globalization, Culture and Development: the UNESCO Convention on Cultural Diversity*. London: Palgrave Macmillan, 2015.
- GAGNÉ, G. *The Trade and Culture debate: Evidence from US Trade Agreements*. New York: Lexington Books, 2016.
- GUÈVREMONT, V. "The 2005 Convention in the Digital Age". In: DE BEUKELAER, C.; PYYKKONEN, M.; SINGH, J.P. (eds). *Globalization, Culture and Development: the UNESCO Convention on Cultural Diversity*. London: Palgrave Macmillan, 2015, 147-162.
- GUÈVREMONT, V.; BERNIER, I.; DE LASSUS SAINT-GENIÈS, G.; NEUWIRTH, R.; RICHIERI-HANANIA, L.; OTAVESIC, I.; RUIZ FABRI, H. *Le renouvellement de l'exception culturelle à l'ère du numérique*. RIJDEC, Report presented to the Government of Federation Wallonie-Brussels, October 2015.
- GUÈVREMONT, V.; BERNIER, I.; BURRI, M.; CORNU, M.; RICHIERI HANANIA, L.; RUIZ FABRI, H. *La mise en œuvre de la Convention sur la protection et la promotion de la diversité des expressions culturelles à l'ère numérique: enjeux, actions, prioritaires et recommandations*. RIJDEC: Québec, November 2013.

- HART, J. "Toward a Political Economy of Digital Culture: From Organized Mass Consumption to Attention Rivalry". In: SINGH, J.P. (ed.). *International Cultural Policies and Power*. New York: Palgrave Macmillan, 2010, 56-62.
- MANSELL, R.; RABOY, M. "Introduction: Foundations of the Theory and Practice of Global Media and Communication Policy". In: MANSELL R.; RABOY M. (eds), *The Handbook of Global Media and Communication Policy*, Oxford: Willey Blackwell, 2014, 1-20.
- NORODOM, A.-T. "The legal nature of the CDCE operational guidelines and their influence on the CDCE effectiveness". In: RICHIERI-HANANIA, L. *Cultural diversity in international law: the effectiveness of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. London: Routledge, 2014, 150-163.
- ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (OIF). *Declaration de Dakar*. Senegal, 29-30 November 2014.
- PSYCHOGIPOULOU, E. (ed.) *Cultural governance and the European Union: Protecting and promoting Cultural Diversity in Europe*. London: Palgrave Macmillan, 2015.
- RICHIERI HANANIA, L. (ed.) *Cultural diversity in international law: the effectiveness of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions*. London: Routledge, 2014.
- RIoux, M.; DEBLOCK, C.; GAGNÉ, G.; TCHÉHOUALI, D.; FONTAINE-SKRONSKI, K.; VLASSIS, A. *Pour une culture en réseaux diversifiée: Appliquer la Convention sur la protection et la promotion de la diversité des expressions culturelles à l'ère du numérique*. Montréal: UQAM, February 2015.
- STUPPLES, P.; TEAIWA, K. (eds) *Contemporary perspectives on Art and International Development*. London: Routledge, 2016.
- UNESCO. *Tenth Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions: Decisions*. DCE/16/10.IGC/Dec., Paris: UNESCO, 15 December 2016a.
- UNESCO. *Summary record of the Ninth Ordinary Session of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions in December 2015*. Paris: UNESCO, 27 June 2016b.
- UNESCO. *Item 7 of the provisional agenda: Preliminary draft operational guidelines on the implementation of the Convention in the digital environment*. DCE/16/10.IGC/7. Paris: UNESCO, 22 July 2016c.
- UNESCO. *Amendements proposés: Avant-projet de directives opérationnelles sur la mise en œuvre de la Convention dans l'environnement numérique*. UNESCO, Paris, 14 December 2016d.
- UNESCO. *Item 12 on the Provisional Agenda: Digital issues and their impact on promoting the diversity of cultural expressions*. CE/15/5.CP/12, Paris: UNESCO, 28 March 2015a.
- UNESCO. *Item 7 of the Provisional Agenda: Towards Operational Guidelines on digital issues*, CE/15/9.IGC/7, Paris: UNESCO, 20 October 2015b.
- UNESCO. *Summary record of the Eighth Ordinary Session of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions in December 2014*. Paris: UNESCO, 10 September 2015c.
- UNESCO. *Summary record of the fourth ordinary session of the Conference of Parties adopted in June 2015*. CE/15/5.CP/4. Rev., Paris: UNESCO, 30 June 2015d.
- UNESCO. *Summary record of the Seventh Ordinary Session of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions in December 2013*. Paris: UNESCO, 29 April 2014.
- UNESCO. *Summary record of the Seventh Ordinary Session of the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions in December 2012*. Paris: UNESCO, 14 March 2013.
- VLASSIS, A. "Inter-organizational networking in the digital age: Lessons from international organizations purposes and practices in the cultural sector". In: RICHIERI-HANANIA L.; NORODOM A.T. (eds). *Diversity of cultural expressions in the digital era*. Buenos Aires: TeseoPress, 2016a, 311-335.
- VLASSIS, A. "European Commission, trade agreements and diversity of cultural expressions: between autonomy and influence". *European Journal of Communication*. Vol. 31 (2016b), no. 4, 446-461.
- VLASSIS, A. *Gouvernance mondiale et culture: de l'exception à la diversité*. Liège: Presses Universitaires de Liège, 2015a.
- VLASSIS, A. "Culture in the post-2015 development agenda: the anatomy of an international mobilization". *Third World Quarterly*. Vol. 36 (2015b), no. 9, 1649-1662.
- VLASSIS, A. "La mise en œuvre de la Convention sur la diversité des expressions culturelles: portée et enjeux de l'interface 'commerce-culture'". *Études internationales*. Vol. 42 (2011), no. 4, 493-510.