

**STUDY ON THE IMPLEMENTATION OF THE
2005 UNESCO CONVENTION ON THE PROTECTION AND
PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS
FOR THE EUROPEAN PARLIAMENT**

INTERNATIONAL ORGANIZATIONS AND EUROPEAN UNION SURVEY

INTERVIEW QUESTIONS

A) The UNESCO Convention on Cultural Diversity has been developed relatively quickly and is now ratified by 104 UNESCO members, which include members of the organization you represent. The UNESCO Convention is viewed by its supporters as an instrument that fills a certain gap in international laws and policies, in particular governance. This instrument shall hold its parties accountable for cultural diversity concerns in their policy-making processes.

- 1. In your view, will the UNESCO Convention meet this goal, and does the entry into force and current implementation of the UNESCO Convention herald the beginning of a new balance between culture and other concerns (e.g. economic and trade interests)?**

The Convention is the first international legal instrument to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory, while ensuring the free flow of ideas and works.

The Convention specifically recognises the dual nature of cultural goods, services and activities (cultural and economic components) and encourages Parties to take this into account in their national policies for culture as well as those related to international cooperation and cooperation for development.

Some examples:

Through the Operational Guidelines adopted by the Conference of Parties at its second session in June 2009 for Article 16 on preferential treatment, Parties are encouraged to put into place institutional and legal frameworks that have both cultural and trade dimensions. Article 3.5.1 states that “Parties may develop and implement specific agreements bringing together trade and cultural dimensions which concern notably cultural goods and services, and/or artists and other cultural professionals and practitioners”.

In addition, the Conference of Parties adopted Operational Guidelines for Article 13 on the integration of culture in sustainable development that stress the interdependence of economic, environmental, social and cultural systems in the formulation of sustainable development policies and call for the elaboration of statistical indicators to better evaluate the role of culture in such policies.

2. Critical voices of the UNESCO Convention observe that this instrument has no legal teeth. According to these opinions, it contains vague and unclear provisions, soft rights and obligations, and a very weak dispute settlement mechanism that is not likely to generate case law. Do you share these opinions? If yes, how could this instrument be improved in the future?

On the 20 October 2005, 148 Member States to the 33rd UNESCO General Conference voted in favour of adopting a legally binding Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Eighteen months later, the Convention entered into force with 57 Parties around the world having ratified the text, the majority in their national parliaments. The speed at which this Convention was adopted and entered into force is considered an extraordinary achievement and signals the urgency and political commitment for action from governments around the world. As of 23 March 2010, the number of Parties had doubled to 108 (+ European Union) and work on a complete set of operational guidelines on the Convention is nearing completion.

The operational guidelines contain clear provisions on the application of the Convention and means for its implementation in, for example, national cultural policies and relevant frameworks. For example, operational guidelines on Article 7 state: “Parties are encouraged to develop and implement policy instruments and training activities in the field of culture. Such instruments and activities should aim at supporting the creation, production, distribution, dissemination and access to cultural activities, goods and services with the participation of all stakeholders, notably civil society as defined in the Operational Guidelines”.

Article 25 of the Convention addresses the settlement of disputes between Parties to the Convention. If Parties cannot reach agreement they may request mediation by a third party. If no settlement is reached by negotiation, a Party may have recourse to a conciliation process in accordance with procedures identified in the Annex to the Convention, including the formation of a Conciliation Commission. Parties do, however, have the right not to recognise the conciliation procedure in a written notification to the Director General of UNESCO at the time of ratification. To date, only three countries have submitted such a notification: Azerbaijan, Chile and Vietnam.

Furthermore, it is too early to assess the full impact of the Convention. Areas will become more visible during the implementation process over the years to come. In the meantime, through Articles 9 and 19, Parties have agreed to share information, data and good practices that can animate the implementation process and provide an indication as to the future.

3. What are your organization's expectations regarding the further implementation of the UNESCO Convention in the best case, in the worst case, and in the most likely case scenarios?

The organs of the Convention are assisted by the UNESCO Secretariat to work towards its most rapid implementation at the international level: completing the work on the operational guidelines, launching the International Fund for Cultural Diversity, providing a platform for cooperation and exchange, etc.

Most likely case: Parties continue to build on the momentum gathered since the Convention's ratification to establish a genuine platform for international cooperation and begin to organise activities on the ground to implement the Convention with national legal, policy and institutional frameworks.

Best case: In addition to the "most likely case" above, all Parties invest in the International Fund for Cultural Diversity and play a key role in creating conditions for culture to be recognised as an integral component of economic and social development.

Worst case: Stakeholders lose the strong political will and momentum that was built up as the Convention entered into force, eventually leading them to set aside programs and activities that would have otherwise helped them to elaborate policies to protect and promote the diversity of cultural expressions.

B) The UNESCO Convention is now in the process of implementation by those countries that have ratified it.

4. How does your organization interpret and / or implement Articles 20 and 21 of the 2005 UNESCO Convention, i.e. "Relationship to other treaties" and "International consultation and coordination"?

The main Organs of the Convention, composed of representatives of States Parties, are responsible for elaborating operational guidelines and therefore for clarifying issues and/or interpreting Articles needed to facilitate implementation by Parties.

Article 23 of the Convention stipulates that the Intergovernmental Committee

draft operational guidelines for eventual approval by the Conference of Parties. To date, the Intergovernmental Committee has yet to draft guidelines for Articles 20 and 21.

The Convention does, however, clearly define its relationship vis a vis other instruments, stressing that nothing in the Convention be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties (Article 20.2).

5. How do you see the role of and / or plan to implement the UNESCO Convention on cultural diversity in authoritarian states that oppress freedom of expression, including freedom of speech and freedom of communication?

Article 2 provides eight guiding principles at the core of the Convention. They are:

- respect for human rights and fundamental freedoms
- sovereignty to adopt cultural policy measures within their territory
- equal dignity and respect for all cultures
- international solidarity and cooperation
- complementarity of economic and cultural aspects of development
- sustainable development
- equitable access
- openness and balance.

Article 2.1 states: “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 international law, or to limit the scope thereof”.

These core principles form the basis upon which the operational guidelines of the Intergovernmental Committee have been drafted and approved by the Conference of Parties.

For example, point 1 of the operational guidelines for Article 7 state: “cultural policies and measures developed by Parties to promote the diversity of cultural expressions should be based upon the guiding principles as set forth in Article 2 of the Convention” (Art. 1.1.2); and “foster the full participation and engagement of all members of society contributing to the diversity of cultural expressions, particularly persons belonging to minorities, indigenous peoples and women” (Article 1.1.3).

6. How do you understand the role of and / or plan to apply the principle of sovereignty when a state perpetrates acts contemplated under article 8 of the

UNESCO Convention, including forms of "cultural genocide" as the most radical negation of cultural diversity, in its own territory?

According to the operational guidelines for Article 8 of the Convention on measures to protect cultural expressions:

1. a Party may determine the existence of special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding (without prejudice to the provisions of Articles 5 and ,).
2. Parties may take all appropriate measures to protect and preserve cultural expressions in such situations referred to in paragraph 1 in a manner consistent with the provisions of the Convention.
3. Parties shall report to the Intergovernmental Committee all measures taken to meet the exigencies of the situation and the Committee may make appropriate recommendations.

Operational Guidelines on Article 17 further that the nature of threats to cultural expressions can be *inter alia* cultural, physical or economic. They further indicate that measures taken to address such threats are to be based on the guiding principles of the Convention and may be short-term or emergency measures designed to have an immediate effect; reinforcement or amendment of existing policies and measures; new policies and measures; long term strategies; and appeals to international cooperation.

They encourage Parties to cooperate with each other by providing assistance, in particular to developing countries, in the event of special situations. Support to address special situations can also be sought from the International Fund for Cultural Diversity.

C) In the context of culture and trade, countries are increasingly negotiating bilateral and regional agreements that include provisions related to culture and cultural policies.

7. **In your view, is this trend a building or stumbling block for global cultural diversity; and, in case of the latter, how can the UNESCO Convention be taken into account and / or implemented in such agreements?**

Parties created unprecedented momentum to begin implementing the Convention at record pace, and it is only natural that the integration of provisions related to culture and cultural policies are also achieved on bilateral and regional levels.

In fact, there is a growing trend among Parties to include provisions of the Convention in trade agreements. For example, Article 16 of the Convention

inspired the introduction of a new EU Cultural cooperation protocol developed within the framework of European Partnership Agreements. This protocol was first introduced in a trade agreement negotiated with CARIFORUM (Caribbean) countries, allowing the works of CARIFORUM artists and cultural producers, particularly from the audiovisual sector, to receive greater access to the EU marketplace.

D) The elaboration of laws and policies aimed at protecting and promoting cultural diversity should be evidence based.

8. If you concur with this statement, how should the degree of cultural diversity be measured and which actions does your organization undertake to define and measure cultural diversity?

UNESCO has been a key actor in the development of methodologies aimed at collecting relevant information and data to support evidence-based laws and policies. To this end, the UNESCO Institute for Statistics (UIS) was established in 1999 to improve UNESCO's statistical programme and to develop and deliver the timely, accurate and policy-relevant statistics needed in today's increasingly complex and rapidly changing policy environment. UIS, in collaboration with the UNESCO Culture Sector, recently published the 2009 UNESCO Framework for Cultural Statistics (FCS) to encourage investment in cultural statistics that will better measure the impact and relevance of cultural policies and programmes.

The capacity of countries to collect and disseminate statistics on culture varies greatly depending on their respective policy priorities, statistical expertise, and human and financial resources. In that respect, the 2009 FCS was designed explicitly to be flexible and adaptable at the national level, while facilitating international comparisons through a common understanding of culture and the use of standardized definitions and international economic and social classifications.

The work of the FCS group can inspire the IGC's activities to create operational guidelines for Articles 9 and 19 on information and data collection and exchange. A review of the operational guidelines adopted by the Conference of Parties for other Articles indicate that there is a strong tendency to encourage evidence based policy making.

For example, the guidelines encourage the collection of information and data on issues ranging from the system of governance for culture to public funding for culture, regulatory frameworks over cultural production and distribution channels, measures to support groups such as women, minorities, and indigenous people, etc.

In addition, the guidelines call for the elaboration of statistical indicators, the

exchange of information and the dissemination of best practice on the role of culture in sustainable development. They also provide a clear role for the participation of civil society in the collection and analysis of data that can feed into the reports Parties are to submit to UNESCO every four years on measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level (Article 9a).