

**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 107 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)?

First of all, I would like to say that UNCTAD really considers cultural diversity to be of critical importance for all nations and cultures and a key pillar in the concept of sustainable development. As an organisation from the UN system – UNESCO is a sister organisation – we greatly welcome the Convention. Indeed UNCTAD has been working and was involved in the whole process of the negotiation of the draft of the Convention. We have been supportive to the UNESCO Secretariat and we would really like to join in the effort to make this convention a useful instrument in which we could really translate the commitments into realities and action. So, from our side, it is a very important convention. I think the Convention represents a step forward in the whole discussion about the importance of culture, in particular to mainstream culture into development strategies. UNCTAD has also worked in this area, so we think that the Convention, in particular as so many countries have so quickly ratified the Convention, is a sign of the political momentum in which countries consider that this was a very important policy instrument for all countries. So, indeed, yes, we consider that the Convention was a landmark in trying to bring a better understanding of the interactions between culture, trade, and other important aspects of the world economy today.

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?

I am not so sure if I agree with the way you formulate this question. I think it is not a question of a critical voice about the Convention, but is really to see the reality of this instrument. I think it is a very important instrument because it was agreed to by the international community, so they are committed with the implementation. But it is true that on the other hand there are also other instruments in other international organisations that have been negotiated for so many years and that we have to respect. They are other important legal instruments, in particular in other forums such as the WTO or WIPO. So, I think this Convention is important, but definitely it has to be seen as one element in the whole multilateral global process. To give just one example: for instance UNCTAD is the arm of the United Nations dealing with economic development issues. Not only trade, but an integrated approach for macroeconomic policies for developing countries. So, for instance, we have a very big conference every four years: our conference in the year 2004 (UNCTAD XI) also had a very strong mandate in terms of calling the international community to support national efforts of developing countries to increase the participation in and benefit from dynamic sectors to foster, protect and promote their creative industries. Another paragraph states that creative industries can help foster positive externalities while preserving and promoting cultural heritage and diversity. So this is just an example that the discussion about those issues is taking place in several forums. UNESCO is one among others - among WTO, among WIPO, among UNCTAD. I think this is important to see. With regard to this process also other processes in progress need to be taken into account.

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?

I think the fact that you already have established a Committee for the implementation of the Convention, which is working for almost three years now. I myself have participated in the first meeting of the Committee. I think governments are really involved in the implementation, in trying to take concrete action. I think key for the real implementation of the Convention is the operation of the International Fund for Cultural Diversity. And as you are probably aware, a number of countries have already paid voluntary contributions to see this Fund in operation. This is quite extraordinary because it is not only developed countries, but also a number of developing countries that contribute to this Fund. This is an indication of their strong interest and commitment to the implementation of the Convention. Off course, it is not that easy, for instance, to think in terms of what kind of indicators we could have for the implementation of cultural diversity. It is a much more subjective matter as compared with other areas. This will take some

time. I think there is a number of very important concepts that should be better understood in terms of the implementation. How to implement, for instance, the important concept of preferential and differential treatment? How to really apply it in practice? What are the implications? What is discussed when you talk about developing countries? Should you have different definitions for different kinds of developing countries? Or should we consider all developing countries together? So there is a number of practical questions that have to be addressed. I think this also will depend on how the UNESCO Secretariat will work in collaboration with other agencies and bringing in experts to assist them in this very important task that will be the implementation of the Convention.

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

1. 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”?

This process of coordination with other agencies will be very important. The Convention on Cultural Diversity does not exist in a vacuum. It needs to be assured that there are flexibilities in policy implementation, particularly taking into account the interests of developing countries. I think it is very important to establish this process of consultation and coordination with the other organisations, to facilitate and speed up the whole process.

2. Do you see barriers or hindrances with regard to the relationship to other treaties and other organisations, i.e. between the Convention and other forums you already referred to?

I think each organisation has its own approach depending on the competence of each organisation. But I think that we have to go beyond that. We have to see what the best way would be to put things in place. For instance there are certain issues that are dealt with in the context of, for example, the GATS agreement of the WTO. So I think it is very important to have consultations; to have a better understanding of what concepts really mean; are there commitments already made by countries in another forum; and how we could move in parallel with these other agreements. Not only coordination is important, but also to build and work in synergy with other processes. Not on a conflictual basis, but to try to find win-win situations.

3. Is this happening in your view? Is there cooperation or conflict for the time being?

I think there is room for improvement of the cooperation with other organisations. But I am not working at the Secretariat, so maybe there are things

going on that I am not aware of. I can only talk on behalf of UNCTAD and UNCTAD has been working in quite a close cooperation with UNESCO. We have been attending some of the meetings - we cannot attend all meetings - but we are very willing to work in full collaboration. I think that this collaboration should be extended to other international organisations. But the objectives of the Convention are not directed at international organisations, but at the countries. How can this Convention make a difference for developing countries? This is really the starting point. For instance, the Convention recognizes the distinctive nature of the cultural and creative goods and services to mould the plurality of cultural offers; it is very important to see how member states will put in practice all this in terms of mainstreaming the idea of the Convention at the international level. This is the essence of the Convention.

4. 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?

This is something that belongs to the mandate of UNESCO. We deal more with economically related issues. I think the Convention may help to improve these kinds of situations. But I am not very familiar with this article and would therefore like to refrain from further comments.

5. 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?

Note: For a definition of "cultural genocide", see Article III of the 1948 Draft Genocide Convention quoted below.

Again, I am not very familiar with this cultural genocide principle and do not feel comfortable to reply on this question.

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.

1. 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?

There are two points. I think the Convention is important but as I said there are also other ongoing processes. In the particular case of trade, I think there are some new developments that show that for the first time the Convention was taken into account. A very concrete example is the negotiations between the

European Commission and the Caribbean countries. The EPA agreement that was negotiated after the Convention in 2008 was quite interesting because looking into trade aspects, it was agreed that this agreement would have a protocol on cultural cooperation. I think this was somehow the reflection of the Convention. It was quite important in terms of the reflection about cultural diversity that was taken into account during these negotiations. So I think there are things that the Convention can do. But there are other things that go beyond the scope of the Convention. Implementation of the Convention is important, but the Convention cannot be a panacea to deal with all problems. It is a question of having a good balance. There are things that belong to the competence of UNESCO; other things belong to the competence of other agencies. What has been very important, is to have this positive momentum that the Convention brought, in terms of sensitizing the international community that it is very important to promote and protect cultural diversity.

2. Could you give some examples of issues that go beyond the scope of the Convention and should be dealt with in other forums, but are nevertheless often associated with the Convention by commentators.

There is some language in the Convention that may create some confusion because of the use of certain terms. For instance preferential treatment is something that is different from special and differential treatment that is used more in the WTO kind of language - also with regard to issues of market access. The Convention should supplement and complement efforts of developing countries to build a competitive capacity in terms of cultural goods and services and to be able to not only promote their creative industries, but also to be able to export their products in national and international markets. I think this is really something that can be discussed in the UNESCO, but on the other hand we have to take into account that these are the same governments that are also negotiating in the WTO or in the WIPO development agenda for intellectual property issues. So it comes down again to what I have answered before: each agency has got its own area of competence and we have to see how this Convention will work in parallel with other commitments that governments may have made in other forums, and to make all these things compatible. In the end, we are talking about how governments could have some national policies, but this is sometimes not so easy because there are limitations because of other commitments. It is very important to keep this in mind.

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

1. 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?

Well this is not our competence. This is a very complex issue. There is a need of more research and a need to find some benchmarks. When you talk about cultural diversity, this is much more complex than when you talk about something where you can really have very clear indicators. For instance with regard to the work of UNCTAD in the context of our creative economy program, we have set up a database with figures on trade of creative goods and services. This is something that is concrete in numbers, although the definition is also important. Every country can have a different classification of creative industries but the idea was really to have something that could assist governments to have a shared vision on what it means when you talk about creative industries, in terms of the world economy. This came up with a figure that said that creative industries is one of the most dynamic sectors in world trade that accounts for at least about \$ 424 billion a year of trade. I think this is a quite important message, because this is evidence based. We use official figures of trade and we came up with this number. I think this is a message that people can understand. When you talk about cultural diversity, it is much more complex. There is a number of academics that are looking to this issue and how you can find ways to have some measurable indicators. In the case of UNCTAD, we are not really working in this area, because our competence is not in this domain. We are looking more in terms of how we can assist governments to put in place public policies that will help them to strengthen their creative industries, in particular for development gains, which means looking more into the economic aspect rather than the cultural aspect. So we look more in terms of impact on employment, on the export earnings, on how to use a sector to diversify the economy; how to promote investment in this sector; how to improve the level of entrepreneurship, ... I think it is more up to the UNESCO Secretariat to try to find indicators for cultural diversity.

2. Should UNESCO take the lead in this process. I would presume that cultural diversity is a cross cutting theme that is relevant for different organisations. Would different organisations then not be required to contribute to more evidence based studies?

Yes, this is what I said. For instance, we are looking to the issue through our approach to the creative economy. When you look into the creative economy, our definition on the creative economy targets the interface between economics, culture and technology, and how the creative economy can foster in coming generations job creation, export earnings while at the same time promoting social inclusion, cultural diversity and human development. This is the approach of UNCTAD. Off course I do not think that we should be duplicating efforts, but we should really work on synergies. Each organisation should look to areas in which they have greater competence. Our competence is to look more to the economic aspects, while I think the UNESCO competence is to look more into the cultural and educational aspect. For example, a very important report has been published last year by UNESCO on cultural diversity. We are doing some projects together, but we try to have a division of labour.

3. Is there a coordination then, led by UNESCO, for the purpose of studying cultural diversity and were there questions from UNESCO for input from UNCTAD or other organisations?

No, there was never a request. I think this is also not our area of competence. We have been cooperating with the discussion about the Convention. Maybe we are more comfortable with some of the articles like Articles 13 to 16 that deal with international cooperation and with the issues of partnership, or the issue of preferential treatment. These articles are more linked with the competence of UNCTAD.

E) To conclude, would you like to add other ideas or remarks that have not been discussed during this, admittedly, very short interview?

I think that the Convention made a decisive step towards mainstreaming national cultural objectives into a broader international development policy. This has been very important. It would also be important that very concrete initiatives be already implemented to see that the Convention is 'out of the paper'. It is very important to think in terms of the development dimension of the Convention; this is the most important part, i.e. to see how the Convention can really be of assistance, particularly to developing countries, in terms of promoting their cultural diversity and really to help them to make use of their cultural industries for development purposes.

Footnote

The 1948 UN Ad Hoc Committee's Draft Genocide Convention contained the following provision defining "cultural genocide":

Article III

['Cultural' genocide]

In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion, or culture of a national, racial or religious group on grounds of the national or racial origin or the religious belief of its members such as:

1. *Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;*
2. *Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.*

This draft provision was eventually deleted from the final text of the UN Genocide Convention that the Parties approved on 9 December 1948.