



**DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES**

CULTURE AND EDUCATION

Implementing the UNESCO Convention of 2005 in the European Union

STUDY

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AUTHOR

Germann Avocats (Geneva) and multidisciplinary research team 1

RESPONSIBLE ADMINISTRATOR

Mr Goncalo MACEDO
Policy Department B: Structural and Cohesion Policies
European Parliament
B-1047 Brussels
E-mail: poldep-cohesion@europarl.europa.eu

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ABOUT THE EDITOR

To contact the Policy Department or to subscribe to its monthly newsletter please write to: poldep-cohesion@europarl.europa.eu

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¹ See section "Research Team" at www.diversitystudy.eu



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Abstract

This study provides a summary of the state of implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005. Focusing on fields in which the EU is expected to provide leadership or coordination, it is intended to provide ideas and long-term guidance on implementing the Convention. For that purpose, it analyses the obligations set out by this treaty. It assesses various practices in implementing the UNESCO Convention from a legal and practical viewpoint, and identifies challenges and measures to help achieve the objectives of this instrument.

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EXECUTIVE SUMMARY

Coal and steel call for culture

Does culture matter for Europe? - Jean Monnet, one of the architects of the European integration, stated that if he had to start his work all over again he would start with culture: "*Si c'était à recommencer, je commencerais par la culture.*"²

This Study provides a summary of the state of implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005. It focuses on fields in which the European Union is expected to provide leadership or coordination. It shall give assistance and long-term guidance to the European Union on implementing the UNESCO Convention. For this purpose, it carries out a detailed analysis of the obligations set out by this treaty. It assesses various practices in implementing the UNESCO Convention from a legal and practical viewpoint, and identifies challenges and measures to help achieve the objectives of this instrument.

The implementation of the UNESCO Convention requires new action by the European Union, the Member States and civil society. Overcoming fragmentation and striving for coherence must be the leitmotivs in this undertaking. If public and private actors are ambitious, the tasks are complex and the stakes are high. However, if they take a minimalist approach, they will fail to meet the challenges. This latter approach presents a worst-case scenario that would clear the way for the diktat of trade concerns at the expense of human rights, fundamental freedoms, and access to the wealth of diversity of cultural expressions. Moreover, a middle path between ambition and minimalism will only cement the *status quo*: the diversity of cultural expressions will be a luxury for a few rich and democratic welfare states, remaining out of reach for the rest of the world.

The UNESCO Convention provides a new instrument with the potential to render the European integration substantially wealthier, more profound and sustainable. In the European Union's external relations, genuine protection and promotion of the diversity of cultural expressions can contribute to improving "world integration" in order to secure peace and social welfare as existential complements to mere economic globalisation. Sixty years after the Schuman declaration, coal and steel now call for culture more than ever in Europe and around the world.

Overview of the Study

Our Study is divided into five Parts. In our survey of implementation practices of the UNESCO Convention summarised in Part One, we examined traditional and innovative approaches to how cultural diversity can be preserved and promoted in all types of countries irrespective of their level of development. The survey encompasses: (1) developed countries with strong cultural industries such as EU Member States and Canada; (2) economically emerging countries with organised cultural industries such as China or Brazil; and, (3) developing and least developed countries with very little economic means to protect and promote the diversity of cultural expressions such as Senegal.

The UNESCO Convention is drafted in a programmatic way. As a consequence, the Parties to the Convention have a wide margin of manoeuvre in implementing this instrument.

² Jean Monnet quoted in Denis de Rougemont tel qu'en lui-même, in Cadmos 33/1986, p. 22.

Taking this reality as a starting point, we develop and discuss new ideas aimed at improving the quality of this treaty via its implementation process (Part Two).

The surveys and desk-based research inform our evaluation of how the EU has applied the Convention in foreign relations and its internal policies (Parts Three and Four). We assess whether the UNESCO Convention had an impact on more recent policy, and provide scenarios of its repercussions in the foreseeable future in order to submit recommendations for further action (Part Five).

Part One: Survey based on questionnaires and interviews

Part One provides a summary of the information and opinions that we gathered through questionnaires and interviews from various private and public stakeholders within and outside the European Union. We provide a short analysis of these data, which grant insight into the current state of implementation and inform expected further action.

The first questionnaire allowed us to gather legal data; the second questionnaire analysed implementation practices from the perspective of representatives of civil society; and, the third questionnaire examined implementation from the angle of regional organisations. Additionally, we conducted oral interviews with representatives of several regional and international organisations.

The completed questionnaires are publicly available via the website dedicated to the Study, www.diversitystudy.eu

Part Two: New ideas for the implementation of the UNESCO Convention:

Part Two explores a selection of new ideas to implement the UNESCO Convention, which apply to the EU's external relations and internal policies.

First, article 8 of the UNESCO Convention provides that "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;" and, that "Parties may take all appropriate measures to protect and preserve cultural expressions" in such situations. This provision, in combination with article 17, can be construed as addressing so-called "cultural genocide" as the most extreme negation of the diversity of cultural expressions. The initial drafts of the UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948 contained provisions addressing attacks on certain cultural expressions with the purpose of destroying national, ethnical, racial or religious groups as such. We propose to further examine this interpretation from the perspective of possible new approaches based on the UNESCO Convention for the early prevention of genocide and mass-atrocities. In particular, we shall recommend further exploration of the relationship between the diversity of cultural, religious, political and national expressions. We shall outline a proposal for new tools for the EU's external relations with countries plagued by humanitarian issues and violations of minorities' rights and human rights.

We submit that this proposal should be discussed in the framework of the Transatlantic Legislators' Dialogue (TLD), which aims to strengthen and enhance the level of political discourse between European and American legislators. Early prevention of genocide and mass atrocities is a very important policy concern shared by lawmakers from both sides of the Atlantic. This topic will allow European Parliamentarians to reveal the full value of the UNESCO Convention to their colleagues in the United States. In the best case scenario, such a dialogue could provoke in the United States and other like minded countries a welcome change of attitude toward this instrument, i.e., from rejection to adherence.

Second, policies aimed at protecting and promoting cultural diversity require adequate resources. In this context, we shall analyse the role of intellectual property rights and competition law in contributing to levelling the playing field between providers of cultural expressions from the North and the South. For the purpose of improving access to cultural expressions from diversified origins, we shall introduce the principles of "Cultural Treatment" and "Most Favoured Culture". We examine the issues related to the international intellectual property system vis-à-vis the protection and promotion of the diversity of cultural expressions and offer proposals for redress. In this context, we also highlight the positive contributions from existing competition law and a new legal framework based on cultural non-discrimination principles. These legal regimes can provide improved balance between the various legitimate interests at stake. Policy makers could adopt similar approaches within the EU in order to meet the requirements of articles 6 and 7 of the UNESCO Convention and promote better circulation of cultural goods and services among the Member States. This discussion calls for the elaboration of new legal avenues to implement the principles of equitable access, openness and balance, pursuant to articles 2.7 and 2.8, whilst complying with universally recognised human rights instruments as required by article 5.

Developing and least developed economies have been pressing developed countries to collaborate on patent adjustments at the WTO in order to protect and promote public health. We submit that cultural stakeholders should require similar initiatives for copyright and related intellectual property rights in order to protect and promote the diversity of cultural expressions. EU taxpayers pay for damage to the diversity of cultural expressions. This includes the adverse effects of oligopolies that abuse their market power by arguably practicing cultural discrimination through their policies.

Third, civil society must play an instrumental role in the implementation of the UNESCO Convention in order to ensure the effectiveness of this instrument. We shall focus our attention on the way this role can materialise. Ideally, non-governmental organisations (NGOs) representing civil society with respect to implementation of the Convention should undertake political action with the same determination and effectiveness as activist groups that voiced environmental non-trade concerns in the WTO. These players were able to substantially influence the elaboration and implementation of international trade laws and policies promoting non-trade concerns related to the protection of the environment and sustainable development. Similar actors must emerge in the near future to further develop and implement laws and policies aimed at protecting and promoting cultural diversity on the national, regional and international stages. In order to achieve these objectives, independence from public and private power is crucial. In authoritarian regimes, NGOs must be protected from the diktat of the state. In democratic regimes, NGOs must contend with the economic strength of corporate interests that have a dominant position in the market. In both cases, we assess legal and policy mechanisms to enable representatives of civil society to articulate and advocate the public interest whilst preserving their independence. At the same time, NGOs must be transparent and accountable in terms of their membership structure, representativeness, internal decision making processes, governance, and funding.

The participatory system of the Århus Convention of 1998 on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters can serve as a model for the implementation of article 11 of the UNESCO Convention at the EU level.

These three issues deserve particular attention for policy makers and representatives of civil society who seek to take action in the implementation process of the UNESCO Convention, with the ambition to overcome its weaknesses and exploit its opportunities.

Stakeholders' Dialogue

Our analysis of each of these three topics is informed by the fact-finding work, addressed in Part One of our study, and by desk-based research. We submitted this analysis to high-level discussants from academia who offered a critical assessment in order to stimulate a broader debate among stakeholders. We recorded these discussants' contributions on video and posted them on www.diversitystudy.eu under the section "Stakeholders' Dialogue". Each of these contributions provides a starting point for an on-line debate on the respective topics via a blog. We expect that stakeholders will read our study, listen to the discussants' comments, and then express and exchange their own opinions on our blog.

Part Three: The implementation of the UNESCO Convention in the EU's external relations

Part Three covers the EU's external relations. It addresses the implementation of the UNESCO Convention in relation to human rights policies and international trade at the multilateral, regional and bilateral levels.

This Part explores the role of the EU in recent litigation at the (WTO) on the GATS and TRIPS Agreements between the United States and China. We observe that the EU supported the United States against China in these dispute settlement procedures concerning cultural industries. Both procedures were driven by the oligopoly of Hollywood film majors and related interests. In one of these trials China invoked the UNESCO Convention in its defence. To our knowledge European cultural stakeholders were not consulted prior to the European Commission's decision to support the American position. Following a discussion of these cases, we conclude that the European Commission should establish procedures that ensure timely information and adequate participation by civil society in decision making processes regarding disputes at the WTO that involve matters falling under the scope of the UNESCO Convention. Such an informed participation shall contribute to a more effective implementation of the UNESCO Convention.

We further question the absence of formal discussions of the UNESCO Convention within the WTO thus far. We analyse this situation and propose strategies for the EU to start a dialogue between the UNESCO and the WTO on the protection and promotion of the diversity of cultural expression in relation to international trade regulation.

We also critically examine cultural cooperation mechanisms and explore the relationship between cultural diversity concerns and regional and bilateral trade agreements. The first concrete implementation of the UNESCO Convention in EU external relations, within the framework of the European Agenda for Culture, was the negotiation of two Protocols on Cultural Cooperation. In 2008, the European Commission concluded a first protocol with CARIFORUM; and, in 2009, she negotiated a second protocol with South Korea. On one hand these protocols are early indicators of how the guidelines and objectives in the Agenda for Culture can be fulfilled. On the other hand, these negotiations reveal several issues that need further analysis, especially considering that different aspects of the European Commission's approach met fierce criticism.

We submit that the EU, the Member States, and like minded countries should conclude a plurilateral framework of reference agreement when the EU enters into regional or bilateral trade agreements. This plurilateral agreement would contain the essential contents on cultural cooperation applicable to all third countries. Such an instrument could, for example, condition TRIPS Plus standards on copyright protection to the implementation of

corresponding competition law safeguards. The EU could then complete this basic arrangement with specific contents applicable on a case by case basis within a clearly defined scope.

International public funding mechanisms are crucial for cultural production in countries in the Global South. On the basis of a case study on the Film Fund for the African, Caribbean and Pacific Group of States (ACP), we take lessons for future development cooperation in the framework of the UNESCO Convention.

Part Four: The implementation of the UNESCO Convention in EU's internal policies

Part Four assesses the situation of France and South Korea in terms of market shares for films as emblematic of a core issue affecting the markets of most cultural industries today. In all EU Member States, and in most countries of the world, a high concentration of marketing power conditions the audience to demand mainstream forms and contents that are for the most part culturally homogeneous. The average person has little choice but to consume the cultural expressions and underlying ideology, which market dominating players are able to impose via heavy advertisement. The more marketing power providers of cultural expressions possess, the higher their market penetration. The Hollywood oligopoly's marketing power on one side, and the EU Member States' funding via selective state aid on the other, largely "duopolizes" Europe's various cultural sectors today. The rights of artists and the audiences who refuse either of these powers must be safeguarded. Responsible policy makers should elaborate new rules for a level playing field for creators of cultural expressions currently excluded from the prevailing system. We consider the States' selective aid mechanism, its "expertocracy," and its inflating business of various intermediaries as a threat to this freedom in Europe. We identify a remedy to this risk in the intellectual property system combined with competition law and cultural non-discrimination principles, as outlined in Part Two.

We further outline strategies for institutional design aimed at implementing the UNESCO Convention in the European Union. We recommend stocktaking of existing competences and potential synergies based on new collaborations between established institutions. In addition, we suggest considering the Intergovernmental Panel on Climate Change (IPCC) as a source of inspiration for the creation of a new facility to produce and exchange knowledge on measures and policies aimed at protecting and promoting the diversity of cultural expressions. Finally, we propose to further explore the question on the impact of the UNESCO Convention on policies aimed at protecting and promoting linguistic diversity.

Part Five: Conclusions and recommendations

Part Five states conclusions and recommendations to materialise the significant potential of the UNESCO Convention within Europe and on the global stage. We stress, in particular, the role of civil society as a driving force for the implementation of this treaty.

Long version of the Study, stakeholders' dialogue and documentation

There are two versions of this Study: a shorter version of 80 pages translated into several languages, and a longer English version that contains a more detailed analysis of the topics in the form of working papers. Both versions, as well as the responses to our survey, can be downloaded from a

website that is dedicated to this Study, and that contains further relevant documentation, www.diversitystudy.eu. This website also provides a section where stakeholders can comment on the Study and exchange their opinions.

The text of the UNESCO Convention, its operational guidelines and other useful information can be consulted at www.unesco.org/culture/en/diversity/convention

Key features of the Convention: the principle of sovereignty and its limitations

The mechanism underlying the UNESCO Convention can be labelled as a “limited free pass” empowering its parties to adopt and implement laws and policies aimed at protecting and promoting the diversity of cultural expressions in their territories (articles 5 and 6). The UNESCO Convention sets forth the principle of sovereignty in article 2.2. Under this provision States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures to achieve the objectives of the Convention. This right is subject to the respect for human rights and fundamental freedoms, pursuant to article 2.1. This provision recalls that “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”. The principles of equitable access, openness and balance, pursuant to articles 2.7 and 2.8, further restrict the powers of the Parties in matters of cultural policies.

The principle of sovereignty is highly problematic when it applies to authoritarian regimes. In most cases, such regimes tend to use and abuse the power vested in sovereignty, and ignore its limitations requiring compliance with human rights and fundamental freedoms. The European Union faces the challenge to address this reality when promoting the objectives of the UNESCO Convention in her external relations.

One can argue that the principle of international solidarity and cooperation, as articulated in article 2.4, prescribes that States overcome a narrow and introverted understanding of the concept of sovereignty. International solidarity and cooperation should be aimed at enabling countries, especially developing and least developed economies, to create and strengthen their means of cultural expressions and cultural industries that are either nascent or established. This must occur at the local, national and international levels. In our opinion, the same interpretation should also apply to the principles of equitable access, and openness and balance (articles 2.7 and 2.8). These principles stress that “equitable access to a rich and diversified range of cultural expressions from all over the world and access of cultures to the means of expressions and dissemination constitute important elements for enhancing cultural diversity and encouraging mutual understanding”. The Convention acknowledges that States should seek to appropriately promote openness to other cultures of the world, when they adopt measures to support the diversity of cultural expressions. Consequently, it is not in the interest of the European Union to reduce international solidarity and cooperation to forms of mere charity.

The protection and promotion of a sustainable diversity of cultural expressions in the so-called “Global South,” to the benefit of the whole world, requires the elaboration and implementation of new legal mechanisms aimed at levelling the playing field. Policy instruments based on direct payments present the risk of empowering donors to influence cultural contents, and of rendering recipients vulnerable to dependence and clientelism.

This particularly applies to so-called "selective state aid" funding schemes, which we address in more detail in Part Four below.

Effective legal safeguards with a long-term vision are necessary to ensure that genuine diversity of cultural expressions benefits more than a small number of wealthy and democratic states that are indifferent to, or patronise, the rest of the world.

Articles 205 to 207 of the TFEU, in combination with article 21, require that the Union's action on the international stage is guided by the principles that have inspired its own creation (i.e., development and enlargement); and, by those principles which it seeks to advance in the world, such as: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. As a consequence, the EU's common commercial policy and emerging economic constitution also should contribute to a fairer world order for the cultural sector.³

Overview on the strengths, weaknesses, opportunities and threats

The results presented in this Study are based on a variety of tools: data collection, interviews, case studies and desk based research. They offer the opportunity to consider the potential of the implementation of the UNESCO Convention. To this effect, we used a SWOT analysis (Strengths - Weaknesses - Opportunities - Threats) of the UNESCO Convention and its implementation in the European Union as a strategy tool. The following is a summary of this analysis:

Strengths

The UNESCO Convention provides considerable space for civil society's participation. In certain jurisdictions, representatives of civil society were instrumental in shaping the contents of the Convention during the elaboration and negotiation phases. The adopted treaty presents the same potential to empower civil society to act as a driving force for its implementation (article 11).

As a consequence, the implementation of the UNESCO Convention requires a strong commitment by civil society to motivate and legitimate action by public stakeholders.

Weaknesses

The principle of sovereignty underlying the Convention, in combination with vague provisions and a very weak dispute settlement system, do not measure up to the challenges facing a large majority of States, particularly those in developing and least developed economies and authoritarian regimes.

Therefore, public and private stakeholders must articulate and enforce at the international level clear and precise limits to the principle of sovereignty based on human rights and fundamental freedoms and the principles of equitable access, openness and balance.

Opportunities

³ See on the emerging European economic constitution Christian Joerges, *La Constitution européenne en processus et en procès*, *Revue Internationale de Droit Économique* 2006, p. 245 to 284: <http://www.cairn.info/revue-internationale-de-droit-economique-2006-3-page-245.htm>

The Convention contains parlance that is inspirational and invites public and private stakeholders to be creative in legal and policy terms. Together with developments in the field of environmental law, and pressured by trade regulation, stimulating dynamics between idealism and realism can transpire from such creativity. This will be highly beneficial for the implementation of this treaty. Furthermore, this Convention can become a building block for an international legal instrument to protect and promote "human diversity" as a tool for early prevention of genocide and mass atrocities. This tool can be used in EU's external relations.

In the EU's internal relations, the Convention has the potential to reinforce more sustainable integration efforts. This instrument can substantially contribute to strengthening cohesion. It can provide a good governance tool for the maximisation of the wealth, and settlement of tensions, resulting from the diversity of cultural, political, ethnical, religious and national expressions in Europe and around the world.

Therefore, stakeholders must give special attention to the effective implementation of articles 7 and 8 of the UNESCO Convention, which address access to the diversity of cultural expressions and its most radical negation. Success in this undertaking can earn the Convention the rank of a major international treaty.

Threats

The Parties to the Convention need to be aware of the negative effects of the current international system of intellectual property rights on the diversity of cultural expressions, particularly in markets that are dominated by big corporations exercising collective power as oligopolies.

If the parties neglect to adequately use relevant competition law, and fail to redress systematic cultural discrimination perpetrated by corporate power, the current imbalance of exchanges of cultural goods and services will not be improved. In this case, the access obligations in article 7 will remain purely programmatic.

Pursuant to article 6, parties must elaborate and implement legal checks and balances to avoid measures granting decision-making powers to the state that are beyond judicial reach and violate freedom of expression. We consider selective state aid mechanisms as a risk for covert censorship and inhibiting cultural entrepreneurship.

Failure in implementing the Convention in a way that takes full advantage of its potential for good governance can have negative spill-over effects on sustainable European integration efforts, especially in times of economic and political crisis.

Without active participation of civil society and policy makers who drive the further implementation of the Convention, this instrument is at risk of becoming a mere "langue de bois" discourse for rich and democratic welfare states; and, eventually becoming a "dead letter" for all parties.

Therefore, promoters of the cultural diversity cause must oppose a narrow interpretation of the scope of the UNESCO Convention. They must mobilise private and public actors within the cultural sector and beyond in order to contribute to an effective implementation of this instrument. Last, but not least, they must use best efforts to further develop the law and policies thus far created on the national and regional levels.

Three generations of law and policy discourses on cultural diversity

We observe three generations of discourses on policies and rules of law that are relevant to the scope of the UNESCO Convention. Pursuant to article 3, this instrument “shall apply to the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions.” This scope must be construed in combination with articles 1 and 2, which define the objectives and guiding principles of this treaty.

Historically, the first generation of discourse was based on a predominantly ethnocentric understanding that focused on the protection and promotion of the concept of “cultural identity”. With the spectacular reinforcement of the multilateral trading system in the last decade of the 20th century, cultural stakeholders in various jurisdictions became aware of their need to join forces in order to meet new challenges. The agreements of the World Trade Organisation (WTO) entered into force in 1995. During the negotiations that led to these treaties, the cultural stakeholders failed to impose a “cultural exception.” This exception would have carved out cultural regulation from the scope of the regulation on the progressive liberalisation of trade in goods and services, and on trade related aspects of intellectual property rights (GATT, GATS and TRIPS).

The success in terms of predictability and enforceability of WTO law essentially resulted in a radical change of the dispute settlement mechanism that applied to the General Agreement on Tariffs and Trade (GATT) from 1948 to 1994. This new reality arguably contributed to a shift of strategy among cultural stakeholders, ushering in a second generation of discourses revolving around the concept of “cultural diversity”. Cultural stakeholders reacted to the imminent threat by elaborating new law. This process started with soft law in the form of a declaration on cultural diversity adopted in 2000 under the auspices of the Council of Europe. This was followed by a similar declaration at the UNESCO in 2001, and by more binding law through the Convention of 2005. Although a variety of discourses on cultural diversity started much earlier, new multilateral trade regulation gave them the momentum to be translated into increasingly well-articulated norms of law.

At present, we perceive an emerging third generation of legal and policy related ideas and initiatives. This impending era presents the opportunity to welcome new allies for the cultural cause who are concerned about the protection of human rights, fundamental freedoms, minorities' rights, and the prevention of genocide and mass atrocities. The Convention as it stands today aims to put forward contributions that materialise human rights and fundamental freedoms, both as a result of the diversity of cultural expressions and as a limitation to the principle of sovereignty.

Implementation as “pursuit of policy developments”

The European Commission considers that “the implementation of the UNESCO Convention within the EU is not a strict legislative activity as such but rather the pursuit of policy developments, both in internal and external policies, which might take the form of legislative action in specific instances.” (EU Commission's reply to question 4 of the Regional Organisations Survey, available at www.diversitystudy.eu). This understanding presents the opportunity for new creative thinking in political and legal terms beyond a mere static and formalistic approach. The UNESCO Convention has the great potential to mobilise and stimulate law and policy makers in search of innovative solutions to address their constituencies' core societal concerns pertaining to questions of identity and diversity. The Convention covers these questions from the cultural angle. However, the considerable value of this instrument resides in its potential to offer inspiration and guidance for a future legal framework that can manage the sources of tensions, such as religious, political and national expressions that flow from the diversity of other forms of expressions within countries and regions.

In the European Agenda for Culture, the European Commission calls for “mainstreaming culture in all relevant policies” on the basis of the Treaty's cultural clause (point 4.4): “With regard to the external dimension, particular attention is paid to multi-intercultural and inter-religious dialogue, promoting understanding between the EU and international partners and reaching out increasingly to a broader audience in partner countries. In this context, education and particularly human rights education play a significant role.”

The relationships between Tibet and China, or Israel and Palestine, exemplify the urgency to further examine such an avenue in depth. The protection and promotion of the diversity of cultural expressions, in compliance with human rights and fundamental freedoms, deliver a road map to the elaboration of novel international law aimed at protecting and promoting human diversity and the early prevention of genocide and mass atrocities. However, before dreaming of new buildings, the existing house must be reinforced in its foundations.

The European Commission recognises that a new strategic framework for culture in the EU's external relations is emerging, following the adoption of the European Agenda for Culture. In this framework, culture is perceived as a strategic factor of political, social and economic development, and not exclusively in terms of isolated cultural events or showcasing (EU Commission's reply to question 4.1 of the Regional Organisations Survey). The Copenhagen criteria on the dialogue between the European Union, the Western Balkan, and Turkey illustrate how this new approach can be applied to concrete tasks. The Commission also clearly articulates the expectation that the UNESCO Convention will shape “a new role for culture and cultural diversity in global governance, being recognised as the cultural pillar at global level, thus mirroring the achievements made by environmental issues and treaties in the area of climate change and biodiversity.” (European Commission's reply to question 11.2 of the Regional Organisations Survey)

We share this vision and outline various options in this Study that can contribute to transforming these aspirations into a reality in domestic and cross border relations. Over recent decades, dynamic developments in environmental law have resulted in the creation of various instruments on the national, regional and international levels, such as the 1992 Biodiversity Convention. These legal developments, combined with more recent challenges to non-trade concerns such as public health resulting from WTO law, eventually caused the genesis of a new discourse on cultural diversity. From a law and policy perspective, the main threat to this discourse is an eventual regression into an introverted understanding of cultural identity. Considering this worst-case scenario, serious advocates of cultural diversity should not miss the unique opportunities that a creative interpretation of the UNESCO Convention promises to deliver.