

Hildegard Schneider and Peter van den Bossche (Eds.), *Protection of Cultural Diversity from a European and International Perspective*. Antwerp: Intersentia, 2008. 380 pages. ISBN: 978-90-5095-864-6. EUR 75.

“Cultural diversity” has become one of the latest buzzwords in international policy- and law-making. The immediate reason for this prominence and for the positioning of the concept of cultural diversity as one of those intuitively positive goals that humankind should pursue is in fact an act of international law – the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. This Convention was adopted under the auspices of the United Nations Educational Scientific and Cultural Organization (UNESCO) and has been widely celebrated as a remarkable success for cultural proponents and human rights supporters, who despite their very varied motivations had had the common and sufficiently strong will to offset the negative effects of economic globalisation through the adoption of this document. Although more than 100 states have now ratified the UNESCO Convention and have thus committed to implementing it in their domestic law, its impact on national and global policymaking is as yet undefined. What is certain, however, is that this impact will not be constrained to cultural policies but will substantially affect the domains of media, communications, intellectual property, external relations and trade, to name but a few.

The reviewed book takes up the intricate task of exploring the implications of the UNESCO Convention from the European and international perspectives, both by looking at the Convention itself as an act of international law and more broadly by contemplating the scope, substance and effects of cultural diversity-oriented policies. It must be added however that the book is not a pioneering work but builds upon a substantial body of academic literature tackling diverse problems in the field and the authors situate their contributions in an already existing, albeit still convoluted, discourse.

The edited volume starts in a reader-friendly manner by introducing the events and developments, in both politics and law, that ultimately led to the adoption of the UNESCO Convention on Cultural Diversity. Yvonne Donders aptly sets the scene discussing the notions of culture and cultural diversity fundamental to the Convention and also offers some interesting insights into the negotiation and drafting processes, notably the strong diplomatic involvement of the United States in its attempt to hinder (unsuccessfully) and to weaken (successfully) an international legally binding instrument on culture. The following two chapters discuss the relationship between the UNESCO Convention and the law of the World Trade Organization (WTO) – an issue of prime significance in terms of the real and potential impact of the Convention. Anke Dahrendorf identifies, although only from a bird’s eye view, possible points of conflict between the WTO Agreements and the commitments of the Members under them and the sizeable leeway given by the UNESCO Convention for states to pursue measures protecting and promoting cultural diversity. In addition to this useful taxonomy, the chapter clarifies questions of jurisdiction and sketches potential paths for resolving a “trade *versus* culture” conflict, although at times in a too legal(istic) manner. The subsequent chapter by Jan Wouters and Bart de Meester takes up (again) the issue of potential legal conflicts. The refreshing promise made at the outset of the chapter – to examine the Convention “as a tool to complement the liberalization process in the WTO, as opposed to being a source of conflict” (pp. 85-86) remains somewhat unfulfilled however, as the authors, similarly to Dahrendorf, look into intersections with the multilateral agreements on trade in goods and services and search for clashes with rights and obligations under the UNESCO Convention. A great deal of attention in both contributions is devoted to Article 20 of the

UNESCO Convention, which was meant to clarify the interface between the Convention and other regulatory regimes and due to its gravity, in particular with regard to international trade law, had been the most contentious during the drafting of the Convention. After the initial wave of interest subsequent to the adoption of the Convention, however, the issue has lost much of its charge and intellectual appeal. Especially now after the WTO Appellate Body Report *China–Publications and Audiovisual Products* (WT/DS363/AB/R), adopted in December 2009, it is evident that the WTO adjudicatory bodies simply dismiss the Convention’s application by recalling its own formulation in Article 20 that, “[n]othing in this Convention shall be interpreted as modifying the rights and obligations of the parties under any other treaties to which they are parties” and by asserting that, “[i]n any event, nothing in the text of the WTO Agreement provides an exception from WTO disciplines in terms of ‘cultural goods’” (WTO Panel Report, WT/DS363/R, para. 4.207). It should also be noted that while a taxonomy of the potential points of tension between the law of the WTO and the UNESCO Convention is helpful in as far as one can get an idea of those domestic cultural policy measures which may breach the WTO provisions, such an analytical exercise can never be exhaustive as the UNESCO Convention allows for a virtually indefinite list of instruments that can be applied for the protection and promotion of cultural diversity. This flaw of the UNESCO Convention has been appositely taken up by Christoph Beat Graber, whose chapter provides a well-structured overview of the substantive rights and obligations under the Convention. Graber exposes the lack of binding obligations and the lack of tests capable of separating the licit from illicit cultural policy measures, which do justify the often expressed critique of the Convention being a disguise for protectionism. The chapter ends with some high (but not very well-founded) hopes that the Convention may nonetheless work if it were to subscribe to a “market- and statistics-oriented approach to measuring cultural diversity” (p. 158) – an approach that is in fact presently not available and deeply controversial in its design and application.

Chapter 5 by Fiona Macmillan is for me the jewel in this collection of essays. It construes the UNESCO Convention as a new incentive to protect cultural diversity and boldly approaches the very complex and intertwined topics within the matrix of trade, cultural diversity and copyright. Perhaps at times adopting a pace that is too quick for unacquainted readers, Macmillan analyses the impact of the international copyright system as incorporated in international trade law on cultural diversity going beyond the constraints of the UNESCO Convention. She skilfully maps out the relationships between trade, copyright, human rights and culture and comes to the conclusion that although these systems increasingly intersect, the “WTO is not an appropriate body to oversee the protection of human rights, including those relating to cultural diversity and self-determination” (p. 188). Linking to Macmillan’s chapter, Hannu Wager tackles the relationship between copyright and the promotion of cultural diversity and exposes some imbalances within the system that may be detrimental to cultural diversity.

Bruno de Witte’s chapter sets the background for the third part of the volume dealing with the European perspective on protecting cultural diversity. De Witte analyses the value of cultural diversity in European Union (EU) law by covering, with the right depth, the entire landscape of EU policies and activities starting with the Constitutional texts and moving from the most central market integration to the more peripheral citizenship and immigration domains. From today’s perspective, the only regret that can be expressed is that the chapter had been written before the changes brought about by the Lisbon Treaty.

The subsequent contribution by Madeleine de Cock Buning concentrates on one specific field of EU policies – mass media regulation and in particular on the Audiovisual Media Services Directive (AVMS; in its previous version known as the Television without Frontiers Directive). Since audiovisual services have been the real hornets’ nest in the debate on trade liberalisation *versus* cultural policy, such a focus is not misplaced but in fact essential. The

chapter criticises the AVMS provisions intended to protect and promote cultural diversity, i.e. the broadcasting quotas for European works and independent productions, and questions their true contribution to the objective of cultural diversity. This doubt is only strengthened and the false European Commission's rhetoric only better exposed in the following chapter by Sophie de Vinck and Caroline Pauwels. The authors carefully and critically examine the real impact of the AVMS quota mechanisms using data from several pertinent studies. Beyond the Directive, they look at the effect of other existing EU programmes and activities in the media domain, as understood broadly, as well as at the generic EU competition rules. Very interestingly, de Vinck and Pauwels conclude that, "[q]uite paradoxically, it seems that the largest threat to cultural diversity concerns currently emanates from the vagueness and ambiguity surrounding many of the relevant EU provisions" (p. 304).

The final book contribution by Katja Lubina and Hildegard Schneider deals with the harmonisation and implementation of *droit de suite* in the Community. The Directive on the resale of royalty right for artists is an interesting case of EU cultural policy "by the backdoor" and the link between this intellectual property right and cultural diversity is indeed rarely discussed. Regrettably, this linkage is not thoroughly analysed here either as the chapter discusses exclusively, and in much detail, the implementation of the Directive in different EU Member States, leaving the reader sometimes at a loss in the search for a connection to the protection of cultural diversity.

The reviewed volume edited by Hildegard Schneider and Peter van den Bossche is the outcome of a two-day-conference that took place at the University of Maastricht in March 2007 that ingeniously coincided with the coming into force of the UNESCO Convention on Cultural Diversity. Despite this fact, and here all contributors can truly be congratulated, the chapters are not marked with the euphoria typical of the early days of the Convention but offer reflective enquiries and critical glimpses into the actual contents and effects of the recent UNESCO act on culture. All chapters are well-researched and structured and are not simply recycled previous work. A point of critique that can be formulated and perhaps related to the task of the editors are the multiple repetitions within the book. Although admittedly these are almost unavoidable in a volume of collected essays, it is often disturbing to read yet again about the Convention's adoption, about its relationship with WTO law, about the notions of culture and cultural diversity, or the competences of the EU in the field of culture. This is a minor drawback however as the book certainly makes a valuable contribution to the evolving discourse on cultural diversity policies, which is about to enter a critical phase as the Convention's actual implementation into domestic legal systems draws near.

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