



Cultural diversity as a multilevel and multifaceted legal notion operating in the law on cultural policies

Céline Romainville

To cite this article: Céline Romainville (2016) Cultural diversity as a multilevel and multifaceted legal notion operating in the law on cultural policies, *International Journal of Cultural Policy*, 22:2, 273-290, DOI: [10.1080/10286632.2014.959510](https://doi.org/10.1080/10286632.2014.959510)

To link to this article: <https://doi.org/10.1080/10286632.2014.959510>



Published online: 26 Sep 2014.



Submit your article to this journal [↗](#)



Article views: 453



View related articles [↗](#)



View Crossmark data [↗](#)



Citing articles: 1 View citing articles [↗](#)

Cultural diversity as a multilevel and multifaceted legal notion operating in the law on cultural policies

Céline Romainville*¹

*National Fund for Scientific Research (F.N.R.S.), University of Louvain-la-Neuve,
Louvain-la-Neuve, Belgium*

(Received 30 January 2014; accepted 26 August 2014)

The objective of the present article is to highlight the obscured links between the multilevel and multifaceted legal concept of cultural diversity and its political uses. It intends to provide a clear appraisal of the concepts of cultural diversity within the legal framework in which cultural policies are immersed. It seeks to focus on the uses of cultural diversity as a legal concept that reflect intense disagreements on cultural policies, that helps legitimize very different and variable political ideas and that emerges from very different backgrounds. After identifying the exact legal scope of the notion, the article analyses the narratives and discourses that lead to the consolidation and use of cultural diversity as a multilevel legal notion.

Keywords: cultural diversity; law on cultural policy; cultural policies; constitutional law; law and policy

1. Introduction

The concept of ‘cultural diversity’ is multifaceted and multilevel, almost as complex as the concept of culture itself. Invoked in different contexts, its scope and function remain extremely difficult to define, especially from a legal point of view. At the descriptive level, cultural diversity refers to the existence of a multiplicity of cultures and thereby to a ‘given of the human condition’ and to the very ‘stuff of anthropology’, in the same vein as biodiversity refers to the variety of living forms through to ecosystems. As Isar (2006) said, cultural diversity then emerges as a ‘normative meta narrative’ under the influence of multicultural theories of justice as well as of communitarian ones, that see cultural diversity as the basis for a needed diversity of mankind or as a policy that use cultural difference as a tool in national or transnational framework. In this latter sense, it refers to the objective of an interaction between cultures (Labouz 2005).

Since its metamorphosis into a normative narrative, the concept of cultural diversity spread to numerous spheres of public action among which that of cultural policies’. It became a concept of particular legal importance for public action in cultural matters. Nowadays, in the cultural policy context, legal instruments,

*Corresponding author. Email: celine.romainville@uclouvain.be

¹Céline Romainville can be contacted at the following address: Research Centre on State and Constitution, Faculté de droit de l’Université catholique de Louvain-la-Neuve; Place Montesquieu, 2; 1348 Louvain-la-Neuve, Belgium.

relaying political discourses, refer ceaselessly to this notion, often with enthusiasm and fervour that hide a great indeterminacy.

The scope of this legal notion as well as its exact function in the context of cultural policies remains largely unclear. Because of the polysemy of the concept, cultural diversity, in the context of cultural policies, has been qualified as the ‘new rhetoric conformism’, a fashionable concept, the success of which can be explained by its dynamic and positive nature compared with the old ‘exception culturelle’ (Regourd 2008). But cultural diversity can simultaneously be understood as a threat to the ‘classic’ models of cultural policies that have been built in several countries upon the idea of a homogenous nation.

The objective of the present research is to highlight the obscured links between the legal concept of cultural diversity and its political and ethical uses. It intends to provide an appraisal of the concept of cultural diversity in the context of the legal framework in which cultural policies are immersed. This contribution is therefore not an exhaustive review of the vast literature on cultural diversity. It seeks to focus rather on the interactions between the legal notion of cultural diversity and political and legal discourses, thereby allowing us to go beyond the allegorical and mostly intuitive understandings of cultural diversity. The impressive and ever-expanding corpus of academic contributions on this topic demonstrates the necessity to clarify the concept of cultural diversity by developing a specific perspective in a precise context.

The context of this article is that of cultural policies developed by states in order to regulate, protect, promote or support domestic cultural life. Cultural policy ‘involves public strategies and activities that promote the production, dissemination, marketing and consumption of the arts, heritage and other creative forms’ (Schuster 2003, Mulcahy 2006) and are about creating ‘the institutional supports that channel both aesthetic creativity and collective ways of life – a bridge between the two registers’ (Miller and Yudice 2002). The perspective developed herein is the study of legal norms in their political context: the legal inquiry opens itself to other disciplines following the ‘point de vue modérément ouvert’ (‘moderately open point-of-view’) method described by Dumont and Bailleux (2010). This research focuses on the uses of cultural diversity as a legal concept that helps legitimatise very different and variable political ideas (Corten 1998) by analysing the narratives and discourses that lead to the consolidation and uses of cultural diversity as a legal notion.

Delving an inquiry into this concept of cultural diversity requires recalling, firstly, the many dimensions of the concept of culture on which cultural diversity is grounded. The first part of this article is thereby devoted to framing the multilevel and multifaceted legal concept of cultural diversity on the basis of a hermeneutic exploration of the concept of culture. The second part will define the various legal concepts of cultural diversity and identify which political positions those concepts reflect and legitimise. It will thereby frame the new functions of cultural policies that legal concepts of cultural diversity are reflecting and, to some extent, legitimatising.

2. The multifaceted legal receptions of the concepts of cultural diversity

The extraordinary semantic richness of the word ‘culture’ (Cuche 2001) implies the impossibility of a univocal definition (Pallard 1997). In order to allow for a legal

analysis of this notion, it is necessary distinguishing four different conceptual levels through which culture can be understood at, on the basis of philosophical inquiries on this question notably the one of de Stexhe and Thomas's (1998).

At the initial and broadest conceptual level, culture is what distinguishes humanity from nature. Culture is in that sense a synonym of 'Humanity'. At the second level, culture refers to the human condition in a given society. This account corresponds to an 'anthropological' perspective on culture. It refers thereby to ways of life, to cultural identities and to a holistic understanding of culture. It encompasses all at once such subjects as traditional housing, legal systems, collective identities, patterns of behaviour and all subsystem of the society (economic, symbolic and political) into a supposedly coherent system. There are various understandings of this conception of culture. One of them draws attention to cultural integrity. It implies that 'culture' does not differentiate between practices and is seen as a rather static and integrated set of practices. Following Stevenson (2003), this particular interpretation sees cultures as 'billiard balls' and downplays 'the ways in which the meanings and symbols of culture are produced through complex processes of translation, negotiation and enunciation', as well as by conflicts between several visions of the world. At the third level, culture refers to a system which, within a given society, is somehow working on the meanings of human and social experiences as Dworkin (1985), Castoriadis (1996) or Habermas understood it (1995). It is doing so by differentiating and qualifying practices, by designating them as good, beautiful, wrong, ugly. This understanding of culture highlights the idea that culture is what enables individuals to exercise real freedom by giving them tools to shape their conception of the good life, to create, to express them, and to exercise their imagination. In this account, culture refers to education, religion, research, traditions, arts and cultural heritage as the creating of a system, following Habermas' (1987) meaning and interpretations. Finally, at the fourth and most concrete level, culture refers to the whole set of cultural expressions, practices, traditions and artistic works that expresses and exemplifies the work on meaning, carried out by culture in the third sense. The work on meaning, in the abstract, can only be developed on the basis of an entire set of cultural artworks, expressions and heritage. Indeed, any particular work cannot be considered as a disembodied exercise or as something springing into existence out of nothing: it is done on the basis of a material set of traditions and works that allows individual to think critically and express themselves (Habermas 1986, Ost 1997, de Stexhe and Thomas 1998).

Defining cultural diversity on the basis of this multilevel understanding of culture helps to identify the different concepts of cultural diversity analytically. Cultural diversity can refer, firstly, to a general statement of facts: the multiplicity of humanity. At the second level, when cultural diversity is understood from an anthropological viewpoint, it then refers to the variety of societies. This understanding of cultural diversity developed itself on the basis of an 'imagined community' often created at the nation-State level to fight against the perceived threats of globalisation or American hegemony (Robins 2006). Cultural diversity can also develop itself as a means for groups wishing to preserve their 'cultural structures' to resist the pressures of an allegedly coherent and uniform majoritarian 'imagined community'. That is to say that cultural diversity can also refer, at the second level, to the variety within societies. This approach highlights the multiplicity of identities and the multiple and versatile ways by which identities are (re)shaped. This latter

understanding of cultural diversity emphasises its relationship with the concept of unity inherent to the former understanding of cultural diversity. It is then closely connected with communitarian philosophers such as Taylor (1994) who popularised the notion. At the third level, cultural diversity relates to the pluralism of intellectual and creative operations aiming at working on the sense of human and social experiences. It then refers to the variety and multiplicity of those 'cultural structures' that help to shape people's conceptions of good life and people's comprehension of the sense of social and human experiences. This understanding of 'cultural diversity' is promoted by multiculturalist philosophers such as Kymlicka (1995) or by philosophers such as Dworkin (1985) or Tully (1995). The fourth, and final, meaning of cultural diversity is linked to the great variety and heterogeneity of cultural expressions of the cultural diversity understood in the second and third level. It relates to the variety of cultural goods and services, to the multiple expressions of cultural heritage, to the richness of various artworks and heritages.

These accounts of cultural diversity, based on a philosophical inquiry into the concept of cultural diversity, help to identify the relationships between the different levels of the concept. The different significations of the notion of cultural diversity can be arranged in four circles that fit together by inclusion. But they also fit together because they objectify more general meanings (which exemplify 'unity') within particular ones (which then typify 'diversity'). These circles have thereby all the potential to conflict with other circles (unity vs. diversity). As Von Bogdandy, relying on the works of Jellinek's and Hegel's puts it: 'conceptually, diversity depends on unity' and thereby 'the concern for cultural diversity develops in opposition to a social unity' (Von Bogdandy 2008). Moreover, understanding cultural diversity on the basis of this multilevel conceptual framework helps to understand that all circles share important normative dimensions, despite their differences in terms of the balance struck between the democratic need for plural cultural structures, on the one hand, and the issue of identity, on the other hand.

Turning now to the legal question, this one can be formulated as the following: how culture and cultural diversity can fit into a legal analysis? Indeed, the specific regulating function of the legal system implies that law represents the world in a certain way through, as Kant said, operations not just of perception (Kant 1962), but also of construction, unification and simplification. In that perspective, the legal concepts of cultural diversity will to some extent reflect the specific function of the legal system (Cornu 2005a). Does that mean that the legal concept of cultural diversity must be a stable, univocal, precise and specific concept? Under the classical liberal theory of law, the answer is yes: the rule of law requires legal concepts to be precise in order to secure individuals liberties. This idea is recalled by Von Bogdandy (2008) '[f]rom a conceptual point of view, a juridical conceptualization that embraces opposing interests is problematic, since legal rationality requires that opposing poles be conceptualized by different notions'. This classical answer has however been widely discussed. Critical legal scholars allow legal concepts to have different meanings and different interpretations, reflecting the struggle of powers that underlie them. In that view, simple and univocal legal conceptualisation of complex realities would be suspicious as it would just reflect the dominant points of view. Sunstein (1995) even defends the idea that, in diverse societies, constitutional law relies for a large part on 'incompletely theorized agreements' which are to some degree workable at one legal level, be it constitutional, legal or operational. Our intuition is that in increasing diverse societies, the notion of cultural diversity

is flexible and is working as an ‘incompletely theorized agreements’ precisely for the reason that it reflects divergences about culture, cultural policies and their relationships with markets, societies and States. It must however be noted that the legal notions often opposed to cultural diversity, as the ‘internal market’ of European Union (EU) law, the ‘sovereignty of States’ or the ‘free trade rules’ of the WTO order are also constitutionally ‘incompletely theorized agreements’ – the single difference being that those agreements are more anchored into the actual legal system and fit better into actual western legal cultures.

3. Cultural diversity and cultural policies

The general and legal concepts of cultural diversity are complex – even potentially contradictory – and refer to distinct dimensions of the notion of culture.

Here, an explanation is provided for the different political ideas and positions that the multilevel legal concept of cultural diversity support and reflect. Does cultural diversity, legally defined, operate as a new function of cultural policies that fundamentally reshapes said policies? Or is it solely a narrative that offers a protectionist defence of national cultural policies? How does it articulate the relationships between the numerous levels of cultural policy governance? These questions must be answered by focusing, in turn, on the international level (1) and, more specifically, on the European one (2), which exemplifies the paradoxes of the international concept of cultural diversity within a given political area. The second section shows, on the one hand, within the European integration process, how the indeterminacy of the concept of cultural diversity is used in order to conciliate diverging positions but without giving a strong basis to develop a well-defined cultural policy, and, on the other hand, how, at the Council of Europe level, the flexibility of the concept of cultural diversity has led to major normative evolutions whose impact on cultural policies remains however uncertain.

3.1. At the international level

Cultural diversity, in international law, refers to two different legal concepts – again, potentially contradictory – that have been established for and reflect different views on cultural policies. They both remain the main narrative of the law on international cultural policies.

3.1.1. The UNESCO Declaration and Convention on cultural diversity

The first international legal concept of cultural diversity aims at questioning neoliberal views on culture. It finds its roots in the non-binding 2001 *Declaration on Cultural Diversity*, which states, in Article 1, that the diversity of culture ‘is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind’. This Declaration values cultural diversity ‘[a]s a source of exchange, innovation and creativity’ which is ‘as necessary for humankind as biodiversity is for nature’. In that perspective, the Declaration qualified cultural diversity as a ‘common heritage of humanity’. The 2005 *UNESCO Convention on the protection and promotion of cultural diversity* was the first time the concept of cultural diversity received legal consecration in a binding instrument of international law. This Convention expresses a consensus between states on the content of the legal

notion of cultural diversity, however ambiguous it is. Article 4 (1) of the Convention defines broadly cultural diversity as referring ‘to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies’. The same provision also specifies that cultural diversity ‘is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used’. A thorough analysis of this Convention being outside the scope of this contribution, though the instrument has been widely analysed elsewhere (Cornu 2005b, Beat Graber 2006, 2008, Hahn 2006, Craufurd-Smith 2007, Burri-Nenova 2008, Schneider and van den Bossche 2008), we will limit ourselves here to identifying the concept of cultural diversity and the function of this concept in the context of international cultural policies.

UNESCO’s intention in the drafting of this multilateral treaty was to establish ‘cultural diversity’ as ‘a principle of organization of the international community of states’ (Von Bogdandy 2008). The Convention aimed at countering the perceived globalisation and homogenisation of cultural sectors led by the US (Our Creative Diversity, 1998) and the liberalisation promoted by certain international organizations, described elsewhere (Mayer-Robitaille 2004a, 2004b, 2008, Craufurd-Smith 2007), by carving out cultural goods and services from free trade rules (UNESCO Declaration 2001). The 2005 Convention moves slightly away from the broad, anthropological and quasi-philosophical concepts deployed in the 2001 Declaration, recalled above. The 2005 Convention establishes a set of state obligations and rights related to cultural diversity understood in the terms of the fourth level, in the analytical framework discussed above. However, it obscures its definition of cultural diversity through multiple and somewhat cryptical references to notions such as cultural identity, ways of life (Regourd 2006) and the ‘cultural content’ of cultural expressions. Despite these grey areas, it can be said on the basis of Article 4 that the Convention focuses on the multiplicity of ‘cultural expressions’ and thereby, on the creation of individuals and of groups. Its major contribution to the international law on culture is the recognition of the dual and ambivalent nature of all forms of cultural expression (Beat Graber 2006) – not only limited to audio-visual creations – and the related recognition of the sovereign right of contracting parties to conduct cultural policies that protect and promote cultural diversity (Burri-Nenova 2008).

Beyond these positive contributions, the normative content of the Convention remains largely problematic. The 2005 Convention largely missed its target as the elements needed to counterbalance the WTO agreements on the legal stage are lacking. First, with the exception of clauses relating to developing countries and provisions establishing special enabling clauses, the Convention lacks binding obligations. It mainly recognises cultural sovereignty and the right of states to pursue cultural policies. However, it must be underline that this right is no impediment for states to take the *sovereign* decision to liberalise all cultural sectors but does not impose obligations. Moreover, the Convention does not recognise cultural rights linked to cultural expressions and lack of other substantive elements (that were included in the Declaration), such as specific rights for indigenous peoples, journalists, media, artists or individuals (Burri-Nenova 2008). There are also strong institutional weaknesses in the Convention including the absence of an actual control body and the inexistence of links with other crucial actors in the field of cultural

policies, such as WTO Panels. Finally, the impact of the UNESCO Convention in the legal sphere, especially regarding WTO rules or IP regimes that have strong impacts on cultural questions, is questionable.

The legal concept of cultural diversity articulated in the 2005 Convention, as depicted above, renews a somewhat classical function of international law: that of questioning neoliberal views on culture by insisting on the fundamental ambivalence of cultural goods and services (Mayer-Robitaille 2008). One may wonder about the value added by the UNESCO Convention, from a legal point of view (Craufurd-Smith 2007) to the existing legal tools protecting culture. International law has been, for decades, an important place for questioning the neoliberal perspectives on culture through the ideas of cultural sovereignty, cultural equality, self-determination in cultural fields and cultural human rights (Carmody 1999, Craufurd-Smith 2007). This resurgence of a conception of international law as challenging neoliberal views of culture might have appeared especially topical given the declining influence of UNESCO on cultural questions, weakened, as it was, by the 'neoliberal tide sweeping international organizations' (Miller and Yudice 2002). The result of this decline in influence has been that other institutions and regimes, such as the WTO, have been dealing with cultural questions from their point of view – often an eminently economic one – establishing free trade as the principle and confining cultural considerations in a default position. For many national and supranational actors, a new equilibrium seemed necessary. This was accomplished through the adoption of a legally binding concept of cultural diversity, meant to (re)create and enlarge the 'shelf space' allotted to the protection and promotion of cultural goods and services (Carmody 2007).

The UNESCO Convention is thereby mainly about a 'crystallization of the political efforts in the context of counterbalancing the effects of economic globalization' (Burri-Nenova 2008). It, thereby, obviously reflects a strong political disagreement about the pair 'Trade and Culture' and about cultural policies, as a book from Smiers has shown (2003). This disagreement explains that, according to Burri-Nenova (2008) 'what made the adoption of the UNESCO Convention possible also emptied it of some of its valuable content'. This political disagreement found its previous legal expression in the idea of 'exception culturelle', inserted within the WTO Agreements under the form of a temporary protection established on a voluntary basis, reassessed every five years. Because this legal expression was considered as too negative, defensive and anti-American States reconfigure this negative notion into a positive and appealing one through a genuine 'régime shopping'. Indeed, civil society and academic networks were, as we have already seen it, willing to extract and to move the issues from the WTO to UNESCO in order to reframe the relationship between culture and trade. As a result, the international legal landscape on trade and culture appears now highly fragmented with an extremely complex form of conflicting rules and overlapping legal regimes. But as Burri-Nenova has shown (2008) 'it is not only the regulatory framework that is profoundly fragmented but also the policy discussions'. However, the relevance of this fragmented policy discussion becomes increasingly questionable seeing the tremendous changes having occurred in the technological environment. Those changes have a strong and very complex impact on the mechanisms of creation, production and dissemination of cultural products as well as on their social impact and their role in the cultural distinction (Peterson 1992, 2005, Lahire 2004, 2008, Bennett *et al.* 2008) and on the appraisal of why culture is – or is not – diverse and how cultural diversity should be protected and promoted.

3.1.2. *Cultural diversity, equality rights, cultural rights and groups' rights*

On the other hand, the second notion of cultural diversity in international law refers to 'the existence of international law parameters for national diversity management' and 'governance'. It opens the question of minority protection to everyone and to the 'new minorities' (Von Bogdandy 2008). Indeed, it refers not only to the question of ethnic minorities, to the 'communal diversity' in the sense of Parekh (2002), and thereby to groups where there are 'several self-conscious and more or less well organized communities entertaining and living by their own different systems of beliefs and practices', but it also, at some point, raises the distinct questions of the 'perspectival diversity' which refers to ideologies dissenting from the mainstream (such as feminists) and of the 'subcultural diversity' which refers to the variety of groups which present their own cultural practices, ways of life and values, but who, at the same time, continue to share most of the values of the dominant society.

Cultural diversity in this second sense is translated into international law in three distinctive sets of human rights norms that refer to the idea of cultural diversity in different ways.

The first set deals with the protection of the right to equality enshrined in Article 26 of the International Covenant on Civil and Political Rights and also in the Conventions on the Elimination of all Forms of Discriminations against Women (1979), in the Convention on the Elimination of all Forms of Racial Discriminations (1965) and in the relevant ILO Conventions. Those Conventions do not recognise a right to equality before the law that would limit itself to the prohibition of arbitrary enforcement of laws. The right to equality also encompasses the right to equality by law (the creation by the law of a substantive equality) which has led to the prohibition of discrimination on certain grounds. In some circumstances, it also requires states to adopt positive measures to promote substantive equality, notably affirmative actions. Those four facets of the right to equality do not only require that 'equals should be treated equally', but also that 'unequal should be treated unequally': the right to equality includes the right to be different. Cultural diversity is both ignored in the equality principle – equality must be guaranteed without any discrimination based on cultural differences – and protected. Indeed, when the ignorance of cultural differences leads to exclusion, the right to equality requires reasonable adjustments to protect cultural diversity (Ringelheim 2011).

The second set of norms relates to universal cultural rights such as the right to participate to cultural life recognised in Article 15 (1)(a) of the International Covenant on Economic, Social and Cultural Rights. The latter right secures, according to the Committee on Economic Social and Cultural Rights, the right for everyone to freely participate in cultural life and implies negative and positive obligations for the states to respect, protect and fulfil an equal access, participation and contribution of everyone in the diversity of the cultural lives (General Comment No. 21, 2009). Cultural diversity forms thereby the *precondition* and the *object* of universal cultural rights. Individuals have not only the right to access and participate in the cultural life of their community, but also of other communities'.

The third set of norms relates to cultural rights recognised for the member of specific groups or for those groups. It includes indigenous peoples' rights (UN Declaration on Indigenous Rights, 2007) communities' rights, protection of intangible cultural heritage of certain groups, land rights, universal instruments protecting minorities (Article 27 of the International Covenant on Civil and Political Rights, Declaration on the

Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992) and of migrant's communities (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990). It also refers to the legal obligations derived from and to the rights of children belonging to certain minorities (Convention on the Rights of the Child, 1989). Within this last set, cultural diversity is designed as a reality to be protected in the case of specific groups. According to Ringelheim (2006, 2008), states have been unwilling, at the international level, to promote this understanding of cultural diversity and, as a result, international law has largely overshadowed the protection of 'cultural groups' because of the 'strong resistance of States to the recognition of groups rights'.

If we take this second broad and multilevel international understanding of cultural diversity in the specific context of cultural policies, cultural diversity can be understood as a concept that aims at protecting and promoting the cultural lives of certain individuals, certain member of creative milieux and certain groups within states. Cultural diversity then requires the respect, the protection and the promotion of the diversity of cultural lives, notably in the context of cultural policies. This second understanding of cultural diversity relates to the idea that states should 'manage diversities' in their cultural policies. In this perspective, they should not only take into account the 'old' minority cultural specificities but also the preoccupations of all (Von Bogdandy 2008) and the specificities of new, ethnic and immigrant groups (Wolfrum 1993). This requirement implies a reorientation of the law and of cultural policies which are currently focusing on cultural products and their exploitation (Schlesinger and Waelde 2012) towards a deeper understanding of the diversity of the actors of the diverse creative milieu. This requirement implies also necessarily a reorientation of some cultural policies: '[i]nsofar as it applies to the question of identity (both internal and external), [cultural diversity], it comes back to one of the most fundamental elements of cultural policies: their relationship to national identity' (Bonet and Négrier 2011).

This second understanding of cultural diversity in international law, highly linked with the theoretical propositions of legal pluralism (Griffiths 2002), is often said to have the potential to confront the first account of cultural diversity. Von Bogdandy (2008), for instance, argues that, beyond their common linkage with the question of identity, the second understanding limits the nature of the action of national states in the field of culture by establishing negative and positive obligations for states to respect, protect and promote group identities, whereas the first understanding of cultural diversity reinforces the action of national states (to protect and promote national identity). The latter is indeed said to be authorising states to shape a common cultural identity, a sense of political belonging and allegiance to the national community, an 'imagined community' of the nation which was and is still considered as necessary to achieve the individual citizen's sense of belonging and the creation of an identity in common (Mokre 2006) and of a political sphere.

Beyond what appears to be an irreconcilable antagonism, we think that a conjunctive analysis of the two concepts of cultural diversity in international law remains possible. Those two concepts can be articulated if the content and direction of public action on culture is reoriented towards a more open definition of national identities. This is namely accomplished by setting a dynamic democratic governance of cultural diversity within cultural policies. Only in that perspective can cultural diversity become a genuine legal concept and a customary norm able to be mobilised in all international 'regimes'. Instead of entailing a weakening of national cultural policies, cultural diversity – in the sense of multiplicity of

cultural lives – actually appears as ‘the driving force behind a reconstitution of this notion of cultural identity, reoriented toward plurality’ that implies, ‘for each of the different levels of public policy (from local to regional and central levels), a thorough reflection on the meaning of their cultural policies’ (Bonet and Négrier 2011).

3.2. *At the European level*

This conjunctive analysis of cultural diversity is particularly crucial in the European context which has been referred to as a ‘laboratory of cultural diversity’ (Baer 2005).

3.2.1. *The Council of Europe expanding protection of cultural diversity’s expressions*

Within the Council of Europe framework, the conjunctive analysis has been interestingly elaborated through the adoption of a set of instruments protecting human rights, minority rights and lastly, cultural heritage.

The 1950 European Convention on Fundamental Rights and Freedoms protects explicitly some facets of cultural diversity through the recognition of religious freedom, and, indirectly, through the recognition of the freedoms of assembly, expression and of association which allow individuals to express or contest their identities and to gather to promote cultural expressions. Moreover, the case law of the European Court has evolved on the question of cultural diversity from the *Belgian Linguistic Case* (where the Court qualified linguistic homogeneity as a legitimate objective) to the *Stankov case* (where the Court expressly valued cultural diversity and pluralism). As Ringelheim illuminated it (2006), this evolution was made possible through the recognition of an obligation to respect and take into account religious, linguistic and traditional specificities. The recognition of such an obligation is based not only on the above set of freedoms, but also on the idea that the respect and protection of cultural specificities can be necessary to guarantee the effectivity of a right (the Court made it clear in the case *Cyprus v. Turkey*). The recognition of this obligation is also deduced, as Ringelheim highlights it (2006), from the idea that the desire of individuals to express their cultural identity has to be considered as inherently linked with the object of the right protected: the desire of an individual to have a traditional lifestyle has been considered as covered by Article 8 of the Convention relating to the protection of private and family life. Finally, this obligation to respect and take into account cultural diversity has been deduced from the equality principle enshrined in Article 14 of the Convention and in Protocol 12. Indeed, the equality principle, since the *Thlimmenos’ case*, requires states, in some circumstances, to treat differently individuals placed in different situations, in order to guarantee them the effective exercise of their rights. In comparison, the European Social Charter does not provide a comprehensive incorporation of cultural rights and of cultural diversity. The Charter focuses on social and economic rights and contains no cultural rights (Donders 2003), exception being made of a right to participate in cultural life recognised for the elderly, the disabled people and the people living in poverty. Beyond this peculiar recognition of the right to participate in cultural life, the non-discrimination paragraph of the Preamble is the only provision that takes cultural considerations expressly into account.

Focusing on cultural diversity in the case of national minorities, the Council of Europe’s Framework Convention for the Protection of National Minorities firmly

engages states towards a full respect and protection of cultural diversity through a set of provisions protecting language, cultural expressions, religion and other cultural specificities of national minorities. Article 5 requires states ‘to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage’ and prohibits assimilation policies. The Explanatory report interestingly stresses that Article 5 ‘does not preclude the Parties from taking measures in pursuance of their general integration policy. It thus acknowledges the importance of social cohesion and reflects the desire expressed in the preamble that cultural diversity be a source and a factor, not of division, but of enrichment to each society within the European Council’ framework’.

Lastly, some sensitivity to cultural diversity is implicitly present in the Conventions devoted to cultural heritage protection adopted within the Council of Europe’s framework. Concern for cultural diversity is even explicitly expressed in the 2005 Framework Convention on the Value of Cultural Heritage for Society (Faro Convention), which tries to link cultural diversity, cultural heritage and sustainable development. However, this link isn’t translated into precise obligations for states nor into concrete guidelines that states should respect when developing cultural heritage policies. This Framework Convention doesn’t thereby constitute a strong basis to develop cultural heritage policies that take cultural diversity seriously.

To conclude, this section reveals that if the Council of Europe’s protection of cultural diversity is expanding in general human rights instruments (exception being made for the Social Charter) and in minority human rights instruments, cultural diversity, in the texts devoted to cultural policies, remains not clearly articulated with those policies. In those texts, cultural diversity is reduced to a vague motto that does not help to define cultural policies oriented towards the plurality and the diversity of culture.

3.2.2. The European Union’s ambiguous relationship with cultural diversity

At the EU level, the theme of diversity locates itself at the heart of the European motto ‘United in diversity’. Cultural diversity is also the legal and political cornerstone of the cultural policies of the EU: those cultural policies are, indeed, mainly devoted to the preservation of cultural diversity or the interaction between diverse cultures. What European law seemed to offer to the concept of cultural diversity at the beginning was an ‘integrationist function’: the diversity of cultures was seen as the heart of the cultural identity of Europe and, according to Psychogiopoulou (2008), as a ‘tentative answer to basic legitimacy’. Cultural diversity is still regarded as the only possible basis for a European unity in cultural matters. The EU constitutional framework is thereby said to allow for ‘political unity without cultural unity’ (Von Bogdandy 2008). The idea is to ‘mak[e] the most of all aspects of this diversity, thereby turning European culture into a culture of cultures by creating the most fertile environment possible’ (Resolution of the European Parliament of 17 February 1989 on a fresh boost for community action in the cultural sector, 1989).

Although UNESCO has formally defined cultural diversity, European institutions have refused to give definition of the concept or of the concept of culture. Moreover, as Barbato (2008) demonstrated, European institutions are more interested by the economic and social dimensions of culture than by the ‘cultural’

ones. And, as the same author has argued, the concept of ‘culture’ and of ‘cultural diversity’ are “functional” in European law: “[l]’existence d’un aspect culturel est mis en avant lorsque [le droit communautaire] est amené à traiter d’un objet qui, d’après ces auteurs, relève de ce domaine’ (Barbato 2008). For this reason, cultural diversity appears to be, in European law, a considerably flexible concept, including not only cultural goods and services, but also linguistic and religious diversities.

EU Law mobilises diverse legal instruments to respect and promote cultural diversity. Various ‘Cultural diversity’ clauses can be identified in European primary law. They can be arranged in two sets.

The first relates to political integration. As Barbato (2008) showed, the cultural competence of the EU is ordered on the respect of cultural diversity, while its objective is the promotion of cultural diversity. Article 167(4) of the Treaty on the Functioning of the European Union (TFEU), indeed, states that ‘the Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures’. Moreover, moving to the configuration of the European political integration, cultural diversity obviously appears as one of the fundamental values of the Union that is translated in a very specific legal nature of the European integration. Article 3 of the TFEU establishes ‘the respect of its rich cultural and linguistic diversity’ and ‘the safeguard and enhancement of Europe’s cultural heritage’ as values of the EU (before the economic union). According the European Charter on Fundamental Rights, ‘the Union shall respect cultural, religious and linguistic diversity’. This clause confirms the status of cultural diversity as an important value and its link with fundamental rights and minorities’ rights. The concept of cultural diversity, in EU law, thereby also refers to the ‘principles of governance of cultural diversity’ in the sense of protection of new and old minorities’ rights (Dacyl and Westin 2000).

The constitution of cultural diversity as a fundamental value of EU law has been widely discussed. A legal controversy relates to the legal qualification of the concept. If cultural diversity is a value of the EU, as Arts *et al.* discussed it (2003), this does not imply that it is a principle of EU law (Von Bogdandy 2008). On the contrary, Barbato (2008) qualifies cultural diversity as a fundamental principle of EU law and as a leading idea of the European project. A second controversy concerns the fact that the EU does not appear as a univocal actor, on the legal stage, of the respect and promotion of the cultural diversity existing either between Member States or within them (Barbato 2008). Despite the various legal instruments adopted, the European governance of cultural diversity is qualified by Kiwan and Hanna Meinhof (2006) as ‘superficial’, paralleling the aforementioned conclusions reached about international public law on the second understanding of cultural diversity. The various normative initiatives to promote cultural diversity comprehend not only the diplomatic efforts to encourage the adoption of the 2005 UNESCO Convention on cultural diversity, but also the ratification by the EU of the Convention and the qualification by the *European Agenda for Culture in a Globalizing World* of culture as a vital element in the EU’s international relations (European Commission, *Communication on a European Agenda for Culture in a Globalizing World*, above, 2–3, 7 and 10). However, neither does the recognition of cultural diversity as a value suggest, at the political internal level, that the shift towards a European multicultural model is complete (Piciocchi 2003) but only that, a new ‘European common core is emerging: cultural diversity as cultural pluralism’ (Palermo 2003).

These controversies are nurtured by the second set of cultural diversity clauses and by the ambiguous function played by cultural diversity within the Common Market rules and the economic integration. Within this framework, the *promotion* of cultural diversity is mainly pursued on the basis of the strict application of free movement and free competition principles to the cultural sector. Contrariwise, European law contains limits to the application to those principles to cultural sectors aiming at *respecting* cultural diversity by preserving the cultural policies of the Member States. For instance, Article 87 of the Treaty admits state aids that promote culture and heritage conservation as long as such aid does not affect the economic integration and the common market. It reflects the idea that respect for cultural diversity can, to some extent, be a limit to the economic integration.

Following de Witte (2001), the ‘value of cultural diversity is relevant in two ways: it may help to define the *limits of negative integration*, and it may help to shape the content of *positive integration* measures’. Cultural diversity can justify certain limits to the negative integration as the respect for cultural diversity might call for restrictions to trade or state aids. Promotion of cultural diversity is also an objective that has to be taken into account in all market policies and harmonisation activities (Barbato 2008), but that is understood in very different ways. Here, again, we find a tension between different uses of the notion of cultural diversity.

In any case, through the recognition of cultural diversity and the implementation of subsidiarity in cultural fields, European law does indeed protect cultural pluralism but not *distinctiveness* as de Witte said (2001). According to Jean-Christophe Barbato, ‘la diversité culturelle nationale et régionale ne doit pas être entendue uniquement en tant que substance mais aussi, en tant que contenant’ (Barbato 2008): respect must be ensured to diversity between and within the Member States (Psychogiopoulou 2009). Again, cultural diversity appears as a conjunctive notion, reflecting partial agreements on the relationships between European law, cultural lives, cultural identities and markets and articulating notions like integration and heterogeneity, notably in the case of cultural policies.

4. Conclusion

Throughout this article, we revealed that the legal concept of cultural diversity remains largely unclear because of the tensions existing between different poles within this notion. Those poles define cultural diversity in the sense of variety of goods and services, cultural diversity in an anthropological sense and cultural diversity in the hermeneutic sense. Cultural diversity is torn between ‘unity’ and ‘multiplicity’ poles, between an understanding of diversity as ‘distinctiveness’ and as ‘pluralism’, between a ‘multiculturalism of fear’ and a ‘multiculturalism of hope’. It can be concluded that the vagueness of cultural diversity reflects those tensions and the power struggles that create them. Those tensions also reflect the complex interactions between the concept of cultural diversity and the different conceptions of culture and of models of public action in the cultural fields. Because of these tensions and complex interactions, it is extremely difficult to assess a univocal and precise legal content of the notion, while political uses of it are increasing dramatically.

Cultural diversity thereby appears as an ‘incompletely theorized agreement’. If there is an agreement on the exclusion from the protection of cultural diversity of ‘state-supporting homogeneity, identity, distinctiveness’ (Von Bogdandy 2008) in

international and European law, there isn't any on the articulation between respect and promotion of cultural diversity within markets' regulations or on the articulation between the protection and promotion of diverse cultural lives and the promotion of common values.

This complexity cannot justify an easy rejection from the legal stage of this notion and of the political concerns it embodies or the formulation of a definition that would just oversimplify those concerns. A deeper debate is needed to conciliate the diverse poles of the legal concepts of cultural diversity and to articulate its different levels of governance. That debate, in the case of cultural policies, would lead all levels of governance to operate a Copernican Revolution on the question of cultural policies by promoting cultural diversity as the underlying common principle of their action.

This Copernican Revolution would begin by acknowledging that respect and protection of cultural diversity in cultural policies mean that cultural policies have to truly implement and promote the principle of non-discrimination and of equality when it comes to cultural policies and to the cultural rights related to them. Respect and protection of cultural diversity in cultural policies also requires the opening of a deep debate on the design and implementation of cultural policies of cultural diversity. This debate shall enlarge the participation of all citizens (and of all communities) in cultural policies in order to give a meaning to the idea of cultural diversity that can be translated into renewed cultural policies. It shall also entail the recognition in cultural policies of 'the right of individuals, irrespective of their legal status, to participate in the cultural life of their choice and to exercise free choice with respect to their cultural practices' as well as 'the imperative to foster the development of public space (...) in which all cultures have equality of status and regards' (Robins 2006).

Those requirements do not necessarily exclude that states draw distinctions to promote positive action for certain minority groups and to promote cultural expressions fostering common values and linking citizens around these values (such as tolerance, respect). Public services can support certain artistic community projects that reinforce social cohesion or shed light on certain parts of the common cultural heritages of its citizens. Cultural diversity implies solely that states must ensure respect for equality in their cultural policies and must justify their choices. Cultural expressions that contribute equally to the formation of citizenship, to cultural democratisation or cultural democracy cannot be systematically excluded from public support related to cultural policies pursuing those objectives. This does not mean that states are obliged to support all forms of culture and all cultural expressions in their cultural policies, which is an impossible task and would inevitably lead to fragmentation of subsidies. States must be able to design coherent cultural policies, but, in the implementation of these cultural policies, the requirement of cultural diversity implies that procedures that can reflect cultural diversity must be defined to include all relevant cultural expressions. It also implies that priorities and choices structuring cultural policies must be justified in light of cultural diversity.

In a conjunctive way of thinking, cultural diversity and the promotion of common values and of democracy need not conflict, at the level of cultural policies, or at all. However, conciliating these two politics within cultural policies requires developing skills to think about cultural diversity as well as specific competences regarding the mixing of cultures and the promotion of a dialogue between them. It also requires law and cultural policies to pay more attention not only to the

diversity of cultural products but foremost, to how diverse creative milieux are actually operating and what are ‘the value systems of those who work with them’ (Schlesinger and Waelde 2012). This can be done, notably, by the genuine implementation of cultural studies and intercultural concerns into the law and into cultural policies, and, more generally, by the setting up of democratic procedures that authorise every citizen, every member of creative milieu and every cultural group to truly participate in the conduct, the design and the implementation of cultural policies.

References

- Arts, W., Hagenaars, J., and Halman, L., 2003. *The cultural diversity of European unity. Findings, explanations and reflections from the European values study*. Leiden: Brill Academic.
- Baer, J.-M., 2005. L’Europe, laboratoire controversé de la diversité culturelle [L’Europe, a controversial laboratory of cultural diversity]. *Mouvements*, 37, 33–40.
- Barbato, J.-C., 2008. *La diversité culturelle en droit communautaire. Contribution à l’analyse de la spécificité de la construction européenne* [Cultural diversity in community law : contribution to the analysis of the specificity of European construction]. Aix/Marseille: Presses Universitaires d’Aix Marseille.
- Beat Graber, C., 2006. The new UNESCO convention on cultural diversity: a counterbalance to the WTO. *Journal of international economic law*, 9 (3), 554–574.
- Beat Graber, C., 2008. Substantive rights and obligations under the UNESCO convention on cultural diversity. *NCCR Trade Regulation Working Paper No 8*.
- Bennett, T., Savage, M., Silva, E., Warde, A., Gayol-Cal, M., and Wright, D., 2008. *Culture, class, distinction*. London: Routledge.
- Bonet, L. and Négrier, E., 2011. The end(s) of national cultures? Cultural policy in the face of diversity. *International journal of cultural policy*, 17 (5), 574–589.
- Burri-Nenova, M., 2008. Trade versus culture in the digital environment: an Old Conflict in need of a new definition. *Journal of international economic law*, 12, 17–62.
- Carmody, C., 1999. When ‘cultural identity was not at issue’: thinking about Canada – certain measures concerning periodicals. *Law & policy in international business*, 30 (2), 231–256.
- Carmody, C., 2007. Creating ‘shelf space’: Nafta’s experience with cultural protection and its relevance for the WTO. *Asian journal WTO & international health & policy*, 2, 287–311.
- Castoriadis, C., 1996. *La montée de l’insignifiance. Les Carrefours du Labyrinthe* [The rise of insignificance: the crossroads of the labyrinth] – 4. Paris: Seuil.
- Cornu, G., 2005a. *Linguistique juridique* [Legal linguistic]. 3rd ed. Paris: Montschrestien.
- Cornu, M., 2005b. L’émergence du principe de diversité culturelle [The emergence of the principle of cultural diversity]. In: M.-F. Labouz, ed. *La diversité culturelle en question (s). Cultural diversity in question(s)*. Bruxelles: Bruylant, 251–259.
- Corten, O., 1998. Eléments pour une sociologie politique du droit [Some elements of a political sociology of law]. *Droit et Société*, 39, 247–370.
- Craufurd-Smith, R., 2007. The Unesco convention on the protection and promotion of cultural expressions: building a new world information and communication order? *International journal of communication*, 1, 24–55.
- Cuche, D., 2001. *La notion de culture dans les sciences sociales* [The notion of culture in social sciences]. Paris: La Découverte.
- Dacyl, J. and Westin, C., 2000. *Governance of cultural diversity: selected aspects*. Stockholm: Centrum för forskning om internationell migration och etniska relationer (CEIFO).
- de Stexhe, G. and Thomas, M., 1998. La culture comme unité complexe: un enjeu médiatique et politique [Culture as a complex unit: a mediatic and political stake]. In: A. Strowel and H. Dumont, eds. *Politiques culturelles et droit de la radio-télévision*. Bruylant: Bruxelles, 19–48.

- de Witte, B., 2001. Trade in culture: International legal regimes and EU constitutional values. In: G. de Burca and J. Scott, eds. *The EU and the WTO. legal and constitutional issues*. Oxford: Hart Publishing, 237–255.
- Donders, Y.-M., 2003. The protection of cultural rights in Europe: none of the EU's Business? *Maastricht journal of European and comparative law*, 10 (2), 117–147.
- Dumont, H. and Bailleux, A., 2010. Esquisse d'une théorie des ouvertures interdisciplinaires accessibles aux juristes [Towards a lawyer-friendly theory of interdisciplinary openness]. *Droit et Société*, 75, 275–293.
- Dworkin, R., 1985. *A matter of principles*. Harvard: Harvard University Press.
- Griffiths, A., 2002. Legal pluralism. In: R. Banakar and M. Travers, eds. *An introduction to law and social theory*. Oxford: Hart, 289–301.
- Habermas, J., 1986. *L'espace public*. Paris: Payot & Rivages.
- Habermas, J., 1987. *Théorie de l'agir communicationnel* [Theory of the communicative action], T.II, *Pour une critique de la raison fonctionnaliste*. Paris: Fayard.
- Habermas, J., 1995. *Sociologie et théorie du langage* [Sociology and language theory]. Paris: Armand Collin.
- Hahn, M., 2006. A clash of cultures? The UNESCO diversity convention and international trade law. *Journal of international economic law*, 9 (3), 515–552.
- Isar, R., 2006. Cultural diversity. *Theory culture society*, 23, 372–375.
- Kant, E., 1962. *Critique de la raison pure* [The critique of pure reason]. 2nd ed. Paris: Presses universitaires de France.
- Kiwan, N. and Hanna Meinhof, U., 2006. Perspectives on cultural diversity: a discourse analytical approach. In: U. Hanna Meinhof and A. Triandafyllidou, eds. *Transcultural Europe: cultural policy in a changing Europe*. Basingstoke: Palgrave Macmillan, 57–77.
- Kymlicka, W., 1995. *Multicultural citizenship. A liberal theory of minority rights*. Oxford: Oxford University Press.
- Labouz, M.-F., 2005. La diversité culturelle dans quelques États [Cultural diversity in some states]. In: M.-F. Labouz and M. Wise, eds. *La diversité culturelle en question(s). Cultural diversity in question(s)*. Bruxelles: Bruylant, 1–27.
- Lahire, B., 2004. *La culture des individus: Dissonances culturelles et Distinction de soi* [The culture of individuals: cultural dissonances and the differentiation of the self]. Paris: La Découverte.
- Lahire, B., 2008. The individual and the mixing of genres: cultural dissonance and self-distinction. *Poetics*, 36, 166–188.
- Mayer-Robitaille, L., 2004a. L'impact des accords de libre-échange américains sur le statut juridique des biens et services culturels [The impact of American free trade agreements on the legal status of cultural goods and services]. *Annuaire français de droit international*, 50 (1), 715–730.
- Mayer-Robitaille, L., 2004b. Le statut ambivalent au regard de la politique communautaire de concurrence des accords de nature culturelle et des aides d'État relatives à la culture [The ambivalent status in the light of community competition policy of cultural agreements and of state aids regarding culture]. *Revue trimestrielle de droit européen*, 30, 477–503.
- Mayer-Robitaille, L., 2008. *Le statut juridique des biens et des services culturels dans les accords commerciaux internationaux* [The legal status of cultural goods and services in the international commercial agreements]. Paris: l'Harmattan.
- Miller, T. and Yudice, G., 2002. *Cultural policy*. London: Sage.
- Mokre, M., 2006. European cultural policies and European democracy. *Journal of arts management, law & society*, 35 (4), 31–47.
- Mulcahy, K.V., 2006. Definitions and theoretical approaches of cultural policy. *Journal of arts management, law & society*, 25, 319–330.
- Ost, F., 1997. Déployer le temps. Les conditions de possibilité du temps social [Deploying time: possibility conditions of the social time]. *European Academy of Legal Theory Working Paper*, 36. Available from: www.legaltheory.net
- Palermo, F., 2003. Integration of constitutional values in the European Union – an Epilogue. In: European Autonomy and Diversity Papers, ed. *European constitutional values and cultural diversity*. Bolzano: EURAC Research Bozen, 116–117.

- Pallard, H., 1997. Culture et diversité culturelle: essai préliminaire à une étude sur l'universalité des droits fondamentaux [Culture and cultural diversity: preliminary essay to a study on universality of human rights]. In: H. Pallard and S. Tzitzis, eds. *Droits fondamentaux et spécificités culturelles*. Paris: L'Harmattan, 21–40.
- Parekh, B., 2002. *Rethinking multiculturalism: cultural diversity and political theory*. Harvard: Harvard University Press, 3.
- Peterson, R.A., 1992. Understanding audience segmentation: from elite and mass to omnivore and univore. *Poetics*, 21, 243–258.
- Peterson, R.A., 2005. Problems in comparative research: the example of omnivorousness. *Poetics*, 33, 257–282.
- Piciocchi, C., 2003. Europe face cultural diversity: towards a European multicultural model? In: F. Palermo and G.N. Toggenburg, eds. *European constitutional values and cultural diversity*. Bolzan: URAC Research, 25–36.
- Psychogiopoulou, E., 2008. *The integration of cultural considerations in EU law and policies*. Leiden: Martinus Nijhoff.
- Psychogiopoulou, E., 2009. *The integration of cultural considerations in EU law and policies*. Leiden: Martinus Nijhoff.
- Regourd, S., 2006. Le paradigme européen de la diversité culturelle à l'aune de la Convention UNESCO [The European paradigm of cultural diversity in the light of the UNESCO Convention]. *Revue des affaires européennes*, 4, 607–613.
- Regourd, S., 2008. Exception et diversité culturelle: portée et vicissitudes des concepts juridiques [Cultural exception and diversity: scope and vicissitudes of legal concepts]. In: J.-P. Saez, ed. *Culture et Société. Un lien à recomposer*. Toulouse: Editions de l'Attribut, 136–145.
- Ringelheim, J., 2006. *Diversité Culturelle et droits de l'homme: la protection des minorités par la Convention européenne des Droits de l'homme* [Cultural diversity and human rights: the protection of minorities through the European Convention on human rights]. Bruxelles: Bruylant.
- Ringelheim, J., 2008. Integrating cultural concerns in the interpretation of general individual rights – lessons from the international human rights case law. *Background papers from Experts gathered for the General Discussion Day on the Right to take part in cultural life organized by the Committee on Economic, Social and Cultural Rights*. E/C.12/40/4.
- Ringelheim, J., 2011. *Le droit et la diversité culturelle* [Law and cultural diversity]. Bruxelles: Bruylant.
- Robins, K., 2006. *The challenge of transcultural diversities. Cultural policy and cultural diversity*. Strasbourg: Council of Europe Publishing.
- Schlesinger, P. and Waelde, C., 2012. Copyright and cultural work: an exploration. *Innovation: the European journal of social science research*, 25 (1), 11–28.
- Schneider, H. and van den Bossche, P., eds., 2008. *Protection of cultural diversity from a European and international perspective*. Antwerp: Intersentia.
- Schuster, J.-M., 2003. *Mapping state cultural policy: the state of Washington*. Chicago, IL: Publications of the University of Chicago.
- Smiers, J., 2003. *Arts under pressure. Promoting cultural diversity in the age of globalization*. The Hague: Zed Books.
- Stevenson, N., 2003. *Cultural citizenship: cosmopolitan questions*. Maidenhead: Open University Press.
- Sunstein, C., 1995. Incompletely theorized agreements. *Harvard law review*, 108 (7), 1733–1772.
- Taylor, C., 1994. *Multiculturalism: examining the politics of recognition*. Princeton, NJ: Princeton University Press.
- Tully, J., 1995. *Strange multiplicity: constitutionalism in an age of diversity*. Cambridge: Cambridge University Press.
- Von Bogdandy, A., 2008. The European Union as situation, executive, and promoter of the international law of cultural diversity – elements of a beautiful friendship. *European journal of international law*, 19 (2), 241–275.
- Wolfrum, R., 1993. The emergence of new minorities in international law. In: C.M. Brölmann, R. Lefeber, and M.Y.A. Zieck, eds. *Peoples and minorities in international law*. Berlin: Springer, 153–166.

Legal Documents

- Convention on the Elimination of all Forms of Racial Discriminations A. RES 2106. 21 December 1965.
- Communication of the European commission to the Council of the 22 November 1977, 'L'action communautaire dans le secteur culturel', Bull. C.E., supplement 6/77.
- Convention on the Elimination of all Forms of Discrimination against Women, A RES 34/180, 18 December 1979.
- Convention on the Rights of the Child, A RES 44/25, 20 November 1989.
- Resolution of the European Parliament of 17 February 1989 on a fresh boost for Community action in the cultural sector, OJ C 69, 20/3/1989, p. 180.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, A RES 45/158, 18 December 1990.
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, A RES 47/135, 18 December 1992.
- Framework Convention of the Council of Europe for the Protection of National Minorities, 1st February 1995.
- Communication of the Commission of the European Communities of 17 April 1996, COM (96) 160, p. 6.
- UN Declaration on the rights of indigenous peoples, 61st UN Assembly, 13 September 2007.
- General Comment No. 21: Right of Everyone To Take Part in Cultural Life*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 43rd Sess. 23, U.N. Doc. E/C.12/GC/21 (2009).
- Treaty on the Functioning of the European Union (Consolidated version 2012), OJ C 326, 26 October 2012.
- Treaty on the European Union (Consolidated version 2012), OJ C 326, 26 October 2012.

Cases

- Eur. Ct. H. R. *Case relating to certain aspects of the laws on the use of language in education in Belgium*, 23 July 1968, (Belgian Linguistic Case).
- Eur. Ct. H. R. *Thlimmenos v. Greece*, 6 April 2010.
- Eur. Ct. H. R. *Cyprus v. Turkey*, 10 May 2010.
- Eur. Ct. H. R. *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, 2 January 2002.