

Cultural Relations Among States: Is a Legal Adaptation Required?

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DOI: 10.26443/glsars.v2.i1.183

Abstract

Cultural rights are an integral part of human rights. According to the *International Covenant on Economic, Social and Cultural Rights* (art. 15), the latter include the right to take part in cultural life, to enjoy the benefits of scientific progress and to benefit from the results of any scientific, literary or artistic production. In order to promote the cultural dimension of human rights, cultural relations among States represent an important tool since they foster initiatives in different sectors (i.e., cinema, literature, music, design, fashion), thereby giving people a better chance to enjoy and develop cultural rights. This essay will highlight the importance to properly define and regulate cultural relations among States through an adaptation of international law, which currently lacks any provision on the issue. Although some international instruments mention cultural relations, they never provide a comprehensive legal framework for their development: The *Vienna Convention on Diplomatic Relations* (1961) merely acknowledges the existence of “cultural relations”; while the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005) aims to encourage dialogue among cultures (art. 1), but never refers to cultural relations. In order to fill this legal gap, this paper will first examine some international tools connected with cultural relations. Secondly, will consider the possibility to adopt a new Convention or act of soft law to define their core principles and values. The overarching argument will hold that an adaptation of international law would help guarantee that the overall outcomes of cultural relations are greater connectivity, better mutual understanding, enhanced sustainable dialogue between states, people and non-state actors, thereby significantly promoting a human right based approach to culture.

Keywords: *cultural relations, human rights, cultural rights, legal adaptation, diversity.*

Résumé

Les droits culturels font partie intégrante des droits de l'Homme. Aux termes du Pacte international relatif aux droits économiques, sociaux et culturels (art. 15), ils incluent le droit de participer à la vie culturelle, de bénéficier du progrès scientifique et de ses applications, et de bénéficier des résultats de toute production scientifique, littéraire ou artistique. Les relations culturelles entre États représentent un outil majeur dans le but de promouvoir la dimension culturelle des droits de l'Homme, puisqu'elles encouragent des initiatives dans différents secteurs (i.e., le cinéma, la littérature, la musique, le *design* ou la mode), donnant ainsi aux individus de plus grandes chances de bénéficier et de développer les droits culturels. Cet article soulignera l'importance de définir correctement, et de réguler, les relations culturelles entre États à travers une adaptation du droit international, qui ne compte actuellement aucune disposition sur le sujet.

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Même si certains instruments internationaux mentionnent les relations culturelles, ils ne fournissent jamais un cadre juridique compréhensible pour leur développement. La Convention de Vienne sur les relations diplomatiques (1961) reconnaît à peine l'existence de « relations culturelles » ; tandis que la Convention sur la protection et la promotion de la diversité des expressions culturelles (2005) vise à encourager le dialogue entre les cultures (art. 1), mais ne se réfère jamais aux relations culturelles. Afin de remédier à ce vide juridique, cet article examinera d'abord certains instruments internationaux en lien avec les relations culturelles. Puis, il considèrera la possibilité d'adopter une nouvelle convention, une nouvelle loi, ou un nouvel instrument de droit souple, pour en définir les principes fondamentaux et les valeurs. Le raisonnement global soutiendra qu'une adaptation du droit international aiderait à garantir que l'aboutissement des relations culturelles soit une plus grande connectivité, une meilleure compréhension mutuelle et un dialogue durable renforcé entre les États, les peuples et les acteurs non-étatiques, promouvant ainsi de manière significative une approche de la culture fondée sur les droits de l'Homme.

Mots-clés : *Relations culturelles, droits de l'Homme, droits culturels, adaptation juridique, diversité.*

Introduction

After the Second World War, together with the arrival of democratic constitutions, the enlargement of human rights topics and the necessity to extend the relevance to an international and regional level from the domestic dimension gradually grew. In this sense we talk about the phenomenon of “internationalization”¹ of human rights. Thus, starting from the *Charter of United Nations* in 1945 and the *Universal Declaration of Human Rights* in 1948, subsequently arises, on one hand, a series of regional organizations too,² and, on the other, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR), both signed in 1966.³ Consequently, and with regards to the first Covenant as above, we can consider today's cultural rights as an integral part of human rights,⁴ insofar as they include the

¹ Interpreted as a complex process that is divided into three parts: the recognition of the innate rights of individuals and human communities within instruments of international law; the functioning of a special international guarantee system; and international politics which has as its object the position of legal norms and the setting up of permanent guarantee apparatuses and which involves, as significant actors, states, intergovernmental organizations and international non-governmental organizations. Regarding the theme, see Marco Mascia, *L'internazionalizzazione dei diritti dell'infanzia* (CEDAM, 1990), 67-76.

² For example, the Organization of American States (OAS) with its American Convention on Human Rights signed in 1969; the Council of Europe and the European Convention on Human Rights of 1950; and the African Union with the African Charter on Human and People's Rights of 1981.

³ P. De Stefani, *Dall'etica al diritto: internazionalizzazione dei diritti umani* (x, 2001), 92.

⁴ As stated, above all, in the Universal Declaration of Human Rights of 1948, in art.26 and 27.

right to take part in cultural life, to enjoy the benefits of scientific progress and to benefit from the results of any scientific, literary, or artistic production, as stated in art. 15.⁵

Simultaneously to the internationalization process of human and cultural rights, the theorization of international cultural relations has been established, understood today as “reciprocal transnational interactions between two or more cultures, encompassing a range of activities conducted by state and/or non-state actors within the space of culture and civil society. The overall outcomes of cultural relations are greater connectivity, good mutual understanding, more and deeper relationships, mutually beneficial transactions and enhanced sustainable dialogue between people and cultures, shaped through engagement and attraction rather than coercion”.⁶ The fact that a multitude of actors, together, can create a cultural interconnection between nations, could give people a better chance to enjoy and develop cultural rights in as much as they foster initiatives in different spheres of culture, highlighting the importance of a free access for every individual inside these. Thus, encouraging dialogue among cultures, cultural relations could be able to strengthen cultural rights, also underscoring their importance in the international dimension. In fact, in the *Joint Communication to the European Parliament and the Council of 2016* named towards an EU strategy for international cultural relations it is underlined, as a guiding principle for the EU action in the field of international cultural relations, the promotion of cultural diversity and respect for human rights.⁷ Therefore, also cultural rights, and, as we will see, the right to take part in cultural life.

Other international conventions announce the existence of international cultural relations but merely acknowledge their existence, as the *Vienna Convention on Diplomatic Relations* in 1961 did,⁸

⁵ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 12 April 2022]

⁶ See the cultural relations definition adopted by British Council and Goethe Institut, available in J.P. Singh, *British Council and Cultural relations: Betwixt Idealism and instrumentality* (Cultural Relations Collection, 2018), 7. <https://www.britishcouncil.org/sites/default/files/british-council-cultural-relations-idealism-instrumentality.pdf> [accessed 8 may 2022].

⁷ European Commission, *Towards an EU strategy for international cultural relations*, 8 June 2016, p. 3, Document 52016JC0029, available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52016JC0029&from=EN>.

⁸ United Nation General Assembly, *Vienna Convention on Diplomatic Relations*, art. 3(e), 18 April 1961, United Nation Treaty Series, vol. 500, p. 95, available at: https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf.

or the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* in 2005,⁹ that aims to encourage dialogue among cultures, even though it fails to refer or define cultural relations.

This paper will try to underline the importance to properly define and regulate international cultural relations among States through an adaptation of international law that will specify the importance of the theme, stressing the core principle and values that should be respected. To do so, it will firstly concentrate on the doctrine concerning cultural relations, cultural rights, and the prospective to consider the latter as a part of cultural relations; secondly it will focus on the state-of-the-art about cultural relations tools existing nowadays and its relative scarcity; and finally, it will consider if a legal adaptation is necessary, and whether it is possible to strengthen cultural relations through a new international tool, by which it will be possible to expand and increase the range of cultural rights.

Part 1: The Doctrine About Cultural Relations Definition

Even though today there are more established conceptual currents than others the definition of international relations remains a debate at the academic level that struggles to reach a generalized agreement. At the same time, the importance noted in the potential beneficial action that the implementation of a new approach – based on the incessant attempt to establish friendly relations between states and, if there aren't, to use culture as a tool to achieve the desired results rather than through military and/or economic power¹⁰ – has led writers to deepen the theme because of the relevance noted in it.

In order to enter into the various worlds of international cultural relations, it is first necessary to have a clear overview of what and how many types of conceptions about the theme still exist today, and who are the subjects that today contribute, develop and/or interfere with this dimension of relations among States. Today it is accepted that various types of actors, both public and private, are coming together: among the former ones, a key role is played by national cultural institutes and

⁹ UNESCO General Conference, *Convention on the Protection and Promotion of the Diversity of Cultural Expression*, art.1 (c), 20 October 2005, p.5, available at: https://en.unesco.org/creativity/sites/creativity/files/convention2005_basictext_en.pdf#page=18.

¹⁰ J-P. N. E. Wanger, *The Effectiveness of Soft & Hard Power in Contemporary International Relations*, (e-international relations, 2014), <https://www.e-ir.info/2014/05/14/the-effectiveness-of-soft-hard-power-in-contemporary-international-relations/> [accessed 8 May 8, 2022].

more generally by cultural diplomacy;¹¹ amongst the latter, a multitude of stakeholders are active in the field. Non-governmental organizations, private foundations, propose and organize events, and also the citizens themselves must be taken into consideration, as they can have strong influences in the field of international cultural relations.

Even though a certain interest in the subject is still present to date the academic community still struggles to arrive at a shared definition of international cultural relations. It is possible that the lack of agreement on what international cultural relations actually are and what they could be defined arises from the fact that already at the semantic level, we are in the presence of words that even if they are taken individually contain meanings that are difficult to crystallize. Culture, in fact, understood as the “customs and beliefs, art, way of life and social organization of a particular country or group”,¹² represents a very wide term, susceptible to variations depending on historical and geographical contexts. The term “relations”, in the sociological field, can be conceived as “the way in which people, groups or countries behave towards each other or deal with each other”,¹³ but the concept is so vast that it is not able to suggest anything in order to give a universal definition to international cultural relations. Finally, when we talk about something conducted among States, we intend activities conducted by two or more countries. Thus, the stress is placed on the transnational nature of the connections examined. It seems that when we talk about international cultural relations, or among States, we enter an extremely wide, various, and changing field, and it is perhaps for this reason that a concrete definition has not yet been produced. Even before we talked about cultural relations, and since it has always been recognized as important idea from a diplomatic point of view, culture has been used as a real instrument of foreign policy, with different purposes depending on the historical periods and the needs of each country. It is from here, in fact, that the concept of “cultural diplomacy” was born, that is, when governmental activity aimed at projecting a favorable image of the nation in the eyes of the public of other countries and with the main task of guaranteeing alliances and influence on a State, by promoting its visibility through the internationalization of its cultural life. Nevertheless, cultural diplomacy can also be understood as a qualified tool for dialogue and the structuring of relations with other cultural contexts.

¹¹ T. Rivera, *Distinguishing Cultural Relations from Cultural Diplomacy: The British Council's Relationship with Her Majesty's Government*, (Figueroa Press, 2015), p.11. ISBN 978-018218801-7. <https://uscpublicdiplomacy.org/sites/uscpublicdiplomacy.org/files/useruploads/u33041/Distinguishing%20Cultural%20Relations%20From%20Cultural%20Diplomacy%20-%20Full%20Version%20%281%29.pdf> [accessed 8 May 2022].

¹² The definition is given by *Oxford Learner's Dictionaries*. https://www.oxfordlearnersdictionaries.com/definition/english/culture_1?q=culture [accessed 8 May 2022].

¹³ The definition is given by *Oxford Learner's Dictionaries*. <https://www.oxfordlearnersdictionaries.com/definition/english/relation?q=relations>. [accessed 8 May 2022].

However, with the end of the Cold War, the concept of cultural diplomacy was gradually abandoned by several governments, while that of “cultural relations” made its way, aimed at indicating a more interactive interconnection and a cultural dialogue with mutual benefit to the parties.¹⁴ A study conducted by Margaret J. Wyszomirski, in which the cultural foreign policies of nine countries (Australia, Austria, Canada, France, Japan, the Netherlands, Singapore, Sweden and the United Kingdom) are compared, has shown how the term cultural diplomacy has fallen into disuse.

Only France is still using this term, while four other countries are using the term “international cultural relations”, or similar expressions such as international cultural policy”.¹⁵ Although the definitory aspect is still not entirely clear, it seems to be certain that a series of non-state actors would fall within the concept of cultural relations – such as companies, non-governmental organizations, private foundations, and sometimes the citizens themselves – who, much like public actors, are able to influence and direct culture through a dense relational network.

Given the strong link existing between cultural diplomacy and cultural relations, a comparative analysis of these two concepts might be beneficial in order to outline a more thorough definition of the latter term. Tim Rivera, quoting the words of Richard Arndt, states that cultural relations identify the relations between national cultures, those intellectual and educational aspects rooted in societies that tend to flow outside national borders and produce cultural pollination. They are a phenomenon that develops naturally and organically, without the necessary intervention of governments; cultural diplomacy, instead, would be the attempt of the institutions to make their own relational flow and use it to favor of national interest.¹⁶

Cultural relations appear to be a deeper and more rooted approach compared to cultural diplomacy. The two differ also in terms of life expectancy: cultural relations offer long-term perspectives, based on the attempt to achieve a solid and mutual understanding between nations,

¹⁴ E. Torcutti, *Diplomazia culturale e politica culturale*, (Università degli Studi di Trieste, 2004-2005), p. 10. https://www.ilsegnalibro.com/normativa/tesi_torcutti.pdf [accessed 8 May 2022].

¹⁵ M. J. Wyszomirski, *International cultural relations: a multi-country comparison*, (Cultural Diplomacy Research Series, 2003), pp.1-5. https://intranet.americansforthearts.org/sites/default/files/MJWpaper_0.pdf, [accessed 8 May 2022].

¹⁶ R. T. Arndt, *The First Resort of Kings: American Cultural Diplomacy in the Twentieth Century*, (Potomac Books, Inc., 2005) in T. Rivera, *Distinguishing Cultural Relations from Cultural Diplomacy: The British Council's Relationship with Her Majesty's Government*, Los Angeles, 2015, p. 9. ISBN 978-018218801-7. <https://uscpublicdiplomacy.org/sites/uscpublicdiplomacy.org/files/useruploads/u33041/Distinguishing%20Cultural%20Relations%20From%20Cultural%20Diplomacy%20-%20Full%20Version%20%281%29.pdf> [accessed 8 May 2022].

while cultural diplomacy offers medium term vision, which is focused on commercial or political objectives that governments intend to pursue through their foreign policy. Moreover, international cultural relations seem to be less manageable, perhaps because of their very essence, imaginable as a continuous flow of cultural exchanges coming from several sides of the population, and therefore sometimes more easily encouraged and incentivized rather than locked and channeled through the action of governments. The independence of cultural relations – at least in its early stages – from the wishes of governments, therefore, makes them even more reciprocal, sincere, and reliable. These factors, combined with their long-term approach, allow them to be, ultimately, a more effective *soft power* tool than what public diplomacy is. Moreover, the fact that they are perceived as more “natural” and genuine in the eyes of society allows them to have a greater influence in external action. Because cultural relations arise spontaneously and are often conveyed by non-state actors, they are perceived by populations as more credible than cultural diplomacy, which descending directly from governments could be seen as an interference, or an attempt to cultural penetration.¹⁷ It should also be noted that, as Jessica Gienow-Hecht points out in “*Searching for a Cultural Diplomacy*”, that the definition of cultural diplomacy is complicated by the fact that unlike other areas of action of diplomacy, in this case the State does not hold large margins of action without the support of non-governmental actors such as artists, publishers, professors, university lecturers and students.¹⁸ International cultural relations are therefore defined today as reciprocal and non-coercive transnational interactions between two or more cultures, which concern a series of activities conducted both by States and by non-State actors within the cultural and civil space of society. The overall outcomes of cultural relations are greater connectivity, a good mutual understanding, deeper and more intense relationships, mutually beneficial transitions and a sustainable and strengthened dialogue between peoples and cultures, shaped through involvement and attraction rather than coercion.¹⁹ Through public policy instruments such as public diplomacy, cultural diplomacy and the communication strategy adopted, which may also include policies of mass persuasion and cultural propaganda, designated institutions rely on State and non-State actors to achieve the goal of promoting and strengthening their foreign policy interests and influencing the perceptions and preferences of populations. Cultural relations, therefore, can be distinguished

¹⁷ Ibidem, pp. 11-13. [accessed 8 May 2022].

¹⁸ J. C.E. Gienow-Hecht and M. Donfried, eds., *Searching for a Cultural Diplomacy*, (Berghahn Books, 2010). http://www.culturaldiplomacy.org/culturaldiplomacynews/content/pdf/searching-for-a-cultural-diplomacy_-_gienow-hecht-donfried.pdf. [accessed 8 May 2022].

¹⁹ See the definition jointly given by British Council and Goethe-Institut in 2018, contained in “*British Council and Cultural relations: Betwixt Idealism and instrumentality*”, J.P. Singh, Cultural Relations Collection, p.7., and available in <https://www.britishcouncil.org/sites/default/files/british-council-cultural-relations-idealism-instrumentality.pdf> [accessed 8 May 8, 2022].

from purely State-driven activities such as public diplomacy, cultural diplomacy or “*nation branding*”,²⁰ as they do not originate directly from the policies of state actors.

Drawing conclusions, it seems that the term cultural relations is today the most appropriate to describe the field in which public action – and within it also diplomatic action – together with a varied plurality of non-governmental actors and actions, moves to create an international cultural network that is, ultimately, autonomous and difficult to be directed, even if throughout the cultural diplomacy it is possible to influence it, trying to give a specific direction, and by doing so it implements foreign policy. The latter, of course, will be effective only if mutually accepted and shared by civil society, that will judge it as honest when intended to create, as a matter of fact, mutual benefit and not unilateral advantage, whether they are political, economic or commercial. Otherwise, the risk is to fall into the dynamic of cultural propaganda, intended as an activity aimed at producing a cultural interference in the receiving country that lack of reciprocity and is aimed to establish a cultural dominion by which will be possible to create goodwill and lastly influence the policies of governments through the pressure of public opinion. The concept of international cultural relations must move away from this imposition, thus coming closer to the idea of, as seen above, something where behind there isn't any political or economic goals, and it really exists just for better connecting cultures, so trying to give everyone the possibility to share and learn culture, is the solution to connect the world in a genuine way. The outcome should be a greater prosperity and a better human development as much as possible around the world throughout an approach that aims to image, creates, and identifies the right way of culture involving more actors as possible. For example, European Commission stated in the preparatory action for culture in EU external relations the necessity that “[...] institutions, national cultural agencies and cultural civil society [...] work together to build a strategy that is both transversal and “joined up” across different sectors and that also respects the ideas and ideals of global cultural citizenship: reciprocity, mutuality and shared responsibility”.²¹

²⁰ In G. Szondi “*Public Diplomacy and Nation Branding: Conceptual Similarities and Differences*”(Netherlands Institute of International Relations ‘Clingendael’, 2008), p.4., nation branding is defined as the tool concerning branding and marketing techniques designed to promote the image of a nation. https://www.researchgate.net/publication/253744488_Public_Diplomacy_and_Nation_Branding_Conceptual_Similarities_and_Differences, [accessed 8 May 2022].

²¹ Directorate-General for Education, Youth, Sport and Culture (European Commission), *Preparatory Action – ‘Culture in EU External Relation’; Engaging the World: Towards Global Cultural Citizenship*, (DOI 10.2766/74887, 2017), pp. 9-10. https://ec.europa.eu/assets/eac/culture/library/publications/global-cultural-citizenship-sum_en.pdf [accessed 8 May 2022].

Part 2: Cultural Rights

Let us consider now one of the fundamental documents concerning the broad notion of culture: the *Declaration on Cultural Rights as Human Rights*. Even though this text has never been formally approved by the General Assembly of the United Nations Educational, Scientific and Cultural Organization (UNESCO),²² it is important to note that the *Declaration* affirms the freedom of knowledge as a fundamental human right. It would be safe to assume that a logical extension of the right to knowledge can be found in the “right to culture”, which presupposes for every individual the possibility to have the necessary means to develop their personality, through direct participation in the creation of human values, and thus to become masters of their own condition, both on the local plan and on a global scale. Moreover, in the preparatory work, Boutros Ghali²³ proposed to define the right to culture as “the right of every man to have access to the knowledge, arts and letters of all peoples, to participate in the progress of science and to enjoy its benefits, to make his own contribution to the enrichment of cultural life”.²⁴ More generally, the conception of cultural rights that emerged during the elaboration of the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, has been the subject of an extremely significant evolution over the years. Thanks to great investigations and reflections, today it has been affirmed that the conceptualization of cultural rights is different from the one which has been elaborated on the preparatory work of the *Declaration* and the *Covenants*. The norms of the *Universal Declaration* that refers to cultural rights are art. 26, relating to the right to education, and art. 27, which concerns the right to participate freely in the cultural life of the community, the right to enjoy the arts and to participate in scientific progress and its benefits (para. 1) and the right to the protection of moral and material interests that derive from any scientific, literary or artistic production of which one is the author (para. 2). These rights are reflected in art. 13, 14 and 15 of the *International Covenant on Economic, Social and Cultural Rights*. The first two articles refer to the right to education, the freedom of parents to educate their children in accordance with their religious and moral convictions, and the freedom to create educational institutions. Art. 15 concerns, instead, the right of everyone: (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; (c) to benefit

²² In fact, a first draft Declaration on Cultural Rights was drawn up for UNESCO in 1998.

²³ He was an Egyptian politician and diplomat, sixth secretary general of the United Nations from 1992 to 1996.

²⁴ M. Carcione, *Diritti culturali: dalle convenzioni UNESCO all'ordinamento italiano*, available in: L. Zagato, M. Vecco, *Citizen of Europe – Culture e diritti*, (Edizioni Ca' Foscari, 2015), p. 361. ISBN 978-88-6969-052-5 (e-book). <https://edizionicafoscari.unive.it/media/pdf/books/978-88-6969-054-9/978-88-6969-054-9.pdf> [accessed 8 May 2022].

from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Another clear reference to cultural rights is also present in art. 27 of the *International Covenant on Civil and Political Rights*, which recognizes the right of ethnic, religious and linguistic minorities to have a “cultural life of their own”.²⁵

Notwithstanding the overall asset of cultural rights, the right to take part in cultural life as mentioned in art.15 of ICESCR is the one that deserve more attention, because thanks to a great doctrine interpretation that has developed the more in the international field, by enlarging the concept of itself.²⁶

In fact, although in international treaties, the definition of cultural rights is mostly based on a materialistic conception of culture, focusing mainly on the rights of minorities, in recent decades copious studies have expanded the purpose of these rights by including the way of life of a person or a group. In this sense we speak of an “anthropological” conception of culture.²⁷

In this context, an important reflection was developed by the Freiburg Group, which drafted the *Freiburg Declaration on Cultural Rights* in 2007.²⁸ Although it has no legal value, it is particularly relevant as it has the merit of having clarified the contents of cultural rights provided by international standards. Not surprisingly, the *Declaration* has helped the United Nations Committee on Economic, Social and Cultural Rights in interpreting cultural rights. The *Declaration* highlights how in the field of cultural rights it is necessary to include also “those values, beliefs, convictions, languages, knowledge and the arts, traditions, institutions and ways of life through which a person or a group expresses their humanity and the meanings that they give to their existence and to their development”.²⁹ It is through culture itself that individuals and/or groups can express the meaning

²⁵ M. Ferri, “L’evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale (La Comunità Internazionale, 2014), Vol. 69, Fasc. 2, pp. 211-212. https://www.academia.edu/8499122/L_evoluzione_del_diritto_di_partecipare_alla_vita_culturale_e_del_concetto_di_diritti_culturali_nel_diritto_internazionale_in_La_Comunit%C3%A0_Internazionale_2014_Vol_69_Fasc_2_pp_211_236 [accessed 8 May 2022].

²⁶ Y. Donders, *Study on the legal framework of the right to take part in cultural life* (MGP Books Ltd, 2007), p 235. UNESCO ISBN 978-92-3-104073-3.

²⁷ M. Ferri, “L’evoluzione del diritto di partecipare alla vita culturale e del concetto di diritti culturali nel diritto internazionale”, p. 214.

²⁸ The Freiburg Group is composed by international academics working in the field of human rights. It was born in 1991 at the end of the VIII Interdisciplinary Colloquium on Human Rights, organized by the Institut interdisciplinaire d’éthique et des droits de l’homme dell’Université of Fribourg.

²⁹ Freiburg Declaration on Cultural Rights, art.2(a); available in: <http://hrlibrary.umn.edu/institute/Fribourg%20Declaration.pdf>.

they give to their own existence and the development of it, making it possible to demonstrate that thanks to human beings culture it can form their own personal identity.

Part 3: The Prospective to Consider Cultural Rights as an Inherent Part of International Cultural Relations

While the first part of the paper has detailed the difference between cultural relations and cultural rights, the following section will analyze the link between these two concepts. This will be done by reviewing some international tools concerning cultural rights in which it is possible to find some connection with the area of activity of cultural relations, demonstrating, afterward, that some values, principles and heads of action of cultural rights also fall within the field of cultural relations and that, moreover, although they are not recognized at the general level by the international community, they can represent a vector for the amplification of cultural rights and that therefore, by intensifying the attention paid to them by the States, it is also possible to achieve greater observance of cultural rights.

The first document considered is the *General comment No. 21*³⁰ of the Committee on Economic, Social and Cultural Rights on the right of everyone to take part in cultural life, contained in art. 15 of the *International Covenant on Economic, Social and Cultural Rights*. The starting point of these analyses is already present inside the cited article, in paragraph 4,³¹ as recalled in the introduction of the comment, when it calls to “international contacts and cooperation in cultural field”.³² It appears clearly that establishing “contact” and “cooperation” is something that concern “relations”.

Moving on to the Second paragraph of the *General comment*, where the normative content of art. 15, paragraph 1 (a) is analyzed, at point 6 it is stated that in order to ensure the right to take part in cultural life is necessary for the States, inter alia, to implement “positive action”,³³ like the promotion of cultural life. Here we can reflect on what the main purposes of cultural relations

³⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment no 21, Right of everyone to take part in cultural life (art. 15, para. 1 a of the Covenant on Economic, Social and Cultural Rights)*, 21 December 2009, E/C.12/GC/21, available at <https://www.refworld.org/docid/4ed35bae2.html> [accessed 9 May 2022].

³¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 9 May 2022].

³² *General comment no. 21*, para. I (a).

³³ *General comment no. 21*, para. II (6).

effectively are: the promotion of culture, in a broad sense, is of course one of these. In fact, several actors in the field of international cultural relations, both from the governmental and non-governmental field, have as a main priority the promotion of culture. Then at point 12 the Committee outlines the importance to “give expression to the culture of humanity”,³⁴ thanks to an “interactive process”³⁵ intended to change the view of culture as something made by a series of “hermetic compartments”.³⁶ Once again, we are in presence of a concept that could be promoted more efficiently by intensifying the relationship among States and cultural society. Furthermore, regarding promotion, in the section of the comment related to the specific legal obligations, it is stated that there are three specific obligations for States parties concerning the right to take part in cultural life, and these are the obligation to respect, to protect and to fulfil cultural life; and with reference to the latter obligation it is highlighted that it is necessary for States parties to provide promotional measures “aimed at the full realization of the right enshrined in article 15, paragraph 1 (a), of the Covenant”.³⁷ Then, in the list of specific measures, section (d) states that to “have access to their own cultural and linguistic heritage and to that of others”,³⁸ and, section (h) states that to take “appropriate measures to create conditions conducive to a constructive intercultural relationship between individuals and group based on mutual respect, understanding and tolerance”.³⁹ Eventually, concerning international obligations, the Committee calls for “international cooperation”.⁴⁰

Taking into consideration the 2019 Report of the Special Rapporteur in the field of cultural rights⁴¹, it is important to note that the Special Rapporteur reaffirms that cultural rights are inherent part of human rights. Considering though the broad scope of art. 15 cultural rights are given little importance, even more if we interpret them as in other previous reports, such as those of 2010⁴² and 2016,⁴³ where a wide range of rights and freedoms such as expression, creation, language,

³⁴ *General comment no. 21*, para. II (12).

³⁵ *Ibidem*.

³⁶ *Ibid*.

³⁷ *General comment no. 21*, para. III (B-48).

³⁸ *General comment no. 21*, para. III (B-49d).

³⁹ *General comment no. 21*, para. III (B-49-h).

⁴⁰ *General comment no. 21*, para. III (D-58).

⁴¹ UN Human Rights Council, *Report of the Special Rapporteur in the field of cultural rights*, 17 January 2019, A/HRC/40/53, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/010/52/PDF/G1901052.pdf?OpenElement> [accessed 9 May 2022].

⁴² UN Human Rights Council, Report of the Independent Expert in the Field of Cultural Rights, Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council, 22 March 2010, A/HRC/14/36, available at: <https://digitallibrary.un.org/record/680585> [accessed 9 May 2022].

⁴³ UN Human Rights Council, *Report of the Special Rapporteur in the field of cultural rights*, 3 February 2016, A/HRC/31/59, available at: <https://www.refworld.org/docid/56f174dd4.html> [accessed 9 May 2022].

identity, lifestyles and so on could be included within their remit. In addition, regarding again art. 15, it states that all results and benefits must be disseminated through “contacts” and “cooperation” at the international level. This is also because, as it affirms, through art and culture we can achieve greater respect for human rights, especially the right to freedom of association and the right to education. At the international level, those rights are largely promoted and protected by cultural establishments, which often provides for the possibility for communities abroad to join and, also about nationals of the host State, to promote teaching courses. Cultural institutes, as already noted both in the doctrine and in this work, represent, on the governmental side, the main actor in the field of international cultural relations.

In any case, regarding the engagement with stakeholders, and specifically of the States, the Special Rapporteur requires greater dialogue and interaction “by extending invitations to conduct mission and by making financial contribution”.⁴⁴ And as far as civil society and academia, two important non-governmental actors in cultural relations, are concerned, they both advocate in favor of a “civil society coalition”⁴⁵ to promote cultural rights at the United Nations.

Finally, regarding the developments at national and regional levels, among the five measures suggested, there is also one on the development of “partnership and cooperation”,⁴⁶ to which an appendix⁴⁷ is also dedicated. In it, the creation of inter-sectoral partnerships or coalitions is suggested, which can unite individuals, academics, professionals, politicians and so on, that are, the actors who are brought back into the world of cultural relations.

The last document to consider, and moving on to the last analysis, is the *Convention on the Protection and Promotion of Diversity of Cultural Expression* of UNESCO of 2005.⁴⁸ Unlike the other two documents considered, the *Convention* is different under two points: it is a binding tool ratified by States and it is not only about cultural rights, but it raises more issues. In any case, already in the art. 1, several analogies with cultural relations are present. In fact, sections (b), (c) and (d) of the *Convention* state that, *inter alia*, the objectives are to “create the condition for cultures [...] to freely

⁴⁴ *Report of the Special Rapporteur*, para II-D (39), p.9.

⁴⁵ *Report of the Special Rapporteur*, para II-D (45), p.10.

⁴⁶ *Report of the Special Rapporteur*, para IV-C (84), p.16.

⁴⁷ See the appendix “Developments in the field of cultural rights at the national and regional levels around the world”, contained in the Report, at pp. 20-26.

⁴⁸ UN Educational, Scientific and Cultural Organization (UNESCO), *Preliminary Draft Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, 20 October 2005, 33 C/23; Annex V, available at: <https://www.refworld.org/docid/435cbdac4.html> [accessed 9 May 2022].

interact in a mutually beneficial manner”, “to encourage dialog among cultures” and “to foster interculturality in order to develop cultural interaction”.⁴⁹

Then, in the list of guiding principles, point 8 addresses the “principle of openness and balance”,⁵⁰ and calls for a general openness to the other culture all over the world inasmuch that the support to the diversity of cultural expression will be pursued.

Point 8 of art. 4 also gives the definition of “interculturality”, as a dynamic that “refers to the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expression through dialogue and mutual respect”.⁵¹ The concept is strictly linked with the perception of cultural relations, inasmuch there is a common call for dialogue and mutual respect, the instrument that could be used to reach both interculturality and cultural relations.

Furthermore art. 12 is dedicated to the promotion of international cooperation and it calls for “professional and international cultural exchange” (l section b), classical activity of cultural relations, and to “reinforce partnership with and among civil society, non-governmental organization and the private sector” (section c), some of the actors recognized as important in the cultural relations field.

The parallelism between cultural relations’ conceptualization as above and the definition given of cultural rights shows a close correlation in the purpose when both settings tend to guarantee free access, participation, and creation of culture. Hence, cultural rights should be considered as an integral part of the international cultural relations, and when an actor – whether from governmental or non-governmental field – will interact in the international dimension of culture, should pay specific attention to the respect of cultural rights. Doing so it will be possible not only to extend the applicability of these rights, but also to approach cultural relations in the best way possible, thus in a tolerant, pluralistic, and fundamental freedom guaranteeing manners. Furthermore, considering the higher attention the doctrine has given to cultural relations in recent years, highlighting the connection with cultural rights seems even more important, because it could point in the right direction– that is, the respect of these values – whoever will wish to approach this kind of relations and world. The outcome of this doctrinal awareness should be that cultural

⁴⁹ *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, art.1, para b), c), d).

⁵⁰ *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, art.2 clause 8.

⁵¹ *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, art.4 clause 8.

relation represents an “amplifier” of cultural rights and all the values and principles linked to them. The result of this awareness should lead actors, both governmental and non-governmental, to approach cultural relations by pledging to pursue the respect of cultural rights in an underlined broad sense.

Part 4: Is a Legal Adaptation Required?

Even though some important aspects of cultural relations have been highlighted – for instance how they can give people major chances to benefit, enjoy and develop cultural rights – to date, a legal framework that could allow these specific rights to develop is still missing. In fact, even though some international tools mention cultural relations, they never provide for the creation of an instrument that can properly define and encourage the respect of main values and, eventually, develop them in a satisfactory way.

Therefore, in this section of the essay, the main tools that nowadays mention cultural relations will be summed up, as a means to deduce what these documents say about the theme and find out if a general rule exists in most observed cases. Consequently, the paper will try to prospect a legal adaptation for cultural relations, considering, on one hand, the strict correlations with some pertinent values of cultural and human rights; and on the other, what the existent tools say about them.

The first international tool is the *Vienna Convention on Diplomatic Relations of 1961*, which stated in art.3(e.) that the function of a diplomatic mission consists, inter alia, in “promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations”.⁵² Once again, we need to outline the strict relation between cultural relations and cultural diplomacy, inasmuch as the provision came from the main document that aims to regulate the diplomatic relations among States, and it is oriented to give principles that every diplomatic mission should be respect. Thus, the provision mentioned above, although it quotes explicitly “cultural relations”, is probably more ascribable to the other field mentioned by the doctrine, that is, cultural diplomacy. Nevertheless, it has been already stated that we could imagine cultural diplomacy as part of cultural relations, a fractal, and thus, *mutatis mutandis*, we can

⁵² United Nation General Assembly, *Vienna Convention on Diplomatic Relations*, art. 3(e), 18 April 1961, United Nation Treaty Series, vol. 500, p. 95, available at: https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf .

interpret the provision as something that is applicable to the main argument. So, we can interpret the call to “friendly relations” in the cultural field as something that is not inherent just for diplomatic mission, but a value that the whole States (sending and receiving) should respect and promote both by the diplomatic mission and any other entity of the State, including – in a progressive interpretation – also the civil society and the general non-state actors that came from the States in question. This is because, as it clearly appears, culture is something everyone benefits from. Furthermore, it is important to note that the development of “friendly relations” is one of the four keystone of the *Charter of the United Nation of 1945*, when in art.1(2) it is stated that one of the purpose and principles is “to develop friendly relations among nations based on respect for the principle of equal rights [...] and to take other appropriate measures to strengthen universal peace”.⁵³ It seems so that the recall for “friendly relations” made in the *Vienna Declaration*, inspired from the *Charter* of the UN, and combined with “cultural relations”, hinge the latter of high values such as respect for equal rights and universal peace. In conclusion, the interpretation made in the call for “cultural relations” in the *Vienna Declaration* is that these, have to be “friendly” in the sense of relations with the aims to strive for the respect of rights and for peace.

Although the instrument that is now going to be examined is not properly an international tool but rather a regional one, it is important to rely on it because is the first document that specifically talks about international cultural relation. This is a proposal for a European Union strategy for international cultural relations, that comes from the *Joint Communication to the European Parliament and the Council*, entitled “Towards a European Union Strategy for International Cultural Relations”,⁵⁴ and issued by the European Commission on the initiative of the High Representative of the Union for Foreign Affairs and Security Policy, Federica Mogherini, in June 2016.

The document places the main emphasis on promoting cultural cooperation with partner countries in three key areas: supporting culture as an engine for sustainable social and economic development; promoting culture and intercultural dialogue to ensure peaceful inter-community relations; reinforcing cooperation in the field of cultural heritage. The aim is to place cultural cooperation at the heart of the European Union’s diplomatic relations with countries around the world, by strengthening the EU’s role on the world stage.

⁵³ United Nations, *Charter of the United Nations*, 24 October, 1 UNTS XVI, available at <https://www.refworld.org/docid/3ae6b3930.html> [accessed 20 April 2022].

⁵⁴ European Commission, *Towards an EU strategy for international cultural relations*, 8 June 2016, p, Document 52016JC0029, available at: <https://eur-lex.europa.eu/legalcontent/EN/TEXT/PDF/?uri=CELEX:52016JC0029&from=EN>.

The *Strategy* opens with a reference to the fundamental values and the historical and cultural vocation that characterizes the EU's role in the world, when stated that: "cultural diversity is an integral part of the values of the European Union. The EU is firmly committed to promoting a world order based on peace, the rule of law, freedom of expression, mutual understanding, and respect for fundamental rights".⁵⁵

Then it is outlined scenario in which the strategy of the European Union will have to fall in. The text recognizes how culture already occupies an important place in the network woven by international relations. In a world in which the predominant measure of a state's power no longer necessarily coincides with the canons traditionally connected with military and economic capabilities, the international geopolitical chessboard comes alive for reasons increasingly linked to the competition for cultural prestige and moral leadership. On the other hand, the expanding universe of globalization is emphasized which has given a remarkable acceleration to cultural exchanges and interactions. The strengthening and deepening of cultural relations can represent the ideal method to break down the social and cultural barriers that still divides many nations today.

From the picture of the situation painted by the European Commission a noble vocation of the role of international cultural relations clearly emerges: creating bridges and networks of transnational interactions that can connect societies, in a broad sense, divided by opposing cultural and political visions, in the name of mutual understanding and the value of the peaceful resolution of international disputes, cornerstone of international law.

The main objectives indicated by the Commission in the framework of the strategy for cultural relations of the European Union are strictly related with the aim to reach global peace and promote human rights. As regards, the second purpose concerns the promotion of cultural policies as factors of peace and socio-economic development in less privileged countries, as well as an instrument for the promotion of peace and international stability and for the preservation of cultural diversity and pluralism. On the other hand, the third objective points out the aims to make the EU a stronger global player on the international scene, by making better use of the historical levers of European soft power. It is reiterated that the active promotion of fundamental human rights, the rule of law, democratization processes, the strengthening of civil societies and

⁵⁵ *Ibidem*, p. 2.

sustainable economic growth are all fundamental prerequisites for achieving the most important objectives of the Eu's foreign policy.

Once again, regarding the guiding principles that should inspire Community instruments and policies highlighted for the promotion of cultural diversity and respect for human rights, when the strategy says that "The EU is firmly committed to fostering cultural diversity, which can be protected and promoted only if human rights and fundamental freedoms are guaranteed. These fundamental rights form the essential basis of democracy, the rule of law, peace and stability, sustainable and inclusive development, and participation in public affairs. States have an obligation to respect, protect and promote the right to freedom of opinion and expression, including artistic expression. In this regard, and in line with its obligations under EU and international law, the EU is committed to "promoting a tolerant, pluralistic approach to international cultural relations".⁵⁶

In addition, cultural relations are cited also in the *Constitution of the United Nations Educational, Scientific & Cultural Organization*, when the Governments of the States Parties declared, inter alia, that "[i]n consequence whereof they do hereby create the [UNESCO] for the purpose of advancing, through the educational and scientific and cultural relations of the peoples of the world, the objectives of international peace and of the common welfare of mankind for which the United Nations Organization was established and which its Charter proclaim".⁵⁷ We can note how the stress in this declaration is put on the "people of the world", re-entering in the definition the largest number of people, by making it vague. Moreover, the statement was taken also in a next *Declaration*, the one of the *Principle of International Cultural Co-operation*,⁵⁸ when it declares again that the cultural relations of the people of the world need to reach the goal of peace and welfare. But also in Art. XI, comma 1, when talking about "cultural relations", the *Declaration* says that States shall bear in mind the principle of the United Nations.

In the light of the evident driving force of international cultural relations regarding strengthening the right to participate in cultural life, and, more generally, human rights and widespread peace, as certain regional and international tools have demonstrated by legal analogy

⁵⁶ European Commission, *Towards an EU strategy for international cultural relations*, pp. 3-4.

⁵⁷ UN Educational, Scientific and Cultural Organization (UNESCO), *Constitution of the United Nations Educational, Scientific and Cultural Organization* (UNESCO), 16 November 1945, available at: <https://www.refworld.org/docid/3ddb73094.html> [accessed 9 May 2022].

⁵⁸ UN Educational, Scientific and Cultural Organization, General Conference (UNESCO), *Declaration of the Principles of International Cultural Cooperation*, 1966, available at: <https://digitallibrary.un.org/record/57727> [accessed 9 May 2022].

during the examination; but also considering that, if moments of tension arises between two or more countries, cultural relations could represent an element of resolution, reconciling States, and even earlier an element of prevention, strengthening the connections between States; and considering the explicit existence of cultural relations in some international and regional instruments, it is appropriate to lay the foundations for producing a legal adaptation which could undertake to recognize and define in a more specific way – compared to the definitions given to date – cultural relations, considering the principles connected to them. As it can be seen from the previous pages, in addition to guaranteeing, as already noted, “greater connectivity, better mutual understanding, more and deeper relationships, mutually beneficial transactions and enhanced sustainable dialogue between people and cultures”,⁵⁹ they can also act as an extender of certain rights, such as the right to take part in cultural life, but also the right to freedom of association, education, expression, identity and linguistic rights.

Finally, international cultural relations can strengthen a series of joint actions between States, civil society, non-governmental organizations, and academics aimed at deepening international cooperation, encouraging dialogue and foster interculturality so that mutual understanding and generalized tolerance can be increased, also encouraging dialogue. In this way it will be possible to guarantee a greater promotion of cultural life that in the last place it will be able to generate shared cultural expression that will allow the culture to freely interact and therefore create a culture for all humanity.

But some obligations should be set up in order to prevent unjust behaviors and wrong approaches to international cultural relations. For example, it could be imposed to not stray into the dimension of propaganda, intended as interference inside a State with the purpose to start a mass persuasion campaign with the aim to reach some political goals, influencing the perceptions and preferences of the populations, even though the promotion of the own culture among States could be accepted if it doesn't reflect the objectives as above. A call up on States to respect the principle of mutual respect for the cultures must be observed. In fact, cultural relations can be interpreted in a genuine way only if there is a reciprocal respect for the other culture, and if they are conducted in the spirit of sharing and interest for the different. In addition, the principle of the bilateralism of cultural relations among States should be set up, in order to prevent the attempt to use them to penetrate into another society and to affirm a culture above another.

⁵⁹ See de definition given by British Council and Goethe-Institut, cited at p. 1.

With reference to what kind of soft law act would be more appropriate, a recommendation seems the best option, inasmuch it wouldn't crystalize a variegated and manifold topic, and could leave enough space for spread out and to avoid the risk to limit it. It is for these reasons, in fact, that an act of hard law such as a multilateral agreement seems too much binding for the theme.

Regarding the subject of the promotion of such act, the prospective to consider an international entity could be the best solution because of the greater reaching capacity compared to a regional one. This has been identified in the United Nation General Assembly (UNGA) and in the General Assembly of UNESCO as the best promoter, with pros and cons. On one hand, UNGA represents the more representative international entity of all, with also a specialized Committee (Third Committee) in cultural matters; on the other hand, UNESCO is the main organization working with culture in all the world, but the membership does not include as many States as UNGA does. In any case, taking account of strong and weak points, the production of such act by one of these organizations will be a satisfactory goal.

Eventually, regarding the customary international law, two different arguments need to be developed. The first is related to *opinion juris*: even if what should be the right behavior regarding international cultural relations has been pointed out, it is not possible to prove that most States believe that it is also mandatory. For doing so, more and deeper research must be developed. The second issue is related to the *diuturnitas*. The constant repetition through time of a determined behavior conducted by a generality of subjects remains uncertain, but it is possible that an act of soft law could help create it, thereby contributing to crystalize an international customary law.