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Cultural Human Rights and the UNESCO Convention: More than Meets the Eye?

Yvonne Donders

Introduction

Cultural rights form one of the “categories” of human rights. This categorization of human rights mainly stems from the titles of two international human rights treaties that were adopted in 1966: the International Covenant on Civil and Political Rights (ICCPR: UN General Assembly, 1966a, entry into force 23 March 1976) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR: UN General Assembly, 1966b, entry into force 3 January 1976). Although cultural rights are mentioned in the title of the ICESCR, the text of this treaty does not make clear which provisions in the treaty belong to the category of cultural rights. In fact, none of the international legal instruments provides a definition of “cultural rights” and, consequently, different lists could be compiled of international legal provisions that could be labelled “cultural rights”.¹

Cultural rights can be broadly defined as human rights that directly promote and protect cultural interests of individuals and communities and that are meant to advance their capacity to preserve, develop, and change their cultural identity. Such rights include rights that *explicitly* refer to culture, such as the right to take part in cultural life and the right of members of minorities to enjoy their own culture; and rights that have a *direct link* with culture, such as the right to self-determination; the rights to freedom of religion, freedom of expression, and freedom of assembly and association; and the right to education (UN General Assembly, 1966a, 1966b). Apart from these explicit provisions in international human rights treaties, cultural rights have been addressed in

several other international instruments, notably those from UNESCO. The Universal Declaration on Cultural Diversity, for instance, adopted in 2001 by the member states of UNESCO, includes a provision on cultural rights as the enabling environment for cultural diversity (Article 5).

In an earlier work on cultural rights and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005 Convention) I concluded that “for those who expected a new international instrument promoting and protecting cultural rights, the Cultural Diversity Convention is clearly a disappointment. Although the human rights framework in relation to cultural diversity is recognized, cultural rights are not reaffirmed as the enabling environment for cultural diversity and are not further advanced” (Donders, 2012, p. 181). This conclusion was drawn based on an analysis of the drafting history and the text of the 2005 Convention. Although human rights are referred to at several points in the Convention, there are no substantive human rights for individuals and/or communities included in this treaty. In fact, it is more the opposite: the 2005 Convention gives rights to states to determine and implement cultural policies that they deem best to protect the diversity of cultural expressions.

Looking from a somewhat broader perspective, I also concluded in the same article that: “At the same time, the Cultural Diversity Convention, together with the other UNESCO instruments on culture, confirms the importance of cultural rights as human rights” (Donders, 2012, p. 181). Several provisions in the Convention elaborate on possible measures to be taken by states parties to protect the diversity of cultural expressions. These measures resemble measures to be taken to protect and promote cultural rights (Donders, 2012, p. 180). In other words, the Convention could perhaps play a role in the advancement of human rights in general and cultural rights in particular, despite the fact that cultural rights are not explicitly enshrined in this treaty. This approach seems to be taken by the UN Special Rapporteur on Cultural Rights. In her report on the right to artistic freedom, she referred to the 2005 Convention as a relevant supporting instrument (Shaheed, 2013, p. 6).

Ten years after the adoption of the 2005 Convention is a good time to assess to what extent the conclusions expressed above are still valid and to answer the question as to what the Convention has to offer in practice for the promotion and protection of human rights, in particular cultural rights. Do the ten years of practice with the Convention confirm that this Convention is not a human rights instrument? Or do states parties use the Convention as a tool to promote human rights, in particular cultural rights, and if so, how? Is the human rights relevance of the Convention perhaps more than meets the eye?

This chapter addresses these questions by analysing the practice of the 2005 Convention as expressed by the Operational Guidelines and the state reports. In the Operational Guidelines, states parties have elaborated guidelines on the practical implementation and application of the provisions of the Convention. In the state reports, submitted by 65 states parties in 2012 and 2013, states parties recounted on the way they have implemented the Convention, thereby showing their interpretation of the Convention provisions in terms of content and obligations. These sources are analysed below to assess the practice of the Convention as to what extent and how human rights, in particular cultural rights, are addressed as being part, or not, of the Convention. First a brief introduction is provided on the link between human rights and the Convention. This chapter focuses on human rights of individuals and communities, including for instance freedom of expression, freedom of religion, the right to education, minority rights, and rights of indigenous peoples. This chapter does not address copyright or intellectual property rights (see Singh, Chapter 2; and Neuwirth, Chapter 6). Although both are linked to human rights, they are mostly part of a different international legal regime mainly regulated and administered by the World Intellectual Property Organization (WIPO), and the World Trade Organization (WTO), for instance the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement).²

Human rights in the UNESCO Convention

The drafting process shows that although the 2005 Convention was never meant to be a human rights instrument, the issue of human rights was part of the debates from the very beginning. Some UNESCO member states wanted the Convention to focus on the human rights dimension of cultural diversity. In the end, however, the Convention emphasized the sovereign rights of states to develop and implement their own cultural policies to protect the diversity of cultural expressions (Donders, 2008, pp. 16–24).

Although no substantive human rights were included in the Convention, several general references to human rights can be found in its text. In the Preamble, for example, it is stated that cultural diversity is important for the full realization of human rights as proclaimed in the Universal Declaration on Cultural Diversity and other universal instruments. The Convention further contains several “guiding principles” in its Article 2(1). One of these principles concerns respect for human rights and fundamental freedoms.

This provision confirms the importance of respect for human rights for the promotion and protection of cultural diversity and reads as follows:

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law or to limit the scope thereof.

Apart from the general reference to human rights and fundamental freedoms, this provision explicitly mentions the right to freedom of expression and information. The United States, one of the crucial participants in the negotiations, insisted on the importance of these rights for the 2005 Convention. The United States was strongly opposed to the adoption of the Convention, among others, because it was concerned that the definition of the word “protection” would cause the Convention to be a protectionist instrument. This could create obstacles for the free exchange of goods and services, contrary to the idea of liberal trade at the bilateral or multilateral level. The United States considered the sovereign right of states to take measures and formulate policies to promote and protect cultural diversity as an open invitation to violate other agreements, such as human rights and trade instruments (Neuwirth, 2006b, pp. 838–839; UNESCO, 2005b). The United States continuously emphasized that UNESCO should promote the free flow of ideas by word and image and therefore insisted on the inclusion of freedom of expression and the free flow of information in the text of the Convention (UNESCO, 2003b).

The 2005 Convention further pays special attention to the situation of minorities and indigenous peoples. The Preamble for instance refers to the importance of traditional knowledge systems, in particular of indigenous peoples, as a source of wealth. It also states that the vitality of cultures is taken into account, “including for persons belonging to minorities and indigenous peoples, manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit from them for their own development” (para. 8). Furthermore, Principle 3 as laid down in Article 2(1) recognizes the equal dignity of and respect for all

cultures, including the cultures of persons belonging to minorities and indigenous peoples.

It is interesting to note that the Convention speaks of “human rights” and does not refer to “cultural rights”. Various persons involved in the drafting process explained that it was felt by many member states that “cultural rights” could be interpreted too narrowly, as referring mainly to the protection of cultural products or artists. The broader term was used because member states preferred to place the Convention in a broader human rights framework (Donders, 2012, p. 177).

Although no substantive human rights or cultural rights were included in the Convention, several provisions have a clear link with these rights. Article 6(b), for instance, refers to measures that may be taken by states to protect cultural diversity. These include, for instance, to “provide opportunities for [...] the creation, production, dissemination, distribution and enjoyment of such domestic cultural activities, goods and services, including provisions relating to the language used for such activities, goods and services”. Article 6(f), (g), and (h), furthermore, speak of measures to establish and support public institutions, to support artists and others involved in the creation of cultural expressions, as well as measures to enhance the diversity of the media, including through public service broadcasting. States should furthermore encourage individuals and groups to create, produce, disseminate, distribute, and have access to their own cultural expressions, “paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples” (Article 7(a)). All these measures show significant similarities with measures that might be taken to advance and implement cultural rights.

The Operational Guidelines

The text of the 2005 Convention already foresaw the adoption of so-called Operational Guidelines. Article 23 includes that the Intergovernmental Committee shall “prepare and submit for approval by the Conference of Parties, upon its request, the Operational Guidelines for the implementation and application of the provisions of the Convention”. Article 22 includes that one of the functions of the Conference of Parties is to adopt the Operational Guidelines.

Soon after the Convention entered into force in March 2007, the Conference of Parties elected 24 states parties to form the Intergovernmental Committee (IGC) (UNESCO, 2007a, pp. 11–12). It asked the IGC to

prepare proposals for the Operational Guidelines, to begin with Article 7 and Article 8, which both concern measures to protect cultural expressions, Article 11 concerning participation of civil society, Articles 12 to 17 concerning international cooperation, and Article 18 concerning the International Fund for Cultural Diversity (UNESCO, 2007b, p. 13).

The IGC held its first session in December 2007 and decided to start with Articles 7, 8, and 17 (UNESCO, 2007c, p. 16). The working methods to draft Operational Guidelines include setting up working groups and drafting groups within the committee, holding expert meetings and commissioning studies on specific themes, inviting states parties to comment on draft texts, and consulting public and private institutions (UNESCO, 2007d, p. 3).

The Operational Guidelines are, as the Convention indicates, to provide general guidelines for the implementation and application of the provisions of the Convention. As such, they provide a more detailed elaboration of the background, scope, and normative content of the Convention's provisions. The first Operational Guidelines were adopted in June 2009 on Articles 7, 8, and 17, grouped under measures to promote and protect cultural expressions; Article 11 concerning the role and participation of civil society; Article 13 concerning the integration of culture in sustainable development; Article 14 concerning cooperation for development; and Article 15 on partnerships. Subsequently, Operational Guidelines were adopted in June 2011 on Article 9 concerning information-sharing and transparency; Article 10 concerning public awareness; Article 19 concerning exchange, analysis, and dissemination of information, and on the visibility and promotion of the Convention. Revised Operational Guidelines were adopted on Article 18 concerning the International Fund for Cultural Diversity.

No Operational Guidelines will be adopted for Articles 1 and 2 concerning the objectives and guiding principles of the Convention, and on Articles 3 and 4 concerning the scope of application and definitions, since these provisions do not demand concrete actions and are therefore considered not to need Operational Guidelines.³ Article 6 concerning the rights of states parties at the national level was also considered not to lend itself to Operational Guidelines. States parties found Article 6 to be a provision that concerns mainly the national level and has a broad perspective, which is further elaborated in the following provisions. In the future, Operational Guidelines may be adopted on Article 20, the famous provision on the interrelation of the 2005 Convention with other conventions, notably those of the WTO.

Within UNESCO, the instrument of Operational Guidelines adopted by states parties is common; they also exist for the UNESCO heritage conventions. Operational Guidelines are drafted and adopted by the states parties and as such provide an important insight in the way they interpret the provisions of the Convention. Their purpose, providing guidelines for the implementation and application of the Convention, is similar to, for instance, the "General Comments" or "General Recommendations" in international human rights law. However, General Comments are adopted by the UN treaty bodies, which are composed of independent experts, set up to monitor the implementation of and compliance with the human rights treaties. Unlike human rights treaties, the UNESCO Conventions do not have such independent monitoring bodies. These Conventions set up conferences of parties and intergovernmental committees that conduct the monitoring of the implementation of the treaty. This shows that states prefer to keep the supervision of the treaty in their own hands, including the drafting and adoption of Operational Guidelines.

The General Comments by UN human rights treaty bodies are based upon their experience in dealing with state reports and individual complaints. This means that the General Comments may reflect changed perceptions and perspectives on the normative content of treaty provisions. Human rights treaties are often called "living instruments", to be interpreted in present-day circumstances, instead of following merely the intention of the drafters at the time of adopting the treaty. This is different in UNESCO, where operational guidelines are adopted rather soon after the entry into force of the Convention, which means that they are adopted by the drafters themselves and reflect their original intention. States parties use the Operational Guidelines to provide more detailed substance to the Convention's provisions. There is, however, the possibility of revising the Operational Guidelines, which already happened with those on the International Fund for Cultural Diversity. It is therefore possible that new insights or changing perspectives may eventually find their way into revised Operational Guidelines.

As stated above, the Operational Guidelines provide a more detailed interpretation of the normative content of the provisions in the 2005 Convention. The text of the articles is often rather broad and vague and Operational Guidelines may provide more explicit substance in terms of the normative content as well as state obligations. For this chapter, the texts of the Operational Guidelines were analysed, searching for the terms "right", "human right", "cultural right", and "freedom".

Notably, these terms could hardly be found in the Operational Guidelines on the different provisions. The most prominent use of the term “rights” was the rights of states to formulate and implement measures and policies to protect the diversity of cultural expressions, following the general purpose of the 2005 Convention. For instance the Operational Guidelines on Articles 7, 8, and 17 concerning measures to promote and protect cultural expressions reiterate the sovereign right of states to formulate and implement cultural policies (UNESCO, 2009f, p. 2).

Human rights are referred to in the Operational Guidelines in relation to the integration of culture in sustainable development, linked to Article 13 of the 2005 Convention (UNESCO, 2009e, p. 1). In these Guidelines it is indicated that such integration makes it possible to maintain social cohesion and “fight violence through cultural activities that promote human rights”. Human rights seem to be referred to here as a broad underlying purpose of this provision. However, the Operational Guidelines on closely related provisions, such as Article 14 on cooperation for development, and Article 15 on partnerships, do not contain a reference to human rights or fundamental freedoms (UNESCO, 2009b, 2009c). Neither are human rights references included in the Operational Guidelines concerning Article 16 on the preferential treatment for developing countries (UNESCO, 2009d), Article 18 concerning the International Fund for Cultural Diversity (UNESCO, 2011f), and Article 19 (UNESCO, 2011c) concerning the exchange of information. Even the Operational Guidelines on education (Article 10) do not make a link to human rights, even though some of the measures suggested have a clear link with human rights, in particular the right to education. Examples of such measures mentioned in the Operational Guidelines are: strengthening the ties between culture and education; including the diversity of cultural expressions in school curricula adapted to local contexts and cultures; inviting artists and cultural professionals to participate in the activities of schools and other educational institutions; enhancing the capacities of teachers to raise students’ awareness about the diversity of cultural expressions (UNESCO, 2011d).

The Conference of Parties has also adopted Operational Guidelines on the reporting procedure, providing guidelines to states on how to report on their implementation of the 2005 Convention (UNESCO, 2011b). These guidelines provide detailed information on the format of the state reports and the preparation procedure of these reports, in which civil society should be involved. No reference to human rights, for instance, as one of the possible elements to be reported

on, is included. At the same time, the guidelines indicate several possible measures to report on that link to human rights, in particular the right to take part in cultural life, such as support for mobility of artists and cultural professionals abroad (under international cooperation and preferential treatment), integrating culture in development policies, and assistance programmes (under sustainable development policies).

From the above it can be concluded that the Operational Guidelines do not give a prominent place to human rights in relation to the 2005 Convention. They confirm that the promotion and protection of human rights was not the main purpose of this Convention. Freedom of expression, supported so strongly by the United States during the negotiations, does not return in the Operational Guidelines. This may be caused by the fact that the United States is not party to the Convention and therefore not a member of the Conference of Parties or the IGC. The Operational Guidelines also do not pay attention to the notion in the Convention that nothing in this treaty may be used to excuse unlawful infringements of human rights.

As stated above, the Operational Guidelines were adopted rather soon after the entry into force of the Convention, which means that they mostly reflect the intention of the drafters of the Convention at the time of adoption, whereby subsequent practice was not (yet) taken into account. Such practice may become clearer from the state reports discussed in the next section.

State reports

According to Article 9 of the 2005 Convention, states parties are obliged to report four years after the entry into force of the Convention and then every four years “on the measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level”. States parties agreed that the reports should follow a thematic approach, dealing with cultural policies and measures, international cooperation and preferential treatment, integration of culture in sustainable development, protecting cultural expressions under threat, and awareness-raising and participation of civil society (UNESCO, 2013d, p. 5).

In 2012 and 2013, 65 states submitted their reports. These reports are only available on the website of the Secretariat of UNESCO.⁴ Most of them follow the reporting format as provided by the Secretariat, some are in different formats and forms. For this chapter, all submitted state

reports were analysed searching for the terms “human right”, “cultural right”, and “freedom”.

Broadly speaking most state reports include one or more references to the general notion of human rights and fundamental freedoms. There are hardly any state reports that do not mention human rights at all. A schematic overview of the main examples of different references to human rights in state reports is given in Table 8.1.

Most of the references mention human rights as one of the underlying or supporting notions of the implementation measures and activities, for instance under Article 6 of the 2005 Convention. These measures are reported under the first thematic item, cultural policies and measures, and to a lesser extent under international cooperation and sustainable development in the yearly states reports. Bulgaria, for instance, reported that “a key principle of the country’s cultural policy is guaranteeing human rights and fundamental freedoms, expressed by access to information, communication, free choice of forms of cultural expression” (2012, p. 3). China included that “the Chinese government [...] devotes intense effort to building up the public cultural infrastructure network in rural and urban areas, so as to satisfy people’s needs and guarantee people’s cultural rights and interests” (2013, p. 4). Ecuador stated that “the main objective of this measure was to recognize the importance of culture through the creation of a governing institution in culture that has the capacity to guarantee the cultural rights of the citizens, including the diversity of cultural expressions” (2012, p. 6). The EU also indicated that “awareness-raising and advocacy as regards the Convention is essential in dissipating misunderstandings about its core principles and concepts (i.e. diversity, cultural expressions) and reaffirming that these principles are enshrined in the fundamental framework of human rights instruments” (2012, p. 32). Sweden stated that “other objectives that also affect Swedish cultural policy are, for example, the Swedish Government’s long-term goal to ensure full respect for human rights” (2012, p. 6). General references to human rights can also be found in the reports of, for instance, Andorra (2013, pp. 9, 24), Argentina (2012, p. 9), Bolivia (2012, p. 10), Burkina Faso (2013, p. 4), Cuba (2012, pp. 2, 5), Italy (2012, p. 19), Mongolia (2012, p. 21), Peru (2012, pp. 4, 34), Serbia (2013, p. 6), Slovakia (2012, p. 2), Slovenia (2012, pp. 4, 45), Spain (2012, pp. 11, 14), Switzerland (2012, pp. 8, 11, 14), and Uruguay (2012, p. 8).

Some states refer to the fact that human rights, or more specifically cultural rights, are included in their national constitutions. For instance, the Dominican Republic indicated that “en janvier 2010, la culture

Table 8.1 Overview of examples of references to human rights in state reports

Reference to	Specific issue	States
Human rights in general	Human rights as underlying or supporting notion of design and implementation of cultural policies	Andorra, Argentina, Bolivia, Bulgaria, Burkina Faso, China, Cuba, Ecuador, EU, Italy, Mongolia, Peru, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Uruguay
	Human rights or cultural rights as included in National Constitution	Armenia, Bangladesh, Cyprus, Dominican Republic, Mexico, Namibia, Spain
Specific human rights	Right to take part in cultural life	Austria, Cuba, Dominican Republic, Ecuador, Montenegro, Namibia, Serbia, Sweden, Syria, Uruguay, Vietnam
	Right to (access to) education	Bangladesh, Cuba, Cyprus, Italy
	Freedom of creative and artistic expression	Dominican Republic, EU, Germany, Montenegro, Peru, Serbia, Sweden, the United Kingdom
	Freedom of expression and (pluralistic) media	EU, Germany, Montenegro, Norway, Peru, Portugal, Serbia, Vietnam
	Linguistic rights	Bosnia and Herzegovina, China, Latvia, New Zealand, Slovenia, Sweden, Vietnam
Specific groups or communities	Women and children	Bangladesh, Cuba, Dominican Republic, Ireland, Serbia, Sweden
	Minorities and indigenous peoples	Argentina, Armenia, Bangladesh, Bosnia and Herzegovina, Ecuador, Latvia, Mexico, Mongolia, New Zealand, Peru, Poland, Serbia, Slovakia, Slovenia, Sweden
	Disabled persons	Lithuania

dominicaine a vécu un moment historique, lorsque les droits culturels de toute la population ont été inscrits dans la nouvelle Constitution de la République dominicaine, et qu'a ainsi été reconnue la diversité des expressions culturelles"⁵ (2013, p. 3). Armenia included that "bases for the implementation of the cultural policy aimed at the application of the Convention are the Articles of the Constitution of the Republic of Armenia on the freedom of speech (Article 27), freedom of thought, conscience and religion (Article 26), right to education (Article 39), freedom of creation (Article 40), right to preserve national traditions" (2013, p. 2, para. 2.1). The reports of Bangladesh (2013, p. 5), Cyprus (2012, p. 4), Mexico (2012, p. 11), Namibia (2012, p. 17), and Spain (2012, p. 9) also show such a reference to the national constitution.

Sometimes, cultural policies and measures are specifically linked to the dissemination of cultural goods and services, and on participation in cultural life, whereby states refer to specific human rights. For instance, the right to cultural participation or to take part in cultural life is mentioned by Austria (2012, p. 10), Cuba (2012, pp. 4–5), Dominican Republic (2013, p. 5), Ecuador (2012, p. 3), Montenegro (2012, p. 5), Namibia (2012, p. 17), Serbia (2013, p. 6), Sweden (2012, p. 6), Syria (2012, p. 1), Uruguay (2012, p. 24), and Vietnam (2012, p. 6). The right to (access to) education is included in the reports of Bangladesh (2013, p. 9), Cuba (2012, p. 5), Cyprus (2012, p. 16), and Italy (2012, p. 11). Some states mention women and children specifically as groups that need extra protection of their cultural rights, for instance Bangladesh (2013, pp. 10–11), Cuba (2012, p. 7), Dominican Republic (2013, p. 3), Ireland (2012, p. 7), Serbia (2013, p. 11), and Sweden (2012, pp. 6, 20). Lithuania mentions disabled persons (2012, p. 14).

Freedom of expression is mentioned by several states. It is linked to creative and artistic expression, for instance in the reports of the Dominican Republic (2013, p. 6), the EU (2012, pp. 13, 32), Germany (2012, p. 6), Montenegro (2012, p. 2), Peru (2012, p. 34), Serbia (2013, pp. 6, 28–29), Sweden (2012, p. 22), and the United Kingdom (2013, p. 12). Freedom of expression is also referred to in relation to (pluralistic) media, for instance by the EU (2012, p. 15), Germany (2012, p. 9), Montenegro (2012, pp. 6, 13), Norway (2012, p. 22), Peru (2012, p. 34), Portugal (2012, p. 8), Serbia (2013, p. 8), and Vietnam (2012, p. 6). The link between freedom of expression and free trade, as was at the time strongly promoted by the United States, is not referred to in the state reports. The United States is not a party to the Convention, and other states do not seem to follow this idea.

Several states pay specific attention to certain cultural communities and their rights. Minorities and indigenous peoples are mentioned in

several reports, for instance those of Argentina (2012, p. 2), Armenia (2013, p. 11), Bangladesh (2013, p. 8), Bosnia and Herzegovina (2013, p. 24), Ecuador (2012, p. 11), Latvia (2012, pp. 11, 39), Mexico (2012, p. 30), Mongolia (2012, p. 30), New Zealand (2012, pp. 4, 53), Peru (2012, pp. 4, 36), Poland (2012, p. 22), Serbia (2013, p. 21), Slovakia (2012, p. 11), Slovenia (2012, pp. 4, 7, 8, 27, 45), and Sweden (2012, p. 12). Most of these inclusions state that the cultural rights of these communities are respected by law and in policies, without linking it to specific provisions of the 2005 Convention. In some reports, references can be found to language rights of these communities, for instance in the reports of Bosnia and Herzegovina (2013, p. 24), China (2013, p. 4), Latvia (2012, pp. 11, 39), New Zealand (2012, pp. 30, 59), Slovenia (2012, pp. 4, 17), Sweden (2012, p. 12), and Vietnam (2012, pp. 3–4).

States hardly link the 2005 Convention concretely to international human rights instruments. With some exceptions, such as the United Kingdom, no state refers to the Universal Declaration on Human Rights or human rights treaties. The United Kingdom indicated that:

[I]n relation to Articles 2 & 5 of the Convention, the UK is a party to the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, which implemented the provisions of the Universal Declaration of Human Rights. The UK is also party to the European Convention on Human Rights, which is incorporated into domestic law by the Human Rights Act 1998.

(2013, p. 8)

Only one state, namely Mexico, referred in its report to the principle in the 2005 Convention that its provisions may not be invoked to infringe human rights and fundamental freedoms. Mexico mentioned, under the question of what indicators it used to measure the impact of actions undertaken, that it used the number of attendees, as the recipients of the message to be transmitted, being cultural diversity and respect for cultural differences, "provided it does not threaten human rights" (2012, p. 15).

The Secretariat of UNESCO has prepared analytical studies on the state reports, providing an overview of issues reported on, good practices, and challenges identified in the implementation of the Convention (UNESCO, 2012b, 2013d). These studies confirm that human rights are referred to, not as substantive rights or concrete obligations, but more as supporting notions for certain policies developed and measures taken under the Convention.

Conclusion

Ten years' practice of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions confirms to a large extent the conclusions drawn soon after its adoption, based on the drafting history and the text of the Convention. The Operational Guidelines, providing more detailed normative content of the provisions of the Convention, hardly mention human rights, neither as a substantive issue nor as an underlying notion. In the state reports, however, human rights are often referred to, mostly as one of the underlying notions of cultural policies or specific measures taken to implement the Convention. The reports show that states link their policies and measures to promote and protect diversity of cultural expressions to human rights. In other words, states do see a relationship between (parts of) the Convention and human rights, but, as concluded earlier, they do not consider and did not wish the Convention to be a human rights instrument *per se*. This also follows from the text of the Convention, which does not enshrine substantive rights and concrete human rights obligations, but where human rights serve as one of the underlying principles.

The link between the 2005 Convention and human rights is more specifically noticeable in the state reports in relation to development policies, as well as in relation to indigenous peoples and minorities. In principle, these are communities that may need special protection of their cultural expressions or measures to advance their participation in cultural life. The link with human rights is therefore more obvious. States keep emphasizing their sovereign right, however, as the cornerstone of the 2005 Convention, to draft and adopt legislation, policies, and measures to protect the diversity of cultural expressions.

At the same time, it is firmly included in the Convention that its provisions to promote and protect cultural expressions may not be used against human rights. Unfortunately, the Operational Guidelines as well as the state reports remain silent on this matter. States parties perhaps consider this as a given and do not see the need to report on specific issues or challenges they face in this regard. It would have been interesting to get more insight on which (type of) expressions this could concern.

In short, the conclusions drawn on the basis of the drafting history and the text of the 2005 Convention largely remain. The Convention is not a human rights or cultural rights instrument and does not include substantive rights and obligations in this regard. At the same

time, the Convention confirms the importance of cultural rights as human rights and could as such support existing international human rights instruments. This link between the Convention and human rights treaties could, however, be further strengthened. This would benefit the cohesion between international instruments but, more importantly, it would benefit the promotion and protection of human rights, in particular cultural rights. The approach to the link between the 2005 Convention and human rights should therefore not only be a negative one, emphasizing that the provisions of the Convention should not be used to infringe upon human rights. The Convention should also positively contribute to the advancement of human rights, in particular cultural rights. Although its provisions may not directly imply substantive rights, the spirit of the Convention should be one of reaffirming and strengthening the legal foundation of cultural rights, thereby helping to further implement them at national level through various laws, policies, and measures. Most states parties seem to be willing to embrace this idea.

Notes

1. For a long time, it was argued that cultural rights were a neglected and under-developed category of human rights. In the last decades, more interest is shown by academics, states, and monitoring bodies (see, *inter alia*, Donders, 2002; Francioni & Scheinin, 2008; Hansen, 2002; Marks, 2003; Meyer-Bisch, 1993; Reidel, 2010). See, also, the *Déclaration des droits culturels*, drafted by the Fribourg Group of experts and launched in Geneva on 8 May 2007 (<http://www.unifr.ch/iiedh/fr/publications/declaration-de-fribourg>). An important development in the further elaboration of cultural rights is the mandate of the Special Rapporteur in the Field of Cultural Rights, which was extended in April 2012 by the Human Rights Council: UN Doc. A/HRC/RES/19/6, 3 April 2012. See also Isar & Pyykkönen, Chapter 1; and Clammer, Chapter 7 (this volume).
2. See, for an analysis of the link between intellectual property and human rights, for instance the statement by the UN Committee on Economic, Social, and Cultural Rights on human rights and intellectual property, UN Doc. E/C.12/2001/15, 14 December 2001.
3. As expressed by the delegation of China during the first session of the ICG (UNESCO, 2008, p. 20).
4. All state reports are available on the website of UNESCO. <http://www.unesco.org/culture/cultural-diversity/2005convention/en/periodicreport/list/>
5. "[I]n January 2010, the Dominican culture has experienced a historical moment, when the cultural rights of the entire population were included in the new Constitution of the Dominican Republic, whereby the diversity of cultural expressions was recognized."