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Right to take part in cultural life (article 15 (1) (a) of the Covenant)

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The right to take part in cultural life^{*}

Background paper submitted by Mr. Christian Groni^{**}

^{*} Reproduced as submitted.

^{**} The views expressed in the present document are those of the author and do not necessarily reflect those of the United Nations.

The Right to take part in Cultural Life^{*}

*I do not want my house to be walled in
on all sides and my windows to be stuffed.
I want the cultures of all lands to be blown
about my house as freely as possible.
But I refuse to be blown off my feet by any.*

Mahatma Gandhi¹

A. Introduction

Culture is at the centre of many developments in Public International Law. The Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO) defines the purpose of the organization as “to contribute to peace and security by promoting collaboration among the nations through ... culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms.”²

In 1986 the General Assembly of the United Nations proclaimed the World Decade for Cultural Development (1988-1997) and approved four main objectives: “acknowledging the cultural dimension of development; affirming and enriching cultural identities; broadening participation in culture; promoting international cultural cooperation.”³ The same organ perceives the process of globalization, *inter alia*, as “risk of a global monoculture”.⁴

The Vienna Declaration and Programme of Action stated, “All human rights are universal, indivisible and interdependent and interrelated” and that, “[w]hile the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”⁵

Faced with the importance of cultural aspects in international law it is quite surprising that cultural rights including the right to take part in cultural life have to be described as “neglected, underestimated, missing or forgotten.”⁶ Against this background, UNESCO has committed itself

^{*} This paper is based on the English Summary of the author’s PhD-thesis “Das Menschenrecht auf Teilnahme am kulturellen Leben. Inhalt, Grenzen und Justiziabilität von Artikel 15 (1) lit. a) des Internationalen Paktes über wirtschaftliche, soziale und kulturelle Rechte“, published at *Verlag Richard Boorberg*. The thesis was supervised by Prof. Dr. Eibe Riedel and approved by the Faculty of Law and Economics of the University of Mannheim in June 2007. The complete bibliography and further references can be found there. The author wants to thank Henry Winter for carefully reviewing the English version of the manuscript.

¹ Cited according to United Nations Development Programme: Human Development Report 2004, p. 85 and World Commission on Cultural Diversity: Our Creative Diversity, p. 73.

² See article I.1 of UNESCO’s Constitution.

³ Cf. Resolution 41/187: Proclamation of the World Decade for Cultural Development”, UN Doc. A/RES/41/187, para. 2.

⁴ Preamble of Resolution 60/152 of the General Assembly: “Globalization and its impact on the enjoyment of all human rights”, UN Doc. A/RES/60/152.

⁵ World Conference on Human Rights, Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/23 para. I 5.

⁶ Symonides: Cultural Rights, in: Symonides (ed.): Human Rights: Concepts and Standards, p. 175-227 (175); but cultural rights have been, for example, analyzed by Donders: Towards a Right to Cultural Identity? 2002; Marks: Defining Cultural Rights, in: Bergsmo (ed.): Human Rights and Criminal Justice for the downtrodden, 2003, p.

by stating that: *“The definition and the content of cultural rights must be clarified and measures must be identified which could improve their effective implementation.”*⁷

B. Legal Background

The right to take part in cultural life is a fundamental human right, laid down in several international legal instruments. The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides the most comprehensive article on the right to take part in cultural life in international human rights law. As per article 15.1 (a) of the Covenant, States parties recognize the right to take part in cultural life⁸, whereas paragraphs 2 to 4 should be regarded as instrumental means⁹ to achieve the full realization of this right. So far, the Committee on economic, social and cultural rights (CESCR) has not adopted a General Comment on article 15.1 (a), but it has recently resumed the process of drafting such a General Comment.¹⁰ Article 27.1 of the Universal Declaration of Human Rights¹¹ affirms that: “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.” More specifically, the International Covenant on Civil and Political Rights (ICCPR) enshrines the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture.¹² Under article 5 (e) (vi) States parties of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee ... [t]he right to equal participation in cultural activities.” Article 13 (c) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides for the

293-324; Meyer-Bisch (ed.): Les droits culturels: Une catégorie sous-développée de droits de l’homme, 1993; Meyer-Bisch (ed.): Les droits culturels. Projet de déclaration, 1999; Niec (ed.): Cultural Rights and Wrongs, 1998; Scherer-Leydecker: Minderheiten und sonstige ethnische Gruppen, 1997; Symonides: UNESCO’s Contribution to the Progressive Development Human Rights, in: Max Planck Yearbook of United Nations Law Vol. 5 (2001), p. 307-340; Szabó: Cultural Rights, 1974; UNESCO (ed.): Cultural Rights as Human Rights, 1970.

⁷ Medium-Term Strategy 1996-2001, UNESCO Doc. 28/C4, para. 169.

⁸ This article has been analyzed by, among others, Bidault: La protection des droits culturels par le Comité des droits économiques, sociaux et culturels, UN Doc. E/C.12/2000/14; Craven: The Right to Culture in the ICESCR, in: Fisher et al. (eds.): Human Rights and Cultural Policies in a Changing Europe, 1994, p. 161-171; Donders: Study on the legal framework of the Right to take part in Cultural Life, in: Volodin/Donders (eds.): UNESCO Studies on Human Rights, 2007; Eide: Cultural Rights as Individual Human Rights, in: Eide et al. (eds.): ESC-Rights, 2001, p. 289-301; Hansen: The right to take part in cultural life, in: Chapman/Russell (eds.): Core obligations, 2002, p. 279-303; Häusermann: The Right to Participate in Cultural Life, in: Fisher et al. (eds.): Human Rights and Cultural Policies in a Changing Europe, 1994, p. 109-133; O’Keefe: The “Right to take part in Cultural Life” under article 15 of the ICESCR, ICLQ Vol. 47 (1998), p. 904-932.

⁹ See below.

¹⁰ Cf. the Committee’s analysis of the right on the occasion of a General Discussion of the right to take part in cultural life as recognized in article 15 of the Covenant, UN Doc. E/C.12/1992/SR.17 or Cor Konaté: Implementation of cultural rights. Analytical Study of article 15 of the ICESCR, UN Doc. E/C.12/1992/WP.4 (1992).

¹¹ Cf. among others Adalsteinsson/Thórhallson in: Alfredsson/Eide (eds.): Universal Declaration of Human Rights, 1999, article 27 or Morsink: Cultural Genocide, the Universal Declaration, and Minority Rights, HRQ 21 (1999), p. 1009-1060.

¹² Article 27, cf. also HRC General Comment No. 23; Capotorti: Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, 1991; Tomuschat: Protection of Minorities under Article 27 of the ICCPR, in: Bernhardt et al. (eds.): Völkerrecht als Rechtsordnung - internationale Gerichtsbarkeit – Menschenrechte, 1983, p. 949-979; Nowak: CCPR-Commentary, 2005, article 27.

elimination of discrimination against women in order to ensure the equal enjoyment of “[t]he right to participate in recreational activities, sports and all aspects of cultural life.”

In accordance with article 31.1, States parties of the Convention of the Right of the Child (CRC) “recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.” The International Covenant of the Rights of Migrant Workers and their Families provides that the treatment of migrant workers and their families must be equal to that afforded to nationals of the State party in relation to “[a]ccess to and participation in cultural life” (article 43.1 (g) and article 45.1 (d)). The recently adopted Convention of the Rights of Persons with Disabilities aims to safeguard participation of disabled persons in cultural life, recreation, leisure and sport (article 30). Non-binding instruments, the General Assembly’s Declaration on the Rights of Persons Belonging to Minorities and the Declaration on the Rights of Indigenous Peoples, adopted in September 2007, contain specific cultural rights as well.¹³ Furthermore, many standard-setting instruments regarding cultural rights were adopted under the aegis of UNESCO.

Additionally, the right to take part in cultural life is recognized in several regional human rights instruments, such as, *inter alia*, the African Charter on Human and Peoples’ Rights of 1981 (article 17.2) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (article 14.1 (a)).

C. The notion of “culture”

1. Definition of Culture and Drafting History

There is still no generally accepted definition of “culture”. It has been said that: “A great deal of confusion arises in both academic and political discourse when culture in the humanistic sense is not distinguished from ‘culture’ in its anthropologic senses, notably culture as the total and distinct way of life of a people or a society.”¹⁴

However, for article 15 of the Covenant an anthropological concept of culture must be applied.¹⁵ Culture thus manifests itself in many forms including a particular way of life.¹⁶ This means “that culture is not merely an accumulation of works and knowledge which an elite produces, collects and conserves in order to place it within reach of all”.¹⁷ In its ‘jurisprudence’, the CESCR referred to that wide notion of culture on many occasions shaping the content of article 15.1

¹³ Cf. in particular article 2.1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN Doc. A/RES/47/135 or article 8.1 of the Rights of Indigenous Peoples, UN Doc. A/61/L.67.

¹⁴ Sahlins, in: World Commission on Cultural Diversity: Our Creative Diversity, p. 21.

¹⁵ Cf. CESCR General Discussion of the right to take part in cultural life as recognized in article 15 of the Covenant, UN Doc. E/C.12/1992/SR.17; Cor Konaté: Implementation of cultural rights. Analytical Study of article 15 of the ICESCR, UN Doc. E/C.12/1992/WP.4 (1992); among many others Meyer-Bisch (ed.): Les droits culturels. Projet de déclaration, art. 1, p. 12; Craven: The Right to Culture in the ICESCR, in: Fisher et al. (eds.): Human Rights and Cultural Policies in a Changing Europe, p. 161-171 (162); Eide: Cultural Rights as Individual Human Rights, in: Eide et al. (eds.): *esc-Rights*, p. 289-301 (293); Hansen: The right to take part in cultural life, in: Chapman/Russell (eds.): Core obligations, p. 279-303 (285); O’Keefe: The “Right to take part in Cultural Life” under article 15 of the ICESCR, ICLQ Vol. 47 (1998), p. 904-932 (916 et seq.); preferring a classical understanding Robertson: Le droit à la culture, in: Cultures Vol. V No. 1 (1978), p. 9-33 (27).

¹⁶ See CESCR General Discussion of the right to take part in cultural life, UN Doc. E/C.12/1992/SR.17 or HRC General Comment No. 23, para. 3.1, 7.

¹⁷ Cf. UNESCO’s Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It from 1978, Preamble.

(a).¹⁸ Thereby, the CESCR has also clarified its Revised Guidelines where questions regarding “awareness and enjoyment of the cultural heritage of ethnic groups and minorities and indigenous peoples” and “positive effects as well as on difficulties and failures, particularly concerning indigenous ... groups” arise.¹⁹ Read alone, the Guidelines leave it open to whether the mere participation of minorities and indigenous groups in the classical cultural life is protected or, more comprehensively, their cultures as a way of life. Nevertheless, a broad interpretation of “culture” also comprises classical aspects of culture.²⁰

However, a wide interpretation of culture seems to be contrary to the original, more classical understanding envisioned in the drafting processes of article 27.1 UDHR and article 15.1 (a). It has been stressed that the drafters of the right did not envisage a “cultural mob rule.”²¹ But, an indication of a wide understanding of culture can be found in article 73 (a) of the Charter of the United Nations pointing out that a broader interpretation of culture has already been used as a legal term at the time the Declaration and the Covenant were drafted.²²

Sometimes the right to take part in cultural life is interpreted in the light of cultural diversity.²³ To the extent “that cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values,”²⁴ this seems to support a broad understanding in an anthropological sense. On the other hand, cultural diversity can be narrowed down to an international cultural diversity. The affirmation of the diversity of cultural expressions in the territory of a State party²⁵ is important for the safeguarding of creative freedom, but it does not necessarily establish a broad notion of culture.

Nevertheless, the necessity for an anthropological concept of culture is a direct consequence of the right to take part in cultural life as a universal human right. A mere restriction on the classical “eurocentric” understanding of culture is inconsistent with the idea of the universality of human rights.

Furthermore, the right to take part in cultural life, like all other human rights of the Covenant, is derived “from the inherent dignity of the human person.”²⁶ That is why “culture” has to be interpreted in the light of human dignity and, therefore, the identity of all individuals. Or, as UNESCO’s 1978 Recommendation on Participation by the People at Large in Cultural Life and

¹⁸ Cf. as recent examples Concluding Observations Finland, UN Doc. E/C.12/FIN/CO/5 (2007), para. 11, 20 (traditional culture and way of life of the Sami); Lists of Issues Nepal, UN Doc. E/C.12/NPL/Q/2 (2006), para. 32 (rituals, customs and traditions of minorities in Nepal); Concluding Observations Libya, UN Doc. E/C.12/LYB/CO/2 (2006), para. 43 (culture, language, traditions and customs of all groups including minorities and ethnic groups); List of Issues Norway, UN Doc. E/C.12/Q/NOR/2, (2004), para. 13 (traditional livelihoods of the Sami).

¹⁹ Revised general guidelines regarding the form and contents of reports to be submitted by States Parties under articles 16 and 17 ICESCR, UN Doc. E/C.12/1991/1, article 15 para. 1 (d) and para. 1 at the end.

²⁰ See Eide: Cultural Rights as Individual Human Rights, in: Eide et al. (eds): *esc-Rights*, p. 289-301 (290) or O’Keefe: The “Right to take part in Cultural Life” under article 15 of the ICESCR, ICLQ Vol. 47 (1998), p. 904-932 (905).

²¹ O’Keefe: The “Right to take part in Cultural Life” under article 15 of the ICESCR, ICLQ Vol. 47 (1998), p. 904-932 (912).

²² Niec: The concept of culture in the context of human rights, in: Fisher et al. (eds.): *Human Rights and Cultural Policies in a Changing Europe*, p. 172-189 (173).

²³ Cf. article 5 of UNESCO’s Universal Declaration on Cultural Diversity or without direct reference to article 15 General Assembly’s Resolutions „Human Rights and Cultural Diversity“; UN Doc. A/RES/58/167 and A/RES/60/167.

²⁴ See the Preamble of UNESCO’s Convention on the Protection of the Diversity of Cultural Expressions.

²⁵ Articles 1 lit. g), 2 (2), 6 (1) of this Convention.

²⁶ Preamble, ICESCR.

their Contribution to It²⁷ states: “[P]articipation in cultural life takes the form of an assertion of identity... and dignity...”.²⁸ Consequently, an interpretation of the term “culture” in the view of cultural identity²⁹, understood as “the specific way of life of individuals and communities”³⁰, also calls for an anthropologic comprehension.

Therefore, culture in the broad sense has to be recognized under article 15.1 (a) ICESCR also to be in line with general developments³¹ in international law which increasingly acknowledge the anthropological dimension of culture.

2. Qualification of “culture” as a human rights term

Nevertheless, there are significant differences between culture as a general term and culture as term of human rights law. Culture, as used in some scientific disciplines, is a purely descriptive concept, whereas human rights are based on values. The comprehension of “culture” as a term of article 15.1 (a) therefore needs to be qualified in two ways.

First: Culture is an ambiguous phenomenon. Many cultural practices run counter to universal human rights. For instance, the Vienna Declaration and Programme of Action called for the “eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices...”³² The Committee is faced with cultural practices like “dedicating girls to a god or a goddess, ... marrying child brides and witchcraft”³³ or “superstitious beliefs against persons with disabilities”³⁴ or, to cite an instance of the Human Rights Committee (HRC), even with infanticide as “a result of traditional beliefs.”³⁵

“Culture” must therefore be interpreted in the light of the universal human rights provisions, establishing the criterion of a human rights consistency of “culture” as a term of article 15.1 (a). Consequently, culture as a social phenomenon must not be confused with culture as a term of international human rights law. However, not all dubious cultural practices constitute an obvious, blatant and definite violation of human rights. Therefore, State measures against these less adverse cultural practices in terms of human rights have to be addressed under the general limitation clause of article 4 of the Covenant. The latter cultural practices may merit at least a protection *prima facie* by article 15.1 (a).

Despite the problem of a cultural bias in the assessment of a cultural practice (which can be addressed by the geographically diverse composition of Monitoring Bodies comprised of

²⁷ Cf. in particular Moulinier: The Nairobi Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it, UNESCO Doc. CC/CSP/CP/14 (1986).

²⁸ Cf. Preamble of the Nairobi Recommendation.

²⁹ Cf. as well CESCR Revised Guidelines, UN Doc. E/C.12/1991/1, article 15 para. 1 (c).

³⁰ Donders: Towards a Right to Cultural Identity?, p.12; cf. also Riedel: Recht auf kulturelle Identität, in: Schwartländer/Riedel (eds.): Neue Medien und Meinungsfreiheit im nationalen und internationalen Kontext, p. 239-265 (247 et seq.).

³¹ Cf. for example articles 8 lit. j), 10 lit. c) of the Convention on Biological Diversity, articles 2.2 lit. b), 5 lit. a) of ILO’s Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries or article 2 of the Convention for the Safeguarding of the Intangible Heritage.

³² See World Conference on Human Rights, Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/23 para. II 38.

³³ Concluding Observations Nepal, UN Doc. E/C.12/NPL/CO/2 (2007), para. 15.

³⁴ CESCR General Comment No. 5, para. 38.

³⁵ Committee on the Rights of the Child: Lists of Issues Central African Republic, UN Doc. CRC/C/Q/CAR/1 (2000), para. 8.

members from different cultural backgrounds), the following criteria might be helpful to identify practices which are not protected *prima facie*. The more a cultural practice represents a violation of peremptory human rights norms, or violates the core content of other human rights, or human dignity, or the general principle of *neminem laedere*, it becomes increasingly likely that this practice will not be protected by the right to take part in cultural life. The same holds true for cultural practices which would provoke States parties' *obligations to protect* under other human rights provisions.

Article 5.1 ICESCR cannot be used to address harmful cultural expressions, since this provision is not applicable to many cases in question. Article 5.1 ICESCR requires an activity aimed at the destruction of the rights of the Covenant or their limitation to a greater extent than provided therein.³⁶ Therefore, the scope of application is limited to the rights of the ICESCR; cultural traditions violating rights enshrined in other Human Rights Treaties are not covered. Due to the limitation to intentional activities, article 5.1 does not cover violating cultural structures and patterns or non-intentional activities.

Second: On account of the anthropocentric nature of all human rights as fundamental, inalienable and universal entitlements belonging to the individual and groups of individuals³⁷, culture in its objective dimension is not protected *per se*. The right to take part in cultural life should not be misinterpreted as an instrument to protect cultural property or cultural heritage as "*l'art pour l'art*".³⁸ However, culture in an objective perspective can be covered by the right to take part in cultural life to the extent that this culture as materialized is essential for the identity of individuals and groups; it manifests itself as an expression of cultural activities; or, establishes any other relationship to the human person.

It is therefore crucial not to equate "culture" in the sense of article 15 ICESCR with the concept utilised in other international law instruments or scientific disciplines.

3. *Right to participate in which culture?*

According to article 27.1 of the Universal Declaration of Human Rights, everyone is entitled to participate in the cultural life *of the community*. In line with article 27 ICCPR, persons belonging to minorities have the right to enjoy *their own* specific culture.

In contrast, the wording of article 15.1 (a) does not establish a restriction to a particular culture. Furthermore, the individual has to be seen as the "maker, shaker and breaker of cultures".³⁹ Hence, the understanding of "culture" in terms of the right to take part in cultural life has to first be based on the individual himself, not necessarily on a cultural entity like a nation, a minority, tribe or a people. Any other group-based interpretation of culture would be contrary to the dynamic character of culture and would support the illusion of cultures as monolithic⁴⁰ structures. It would allow the monopolization of the definition of "culture" by collective entities, leading to coercion towards cultural conformity instead of safeguarding cultural freedom. Yet, the fact that a cultural group perceives a practice as part of their culture constitutes strong evidence regarding the applicability of the right to take part in cultural life.

³⁶ Cf. Nowak: CCPR-Commentary, 2005, article 5, para. 8 et seqq.

³⁷ CESCR General Comment No. 17, para. 1.

³⁸ Cf. for example article 2.5 of the Convention on the Protection of Underwater Heritage, where the preservation of cultural heritage is described as "first option".

³⁹ See Eide: Cultural Rights as Individual Human Rights, in: Eide et al. (eds): *esc-Rights*, p. 289-301 (290).

⁴⁰ Similarly Riedel: Universality of Human Rights and Cultural Pluralism, in: Starck (ed.): *Constitutionalism, Universalism and Democracy*, p. 25-52 (31).

Moreover, the right to take part in cultural life could not adequately reflect multiple cultural identities increasingly occurring in a globalized world. If reduced to a right to take part solely in one's *own* culture, or the culture of another predominating collective entity, article 15.1 (a) could not adequately mirror intercultural options and opportunities for the individual's conduct, hampering intercultural contacts and, in the worst case scenario, leading to cultural segregation. The individual has to be the reference point of culture in terms of article 15.1 (a), thereby avoiding cultural restriction and oppression, while at the same time safeguarding cultural freedom and options.

Consequently, the Committee's Revised Guidelines⁴¹ on article 15 should be clarified, as they speak of the "the right of everyone to take part in the cultural life which he or she considers pertinent, and to manifest his or her own culture". This phrase cannot only be understood as an affirmation of an interpretation based on the individual, but also as a restriction on the manifestations of one's "own" culture to which the individual belongs.

The right to take part in cultural life should nevertheless not be confused with a right to individual self-development, since it requires a special nexus to culture. Within a cultural system there are spaces not occupied by cultural values or ideas which are open for purely individual conduct. Alongside this differentiation, a cultural self-realization could be separated from a purely individual self-realization.

4. The collective dimension of the right

The focus on the individual as the bearer of the right to take part in cultural life, and as reference for the determination of culture, does not negate culture as a collective phenomenon. Thus, it appears that the right to take part in cultural life undoubtedly has a collective dimension. However, a cultural group as such should not be recognized as the bearer of article 15.1 (a).⁴² This understanding of the right to take part in cultural life is hardly compatible with the wording of the Covenant and the individual orientation⁴³ of the Human Rights System within the United Nations. In particular, it would even exceed the interpretation of article 27 ICCPR containing an individual right with a collective element as a specific provision for the benefit of minorities.⁴⁴ Moreover, granting a cultural group its own substantial right at the level and the dignity of human rights is counterproductive, and even dangerous, since this could undermine the rights of individual bearers against collective pressure, be it the State or another cultural group.

In consideration of the fact that many cultural practices can only be enjoyed with others in the community, collective concerns can nevertheless fall under article 15.1 (a) insofar as they are

⁴¹ Revised general guidelines regarding the form and contents of reports to be submitted by States Parties under articles 16 and 17 ICESCR, UN Doc. E/C.12/1991/1, article 15 para. 1.

⁴² See generally on group rights Riedel: Menschenrechte als Gruppenrechte auf der Grundlage kollektiver Unrechtserfahrungen, in: Reuter (ed): Ethik der Menschenrechte - zum Streit um die Universalität einer Idee. I., 1999, p. 295-320; Riedel: Gruppenrechte und kollektive Aspekte individueller Menschenrechte, in: Berichte der deutschen Gesellschaft für Völkerrecht, Band 33 (1994), p. 49-79; Riedel: La dimensione di diritti di gruppi fra diritti umani e diritti fondamentali, in: Ermanno Vitale et al. (ed.): Diritti umani e diritti delle minoranze, Torino 2000, p. 83-104.

⁴³ Riedel: Gruppenrechte und kollektive Aspekte individueller Menschenrechte, in: Berichte der deutschen Gesellschaft für Völkerrecht, Band 33 (1994), p. 49-79 (53).

⁴⁴ Cf. Nowak: CCPR-Commentary, 2005, article 27, para. 36 et seqq.

understood as the interests of a group of individuals.⁴⁵ Recognition of collective aspects⁴⁶ therefore is possible depending on, and mediated by, the individual. From a procedural perspective, an individual or a group of individuals can assert a derivative protection of the group, which to a certain extent can be compared to the legal concept of an “*actio pro socio*”.⁴⁷ Moreover, in order to realize the rights of individuals, States parties are regularly under an obligation to take measures supporting cultural groups, thereby establishing an objective legal dimension in favour of collective entities stemming from the right to take part in cultural life.

D. Relation to other Human Rights and Provisions

1. Participation in cultural life and creative freedom

The relationship between the right to take part in cultural life and other universal human rights and provisions is crucial for the understanding of the scope of application. Article 15 ICESCR enshrines three substantial human rights: the right to take part in cultural life; the right to enjoy the benefits of scientific progress and its applications⁴⁸ (paragraph 1 (b)); and, the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author⁴⁹ (paragraph 1 (c)).

However, “the freedom indispensable for ... creative activity”, as laid down in paragraph 3, should not be considered a substantial human right of its own.⁵⁰ This follows from the wording of this paragraph as it does not include the expression “right of everyone” which is usually found in the Covenant to indicate a right and from the systematic position between two instrumental provisions in paragraphs 2 and 4, dealing with States parties’ obligations. Furthermore, a separate right to creative freedom would not directly require positive States obligations, since according to the wording of paragraph 3 States parties are only bound to respect creative freedom.

⁴⁵ With a view to procedural aspects Human Rights Committee *Lubicon Lake Band v. Canada*, Communication No. 167/1984, UN Doc. CCPR/C/38/D/167/1984, para. 32.1.

⁴⁶ Riedel: Gruppenrechte und kollektive Aspekte individueller Menschenrechte, in: *Berichte der deutschen Gesellschaft für Völkerrecht*, Band 33 (1994), p. 49-79 (75).

⁴⁷ Cf. Riedel: Die Grundrechtssaat ist aufgegangen – Zeit nachzusäen?, in: Wolter et al. (eds): *Einwirkungen der Grundrechte auf das Zivilrecht, Öffentliche Recht und Strafrecht*, Heidelberg 1999, p. 297-315 (309 et seq.). Contrary to its meaning in this context, this concept of civil law, however, is based on rights of a company as such.

⁴⁸ Cf. Report of the Expert’s Meeting on the Right to Enjoy the Benefits of Scientific Progress and its Applications, Amsterdam 2007.

⁴⁹ Cf. CESCR General Comment No. 17: The right of everyone to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, UN Doc. E/C.12/GC/17 or Schneider: *Menschenrechtlicher Schutz geistigen Eigentums*, 2006.

⁵⁰ Like here Concluding Observations Iran, UN Doc. E/C.12/1993/7 (1993), para. 7; O’Keefe: The “Right to take part in Cultural Life” under article 15 of the ICESCR, ICLQ Vol. 47 (1998), p. 904-932 (905, 910); Hansen: The right to take part in cultural life, in: Chapman/Russell (eds.): *Core obligations*, p. 279-303 (298) Symonides: UNESCO’s Contribution to the Progressive Development Human Rights, in: *Max Planck Yearbook of United Nations Law* Vol. 5 (2001), p. 307-340 (319) and Häusermann: The Right to Participate in Cultural Life, in: Fisher et al. (eds.): *Human Rights and Cultural Policies in a Changing Europe*, p. 109-133 (124); as “instrumental right” by Marks: *Defining Cultural Rights*, in: Bergsmo (ed.): *Human Rights and Criminal Justice for the downtrodden*, p. 293-324 (296); obviously differing General Comment No. 17, para. 4 and Craven: *The Right to Culture in the ICESCR*, in: Fisher et al. (eds.): *Human Rights and Cultural Policies in a Changing Europe*, p. 161-171 (164).

Moreover, a clear-cut distinction between the active, more creative and passive, more consumptive participation in cultural life is scarcely possible. Consequently, the right to take part in cultural life should be interpreted as including both passive access to a given culture⁵¹ and participation in an active manner in living and creating culture. Or, as UNESCO's Recommendation on Participation in Cultural Life puts it: "[B]y access to culture is meant the concrete opportunities available to everyone ... for enjoying cultural values and cultural property" whereas "by participation in cultural life is meant the concrete opportunities guaranteed for all to express themselves freely, to communicate, act, and engage in creative activities with a view to the full development of their personalities, a harmonious life and the cultural progress of society"⁵². The right to take part in cultural life must therefore be interpreted as including creative freedom.

2. *Cultural Life and Self-Determination*

Although the right to take part in cultural life comprises a collective dimension, it must not be confused with the people's right to self-determination including the pursuance of the cultural development of a people according to article 1.1 of the Covenant. Whereas the right to self-determination only belongs to peoples, the right to take part in cultural life constitutes an individual right with collective implications. The enjoyment of the right to take part in cultural life does not directly touch States parties' sovereignty and integrity⁵³. Nevertheless, as the Human Rights Committee regarding the ICCPR stated, "the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular article 27"⁵⁴. The same holds true for the provisions of the ICESCR in general and article 15 in particular.

3. *Articles 15.1 (a) ICESCR and 27 ICCPR*

The relationship of article 15.1 (a) ICESCR to the right of members of minorities⁵⁵ to enjoy their own culture in article 27 ICCPR poses difficult questions. As a consequence of the very existence of article 27, one could draw the conclusion that minorities or their members do not fall within the scope of application of article 15.1 (a). The provisions reveal even more similarities when the French or the Spanish wording of article 27 ICCPR is examined. Contrary to the English wording ("their own culture"), but in line with the wording of article 15.1 (a) ICESCR, the provision has been drafted using the term "cultural life" in these languages as well ("leur propre vie culturelle", "su propria vida cultural"). This seems to indicate that the terms "culture" and "cultural life" can be used interchangeably in the context of the International Bill of Rights, since a divergent meaning in the different languages was surely not intended.

However, there are several crucial differences between the provisions. Article 27 ICCPR only applies to persons belonging to certain minorities, whereas article 15 ICESCR does not impose a limitation to a specified group. In the absence of a generally accepted definition of "minority",

⁵¹ Cf. article 27.1 of the Universal Declaration with the explicit mention of the right to enjoy the arts, which has to be seen as merged in the phrase "participation in cultural life".

⁵² See Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It, para. 2 (a) and (b).

⁵³ Focussing, of course, on article 27 ICCPR HRC General Comment No. 23, para. 3.1.

⁵⁴ HRC *Apirana Mahuika et al. v. New Zealand*, UN Doc. CCPR/C/70/D/547/1993, para. 9.2.

⁵⁵ See also the General Assembly's Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN Doc. A/RES/47/135.

the application of article 27 ICCPR might vary considerably, albeit the existence of a minority is not dependent on the decision of a State party.⁵⁶ Contrary to views expressed in the drafting process, indigenous peoples form a minority.⁵⁷ But still, it is doubted whether the rights enshrined in article 27 ICCPR are conferred only to nationals⁵⁸ or also to foreigners.⁵⁹ The prerequisite of the “existence” of a minority indicates that article 27 requires a certain degree of historic stability of the minority⁶⁰, leaving space for some degree of uncertainty regarding the applicability of the norm. Accordingly, it is doubtful, if so-called “new minorities” such as refugees, guest workers and other immigrants would constitute a minority under article 27 ICCPR.

Furthermore, the Human Rights Committee confirmed that “the minorities referred to in article 27 are minorities within ... a State, and not minorities within any province.”⁶¹ However, especially in States which provide their sub-units with a high degree of autonomy, there is also a need for the protection of members of a culture which form a majority in the State, but not in a province.

Moreover, article 27 merely guarantees the enjoyment “of their own culture”, that is to say, only the enjoyment of their specific minority culture without intercultural aspects. Thereby, the participation in the cultural life of the majority is not guaranteed. Furthermore, the wording “in community with the other members of their group” was interpreted in a way that a purely individual enjoyment of culture is not protected by the same token.⁶²

By contrast, article 15 applies in all these cases, irrespective of the existence of a minority, be it in a State or a Province, of the affiliation to such a minority, of the nationality⁶³ of the individual, and of any reference to a group. The right to take part in cultural life is not restricted to one’s “own” culture but also safeguards access to other cultures.

Consequently, the relationship of article 27 ICCPR and 15.1 (a) ICESCR is not mutually exclusive, but reciprocally reinforcing. To conclude: insofar as article 27 ICCPR applies, it is *lex specialis* to article 15 ICESCR and therefore creates a more intensive level of protection unless article 15.1 (a) provides more favourable and beneficial conditions. One must also bear in mind the passive wording of article 27 ICCPR (“shall not be denied”)⁶⁴ which contrasts with obligations to act in a positive manner – in particular under the obligation to fulfil under the Social Covenant.

4. *Cultural acceptability and overlapping provisions*

⁵⁶ HRC General Comment No. 23, para. 5.2.

⁵⁷ Nowak: CCPR-Commentary, art. 27 para. 27 et seqq.

⁵⁸ Capotorti: Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, para. 566.

⁵⁹ HRC General Comment No. 23, para. 5.1.

⁶⁰ Less restrictive HRC General Comment No. 23, para. 5.2; cf. also Nowak: CCPR-Commentary, art. 27 para. 19 et seqq.

⁶¹ HRC *Ballantyne, Davidson and McIntyre v. Canada*, Communication No. 385/1989, UN Doc. CCPR/C/47/D/385/1989, para. 11.2.

⁶² Nowak: CCPR-Commentary, article 27 para. 38.

⁶³ Cf. article 2.3 ICESCR, which allows limitations on nations only for developing countries and merely for economic rights, but not cultural rights.

⁶⁴ But cf. HRC General Comment No. 23, para. 6. 1 and 6.2.

The Committee has consistently confirmed the concept of cultural acceptability or adequacy⁶⁵, meaning that the realization of a right has to be respectful of the cultural identity of individuals, minorities, peoples and communities and their traditional lifestyle.⁶⁶ Consequently, cultural aspects pervade almost all human rights of the Covenant. In particular, the right to take part in cultural life is intrinsically linked to the right to education as enshrined in articles 13 and 14⁶⁷ and to the right to benefit from the protection of the moral and material interests resulting from one's scientific, literary and artistic productions⁶⁸, both mutually reinforcing and reciprocally limiting.

From this, it follows with respect to a broad understanding of culture, that the right to take part in cultural life has considerable overlap with other human rights provisions, especially the right to an adequate standard of living⁶⁹ (article 11 ICESCR), the right to education (articles 13, 14 ICESCR), the right to freedom of religion (article 18 ICCPR) and the right to freedom of expression (article 19.2 ICCPR).

To some extent, rules of primacy, such as the principle of *lex specialis derogat legi generali*, can be helpful to identify the most applicable provision.

In most of the cases, pertinent human rights provisions have to be applied cumulatively. Article 5.2 of the Covenant ensures the application of domestic law, any bilateral or multilateral treaty in order to guarantee application of the most favourable legal rules.⁷⁰ As a consequence of article 5.2 ICESCR and of similar provisions in other human rights treaties, one can derive a principle of favourability. Therefore, limitations on human rights have to be consistent with the provision, guaranteeing the highest level of protection for the individual. Furthermore, a cumulative application of different human rights can establish new specific aspects of protection drawn from this synopsis. In this light, the Committee's concept of cultural acceptability can be seen as an implementation of the right to take part in cultural life in relation to other human rights provisions, emphasizing the cultural dimensions of other rights and freedoms and, by this, establishing new focal areas of protection.

Nevertheless, in line with recent developments for more coherence⁷¹ in the United Nations monitoring system, it would be helpful to clarify the relationship of the rights and to highlight specific instances, in order to strengthen human rights as justiciable, enforceable and actionable entitlements, be it on the national or international level.

E. Normative content: elements of the right to take part in cultural life

The scope of application of article 15.1 (a) comprises every activity or conduct as the expression of the way of life of one or more groups in an anthropological or ethnological sense, provided

⁶⁵ CESCR General Comments No. 12: The right to adequate food, para. 11; No. 13: The right to education, para. 6 (c); No. 14: The right to the highest attainable standard of health, para. 12 (c); as cultural adequacy in General Comment No. 4: The right to adequate housing, para. 8 (g) and cultural appropriateness in General Comment No. 15: The right to water, para. 12 (c).

⁶⁶ Riedel: Universality of Human Rights and Cultural Pluralism, in: Starck (ed.): Constitutionalism, Universalism and Democracy, p. 25-52 (47).

⁶⁷ See CESCR General Comment No. 13, para. 6 (c), 50

⁶⁸ CESCR General Comment No. 17, para. 4.

⁶⁹ Cf. Engbruch: Das Menschenrecht auf einen angemessenen Lebensstandard, in print.

⁷⁰ The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, HRQ Vol. , (1987), pp. 123-135, para 58.

⁷¹ Cf. Concept paper on the High Commissioner's proposal for a unified standing treaty body; UN Doc. HRI/MC/2006/2 or Harmonized guidelines on the reporting under international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents, UN Doc. HRI/MC/2005/3.

that this activity or conduct does not constitute an obvious, blatant and definite violation of another human rights provision.

It proves to be very difficult to define as to whether a concrete action falls in the scope of application of the right to take part in cultural life. On account of this, an approach on a case by case basis seems to be preferable. This is in line with the ‘jurisprudence’ of the Human Rights Committee regarding article 27 ICCPR which has observed that this right „... cannot be determined in abstracto but has to be placed in context.”⁷²

Nonetheless, it is possible to identify some components of article 15.1 (1) ICESCR.⁷³ The right to take part in cultural life comprises three overlapping dimensions: culture as a way of life, culture as creative freedom and culture as a right to access, which can be characterized by using the Committee’s “-ilities”-approach⁷⁴.

1. Culture as way of life

Capability of cultural self-realization: Culture as a way of life includes the capability of an individual to align his or her personal conduct and life according to one or more cultures.⁷⁵ The right to take part in cultural life does not only include a cultural self-realization within a given culture, but also the right to choose the cultural life, in which to participate. Or, as the United Nations Development Programme puts it: “*Cultural liberty is the capability of people to live and be what they choose, with adequate opportunity to consider other options.*”⁷⁶

This dimension of the right to take part in cultural life therefore includes a traditional and a different lifestyle, which implies that article 15.1 (a) also comprises a negative right, i.e., a right to be free from culture as a way of life which is not desired.

According to the relevant standard-setting instruments and the ‘jurisprudence’ of the Committee, the following elements of the right to take part in cultural right have already been substantiated.

Language forms an important aspect of culture. Besides provisions forbidding discrimination on grounds of language (e.g. article 2.2 ICESCR), language rights are mentioned in several human rights instruments.⁷⁷ That is why the Committee rightly has established a linguistic dimension under article 15.1 (a), dealing, for example, with the “use of minority languages in everyday life”.⁷⁸ Thus, the use of the language of one’s choice in a private or public sphere is protected. Furthermore, the right to take part in cultural life enshrines the aspect of languages in the press, radio or television.⁷⁹ The fear of some States that granting language rights could evoke or

⁷² *Kitok v. Sweden*, Communication No. 197/1985; UN Doc. CCPR/C/33/D/197/1985, para. 9.3; *Länsman v. Finland*, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992, para. 9.3; *Apirana Mahuika v. New Zealand*, Communication 547/1993, in UN Doc. CCPR/C/70/D/547/1993, para. 9.4; emphasis in the originals.

⁷³ For further references to the methodological approach, legal instruments, State practice or views of scholars please cf. the underlying thesis *Das Menschenrecht auf Teilnahme am kulturellen Leben*, chapter 5.

⁷⁴ Cf. Riedel: *The Human Right to Water*, in: Dicke, Klaus et al. (eds.): *Weltinnenrecht. Liber amicorum Jost Delbrück*, p. 585-606 (597).

⁷⁵ Cf. also Meyer-Bisch (ed.): *Les droits culturels. Projet de déclaration, articles 3 a), 4 a) and 5 a)*, p. 12 et seq., p. 33.

⁷⁶ UNDP: *Human Development Report 2004. Cultural Liberty in today’s diverse world*, p. 4, 13.

⁷⁷ Cf. article 27 ICCPR, article 30 CRC, article 10.1 of the Framework Convention for the Protection of National Minorities, article 7 of the European Charter for Regional or Minority Languages; cf. also articles 2.1 and 4.2 of the United Nations Declaration on the Rights of Persons belonging to Minorities.

⁷⁸ List of Issues Slovenia, UN Doc. E/C.12/Q/SVN/1 (2004), para. 30.

⁷⁹ List of Issues Monaco, UN Doc. E/C.12/Q/MCO/1 (2004), para. 25.

strengthen centrifugal political powers can be countered by the fact that recognizing different languages will also promote the integration of diverse cultures within a State.

Sometimes, the Committee seems to recognize access to State authorities or courts in Minority or Indigenous languages as a matter of article 15.⁸⁰ Though, insofar as this jurisprudence should go beyond certain civil rights as enshrined, for instance in article 14.3 ICCPR, this seems to be too extensive, especially as it exceeds the prevalent interpretation of article 27 ICCPR⁸¹.

The right to a name is recognized in several human rights instruments, for instance in articles 24.2 ICCPR or 7.1 and 8.1 CRC.⁸² Yet, since a name is also an expression of the cultural identity, the right to a name common in one culture can also be seen as an element of article 15.1 (a) ICESCR, establishing a cultural dimension of the right to a name and also addressing forced changes of names as occurred in some States.

Article 15.1 (a) also includes a land dimension, especially in the case of indigenous peoples. In its ‘jurisprudence’, the Committee has linked land issues to the enjoyment of the Covenant’s rights on several occasions.⁸³ In any event, land rights⁸⁴ should not be seen as a matter of article 15.1 (a) *per se*, a land dimension of this right should only be acknowledged if the use of land is required as a *conditio sine qua non* for a certain cultural life, especially in the case of indigenous peoples, conceding a wide margin of discretion to the State party.

Besides, the issue of a subsistence economy forms an element of the right to take part in cultural life. The CESCR, as well as the HRC, has confirmed fishing, hunting or reindeer herding as aspects of cultural life.⁸⁵ Moreover, plants, animals and minerals may not only enjoy a protection as a consequence of the realization of the right to health⁸⁶, but also of the implementation of the right to take part in cultural life.

Additionally, religion has been perceived as a component of article 15.1 (a) ICESCR. The Committee has explicitly seen “the right to free exercise of religion as a right to take part in cultural life”.⁸⁷ Although religious aspects should primarily be dealt with under article 18 ICCPR, a protection of religion under article 15 ICESCR mirrors the anthropological concept of culture. Furthermore, a clear-cut separation of religious and cultural aspects is almost impossible

⁸⁰ Cf. List of Issues Ecuador, UN Doc. E/C.12/Q/EQU/1 (2003), para. 31 or Concluding Observations Tajikistan, UN Doc. E/C.12/TJK/CO/1 (2006), para. 73.

⁸¹ Nowak: CCPR-Commentary, article 27 para. 42.

⁸² Cf. also article 11.1 of the Framework Convention for the Protection of National Minorities or article 10.5 of the European Charter for Regional or Minority Languages or article 13.1 Declaration on the Rights of Indigenous Peoples.

⁸³ General Comment No. 14, para. 27; Concluding Observations Irak, UN Doc. E/C.12/1994/6 (1994), para. 14; Concluding Observations Canada, UN Doc. E/C.12/1/Add.31 (1998), para. 43; List of Issues Honduras, UN Doc. E/C.12/Q/HON/1 (1999), para. 48; Concluding Observations Colombia, UN Doc. E/C.12/1/Add.74 (2001), para. 12; List of Issues Norway, UN Doc. E/C.12/Q/NOR/2 (2004), para. 13.

⁸⁴ Cf. also articles 13 et seqq. ILO Convention No. 169; articles 8.2 (b), 10, 25 et seqq. of the Declaration on the Rights of Indigenous Peoples or HRC General Comment No. 23, para. 7 regarding land resources.

⁸⁵ CESCR Concluding Observations Finland, UN Doc. E/C.12/FIN/CO/5 (2007), para. 11, 20; Concluding Observations Denmark, UN Doc. E/C.12/1/Add.34 (1999), para. 6; HRC *Howard v. Canada*, Communication 879/1999, UN Doc. CCPR/C/84/D/879/1999, para. 12.5 and *Apirana Mahuika v. New Zealand*, Communication 547/1993, UN Doc. CCPR/C/70/D/547/1993, para. 9.3. *Kitok v. Sweden*, Communication No. 197/1985; UN Doc. CCPR/C/33/D/197/1985; *Länsman v. Finland*, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992, para. 9.2; *Äärelä and Näkkäljärvi v. Finland*; Communication No. 779/1997, UN Doc. CCPR/C/73/D/779/1997, para. 7.5; cf. also art. 23 (1) of the ILO Convention No. 169.

⁸⁶ General Comment No. 14, para. 27.

⁸⁷ Concluding Observations China, UN Doc. E/C.12/1/Add. 107 (2005), para. 38.

especially as regards traditional cultures calling for a religious dimension of the right to take part in cultural life, which also aims to reduce the number of loopholes and other unprotected areas in the grey area between religion and culture.

Moreover, engagement in play and recreational activities, as well as the exercise of sports, should also be acknowledged as elements of article 15.1 (a).⁸⁸ In its General Comment No. 5 on Persons with disabilities the Committee emphasized the accessibility “to places for recreation, sports and tourism” as well as the “use of restaurants, hotels, recreation centres and cultural venues”.⁸⁹

Finally, the recognition of a traditional legal system or legal customs can be seen as an element of the right to take part in cultural life as well, since the law itself is a cultural phenomenon.⁹⁰ In line with some international instruments⁹¹ the Committee dealt with that issue on some occasions.⁹² But, obviously, a State party’s margin of discretion would be very wide in implementing this dimension of article 15.1 (a). The realization of this element can lead to a legal pluralism, but the Covenant does not call for a pluralist legal system.⁹³ In particular, the requirements of article 14 ICCPR⁹⁴ have to be kept in mind.

2. *Creative Freedom*

Possibility of creative expression: The right to take part in cultural life under article 15.1 (a), read in conjunction with article 15.3 ICESCR, includes the freedom indispensable for creative activity. This is to say the possibility of each individual to engage in any artistic and creative practice. This dimension of the right to take part in cultural life is not limited to the creation itself, but also extends to the dissemination, exposition and performance of any creative or artistic work or production, such as, *inter alia*, poems, novels, paintings, sculptures, musical compositions, theatrical and cinematographic works, performances and oral traditions⁹⁵. This component also sheds light on the importance of mass media⁹⁶ as creators and transmitters of culture.

3. *Enjoyment of Culture*

⁸⁸ See also articles 31.1 CRC; 13 lit. c) CEDAW or 5 lit. f) ICERD or UNESCO’s International Charter of Physical Education and Sport.

⁸⁹ General Comment No. 5, para. 36, 38.

⁹⁰ See, as an example, Sec. 211 of the South African Constitution, although the Covenant has not been ratified so far; further on this Wehnert: *Afrikanisches Gewohnheitsrecht und die südafrikanische Verfassung*, 2006.

⁹¹ Cf. article 5 CRC (“local customs”); articles 8.1, 9 ILO Convention No. 169, General Assembly’s Resolution “Human Rights and Cultural Diversity”, UN Doc. A/RES/60/167, para. 12, calling for a State’s legal system to reflect the cultural diversity, and, depending on the interpretation, as well article 27 ICCPR, on this Capotorti: *Study on the Rights of Persons belonging to Minorities*, para. 379 et seqq.; see also Human Development Report 2004, p. 57 et seq.

⁹² General Comment No. 15, para. 21 (“customary or traditional arrangements for water allocation”); Conclusions and Recommendations Solomon Islands, UN Doc. E/C.12/1/Add.33 (1999), para. 20.

⁹³ Cf. on this European Court of Human Rights *Refah Partisi v. Turkey*, rejecting a system of legal pluralism.

⁹⁴ Cf. HRC General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law.

⁹⁵ General Comment No. 17, para. 9.

⁹⁶ Revised Guidelines, article 15 para. 1 (e).

Availability: The right to take part in cultural life as a right of access to culture requires the availability of a cultural infrastructure, including, *inter alia*, cultural centres, museums, libraries, theatres, cinemas,⁹⁷ but also places for cultural performances and services; places for recreation, sports and tourism⁹⁸, restaurants and hotels⁹⁹. Furthermore, this dimension encompasses the availability of cultural products such as, *inter alia*, books, newspapers, magazines, audiovisual products, radio and television programmes. Furthermore, it also includes the availability of a system to protect cultural heritage, be it the heritage of national ethnic groups, minorities or indigenous peoples,¹⁰⁰ provided that the protection of this cultural heritage is consistent with the anthropocentric concept of the ICESCR.

Accessibility: Culture, cultural products and cultural institutions have to be accessible to everyone on a non-discriminatory basis. The concept of accessibility comprises the following overlapping dimensions.

*Non-Discrimination*¹⁰¹: State-run cultural venues and institutions must be accessible to all, without discrimination, according to the provisions as enshrined in Article 2.2 and 3 of the Covenant, in law and fact. The safeguarding of the principle of non-discrimination also has indirect horizontal effects¹⁰², especially in the case of cultural venues and institutions, operated by third parties in a quasi-public area, or in the case of the privatization of formerly public institutions¹⁰³.

Occasionally, temporary special measures to achieve substantive equality might be required. According to article 8.3 of the General Assembly's Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, "[m]easures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality...". The same holds true for article 15.1 (a) regarding not only the rights of minorities, but also the rights of women, disabled, old or young people, etc.

Physical accessibility: Cultural infrastructure has to be physically accessible for everyone. This criterion reveals special importance for disabled¹⁰⁴ and older¹⁰⁵ persons and might require a State party to make arrangements for ramps, elevators, transport systems and other devices.

Accessibility of media and cultural products: Furthermore, article 15.1 (a) includes the accessibility of the media, including the Internet and cultural products. Everyone therefore has the right to purchase cultural products, to receive radio or television programmes, to have free access to the press as magazines and newspapers, or books, and to enjoy the cultural content. This aspect should also contain free reception to culturally important events, including

⁹⁷ Revised Guidelines, article 15 para. 1 (b); see also General Comment No. 6: The economic, social and cultural rights of older persons, para. 39 et seq.

⁹⁸ General Comment No. 5: Persons with disabilities, para. 36.

⁹⁹ Ibid. para. 38.

¹⁰⁰ Revised Guidelines, article 15 para. 1 (d).

¹⁰¹ Comprehensively General Comment No. 16 focussing on the equal rights of men and women.

¹⁰² Cf. especially articles 2.1 (e) ICERD and 2 (e) CEDAW.

¹⁰³ Cf. particularly General Comment No. 16, para. 20.

¹⁰⁴ See General Comment No. 5, para. 36 et seqq.

¹⁰⁵ Cf. General Comment No. 6, para. 39 et seqq.

outstanding national or international sporting events.¹⁰⁶ Access to cultural institutions via modern communication technologies such as the Internet or CD-ROMs should also be included in this realm.

Economic accessibility (affordability): Culture, whether cultural performances, institutions, products, or sporting events, should also be affordable for everyone, especially for poor, marginalized and disadvantaged persons.¹⁰⁷

Geographic and temporal accessibility: Culture should also be accessible in geographic and temporal terms. The geographical dimension of the right to take part in cultural life demands the accessibility of culture, be it in urban or rural areas. Article 15.1 (a) therefore calls for the regionalization and decentralization of cultural offerings and services. The temporal aspect reflects the need for opening hours of cultural venues and timing of events to facilitate the accessibility for the widest audience possible.¹⁰⁸

Linguistic accessibility: Accessibility of culture also encompasses a dimension of comprehension in terms of language and understanding, especially for disabled persons. The right to take part in cultural life requires that the linguistic diversity within a country is reflected in cultural performances, productions and the media. A special focus lies on the languages of minorities and indigenous peoples, including the languages of so-called “new minorities”. States should therefore consider measures such as, *inter alia*, establishing media to include languages other than the dominant language, guaranteeing quota and supporting translations from the dominant language into other significant languages spoken within their borders and vice versa. Other measures to consider are dubbing and sub-titles in movies and television. Moreover, disabled persons should be able to comprehend cultural activities through the use of talking books, theatres and television for deaf people¹⁰⁹ and sign language interpreters.

4. Cross-cutting aspects

Permeability: The right to take part in cultural life encompasses a dimension of intercultural and international activities. The international dimension is explicitly laid down in article 15.4 of the Covenant, in which States parties “recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the ... cultural fields.”¹¹⁰ However, international contacts are quite often intercultural contacts. Moreover, because of the omission of the restrictive criterion “of the community” in contrast to the Universal Declaration of Human Rights and because of reasons of non-discrimination, the intercultural dimension is included in the right to take part in cultural life as well. Therefore, everyone has the right to take part in the cultural life of other cultures and nations, regardless of borders. This dimension of article 15.1 (a) in conjunction with paragraph 4 encompasses, *inter alia*, international cultural

¹⁰⁶ Cf. O’Keefe: The “Right to take part in Cultural Life” under article 15 of the ICESCR, ICLQ Vol. 47 (1998), p. 904-932 (914 et seq.) who asks for the inclusion of sport in the Reporting Guidelines.

¹⁰⁷ Cf. UNESCO’s Recommendation concerning the Most Effective Means of Rendering Museums Accessible to Everyone, para. 7 et seqq.

¹⁰⁸ Cf. also article 7 (d) ICESCR and UNESCO’s Recommendation concerning the Most Effective Means of Rendering Museums Accessible to Everyone, para. 5.

¹⁰⁹ General Comment No. 5, para. 37.

¹¹⁰ Cf. also Riedel: Recht auf kulturelle Identität, in: Schwartländer/Riedel (eds.): Neue Medien und Meinungsfreiheit im nationalen und internationalen Kontext, p. 239-265 (253).

contacts, participation by cultural creators in international conferences or symposiums¹¹¹, the reception of foreign media materials, the purchase of cultural products, as well as the acquisition of foreign cultural ideas, and, especially in the case of minorities or indigenous peoples, the establishment of close connections to members of such groups living outside the national borders.

Institutional aspects: Cultural institutions, such as organisations to promote cultural traditions, sports clubs, cultural centres or associations, museums and so forth, can also be seen as safeguarded by the right to take part in cultural life.¹¹² Yet, these institutions should not be protected *per se*, but rather dependent on and transmitted by the individual. This derivative level of protection partly follows from the anthropological concept of the human rights. But furthermore, cultural chambers and similar institutions have very often proven not to guarantee cultural freedom but have rather been established to control, influence or censor cultural life. For example, the Committee has been concerned about the activity of a “Theatrical Guidance Board” in Tunisia.¹¹³ However, recognizing only an indirect protection of cultural institutions prevents a misinterpretation of this institutional aspect aimed at limiting the individual’s enjoyment of the right to take part in cultural life.

F. Limitations and Conflicts

1. General Remarks

According to article 4 ICESCR, a State party may restrict the rights of the Covenant “only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”¹¹⁴ From this, it follows that any limitation has to be consistent with the principle of proportionality. This is to say that any limitation has to serve a legitimate aim, has to be the least restrictive alternative, and must be proportional with the effects of the limitation compared to its intent. Furthermore, proportionality requires a comprehensive balancing and appreciation of conflicting human rights assurances in order to guarantee optimum effectiveness of each of the conflicting legal interests.¹¹⁵

2. Examples of colliding aspects and provisions

Economic development activities can collide with the right to take part in cultural life. For example, the construction of dams¹¹⁶ or mining activities can have severe implications on the cultural life, especially of minorities and indigenous peoples. The CESCR rightly stated: “Many activities undertaken in the name of ‘development’ have subsequently been recognized as ill-conceived and even counterproductive in human rights terms.”¹¹⁷ Nevertheless, development and economic activities are crucial in terms of the realization of other human rights provisions,

¹¹¹ Revised Guidelines, article 15 para. 6 (b).

¹¹² See also article 22 ICCPR.

¹¹³ Concluding Observations Tunisia, UN Doc. E/C.12/1/Add.36 (1999), para. 19.

¹¹⁴ Cf. for the prerequisites for example the Limburg Principles, para. 46 et seqq.

¹¹⁵ See the concept of „Praktische Konkordanz“ as developed by German doctrine.

¹¹⁶ Concluding Observations Mexico, UN Doc. E/C.12/MEX/CO/4 (2006), para. 10.

¹¹⁷ General Comment No. 2, para. 7.

as, for example, the right to work (article 6) and the right to an adequate standard of living (article 11). However, any limitation on the right to take part in cultural life has to be consistent with article 4 of the ICESCR. Article 15.1 (a) and development issues have therefore to be balanced, calling for a cultural development.

The right to take part in cultural life, such as the right to a traditional lifestyle including collecting, hunting or fishing, can clash with provisions to protect the environment, plants or animals, for example in the case of ritual slaughter of animals¹¹⁸ or bull or cock fights¹¹⁹. Here, as well, the different interests have to be balanced as far as possible.

Provisions of regulatory law, and to a certain extent penal law, can also conflict with the right to take part in cultural life. For example, measures of censorship¹²⁰ can clash with creative freedom as element of the right to take part in cultural life. Traditional headpieces might collide with the obligation to wear a helmet when riding a motorcycle.¹²¹ The prohibition of certain stimulants, especially for spiritual or ceremonial use, might be incompatible with article 15. Such limitations have to be in line with article 4 ICESCR. Nevertheless, in the context of States obligations *to protect*, such measures can even be required, especially considering that they serve to protect minors (article 10.3 ICESCR) or public health (article 12 ICESCR).

The provisions of non-discrimination, as enshrined in article 2.2 and 3, can also conflict with the right to take part in cultural life. The State is directly required to comply with these provisions of non-discrimination so that collisions are not very likely. But given the horizontal effects of non-discrimination on non-State actors, the situation is more complicated, since cultural activities are often based on differentiation on many grounds, such as sex, social origin or birth. An excessive application of the principle of non-discrimination would therefore leave hardly any room especially for traditional cultural life and vice versa.

Consequently, the right to take part in cultural life may appear to be discriminatory from an objective perspective, whereas a subjective and individual point of view would allow a practice to be protected. By way of illustration, a dance which is traditionally only conducted by men¹²² does not *a priori* preclude a protection by article 15.1, taking an individual perspective. Implementing articles 2.2 and 3 of the Covenant in relation to the right to take part in cultural life would then require a State to progressively replace such practices with non-discriminating ones or modify such customs, e.g. by realizing the right of women to take part in such dances as well and ensuring the cultural relevance and meaning of the custom. Furthermore, it might be necessary to justify differential treatment by the right to take part in cultural life, so that this differentiation does not constitute a discrimination.¹²³ In any case, limitations on article 15.1 (a)

¹¹⁸ Cf. German Federal Constitutional Court, BVerfGE 104, p. 337 et seqq.

¹¹⁹ Which where, though seen in relation to popular culture, prohibited by the Brazilian Supreme Federal Tribunal; cf. de Moraes: *Constituição do Brasil*, 2003, p. 1993.

¹²⁰ Cf. among others Concluding Observations Egypt, UN Doc. E/C.12/1/Add.44 (2000), para. 25; Concluding Observations Republic of Korea, UN Doc. E/C.12/1/Add.59 (2001), para. 32.

¹²¹ Referring, as an example, to the turban of the Sikhs Donders: *Towards a Right to Cultural Identity?*, p. 343, Poulter: *Ethnicity, Law and Human Rights*, p. 277 or Swiss Federal Court, BGE 119 IV, 260.

¹²² In the context of intangible heritage Odendahl: *Die Bewahrung des immateriellen Kulturerbes als neues Thema des Völkerrechts*, in: *SZIER* 3 (2005), p. 445-457 (456).

¹²³ Cf., for example, the findings of the Human Rights Committee in *Lovelace*: "The Committee recognizes the need to define the category of persons entitled to live on a reserve...regarding protection of its resources and preservation of the identity of its people."; *Lovelace v. Canada* Comm. No. 24/1977, UN Doc. CCPR/C/13/D/24/1977, para. 15.

must be consistent with article 4 also in consideration of the principle of optimum effectiveness of the opposing legal interests.

There are several areas of conflict within the scope of application of article 15.1 (a) itself, i.e., “culture versus culture”. The right to take part in cultural life in its intercultural dimension can clash with the right to protection against undesired cultures. The need for openness of a culture has to be balanced with the protection against “cultural infiltration”.

Moreover, one must consider that the right to take part in cultural life encompasses the right to participate in the predominant culture as well as the right to be culturally different from the predominant culture. Thus, the tension between equality and difference arises. The Committee has stressed: “In order to facilitate the equal participation in cultural life of persons with disabilities, Governments should inform and educate the general public about disability. In particular, measures must be taken to dispel prejudices or superstitious beliefs against persons with disabilities, for example those that view epilepsy as a form of spirit possession or a child with disabilities as a form of punishment visited upon the family.”¹²⁴ Here, the aspect of equality rightly prevails over traditional cultural ideas. Nonetheless, other collisions might be more problematic to resolve.

Furthermore, since the right to take part in cultural life encompasses an indirect collective dimension, individual and collective cultural concerns can conflict within the scope of the application of article 15.1 (a). To resolve this conflict, the following rule of thumb might be appropriate: there is usually a primacy of individual rights over collective concerns.¹²⁵ But, in some cases the realization of collective aspects can prevail over clashing individual rights, in particular, if the enjoyment of individual rights of others is dependent on the realization of collective aspects. Nonetheless, the primacy of group rights, completely detached from the interests of their members, cannot be extracted from the right to take part in cultural life. Regardless, the results of the process of balancing will vary depending on whether an individual is part of the group in question or not.

G. The obligations of States Parties

1. *Obligations to respect, protect and fulfil*

States Parties’ obligations of how to realize the right to take part in cultural life are roughly outlined in paragraphs 2-4 of article 15 ICESCR. But it has to be stressed that these provisions have always to be interpreted in the light of the individual’s rights as enshrined in paragraph 1 and do not establish any obligations detached thereof.¹²⁶

Like any other human right of the Covenant, imposes different categories of obligations on States parties: *obligations to respect, to protect and to fulfil*.¹²⁷

The obligation to *respect* requires that States parties should refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life. This includes, for example, that States parties should refrain from interfering in the cultural self-realization of a

¹²⁴ General Comment No. 5, para. 38.

¹²⁵ Cf. article 5.1 ICESCR („group“); similarly Riedel: Gruppenrechte und kollektive Aspekte individueller Menschenrechte, in: Berichte der deutschen Gesellschaft für Völkerrecht, Band 33 (1994), p. 49-79 (68).

¹²⁶ Cf. also Riedel: Recht auf kulturelle Identität, in: Schwartländer/Riedel (eds.): Neue Medien und Meinungsfreiheit im nationalen und internationalen Kontext, p. 239-265 (253).

¹²⁷ See in particular General Comment No. 12, para. 15.

person's creative and artistic activities as well as an individual's equal access to culture. In short, a State party always has to be mindful of the cultural identity of individuals, especially in the case of minorities, including so called new minorities and indigenous people. Furthermore, a State is required to respect cultural diversity and the diversity of cultural expressions. Also, a State has to acknowledge the autonomy of culture, understood as a domain largely independent of the State. Thus, a State has to be – in line with the recognized limitations – culturally neutral in a sense that there is no hierarchy of cultures.

Under the obligation to *protect*, States parties are obliged to prevent third parties, be they individuals, groups or corporations, from encroaching upon the right to take part in cultural life. This obligation includes for instance, that cultural services or institutions, run by private persons in a quasi-public sphere, are bound by the principle of non-discrimination. This dimension further requires States to take measures against trespassing or economic activities in protected indigenous areas. Furthermore, this obligation, be it under article 15.1 (a) or other human rights provisions, requires States parties to address harmful cultural traditions and to replace them immediately or progressively by practices consistent with universal human rights standards.

The obligation to *fulfil* encompasses three dimensions: the obligation to *facilitate*; the obligation to *promote*; and, the obligation to *provide*.¹²⁸ Under the obligation to *facilitate*, a State has to take positive measures to assist individuals or groups to enjoy the right to take part in cultural life in order to stimulate cultural life by setting an appropriate framework, which, for example, can include fiscal advantages for cultural affairs.

The obligation to *promote* requires a State party to conduct information programmes with a view to furnish information about the right to take part in cultural life in general, cultural activities and venues in particular, as well as to promote intercultural tolerance, friendship¹²⁹ and knowledge about cultures to foster further mutual understanding.

The States parties are under an obligation to *provide* the right to take part in cultural life when individuals are unable, for reasons beyond their control, to realize the right themselves, including temporary special measures. This requires, for instance, the “[a]vailability of funds for the promotion of cultural development and popular participation in cultural life, including public support for private initiative.”¹³⁰ Granting subsidies, however, always includes the risk of creating an official state culture¹³¹, diminishing cultural diversity, and can even be manipulative in terms of a cultural etatism. Therefore, a State's cultural policy has, in addition to the aforementioned obligations, to observe the criteria of democratization and decentralization of culture in terms of social and geographic accessibility and cannot, moreover, be restricted to support the predominant or national culture if more cultures exist. Nevertheless, States parties enjoy a wider margin of discretion when it comes to the obligation to provide in comparison to the obligation to respect. It seems important to consider that culture itself is independent of the State and, as such, can hardly be provided directly by a State party.

2. Participatory elements

To safeguard the cultural acceptability of States' cultural policies and measures, article 15.1 (a) contains a participatory element. The importance of the right to take part in cultural life in specific situations is particularly dependent on the notion, wishes and ideas of those who are

¹²⁸ Cf. in particular General Comment No. 14, para. 33.

¹²⁹ Cf. article 13.1 ICESCR.

¹³⁰ Revised Guidelines, article 15 para. 1 (a).

¹³¹ O'Keefe: The “Right to take part in Cultural Life” under article 15 of the ICESCR, ICLQ Vol. 47 (1998), p. 904-932 (915).

affected by a State party's measures.¹³² For example, the construction of an opera house in an indigenous reservation will generally not realize their right to take part in cultural life. In fact, this could even be seen as an attempt to assimilate¹³³ and, thus, as a violation of their rights under the Covenant. The participation in cultural decision-making includes a variety of possible State measures, which can extend from mere hearings to granting cultural autonomy, such as the grant of self-government to cultural groups¹³⁴, especially in the case of minorities or indigenous peoples. One should also consider providing remedies, such as ombudspersons, human rights institutions or legal remedies.

3. *Interrelated human rights obligations*

Among others, the realization of the rights to social security, and to an adequate standard of living according to articles 9 and 11 of the Covenant, is in many ways crucial for the enjoyment of the right to take part in cultural life. The effective realization of the right to take part in cultural life is in large part dependent on the financial situation of individuals. The poor and marginalized have little access to the media, the cultural services, institutions or products.

Furthermore, the realization of the right to education, as enshrined in article 13, is significant for a meaningful enjoyment of the right to take part in cultural life. For example, conducting a traditional way of life without knowledge of alternative lifestyles and cultures is not a result of the enjoyment of the right to take part in cultural life as a consequence of a free choice, but a mere factual imposition.

4. *Core obligations*

The Committee stated, "that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party."¹³⁵

States parties' core obligations¹³⁶ under the right to take part in cultural life comprise an obligation not to assimilate. Assimilation is understood to be a complete absorption of individuals or groups in the predominant society causing the subsequent loss of individual cultural characteristics.¹³⁷ In any event, an individual's request to take part in another culture, and therefore, to assimilate is protected. Integrative measures of States parties leaving room for certain cultural characteristics might, in contrast, even be required to guarantee equality.

Another core obligation of article 15.1 (a) consists of the obligation not to isolate or segregate individuals or cultural groups, be it an isolation within a States territory or from international cultural developments. The right to take part in cultural life necessitates a minimum level of international and intercultural dialogue. However, the desire of individuals to isolate, based on a free decision, can be protected under article 15.1 (a) ICESCR.

¹³² Cf. also Ermacora regarding article 27 ICCPR: Der Minderheitenschutz im Rahmen der Vereinten Nationen, p. 58, para. 62.

¹³³ On assimilation and article 15.1 (a) cf. also Donders: Study on the legal framework of the Right to take part in Cultural Life; in: Volodin/Donders (eds.): UNESCO Studies on Human Rights.

¹³⁴ Cf. CESCR, emphasizing autonomy for institutions of higher education, General Comment No. 13, para. 40.

¹³⁵ General Comment No. 3, para. 10.

¹³⁶ In detail chapter 7 of the thesis *Das Menschenrecht auf Teilnahme am kulturellen Leben*.

¹³⁷ See also Riedel: *Menschenrechte als Gruppenrechte auf der Grundlage kollektiver Unrechtserfahrungen*, in: Reuter (ed): *Ethik der Menschenrechte*, 1999, p. 295-320 (302).

Furthermore, States parties are under a core obligation not to establish an official “State Culture”, which completely encompasses and defines the contents of culture and the arts. An example of a State’s practice serves to illustrate this problem: The constitution of the former German Democratic Republic as a State party to the ICESCR provided for the right of all citizens to take part in cultural life, while dealing with “the complete development of the socialist personality” in the same paragraph and defining that “the socialist national culture is part of the foundations of the socialist society”.¹³⁸

Moreover, States are obliged not to discriminate in the cultural field.¹³⁹ This obligation totally prohibits discrimination *de iure* and therefore guarantees a formal equality in all state-run cultural institutions or services, but only provides for a substantive equality to the extent of a minimum standard.

H. Conclusions and Outlook

In many respects the right to take part in cultural life resembles the human rights of the first generation. Although it is not clear if this differentiation between rights of the first and second generation is of great value,¹⁴⁰ it becomes evident that the concept of progressive realization of article 2.1 of the Covenant does not play the role one might expect as regards the right to take part in cultural life. Many components of article 15.1 (a) do not require any resource-intensive State measures, in particular as regards the dimension of the obligations to respect¹⁴¹. Moreover, contrary to cultural offers or a cultural infrastructure, culture as such cannot be provided directly by the State. From this it basically follows that the right to take part in cultural life is justiciable. Even as regards access to an existing cultural infrastructure in the case of capacity problems the justiciability of the right cannot be doubted if the German doctrine of “*Teilhaberechte*”¹⁴² (roughly “participation rights”) is applied. According to this doctrine a substantive entitlement to access or allowance is transformed into a procedural entitlement directed towards equal and fair rationing based on objective reasons and qualification, if there are insufficient capacities. At least to this extent States parties’ measures are subject to judicial decisions as well.

On the other hand, there is, as shown above, a tendency to interpret the quite amorphous scope of application of article 15.1 (a) in a very extensive way to cover needs, wishes or political claims. Faced with this problem, a reluctant approach seems to be favourable. For instance, as regards to a minority or indigenous language as an official language, substantive group rights, international personal contacts or cultural assemblies, the right to take part in cultural life should not be interpreted as guaranteeing a higher level of protection than the relevant provisions of the ICCPR, namely articles 27, 15 or 12. To exaggerate: a “right to everything” turns out to be a “right to nothing” quite quickly.

Therefore, it is the most important challenge to outline the legal content of the right to take part in cultural life to be applied by bodies and courts, be it on a national or international level. To this end, the Committee on Economic, Social and Cultural Rights plays a key role and should

¹³⁸ Cf. articles 25.3 and 18.1 of the 1968 constitution.

¹³⁹ General Comment No. 16, para. 16 et seqq., 31.

¹⁴⁰ Riedel: International Law Shaping Constitutional Law. Realization of Economic, Social and Cultural Rights, in: Riedel (ed.): Constitutionalism - Old Concepts, New Worlds, Berlin 2005, p. 105-121 (108 et seqq.).

¹⁴¹ Cf. the Committee’s Statement on article 2.1, UN Doc. E/C.12/2007/1, para. 7; in detail Klee: Die progressive Verwirklichung wirtschaftlicher, sozialer und kultureller Menschenrechte, 2000.

¹⁴² Cf. German Federal Constitutional Court, BVerfGE 33, p. 303 ff. (333).

resume the process of clarification of the content of article 15.1 (a)¹⁴³ leading to the adoption of a General Comment on the right to take part in cultural life.

Moreover, in accordance with article 23, which states, “that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations...”, States parties should consider the adoption of international instruments. From that point of view, the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, adopted under the premises of FAO, are a good example of how to realize the right to take part in cultural life on a national and international level, combining binding and non-binding provisions, which could be achieved under the aegis of UNESCO.

Additionally, the right to take part in cultural life can reconcile the debate concerning the issue of universality as it shows that human rights are not a “Western” product establishing a eurocentric perspective, but by contrast acknowledge cultural difference as a universal concern. The realization of the right to take part in cultural life can therefore affirm the concept of universality. But still, the conclusion of the Statement on Cultural Rights as Human Rights rings true: “*We have only just begun.*”¹⁴⁴

¹⁴³ See General Discussion of the right to take part in cultural life, UN Doc. E/C.12/1992/SR.17 and the Working Paper of Cor Konaté: Implementation of cultural rights. Analytical Study of article 15, UN Doc. E/C.12/1992/WP.4 (1992).

¹⁴⁴ UNESCO (ed.): *Cultural Rights as Human Rights*, p. 107.