The protection of cultural rights as human rights has been one of the lifelong concerns of Asbjørn Eide, along with a multitude of other vital issues in peace research, conflict resolution and human rights studies where he has had such a positive influence on the evolution of thinking and policy. He noted with perspicacity that the relationship between human rights and cultures and the problem of cultural relativism "go to the core of the human rights debate" and has provided invaluable insights on the meaning and scope of cultural rights, both in the context of general human rights and in relation to minorities. In tribute to his pioneering work on cultural rights, I would like to offer these reflections on the definition of cultural rights and the wide range of creative human activity covered by the explicit and implied references to cultural rights in existing international normative instruments.

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2 Id., pp. 289-301.

3 Asbjørn Eide, Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, Report submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN doc. E/CN.4/Sub.2/1993/34 (10 August 1993); Asbjørn Eide, A Review and Analysis of constructive Approaches to Group Accommodation and Minority Protection in Divided or Multicultural Societies, Forum for Peace and Reconciliation, Consultancy Studies, No. 3 (July 1996), Dublin Castle; Towards a comprehensive programme for the prevention of discrimination and protection of minorities, including proposals for the examination of thematic issues relating to racism, xenophobia, minorities and migrant workers: some suggestions, Working paper submitted by Mr. Asbjørn Eide to the Sub-Commission on Prevention of Discrimination and Protection of Minorities under its agenda item on "Comprehensive Examination of Thematic Issues Relating To Racism, Xenophobia, Minorities and Migrant Workers", UN doc. E/CN.4/Sub.2/1996/30 (25 July 1996); Asbjørn Eide, Minority rights and the right to participate in cultural life, with special reference to CESCR Article 12(1)(a), paper submitted to the International Roundtable on the Right to Take Part in Cultural Life, held at the University of the Philippines, Dilman, Quezon City, Philippines (11-13 February 2002).
1. Definition of culture and cultural rights

Culture, which Eide described as “an overworked concept with little semantic precision”, has been variously defined. From the Latin cultura, “cultivation” or “tending”, it entered the English language by 1430, according to the Oxford English Dictionary, which defines its modern meaning as “the training, development, and refinement of mind, tastes, and manners” (Oxford English Dictionary). This definition may be contrasted to that of the American Heritage English Dictionary: “The totality of socially transmitted behavior patterns, arts, beliefs, institutions, and all other products of human work and thought”. It is defined by the Encyclopaedia Britannica as “the integrated pattern of human knowledge, belief, and behaviour ... language, ideas, beliefs, customs, taboos, codes, institutions, tools, techniques, works of art, rituals, ceremonies, and other related components ...” (Encyclopaedia Britannica, 1989). Another definition is provided by Robert Murphy:

Culture means the total body of tradition borne by a society and transmitted from generation to generation. It thus refers to the norms, values, standards by which people act, and it includes the ways distinctive in each society of ordering the world and rendering it intelligible. Culture is a set of mechanisms for survival, but it provides us also with a definition of reality. It is the matrix into which we are born, it is the arena upon which our persons and destinies are forged.

A much simpler and more elegant definition was provided by Alfred North Whitehead in 1912: “activity of thought, and receptiveness to beauty and humane feeling.” While this simple definition is appealing, neither it nor the multifarious definitions of cultural anthropologists lend themselves to easy application in a human rights framework. In order to make cultural rights operational as human rights we have to draw upon standard setting instruments which governments have accepted as creating obligations for them.

International instruments providing for cultural rights include the International Covenants, other specific UN treaties on racial discrimination, torture, women and children, as well as regional instruments of the Council of Europe, the Organization for Security and Cooperation in Europe, the Organization of American States (OAS) and the Organization of African Unity (OAU), now the African Union (AU). The right to cultural participation is set out primarily in Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 14(1)(a) of the Additional Protocol to the American Convention on Human rights in the area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), and Article 17(2) of the African Charter on Human and Peoples’ Rights.

However, these general instruments need to be read in relation to more specific normative instruments of the United Nations Educational, Scientific and Cultural Organization (UNESCO). UNESCO’s most relevant instrument for a broad explanation of “culture” is the Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It (26 November 1976). While the Recommendation encountered some opposition from certain Member States, the basic concept of culture on which it is based remains valid for most Member States. The text contains a preambular paragraph according to which “culture is, in its essence, a social phenomenon resulting from individuals joining and co-operating in creative activities”. The text indicates further that culture “is at one and the same time the acquisition of knowledge, the demand for a way of life and the need to communicate”.

The ICESCR, the regional human rights treaties, and the 1976 Cultural Participation Recommendation deal primarily with the right to participate in cultural life. However, the definition of “cultural rights” covers more, although there is no international instrument that defines them as such. Inductively one can conclude from the literature that cultural rights include the

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4 Id., p. 290.
7 On the European regional instruments and case law, see Ragnar Adolfsson and Pál Thórhallsson, “Article 27”, in Gudmundur Alfredsson and Asbjørn Eide, The Universal
right to education; rights to cultural identity, including free determination of cultural future; participation in cultural life; conservation and diffusion of culture; protection of cultural property (in time of armed conflict and from theft or destruction); and rights of creators, transmitters and interpreters of artistic and other cultural works.

This enumeration can be reduced into the three categories Eide identifies, namely, material heritage, artistic and scientific creation, and cultural activity. All three are interwoven in the fabric of Article 15 of the ICESCR, although the full realization of cultural rights requires that “related rights” also be identified and realized in the context of cultural life.

2. The architecture of Article 15 of the ICESCR

Article 15 may be analyzed as setting out two substantive human rights, two other human rights which are instrumental to the first two, and two instrumental means for the realization of these same two substantive rights. The two core substantive rights are the “right of everyone ... to take part in cultural life” and “the right of everyone to benefit from the advances of science and its applications”, set out in Article 15(1)(a) and (b) of the Covenant. In this sense, the right to participate in cultural life is a sister right of the right to benefit form scientific advancement. The instrumental rights are the rights “to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”, set out in Article 15(1)(c) and the right to benefit from respect of “the freedom indispensable for scientific research and creative activity” (Article 15(3)). Finally, the instrumental means mentioned in support of the core rights are the steps States Parties may take to realize these rights including “those necessary for the conservation, the development and the diffusion of science and culture” (Article 15(2)) and the recognition by states parties of “the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields” (Article 15(4)).

The relations among the two substantive rights, the two supporting rights and the two means may be represented schematically as follows:

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13 Hyde, supra, note 1.

14 For example, the World Conference on Human Rights (Vienna, 14-25 June 1993) proclaimed that “[a]ll human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis”; Vienna Declaration and Programme of Action, UN doc. A/CONF.157/23 (12 July 1993), para. 5.
minorities' rights (or of persons belonging to minorities) is almost entirely cultural. The same may be said of the Draft United Nations Declaration on the Rights of Indigenous Peoples, essentially a cultural rights instrument considering that so much of the essence of the rights of indigenous peoples relate to their culture. After reaffirming the right of indigenous peoples to self-determination, including to freely pursue their cultural development and "to maintain and strengthen their distinct political, economic, social and cultural characteristics," the Declaration calls for prevention and redress of ethnocide and cultural genocide. Indigenous peoples also have "the right to practise and revitalize their cultural traditions and customs," including the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

Other provisions concern "the right to manifest, practise, develop and teach their spiritual and religious traditions" and to protect histories, languages, oral traditions, philosophies, writing systems and literatures, and the right to education and to expression of indigenous cultural diversity in the media. Another important cultural dimension included in the declaration is respect for their traditional medicines and health practices and "the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources", as well as land ownership and environmental protection. Finally, they have the right to autonomy or self-government and to international contacts in many areas including culture.

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23 Id., Article 4. See also Article 8.
24 Id., Article 7.
25 Id., Article 12.
26 Id., Article 13.
27 Id., Article 14.
28 Id., Article 15.
29 Id., Articles 16 and 17.
30 Id., Article 24.
31 Id., Article 25.
32 Id., Article 26.
33 Id., Article 28.
34 Id., Articles 31 and 35.
foremost among the related individual rights is the right to education. As this right is already the object of a General Comment and has been studied by the Special Rapporteur Katarina Tomasevski, it is not necessary to dwell on the content of that related right in this overview of definitional aspects of cultural rights. As Asbjorn Eide correctly points out, the other related rights span the two Covenants and include: freedom of expression; freedom of information; freedom of religion; freedom of assembly; and freedom of association.

To these I would add the rights that need to be affirmed because cultural belief systems are usually the principal barriers to their realization, such as the rights to sexual equality, to free consent to marriage, and to the highest attainable standard of physical and mental health. Regarding the right to health, culture is not necessarily an impediment, since culturally-based traditional forms of healing may have a positive role in realizing this right. However, some cultural practices are harmful to health and well-being and their elimination has been advocated by the NGOs and various UN agencies. In 1984, the Sub-Commission on Prevention of Discrimination and Protection of Minorities established a Working Group to study all aspects of traditional practices affecting the health of women and girls, which drew up a list of the most harmful traditional practices, including female excision, other forms of mutilation (facial scarring), force-feeding of women, early marriage, various nutritional taboos and traditional practices associated with childbirth, noting also other culturally related issues, such as dowries, crimes of honour and the consequences of son preference. A Special Rapporteur on the issue was appointed in 1991 and seminars were organized in Africa and Asia, leading to a programme of action for the elimination of harmful traditional practices affecting the health of women and children, which the Sub-Commission adopted in 1994.

At the 1993 World Conference on Human Rights, governments had agreed that "gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person and must be eliminated".

Further work to respect cultures while eliminating harmful practices have been undertaken on the basis of the Beijing Declaration and Platform for Action, the Declaration on the Elimination of Violence (1993), the Programme of Action of the International Conference on Population and Development, the joint statement in 1997 of WHO, UNICEF and UNFPA supporting Governments' and communities' strategies to eliminate female genital mutilation, the WHO Regional Plan of Action to Accelerate the Elimination of Female Genital Mutilation in Africa, and UNESCO's Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children, among others. Finally, the Committee on the Elimination of Discrimination against Women adopted General Recommendation 24 in 1999 dealing with Article 12 of the Convention concerning women and health, emphasizing the need for the enactment and effective enforcement of laws that prohibit female genital mutilation and the marriage of girl children.

Protection from genocide, as Stavenhagen points out, is also related to cultural rights since genocide denies the rights of national, ethnic, racial and religious groups to exist. The prohibition of slavery and slave-like practices and of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence are also dependant on the realization of cultural rights of the victims.

In addition, cultural rights relate to fair trials and the right to be informed in a language the defendant understands and to have free assistance if an interpreter is necessary. As Eide has pointed out,

[J]or members of minorities ... it is important to be able to address the court and other authorities in their own language, in order to feel secure that their own language is sufficient to be able to function in society, and thus be at ease in the preservation of one's identity.

There are cultural aspects of the right to privacy (non-interference with family, home or correspondence) and protection from attacks on one's honor or reputation.

Finally, culture figures in the limitations that may be placed on the six rights in the International Covenant on Civil and Political Rights (ICCPR) and similar provisions of regional instruments for the protection of various

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40 Stavenhagen, op. cit., pp. 64-65 (citing Buergenthal at this point).
41 Ashbjørn Eide, A Review and Analysis of Constructive Approaches to Group Accommodation and Minority Protection in Divided or Multicultural Societies, Forum for Peace and Reconciliation, Consultancy Studies, No. 3 (July 1996), Dublin Castle, p. 74.
social goods. The clauses permitting limitations on certain rights refer to "morals", suggesting that cultural rights of the dominant population prevail over the rights of those who are perceived to threaten the "morals" of the dominant group.42

An analysis of all these related rights is part of an understanding of cultural rights. The core normative elements of these rights, however, are found in the elaboration of the rights contained in Article 15, specifically as regards cultural identity and diversity, access and participation, as well as conservation and diffusion of culture, protection of cultural property from loss, and protection of creators, transmitters and interpreters of culture.

4. Cultural identity and diversity

Two core concepts of cultural rights, not explicitly mentioned in Article 15 of the ICESCR, are cultural identity and diversity. Without them the other dimensions of cultural rights are without object, since there is no human rights purpose in providing access to or preserving goods that do not respond to something fundamental in human existence.

4.1. Cultural identity

The basic meaning of culture involves individual and group identity. One of the earlier instruments on cultural rights is the 1966 Declaration of the Principles of International Cultural Cooperation. It is significant for our purposes because of what it says about the value of each culture. In particular, the Declaration specifies that,

1. Each culture has a dignity and value which must be respected and preserved.
2. Every people has the right and the duty to develop its culture.
3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.43

As Eide has noted,44 various UN and regional texts reaffirm the right to cultural identity for specific categories of people. For example, children have the right to education that includes developing "his or her own cultural identity"45 and, as a member of a minority, “to enjoy his or her own culture”.46 The Migrant Workers Convention provides that states shall "ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin".47 Finally, the ILO convention on indigenous peoples refers to the promotion of the "full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions".48

The Committee on Economic, Social and Cultural rights has included in its revised reporting guidelines the request that reporting states provide information on measures of "promotion of cultural identity as a factor of mutual appreciation among individuals, groups, nations and regions". Cultural diversity has been another dimension in which norms have been agreed upon of significance to cultural identity. The rights of minorities and of indigenous peoples, already discussed, are also essential to the concept of cultural identity.49

4.2. Cultural diversity

On 2 November 2001, the General Conference adopted the Declaration on Cultural Diversity, along with the main lines of an action plan for its implementation. Rather than providing a definition, the Declaration explains:

Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.50

42 The articles of the ICCPR which allow for restrictions based on the culturally determined concept of "public ... morals" or "morals" are Art. 12(3) (freedom of movement), Art. 14(1) (right to a public trial), Art. 18(3) (freedom of religion), Art. 19(3) (freedom of opinion), Art. 21 (right to peaceful assembly), and Art. 22(2) (freedom of association).
44 Asbjørn Eide, A Review and Analysis of constructive Approaches to Group Accommodation and Minority Protection in Divided or Multicultural Societies, Forum for Peace and Reconciliation, Consultancy Studies, No. 3 (July 1996), Dublin Castle, p. 73.
45 Convention on the Rights of the Child, Article 29(c).
48 Convention concerning Indigenous and Tribal Peoples in Independent Countries, ILO Convention 169, Article 2(3)(b).
49 The reporting guidelines also refer to "promotion of awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous peoples".
The Declaration contains an article on “cultural rights as an enabling environment for cultural diversity”, which reads:

Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.\(^{51}\)

From these reaffirmations of cultural identity and diversity arise the need to ensure access to, participation in, and diffusion and preservation of culture.

5. Access to and participation in cultural life

The first paragraph of Article 15 of the ICESCR refers to the right of everyone to take part in cultural life, which is the basic purpose of the Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It. The first article defines its scope as covering:

everything that should be done by Member States or the authorities to democratize the means and instruments of cultural activity, so as to enable all individuals to participate freely and fully in cultural creation and its benefits, in accordance with the requirements of social progress.

The key concepts of “access to culture” and “participation in cultural life” are defined in Paragraph 2 of Section I of the Recommendation as follows:

(a) by access to culture is meant the concrete opportunities available to everyone, in particular through the creation of the appropriate socio-economic conditions, for freely obtaining information, training, knowledge and understanding, and for enjoying cultural values and cultural property;

(b) by participation in cultural life is meant the concrete opportunities guaranteed for all – groups or individuals – 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 cultural progress of society.

\(^{51}\) Id., Article 5.

In addition to the general definition of culture cited supra, the Recommendation specifies that “participation by the greatest possible number of people and associations in a wide variety of cultural activities of their own free choice is essential to the development of the basic human values and dignity of the individual”, and that “access to culture and participation in cultural life are essential components of an overall social policy dealing with the conditions of the working masses, the organization of labour, leisure time, family life, education and training, town-planning and the environment”.\(^{52}\) The text stresses a non-elitist approach to cultural participation based on the idea 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; or that a people rich in its past and its heritage offers to others as a model which their own history has failed to provide for them; that culture is not limited to access to works of art and the humanities.\(^{53}\)

In addition, the Preamble notes that cultural action often involves only a minute proportion of the population and that, moreover, existing organizations and means used do not always meet the needs of those who are in a particularly vulnerable position because of their inadequate education, low standard of living, poor housing conditions and economic and social dependence in general. It also notes that there is often a wide discrepancy between reality and proclaimed ideals, declared intentions, programs or expected results. The text recognizes that, while it is essential and urgent to define objectives, contents and methods for a policy of participation by the people at large in cultural life, the solutions envisaged cannot be identical for all countries, in view of the current differences between the socio-economic and political situations in states.

The Recommendation provides that free participation in cultural life is related to policy in a wide range of other areas including development in general, life-long education, science and technology, social progress, environment, communication and international co-operation.\(^{54}\) In the section on legislation and regulations, the Recommendation emphasizes the need to modify and adapt national laws and practices in order to “guarantee as human rights those rights bearing on access to and participation in cultural life”, and to provide “effective safeguards for free access to national and world cultures by all members of society without distinction based on race,

\(^{52}\) Cultural Participation Recommendation, supra, note 8, preamble.

\(^{53}\) Id.

\(^{54}\) Id., Sect. I, para. 3(d).
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colour, sex, language, religion, political convictions, national or social origin, or financial consideration.55

The text further calls upon Member States to pay “special attention to women’s full entitlement to access to culture and to effective participation in cultural life”, and to the creation of “appropriate conditions enabling the populations to play an increasingly active part in building the future of their society, to assume responsibilities and duties and exercise rights in that process”.56 A particular reference is made to national and foreign minorities; legislation should be adopted or practices modified in order to:

guarantee the recognition of the equality of cultures, including the cultures of national minorities and of foreign minorities if they exist, as forming part of the common heritage of all mankind, and ensure that they are promoted at all levels without discrimination; ensure that national minorities and foreign minorities have full opportunities for gaining access to and participating in the cultural life of the countries in which they find themselves in order to enrich it with their specific contributions, while safeguarding their right to preserve their cultural identity.57

Further, such provisions and practices should protect “all forms of cultural expression such as national and regional languages, dialects, folk arts and traditions both past and present, and rural cultures as well as the cultures of other social groups”.58 The Recommendation emphasizes international cooperation. The responsibilities of Member States in this regard are set out in Section IV of the Recommendations, including, inter alia, the strengthening of bilateral, multilateral, regional and international cultural cooperation with due regard for the UN and the equality of cultures; the encouragement of the circulation of ideas and of cultural values conducive to a better understanding among peoples; and the provision of appropriate financial facilities for activities which aim at promoting international exchanges and cultural cooperation. Additional guidance with respect to technical, administrative, economic and financial measures is set out in Section III of the Recommendation.

6. Conservation and diffusion of culture

Paragraph 2 of Article 15 of the ICESCR refers to one of the two supporting means by which states parties realize cultural participation, specifically through the conservation, the development and the diffusion of science and culture. Conservation relates both to museums and traditional culture and folklore, which will be mentioned here, and to protection of monuments, sites and cultural property, which will be covered in the section of protection from loss. Diffusion relates to the circulation of materials of cultural value.

6.1. Museums

According to the Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone, adopted by the General Conference at its eleventh session, on 14 December 1960,59 “museums by preserving works of art and scientific material and presenting them to the public, help to disseminate a knowledge of the various cultures and this promotes mutual understanding among nations”.60 This instrument defines “museum” as “any permanent establishment administered in the general interest for the purpose of preserving, studying, enhancing by various means and, in particular, exhibiting to the public for its delection and instruction groups of objects and specimens of cultural value ...”.61 Member States are urged to make museums “accessible to all without regard to economic or social status”.62 Other provisions of the Recommendation deal with material arrangements in and admission to museums,63 publicity for museums64 and the place and role of museums in the community.65

6.2. Traditional culture and folklore

Section A of the Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989 defines folklore as:

the totality of tradition-based creations of a cultural community, expressed by a group of individuals and recognized as reflecting the expectations of a community insofar as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation of other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts.

In order to safeguard folklore, the Recommendation provides that Member States should encourage national, regional, and international research surveys. The goals of surveying are: to develop a national inventory of folk-

55 Id., Sect. II, para. 4(a) and (b).
56 Id., Sect. II, para. 4(c) and (e).
57 Id., Sect. II, para. 4(f).
58 Id., Sect. IV, para. (g).
60 Id., Preamble.
61 Id., para. 1.
62 Id., para. 2.
63 Id., paras. 4-10.
64 Id., paras. 11-12.
65 Id., paras. 13-18.
lore institutions which will be included in regional and global registers of folklore institutions; to create new systems or improve existing systems for collecting, identifying, and transcribing folklore; and to stimulate the creation of a standard topology of folklore.

Folklore that has been fixed in a tangible form should be effectively protected. To this end, Member States should: establish national archives for collected folklore; establish a central national archive function for providing services such as cataloguing; create museums or folklore sections at existing museums; present traditional and popular cultures in ways that emphasize the living or past aspects of those cultures; harmonize collecting and archiving methods; train collectors in the conservation of folklore; and provide the means for making copies of folklore materials.

The Recommendation provides that measures must be taken to guarantee the status of and economic support for folk traditions. To this end, Member States should: design and introduce the teaching and study of folklore into school curricula; support the work of various cultural communities, thus guaranteeing their right to access to their own folklore; establish a national folklore council represented by various interest groups; provide moral and economic support for individuals and institutions studying, making known, cultivating, or holding items of folklore; and promote scientific research relevant to the preservation of folklore.

Folklore items must be widely disseminated, but distortion during dissemination should be avoided to safeguard the integrity of the traditions. To promote fair dissemination, Member States should: encourage the organization of national, regional, and international events and support dissemination and publication of their results; encourage broader coverage of folklore material through national and regional media; encourage the establishment of full-time jobs for folklorists; support the production of education materials; ensure the availability of adequate information on folklore; facilitate meetings and exchanges, taking into account bilateral cultural agreements; and encourage the international scientific community to adopt a code of ethics ensuring a proper approach to and respect for traditional cultures.

Finally, Member States are urged to cooperate with international and regional associations concerned with folklore; cooperate in the field of knowledge, dissemination, and protection of folklore through exchanges of information, training of specialists, awarding of travel grants, sending of scientific and technical personnel and equipment, promotion of bilateral or multilateral documentation projects, and organization of meetings between specialists; cooperate closely on an international level; guarantee that Member States on whose territory research has been carried out obtain copies of all materials; refrain from acts likely to damage folklore materials; and take necessary measures to safeguard folklore against all human and natural dangers to which it is exposed, including risks deriving from armed conflicts.

6.3. Circulation of educational, scientific and cultural materials

At its third session, held in Beirut, the General Conference adopted, on 10 December 1948, the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (the “Beirut Agreement”). This agreement applies to films, filmstrips and microfilm, sound recordings, glass slides, wall charts, props and posters, when their primary purpose or effect is to instruct or inform or when their content is such as to maintain, increase or diffuse knowledge. Such material originating in a State Party is exempt from customs duties, quantitative restrictions and the need for import licenses in any other State Party.

The exceptions of the Beirut Agreement were considerably expanded two years later by the Agreement on the Importation of Education Scientific and Cultural Materials (the “Florence Agreement”) adopted on 17 June 1950 by UNESCO’s General Conference at its 5th session, held in Florence. The Contracting Parties undertake not to apply customs duties or other charges on the importation of selected books, publications, documents, and scientific, cultural, and educational materials listed in the Annexes attached to the Agreement which are the products of another Contracting Party. While internal or related taxes may be levied, they are not to exceed charges for similar domestic materials. Contracting Parties further agree to grant licenses and/or foreign exchange for the importation of selected articles, including materials for educational and related institutions, official government documents, materials distributed by the UN, and materials for the blind, among others. They also agree to facilitate the importation of such materials for public exhibit and in general to promote the free circulation of scientific, educational, and cultural materials, including by simplifying...
ing administrative procedures and facilitating customs clearance of such materials.\textsuperscript{72}

A Protocol of the Florence Agreement, adopted by the UNESCO General Conference at its 19th session in Nairobi on 26 November 1976,\textsuperscript{73} extends the types of materials to which import exemptions apply to a wide range of articles not covered by the Agreement and provides special measures to protect nascent indigenous industries in developing countries.\textsuperscript{74}

6.4. Satellite broadcasting

The Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange, adopted by the General Conference at its seventeenth session on 15 November 1972,\textsuperscript{75} provides additional guidelines on the diffusion of culture. Recognizing that satellite broadcasting "provides a new means of disseminating knowledge,"\textsuperscript{76} this text seeks to balance the concern for transfer of technology to developing countries ("the benefits of satellite broadcasting should be available to all countries without discrimination and regardless of their degree of development")\textsuperscript{77} with freedom of expression ("[t]he text stipulates that international cultural co-operation and regulation of the media be designed to ensure low costs and wide dissemination of the mass media to all countries")\textsuperscript{78} Other articles deal with the objectives of free flow of information,\textsuperscript{79} the spread of education,\textsuperscript{80} and the promotion of culture\textsuperscript{81} through satellite broadcasting.

7. Cultural co-operation

Paragraph 4 of ICESCR Article 15 refers to the second means of supporting the core substantive right, namely, international contacts and co-operation in the cultural field. Virtually all of UNESCO’s standard-setting instruments support the proposition that international contacts and co-operation in the

\textsuperscript{72} \textit{Id.}, Articles III and IV.
\textsuperscript{73} \textit{UNESCO’s Standard-Setting Instruments}, Sect. IV.A.2: Protocol to the Florence Agreement.
\textsuperscript{74} \textit{Id.}, para. 10.
\textsuperscript{75} \textit{UNESCO’s Standard-Setting Instruments}, Sect. IV.C.2.
\textsuperscript{76} \textit{Id.}, Article IV.1.
\textsuperscript{77} \textit{Id.}, Article III.1.
\textsuperscript{78} \textit{Id.}, Article IX.1.
\textsuperscript{79} \textit{Id.}, Article V.
\textsuperscript{80} \textit{Id.}, Article VI.
\textsuperscript{81} \textit{Id.}, Article VIII.

8. Protection of cultural property from loss

The protection of cultural property from loss concerns the preservation of a) international heritage, which the Hague and World Heritage Conventions and related instruments cover; and b) national cultural heritage, which the Convention and Recommendation on Illicit Import, Export and Transfer of Ownership of Cultural Property deal with.\textsuperscript{82}
8.1. Protection of cultural property from destruction

The principal instrument for protection of internationally recognized cultural property is the Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention). The definition of cultural property given in Article 1 of the Hague Convention includes:

movable and immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular, archaeological sites, groups of buildings which, as a whole, are of historical or artistic interest, works of art, manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collection of books or archives or of reproductions of the property defined above; buildings whose main and effective purpose is to preserve or exhibit the movable cultural property ... [and] centres containing a large amount of cultural property ... 89

The Convention provides for measures of special protection, including an emblem for identification of property under protection, peace-time preparations by the military to uphold such protection, the agreement by the High Contracting Parties to refrain from acts of hostility against such property under protection, an immunity from seizure for cultural property enjoying protection, and the movement of such property under designated special protection. Besides peacetime preparations, the Convention is to take effect in the event of war (whether declared or not) between High Contracting Parties. Separate regulations (execution regulations) for the execution of the Convention are considered an integral part of the Convention.

The Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted by UNESCO’s General Conference at its seventeenth session on 16 November 1972,90 extends to the world’s natural heritage a protection formerly reserved for cultural heritage. The Convention defines “cultural heritage” as

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.90

Property falling with the category of “natural heritage” includes outstanding physical or biological formations, the habitat of threatened species and outstanding natural sites.91 States Parties to the Convention recognize the “duty of ensuring the identification, protection, conservation and transmission to future generations of the cultural and natural heritage”.92 They also recognize that the cultural and natural heritage “constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate”.93

The preservation of monuments and works of the past is vital to the conservation and diffusion of most of the cultures of the world. The protection of these remains may be threatened by improper excavation or appropriation of archaeological property. These issues are covered by the Recommendation on International Principles Applicable to Archaeological Excavations, adopted by the UNESCO General Conference at its ninth session, New Delhi, on 5 December 1956.94 According to this instrument, archaeological excavations mean “any research aimed at the discovery of objects of archaeological character, whether such research involves digging of the ground or systematic exploration of its surface or is carried out on the bed or in sub-soil of inland or territorial waters of a Member State”.95 The Recommendation seeks to protect any remains, in particular any monument and movable or immovable object of archaeological interest “whose preservation is in the public interest from the point of view of history or art and architecture” as determined by each Member State.96 In order to protect its archaeo-


90 Convention concerning the Protection of the World Cultural and Natural Heritage, adopted 18 November 1972, 1037 U.N.T.S. 151, 27 U.S. T 37; TIAS 8226; UNESCO’s Standard-Setting Instruments, sect. IV.A.5 Convention, Articles 3 and 5.

91 Id., Article 1.
92 Id., Article 2.
93 Id., Article 4.
94 Id., Article 6.
96 Id., para. 1.
97 Id., para. 2.
logical heritage, each Member State is urged to establish a system of supervision of archaeological explorations and excavations, including procedures for prior authorization before excavations begin, declaration of findings, confiscations of undeclared objects and classifying of monuments. 97 Other provisions set out regulations governing excavation and international collaboration, including granting authorization to excavate to foreigners, preservation of archaeological remains, access to excavation sites, assignment of finds, and rights and obligations of the excavator. 98 These regulations provide, inter alia, that conditions imposed on foreign excavators should be the same as those on nationals, 99 that Member States should encourage excavations by a liberal policy of allowing qualified foreign individuals and learned bodies concessions to excavate and of joint missions; 100 and that they should use finds first to build up national museums and then consider lending or ceding to foreign museums objects not required in national collections. 101

More recently, UNESCO has devoted a convention to the protection of underwater cultural heritage. The Convention on the Protection of Underwater Cultural Heritage was adopted by the General Conference on 2 November 2001. It defines the object of protection as follows:

(a) "Underwater cultural heritage" means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as:

(i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context;

(ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context;

(iii) objects of prehistoric character.

(b) Pipelines and cables placed on the seabed shall not be considered as underwater cultural heritage.

(c) Installations other than pipelines and cables, placed on the seabed and still in use, shall not be considered as underwater cultural heritage.

The obligations of States Parties include that of preserving "underwater cultural heritage for the benefit of humanity" and taking "all appropriate measures in conformity with this Convention and with international law that are necessary to protect underwater cultural heritage, using for this purpose the best practicable means at their disposal and in accordance with their ca-

pabilities". 102 In addition, the Convention establishes a priority of protection of such property, beginning with the preservation in situ of underwater cultural heritage "as the first option" and then recovery of underwater cultural heritage to "be deposited, conserved and managed in a manner that ensures its long-term preservation". 103 Finally, the Convention provides that "underwater cultural heritage shall not be commercially exploited".

8.2. Landscapes and sites and historic areas

The Recommendation Concerning the Safeguarding of the Beauty and Character of Landscapes and Sites, adopted by the UNESCO General Conference at its 12th session on 11 December 1986,104 is concerned with the protection of the beauty and character of landscapes and sites and seeks "the preservation and, where possible, the restoration of the aspect of natural, rural and urban landscapes and sites, whether natural or man-made, which have a cultural or aesthetic interest or form typical natural surroundings". 105 The text sets out a number of preventative and protective measures 106 the authorities can take, including proper supervision of construction of buildings and roads, and other potentially harmful activities, insertion of protective obligations into urban development plans, scheduling of landscapes by zones and isolated sites, and the creation and maintenance of natural reserves and national parks. Public education to arouse and develop public respect for such natural landscapes and sites is also deemed appropriate both in school and out, and Member States should facilitate such education. 108

Conservation of culture is the focus of yet another UNESCO instrument, the Recommendation Concerning the Safeguarding and Contemporary role of Historic Areas, adopted by the UNESCO General Conference at its nineteenth session on 26 November 1976. This Recommendation defines "safeguarding" as "the identification, protection, conservation, restoration, renovation, maintenance and revitalization of historic or traditional areas and their environment". 110 Such areas are considered to form "an irreplaceable universal heritage" which both governments and citizens are duty-bound to safeguard. 111 According to the Recommendation, a policy of safeguard

97 Id., paras. 4-5.
98 Id., Sect. III.
100 Id., para. 15.
101 Id., para. 23.
103 Id.
104 See UNESCO's Standard-Setting Instruments, Sect. IV.B.3.
105 Id., para. 1.
106 Id., paras. 7-11.
107 Id., paras. 12-29.
108 Id., paras. 37-42.
110 Id., para. 1(g).
111 Id., para. 2(a).
should influence national, regional and local planning and provide guidelines for town-planning and regional and rural development planning at all levels. The Recommendation further sets out legal and administrative measures, technical, economic and social measures, provisions regarding research, education and information, and international co-operation.

8.3. Movable cultural property

The Recommendation for the Protection of Movable Cultural Property, adopted by UNESCO's General Conference at its twentieth session on 28 November 1978, defines “movable cultural property” as “all movable objects which are the expression and testimony of human creation or of the evolution of nature and which are of archaeological, historical, artistic, scientific or technical value and interest”. According to this Recommendation, ‘protection’ shall be taken to mean the prevention and coverage of risks as defined below:

(i) ‘prevention of risks’ means all the measures required, within a comprehensive protection system, to safeguard movable cultural property from every risk to which such property may be exposed, including those resulting from armed conflict, riots or other public disorders;

(ii) ‘risk coverage’ means the guarantee of indemnification in the case of damage to, deterioration, alteration or loss of movable cultural property resulting from any risk whatsoever ... whether such coverage is effected through a system of governmental guarantees and indemnities, through the partial assumption of the risks by the State under a deductible or excess loss arrangement, through commercial or national insurance or through mutual insurance arrangements.

This Recommendation enumerates measures relating to the prevention of risks in museums and similar institutions, private collections, and in religious buildings and archaeological sites. It also indicates ways of drawing public attention to the need for protection, control measures, and measures to improve the financing of risk coverage and international co-operation in this area.

8.4. Protection of cultural property from illicit import, export and transfer

The preservation of national cultural heritage has been the primary concern of the Recommendation (1964) and the Convention (1970) on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Article 1 of the Convention defines "cultural property", i.e., what is to be conserved, as property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

(a) rare collections and specimens of fauna, flora, minerals and anatomy and objects of palaeontological interest;
(b) property relating to history ...;
(c) products of archaeological excavations ...;
(d) elements of artistic of historical monuments or archaeological sites which have been dismembered;
(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
(f) objects of ethnological interest;
(g) property of artistic interest ...;
(h) rare manuscripts and incunabula, old books, documents and publications of special interest;
(i) postage, revenue and similar stamps ...;
(j) archives, including sound, photographic and cinematographic archives;
(k) articles of furniture more than one hundred years old and old musical instruments.

In Article 2 the States Parties to the Convention recognize that the illicit import, export and transfer of ownership of cultural property are a main cause of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country’s cultural property against...
all the dangers of resulting therefrom. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

Further, States Parties to the Convention undertake a range of specific obligations including setting up one or more national services for the protection of cultural heritage, introducing export certificates, preventing museums from acquiring illegally exported cultural property and preventing transfer of ownership of such property. The Convention provides that States Parties submit reports to the General Conference of UNESCO in order to give information on the measures adopted to implement the Convention. Technical assistance by UNESCO is available to States Parties on request.

In 1992, the International Workshop on the Protection of Artistic and Cultural Patrimony, held at Courmayeur, Aosta Valley, Italy, adopted the "Charter of Courmayeur", which enumerates national and international measures to be taken to prevent and suppress the illicit trade with objects belonging to the world cultural patrimony, including establishing focal points to collaborate with ICOM/INTERPOL on matters of transnational traffic with art objects and items belonging to the cultural patrimony, legislation to criminalize the illicit export and import of cultural objects, consideration of an internationally recognized licensing system for art dealers, improvement of recording and dissemination of information about the legal status of cultural items and about crimes against the cultural patrimony.

9. Protection of creators, transmitters and interpreters of culture

Article 15(1)(c) of the ICESCR refers to the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. This instrumental right supports the core substantive right contained in Article 15(1). Similarly, Article 15(3) sets out the second instrumental right in support of the core right, namely, "the freedom indispensable for scientific research and creative activity". Both of these supporting or instrumental rights have been developed through norms that further define the rights relating to those who create and transmit culture, whether it is the general protection of copyright or special consideration for artists, translators and similar professions.

9.1. Copyright

The principal normative instruments relevant to promoting the right to benefit from the protection of the moral and material interests in intellectual property is the Universal Copyright Convention of 1952 as revised in Paris in 1971, which is administered by UNESCO, and has been ratified by 62 states, and the Berne Convention for the Protection of Literary and Artistic Works of 24 July 1971, originally adopted in 1886, commonly known as the "Berne Convention", which has been revised several times to take into account new technology (most recently on 28 September 1979). It has been ratified by 149 states and is administered by the World Intellectual Property Organization (WIPO). Other texts that protect intellectual property relate to patents and will not be discussed here.

Both the Convention (1952) and the revised Convention (1971) require that each Contracting State protect the rights of authors and other copyright holders and provide the right to the same protection for authors of any Contracting State publishing in its state as that Contracting State provides for its own nationals publishing first in its own territory. Article I of both Conventions stipulates that,

"[e]ach Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture."

Article VI common to both instruments defines publication as "the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived".

Along with the worldwide introduction of the principle of assimilation of foreign authors to national authors, other features of the 1952 Convention include the following: the simplifying of copyright formalities, by printing on all copies of a published work, the symbol ©; particular arrangements pertaining to translation rights; and the establishment of a minimum period of protection equal to the remainder of an author's life and twenty-five years after his death.

The 1952 Convention further provides that each State Party shall, according to its Constitution, adopt measures to bring its laws and practices into harmony with the provisions of this Convention. An Intergovernmental Committee was established by the Convention to study problems related to the application and periodic revisions thereof. Protocol I annexed to the


129 Id., Articles I and II.

130 Id., Article XI.
Universal Copyright Convention (1952) assimilates, for the purposes of the Convention, refugees and stateless persons with habitual residences in a State Party to the nationals of that State; Protocol 2 provides protection for those works published for the first time by the United Nations, by the Specialized Agencies, and by the Organization of American States; Protocol 3 relates to the effective date of instruments of ratification, acceptance or accession to the Convention.  

The 1971 revision of the 1952 Convention was designed to take into account the economic, social and cultural conditions of the developing countries. It also extends the author's basic rights. Thus, the Revised Convention establishes criteria to be satisfied by States and the procedures to be followed to gain the benefits of special provisions for developing countries, including a translation license more favorable than that instituted by the common system referred to in Article V of the 1952 Convention.

Besides the Universal Copyright Convention, several other normative instruments adopted by international conferences or the General Conference of UNESCO are relevant to the right to benefit from the protection of the moral and material interests in intellectual property. These are: the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, of 26 October 1961; the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, of 14 November 1970; the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, of 29 October 1971; the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, of 13 December 1979; the Recommendation on the Legal Protection of Translators and Translations and the Practical Means to Improve the Status of Translators, of 22 November 1976; and the Recommendation for the Safeguarding and Preservation of Moving Images, of 27 October 1980.

To cite an example, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations provides the following definitions:

132 Universal Copyright Convention as Revised in 1971, supra, note 128, Articles Vbis, Vier and Vquater.
133 UNESCO’s Standard-Setting Instruments, Sect. V.2.A.4.
137 Id., Sect. V.2.B.1.

The protection to which they are entitled includes the prevention of broadcasting and the communication to the public, without their consent, of their performance, the fixation, without their consent, of their unfixed performance; and the reproduction, without their consent, of a fixation of their performance under specified circumstances. WIPO administers other texts that add other layers of protection of various economic and moral rights of creators and producers.

9.2. Status of the artist, scientific researchers and of translators

The Recommendation concerning the Status of the Artist recognizes "that it is necessary and appropriate for Governments to help create and sustain ... a climate encouraging freedom of artistic expression ...". The text is also based on the conviction that action by the public authorities is becoming necessary and urgent in order to remedy the disquieting situation of artists in a large number of member States, particularly with regard to human rights, economic and social circumstances and their conditions of employment, with a view to providing artists with the conditions necessary for the development and flowering of their talents and appropriate to the role that they are able to play in the planning and implementation of cultural policies and
cultural development activities of communities and countries and in
the improvement of the quality of life.\textsuperscript{143}

Eight “guiding principles” contained in Part III of the Recommendation
relate to such matters as Member States’ “duty to protect, defend and assist
artists and their freedom of creation”, and to “see that artists are unequivocally
accorded the protection provided for in this respect by international and
national legislation concerning human rights”, and that they are not dis-
criminated against in preparing their careers or in employment.

Part IV of the Recommendation acknowledges that, if it is to be effect-
ive, the stimulation of artistic creativity calls for provision of the necessary
professional training of talent to produce works of outstanding quality. Ac-
Accordingly, a number of measures which should be taken by Member States
are listed. Other parts of the Recommendation deal with the social status of
artists,\textsuperscript{144} their employment, working and living conditions, their profes-
sional and trade union organizations\textsuperscript{145} and the process of formulating cul-
tural policies.\textsuperscript{146}

Creative freedom is also supported by the Cultural Participation Rec-
ommendations, which calls on Member States, if they have not already done
so, to adopt legislation or regulations in conformity with their national con-
stitutional procedures, or otherwise modify existing practices in order to
“bring about conditions conducive to creative work and ensure the freedom of
creative artists and the protection of their works and rights”.\textsuperscript{147}

As already mentioned, the right to the “the freedom indispensable for
scientific research and creative activity” of ICESCR Article 15(3) is instru-
mental to both aspects of the core substantive right of Article 15, namely,
cultural participation and benefit from scientific advances. Scientific develop-
ment is also part of culture as broadly defined and therefore the norms that
apply the freedom of scientific research are relevant to the realization of cul-
tural rights. As Richard Claude has written, the “scientific freedom embed-
ed in Article 15 of the ESC Covenant is like a ship’s anchor on which scien-
tists daily depend, a mainstay for freedom of information, association and
inquiry”.\textsuperscript{148}

Thus, cultural rights are supported by the professional rights of scien-
tific researchers, the principal reaffirmation of which is contained in the Recommen-
dation on the Status of Scientific Researchers adopted by

\textsuperscript{143} Id.
\textsuperscript{144} Id., Part V.
\textsuperscript{145} Id., Part VI.
\textsuperscript{146} Id., Part VII.
\textsuperscript{147} Cultural Participation Recommendation, para. 4(k).
\textsuperscript{148} Richard Pierre Claude, Science in the Service of Human Rights, Philadelphia, University

UNESCO’s General Conference in 1974.\textsuperscript{149} It defines scientific researchers
as “those persons responsible for investigating a specific domain of science or
technology”\textsuperscript{150} and takes a strong position on academic freedom by rec-
ognizing “that open communication of the results, hypotheses and opinions –
as suggested by the phrase ‘academic freedom’ – lies at the very heart of the
scientific process and provides the strongest guarantee of accuracy and ob-
jectivity of scientific results”.\textsuperscript{151} With respect to publicly-supported scientific
research, Member States are expected to allow researchers to enjoy “the de-
gree of autonomy appropriate to their task and to the advancement of science
and technology” and to take fully into account “that creative activities of
scientific researchers should be promoted in the national science policy on
the basis of utmost respect for the autonomy and freedom of research neces-
sary to scientific progress”.\textsuperscript{152} Similarly, the Recommendation provides that
“Member States should be actively concerned to stimulate creative perfor-
ance in the field of science and technology by all scientific researchers”.\textsuperscript{153}

In the section devoted to the civic and ethical aspects of the work of sci-
cientific researchers, the Recommendation addresses at some length the “spirit
of intellectual freedom to pursue, expound and defend the scientific truth as
they see it”, their role in defining aims and objectives of the programs in
which they are engaged and determining the methods “which should be hu-
manely, socially and ecologically responsible”, as well as their responsibility
and right “to express themselves freely on the human, social or ecological
value of certain projects and in the last resort withdraw from those projects if
their conscience so dictates”.\textsuperscript{154}

The Recommendation on the legal protection of translators and transla-
tions and the practical means to improve the status of translators was adopted by
the General Conference on 22 November 1976.\textsuperscript{155} Its definitions are:

(a) the term “translation” denotes the transposition of a literary or
scientific work, including technical work, from one language into an-
other language, whether or not the initial work, or the translation, is in-
tended for publication in book, magazine, periodical, or other form, or
for performance in the theatre, in a film, on radio or television, or in any other media;
(b) the term “translators” denotes translators of literary or scientific works, including technical works;
(c) the term “users” denotes the persons or legal entities for which a translation is made. 156

The Recommendation provides that translators should receive the same protection accorded to authors under the provisions of the international copyright conventions and/or under their national laws, but without prejudice to the rights of the authors of the original works translated. 157

10. Final remarks

Cultural rights are often neglected in the cataloguing of human rights in favor of the more succinct “economic and social rights”. And yet they constitute a complex web of rights that merits a more central place in human rights theory, diplomacy and policy. Article 15 of the Covenant enumerates these rights in six main areas: cultural participation (Article 15(1)(a)); benefits of science (Article 15(1)(b)); intellectual property (Article 15(1)(c)); conservation and diffusion (Article 15(2)); academic freedom (Article 15(3)); and contact and co-operation (Article 15(4)).

I have attempted here to structure these six elements as part of an unplanned architectural construction into which the first two are core substantive rights; the third and fifth are supporting rights; and the fourth and sixth are supporting means. When each element is examined more thoroughly, a rich fabric of concepts, definitions, guidelines, and state obligations appears. This overview is aimed at clarifying how the international human rights regime has defined cultural rights.

For several decades, Asbjørn Bide has opened the way and provided the best and most insightful analysis of cultural rights, on which the preceding pages are but a modest addition. While other human rights are essential to human survival, to bodily integrity, and to material existence, cultural rights are much more than accessory rights. Recalling Whitehead’s definition of culture as “activity of thought, and receptiveness to beauty and humane feeling”, it is not an exaggeration to say that cultural rights guarantee to individuals and to culturally defined groups their sense of meaning. They merit much more attention than they have received, for they are in a real sense the grounding of the aesthetic, cognitive, spiritual, and emotional bonds of all humans to their society and, for many, to the cosmos and, in any case, they provide the means of expressing those bonds.

156 Id., Article I.
157 Id., Article II.