

# Cultural Rights Protection in the United Nations System: A Study from the Perspective of UNESCO

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**Abstract:** *Cultural rights are important human rights established by the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, they have not received due attention within the United Nations human rights system and related academic research. As a specialized agency within the United Nations system primarily responsible for cultural affairs, United Nations Educational, Scientific and Cultural Organization (UNESCO) has played a significant role in promoting the recognition and advocacy of cultural rights in the international community, mainly by expanding and deepening the normative connotations of cultural rights, strengthening the integration of culture and cultural rights with the United Nations' development agenda, and creating cultural heritage rights and other specific examples of protection practices. Under its leadership, the United Nations system is exploring a new agenda of collective actions to promote cultural rights, which shows a trend of emphasizing cross-sectoral collaboration between culture and science, as well as culture and education. Guided by Xi Jinping Thought on Culture, China should further leverage the advantages of UNESCO as a global cultural governance platform to share its concepts and experience in protecting and realizing cultural rights with the international community. Through the Global Civilization Initiative, China can lead and shape the emerging international agenda on cultural rights and promote the progress of international human rights and the building of a community with a shared future for mankind.*

**Keywords:** cultural rights ♦ United Nations system ♦ UNESCO ♦ global civilization initiative

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As world politics increasingly shifts from power politics to rights-based politics, the “gentle side” of the United Nations’ many tasks, such as the promotion of cultural rights, has become increasingly prominent.<sup>1</sup> Cultural rights are important human rights, as confirmed by the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). However, within the United Nations’ human rights protection system, they have long been unable to receive the same level of attention as civil and political rights, the right to self-determination of peoples,

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<sup>1</sup> Jia Lieying, “UN and Evolution of the World Order: from Power Politics to Rights Politics,” *The Journal of International Studies* 6 (2015): 118-131.

and other rights such as the right to peace, the right to development, and the right to a healthy environment. Accordingly, they have been regarded as the “underdeveloped sector” of human rights, “a neglected human right,” or the “poor relative” of other human rights.”<sup>2</sup> The academic research on cultural rights is also relatively underdeveloped and weak. It is often placed within the broader research framework of the ICESCR and only briefly mentioned in passing. For example, the books published by Oxford University Press, such as the *International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development* and *Economic, Social and Cultural Rights in International Law: Contemporary Issues and Challenges*, although providing a relatively comprehensive exploration of the legal philosophical foundations of economic, social, and cultural rights, the international dimensions of their obligations, the origins and drafting process of the Covenant, the implementation and monitoring mechanisms of the Covenant, and the debates and challenges in practice, do not offer a specialized discussion on cultural rights.<sup>3</sup> The monograph the *International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* by Ben Saul and other scholars from the University of Sydney, Australia, has been described as an “insightful comprehensive discussion of the most important factors in the theory of economic, social and cultural rights.” However, it also devotes only a very limited amount of space to analyzing and commenting on cases and materials related to cultural rights.<sup>4</sup>

Over the past two decades, monographs and papers that treat cultural rights as an independent subject of study have primarily focused on two types of issues. The first is the relationship between cultural rights as human rights and human rights in the general sense, both conceptually and in practice. For example, Elissavet Stamatopoulou-Robbins, a professor at Columbia University in the United States and a Greek human rights lawyer, has explored the tension between cultural specificity and the universality of human rights, as well as between national policies for the protection of cultural rights and international legal oversight in her book *Cultural Rights in International Law: Article 27 of the Universal Declaration of Human Rights and Beyond*. She pointed out that the United Nations’ human rights mechanisms have to some extent compensated for the deficiencies in national protection of cultural rights.<sup>5</sup> Scholars such as Hubert Faes from France, Rowan Cruft from the United Kingdom, and Gabriela

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<sup>2</sup> Song Huixian, “On Composition and Attribute of Cultural Right,” *Journal of CUPL* 5 (2017): 5-23.

<sup>3</sup> Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Oxford University Press, 1995); Eibe Riedel, Gilles Giacca and Christophe Golay, eds., *Economic Social and Cultural Rights in International Law: Contemporary Issues and Challenges* (Oxford: Oxford University Press, 2014).

<sup>4</sup> Sun Shiyun, “Review of the Studies on the International Covenant on Economic, Social and Cultural Rights: Some Observations from The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials,” *Chinese Review of International Law* 4 (2014): 110-126.

<sup>5</sup> Elsa Stamatopoulou, *Cultural Rights in International Law: Article 27 of the Universal Declaration of Human Rights and Beyond* (Leiden: Martinus Nijhoff Publishing, 2007); Elsa Stamatopoulou, “Monitoring Cultural Human Rights: The Claims of Culture on Human Rights and the Response of Cultural Rights,” *Human Rights Quarterly*, vol. 34, no. 4 (2012): 1170-1192.

Garcia Escobar from Mexico have reflected critically on the fundamental values and connotations of human rights through a cultural discourse lens. They have discussed how the individualism and pluralism of cultural rights, as well as their diversity and universality, can be dialectically interrelated and compatible.<sup>6</sup> Andrew Fagan, a professor of human rights law at the University of Essex, has reviewed the situation and challenges faced by the UN Human Rights Council in addressing cultural relativism and traditional cultural practices that are harmful to human rights and dignity.<sup>7</sup> Chinese scholars such as Yang Lian, Hu Xinyi, Wu Licai, Song Huixian, Tu Yunxin, and Xiao Wei have analyzed the human rights attributes, legal attributes, normative elements, normative functions, and conditions for the realization of cultural rights. They have clarified the positioning of cultural rights within the human rights theory spectrum and commented on the debate between communitarianism and liberalism regarding cultural rights.<sup>8</sup> Li Weihua, Sun Meng, and others have explored the state obligations for the protection of cultural rights, as well as the justiciability of cultural rights in national constitutions and international law. Zhao Yanqun has also traced the historical process and current situation of China's implementation of cultural rights.<sup>9</sup>

The second point is the concretization of the international law protection and practice of cultural rights in the areas of cultural life, cultural heritage, cultural identity, and cultural diversity. The anthology *Cultural Human Rights*, edited by an Italian scholar Francesco Francioni, UNESCO Chair in International Law and Culture, explores cultural rights from various perspectives, such as the participation of specific cultural groups in cultural life, the realization of the right to self-determination, and the rights to cultural product trade benefits. It also introduces the protective measures for relevant cultural rights by the European Union, the World Trade Organization, and UNESCO.<sup>10</sup> Australian

<sup>6</sup> Hubert Faes, "Droits de l'homme et droits culturels," *Transversalité* 108 (2008): 85-99; Rowan Cruft, "Human Rights, Individualism and Cultural Diversity," *Critical Review of International Social and Political Philosophy*, vol. 8, no. 3 (2005): 265-287; Gabriela Garcia Escobar, "Human Rights Pluralistic Universality: A Bridge Between Global Norms and Cultural Diversity," *Nordic Journal of Human Rights*, vol. 41, no. 2 (2023): 171-188.

<sup>7</sup> Andrew Fagan and Hans Fridlund, "Relative Universality, Harmful Cultural Practices and the United Nations Human Rights Council," *Nordic Journal of Human Rights*, vol. 34, no. 1 (2016): 21-39.

<sup>8</sup> Yang Lian, "Cultural Rights from the Perspective of Legal Philosophy," *Culture and History Vision (Theory)* 4 (2012): 49-51; Wu Licai, "The Concept of Cultural Rights and Its Controversies," *Journal of the Party School of Tianjin Committee of the CPC* 1 (2015): 53-61; Xiao Wei, Yang Longbo and Zhao Yanqun, "Cultural Rights and Its Realization," *Academic Monthly* 8 (2014): 114-124; Hu Xinyi, "From Dichotomy to Indivisibility: The Human Rights Attributes of Economic, Social, and Cultural Rights," *Morality and Civilization* 5 (2013): 126-134; Tu Yunxin, "The Normative Construction of Cultural Rights: The Interplay of Human Rights Conventions and Empirical Constitutional Law," *Fudan Journal of Legal Studies* 2 (2015): 402-441; Song Huixian, "On Composition and Attribute of Cultural Right," *Journal of CUPL* 5 (2017): 523.

<sup>9</sup> Li Weihua, "The Legal Protection, Basic Content, and State Responsibility of Cultural Rights," *Theory Journal* 7 (2014): 101-107; Sun Meng, "International Justifiability of Economic, Social, and Cultural Rights," *Journal of Shandong University (Philosophy and Social Sciences)* 5 (2013): 18-25; Zhao Yanqun, "The Establishment and Realization of Cultural Rights," (PhD diss., Fudan University, April 2007).

<sup>10</sup> Francesco Francioni, Martin Scheinin eds., *Cultural Human Rights* (Leiden: Martinus Nijhoff Publishers,

scholars such as Craig Forrest and Anthony Connolly have reviewed different types of cultural rights, such as those related to World Cultural Heritage, Intangible Cultural Heritage, Underwater Cultural Heritage, and Cultural Landscape Heritage. They have also explored the cultural rights of indigenous peoples, as well as the protection of cultural rights in the context of armed conflict, terrorism, and climate change.<sup>11</sup> Scholars and practitioners in the field of international heritage conservation, such as Janet Blake, William Logan, Jukka Jokilehto, and Irina Bokova, have tracked how a human rights-based approach has become a core principle in cultural heritage protection and how human rights studies and heritage studies have formed intersections and connections.<sup>12</sup> Chinese scholars such as Wu Handong, Huang Xiaoyan, Tang Haiqing, and Ma Ran have explored cultural rights in the context of cultural diversity. They have also reviewed the mechanisms and practices for the protection of cultural rights at the global and regional levels, including the United Nations, the European Union, the Americas, and Africa.<sup>13</sup>

Overall, the academic community's awareness and interest in studying cultural rights have continuously increased. However, there is still a gap compared with the research on civil and political rights as well as economic and social rights. In particular, the existing research perspective is limited to the level of legal philosophical speculation on cultural rights, specific groups and minority groups as rights holders, and the policy measures of the United Nations' general human rights bodies. There is a lack of systematic examination of the development and evolution of the normative connotations of cultural rights within the United Nations system, and the role and perspective of specialized United Nations agencies have not been fully considered. Therefore, it is necessary to further clarify the process, characteristics, driving forces, and trends of cultural rights protection within the United Nations system, and to combine the perspectives of general human rights mechanisms with those of specialized United Nations agencies.

In fact, the protection of cultural rights within the United Nations system

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2008).

<sup>11</sup> Anthony J. Connolly, *Cultural Heritage Rights* (London: Routledge, 2020).

<sup>12</sup> Janet Blake, "Taking a Human Rights Approach to Cultural Heritage Protection," *Heritage & Society*, vol. 4, no. 2 (2011): 199-238; William Logan, "Cultural Diversity, Cultural Heritage and Human Rights: Towards Heritage Management as Human Rights-based Cultural Practice," *International Journal of Heritage Studies*, vol. 18, no. 3 (2012): 231-244; Jukka Jokilehto, "Human Rights and Cultural Heritage: Observations on the Recognition of Human Rights in the International Doctrine," *International Journal of Heritage Studies*, vol. 18, no. 3 (2012): 226-230; Irina Bokova, "Fighting Cultural Cleansing: Harnessing the Law to Preserve Cultural Heritage," *Harvard International Review*, vol. 36, no. 4 (2015): 40-45.

<sup>13</sup> Wu Handong, "The Sovereign Rights, Human Rights and Private Rights Analysis on Diversity of Cultural Expression," *Chinese Journal of Law* 6 (2007): 3-17; Huang Xiaoyan, "The Protection of Cultural Rights under International Law," (PhD diss., Wuhan University, March 2013); Huang Xiaoyan, "The Dilemma of International Legal Protection for Cultural Diversity and New Approaches to Its Resolution," *Law Review* 5 (2013): 25-32; Tang Haiqing, "A Brief Discussion on Rights Conflicts in the International Human Rights Law Protection of Intangible Cultural Heritage: A Perspective on the Conflicts between Cultural Rights and Other Fundamental Human Rights," *Law Review* 1 (2013): 67-70; Ma Ran, "On Cultural Rights from the Perspective of Cultural Diversity," *Front of Thought and Theory* 2 (2015): 46-51.

has undergone a process of increasing attention, deepening normative connotations, and the continuous development and improvement of mechanisms and measures. This progress is inseparable from the joint efforts of various UN human rights bodies, among which UNESCO, the specialized agency responsible for cultural affairs within the UN system and often referred to as the “UN’s cultural agency,” has played a significant role. Taking the concepts and practices of UNESCO in promoting cultural rights as a perspective, this paper is divided into four parts: The first part traces how the normative connotations of cultural rights have evolved from a narrow concept of the right to culture to a broad range of empowering rights, and from individual rights that are “everyone’s” to collective rights that emphasize the ownership of nations, peoples, and specific groups. The second part will review the evolution of the cultural rights protection mechanisms within the United Nations system, with a focus on how UNESCO has promoted the monitoring and implementation of international normative instruments in the cultural field, pushed culture and cultural rights onto the collective agenda of the international community, and created concrete and tangible examples of cultural rights protection, such as cultural heritage rights. The third part will evaluate the new cultural rights agenda and the trend-setting characteristics that have emerged in the international community in recent years. The fourth part will put forward some thoughts on how China, guided by Xi Jinping Thought on Culture, should deeply participate in global human rights governance, practice the Global Civilization Initiative, and promote the progress of the global human rights cause and the building of a community with a shared future for mankind.

## **I. Normative Connotations of Cultural Rights**

Cultural rights can generally be understood as the cultural entitlements and opportunities that individuals and groups are entitled to and should enjoy, as well as the cultural attitudes and measures that can be adopted, as well as the legal qualifications to assert cultural rights and interests as well as the social freedoms for members to maintain their identities and differences.<sup>14</sup> As an individual human right, cultural rights can enable individuals to construct interpersonal environments and ecosystems conducive to their survival and development. As a collective human right, cultural rights can foster a strong sense of cultural confidence, national identity, and pride among sovereign states or major ethnic groups.<sup>15</sup> It is important to note that different international legal instruments stipulate various contents and categories of cultural rights. However, no single international legal document can precisely define what constitutes “cultural rights.” This is because both “culture” and “rights” are concepts with rich

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<sup>14</sup> Xiao Wei, Yang Longbo and Zhao Yanqun, “Cultural Rights and Its Realization,” *Academic Monthly* 8 (2014): 114-124; Huang Xiaoyan, “The Protection of Cultural Rights under International Law,” (PhD diss., Wuhan University, March 2013).

<sup>15</sup> Mo Jihong, “On the Institutional Construction of the Cultural Right System from the Perspective of Xi Jinping Thought on Culture,” *Law Science* 8 (2024): 3-18.

connotations, are subject to debate, and are constantly evolving.<sup>16</sup> The *Weimar Constitution* of Germany, enacted in 1919, is considered one of the earliest legislative documents addressing cultural rights. It expanded the scope of citizens' rights from traditional natural rights such as personal liberty, property rights, freedom of speech, and freedom of belief, to social categories including education, science, culture, and the arts. Specifically, Article 142 of the *Weimar Constitution* stipulated that "Art, science, and instruction in them are free," and that the state has the obligation to protect and nurture these fields.<sup>17</sup>

At the international level, the normative documents that first recognized cultural rights are the UDHR of 1948 and the ICESCR of 1966. Scholars generally agree that Article 27 of the UDHR and Article 15 of the ICESCR define the basic scope of cultural rights in the context of international human rights.<sup>18</sup> Article 27 of the UDHR stipulates: "1. Everyone has the right to participate freely in the cultural life of the community, enjoy the arts, and share in scientific advancement and its benefits. 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author." Article 15 of the ICESCR stipulates: "1. The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."<sup>19</sup>

The international human rights framework, including the UDHR, the ICESCR, and the *International Covenant on Civil and Political Rights* (ICCPR), explicitly acknowledges the importance of cultural rights. However, Janusz Symonides, a former director of the Division of Human Rights at UNESCO, pointed out that cultural rights in the international human rights framework are often conceptualized as a "right to culture," emphasizing cultural participation and the ownership of cultural creations. This approach does not fully capture the rich and diverse connotations of "cultural rights."<sup>20</sup> UNESCO has continuously clarified, refined, and enriched the specific connotations of cultural rights, thereby promoting the development of a comprehensive and broad view of cultural rights that also emphasizes empowerment and a sense of collective belonging within the United Nations system.

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<sup>16</sup> Stephen P. Marks, "Defining cultural rights", in *Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjørn Eide*, Morten Bergsmo ed. (Leiden: Marinus Nijhoff Publishers, 2003), 294.

<sup>17</sup> Wu Licai, "The Concept of Cultural Rights and Its Controversies," *Journal of the Party School of Tianjin Committee of the CPC* 1 (2015): 53-61.

<sup>18</sup> Rodolfo Stavenhagen, "Cultural Rights: A Social Science Perspective," in *Economic, Social and Cultural Rights*, Asbjørn Eide, Catarina Krause, Allan Rosas ed. (Beijing: China Social Science Press, 2003), 97-108.

<sup>19</sup> The Office of the United Nations High Commissioner for Human Rights, the International Covenant on Economic, Social and Cultural Rights, accessed May 29, 2024, <https://www.ohchr.org/zh/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

<sup>20</sup> Janusz Symonides, "Cultural Rights," in *Human Rights: Concept and Standards*, Janusz Symonides ed. (London: Routledge, 2000), 175-225.

### A. Cultural rights with an empowering nature

In 1946, one of the priorities established by UNESCO's first General Conference was to request the Secretariat to "clarify the principles that could serve as the basis for a modern declaration of human rights." In 1947, UNESCO launched an extensive human rights survey, with Edward H. Carr, a historian of international relations, chairing the expert committee that submitted the report to the UN Human Rights Commission. The survey collected and reflected a more diverse range of views compared to those of the Human Rights Commission, and it emphasized integrating cultural rights with the context of cultural diversity.<sup>21</sup> Regarding the relationship between culture and human rights, UNESCO's research report pointed out that the main challenge in formulating the UDHR was how to harmonize individual rights while respecting the cultural sentiments of different human groups, as a rights charter followed by all countries could not be based solely on the traditional values and ideologies of any one country.<sup>22</sup> The report was rejected in a secret vote by the UN Human Rights Commission at the time because it was considered too divergent from the "template" of the *United States Bill of Rights*.<sup>23</sup>

However, UNESCO has persisted in fulfilling its function as a "laboratory of ideas" and an "international standard-setter." It has mobilized the international intellectual and academic communities to conduct in-depth discussions on the connotations of cultural rights. Through the issuance of international declarations and the formulation of recommendations, UNESCO has articulated an inclusive concept of cultural rights and established an empowering list of cultural rights. After the adoption of the ICESCR in 1966, UNESCO held its first international symposium specifically dedicated to cultural rights in 1968. The symposium brought together the International Council for Philosophy and Human Sciences, the International Social Science Council, and prominent international figures and experts such as Boutros Boutros-Ghali, to explore the understanding of "cultural rights as human rights." The symposium examined the evolution of cultural connotations and policies over the twenty years from 1948 to 1968, with a particular focus on the relationships between elite culture and mass culture, modern culture and traditional culture, individual cultural rights and collective cultural rights, and cultural rights and other human rights. This effort has deepened the international community's understanding of cultural rights as a newly established category of human rights.<sup>24</sup>

In 1976, UNESCO adopted the *Recommendation on Participation by the*

<sup>21</sup> Janusz Symonides, "UNESCO and the Universal Declaration of Human Rights," in *The Universal Declaration of Human Rights: A History of its Creation and Implementation 1948-1998*, Glen Johnson and Janusz Symonides, eds. (Paris: UNESCO publishing, 1998), 77-110.

<sup>22</sup> Melville Herskovits, "Individual rights and respect for all cultures," in UNESCO, *Courier: Human Rights: back to the future* 4 (2018): 22-24.

<sup>23</sup> Ren Cassin, "How the Charter of Human Rights was Born," in 1968 *International Year of Human Rights*, UNESCO, *Courier*, January 1968, page 4-8.

<sup>24</sup> UNESCO, *Cultural Rights as Human Rights* (Paris: UNESCO Publishing, 1970), 105-108.

*People at Large in Cultural Life and Their Contribution to It*, which elaborated Article 27 of the UDHR on “participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits” into “access to culture and participation in cultural life.” “Access to culture means 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.” “Participation in cultural life is meant to guarantee concrete opportunities 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 the cultural progress of society.”<sup>25</sup>

After the Cold War, UNESCO included the task of developing a list of cultural rights in its medium-term strategy and biennial program budget. In 1996, it proposed a preliminary list of cultural rights, which included 11 categories and 50 specific rights. This list expanded the scope of cultural rights to include the right to education, the right to access information, the right to participate in sports, and other cultural activities.<sup>26</sup> UNESCO collaborated with the Council of Europe to establish an expert working group known as the “Fribourg Group on Cultural Human Rights.” In 2007, this group published the *Fribourg Declaration on Cultural Rights*, which summarized the connotations of cultural rights in six aspects: cultural identity and heritage, belonging to cultural communities, access to and participation in cultural life, education and training, information and communication, and cultural cooperation. The declaration argued that cultural rights should encompass various “empowering” rights that enable individuals to be proactive, freely express themselves, and communicate with others. In essence, it advocated for a “pan-cultural rights” concept that transcends the scope of the international human rights legal framework.<sup>27</sup>

UNESCO’s empowering view of cultural rights has influenced the evolution of concepts and interpretative work on human rights within relevant UN human rights bodies. In 2009, the Committee on Economic, Social and Cultural Rights issued General Comment No.21 on “Right of everyone to take part in cultural life,” citing UNESCO’s normative instruments and the *Fribourg Declaration on Cultural Rights*. This General Comment elaborated on Article 15 of the ICESCR, providing detailed interpretations of the right to take part in cultural life. The General Comment not only reaffirmed that cultural rights, like

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<sup>25</sup> UNESCO, *The Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It*, Resolutions of the 19<sup>th</sup> Session of the UNESCO General Conference, 1984, page 211-224.

<sup>26</sup> Birgitta Leander, “Preliminary List of Cultural Rights,” document commissioned by UNESCO (non-published), 1996, in *Pour ou Contre les Droits Culturels?* Halina Niec ed. (Paris: UNESCO Publishing, 2000), 298-299.

<sup>27</sup> Institut interdisciplinaire d’éthique et des droits de l’homme de l’Université de Fribourg, “Déclaration de Fribourg sur les droits culturels,” accessed May 29, 2024, <https://www.unifr.ch/ethique/fr/assets/public/Files/declaration-fr3.pdf>.



other human rights, are universal, indivisible, and interdependent, but also defined key terms such as “everyone,” “cultural life,” and “participation.” It outlined the elements of the right to participate in cultural life, including availability, accessibility, acceptability, adaptability, and appropriateness. The Comment emphasized the need to pay special attention to the rights of women, children, older persons, persons with disabilities, minorities, migrants, indigenous peoples, and those living in poverty to participate in cultural life.<sup>28</sup>

In the 2019 report titled “*Cultural Rights: Tenth Anniversary Report*,” the United Nations Special Rapporteur in the field of cultural rights reviewed UNESCO’s work in defining the scope of cultural rights and proposed that cultural rights should cover the following areas in practice: (1) The rich diversity of human creativity and the conditions for its expression, development, and dissemination; (2) The free choice, expression, and development of identity, including the right to choose not to affiliate with a particular group and the right to exit a group, as well as the right to participate in the shaping of collective identities on an equal basis; (3) The right of individuals and groups to freely choose to participate or not participate in cultural life, and the right to practice their own cultural customs; (4) The right to interact and communicate regardless of group affiliation and national boundaries; (5) The right to enjoy and access art, knowledge (including scientific knowledge), and one’s own and others’ cultural heritage; (6) The right to participate in the interpretation, elaboration, and development of cultural heritage, as well as the right to reshape cultural identities.<sup>29</sup> It is evident that the scope of cultural rights within the United Nations system has significantly expanded compared to the era when the international bills of human rights were formed.

### **B. Cultural rights as a collective belonging**

The cultural rights stipulated by the international bills on human rights are primarily individual rights. In its cultural conventions, recommendations, and declarations, UNESCO emphasizes that cultural rights also have a collective nature, belonging to nations, ethnic groups, professional associations, and other such collectives. In 1966, the same year as the adoption of the ICESCR, UNESCO’s *Declaration of the Principles of International Cultural Co-operation* stated in Article 1 that “Every people has the right and the duty to develop its culture”; Article 5 of the *Declaration* affirms that “Cultural co-operation is a right and a duty for all peoples and all nations, which should share with one another their knowledge and skills.”<sup>30</sup> This declaration was the first to

<sup>28</sup> United Nations Treaty Body Database, “E/C.12/GC/21 General Comment No.21 on the Right of Everyone to Take Part in Cultural Life (Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights),” accessed May 29, 2024, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F21&Lang=zh](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F21&Lang=zh).

<sup>29</sup> UN Human Rights Special Procedures, “A/HRC/40/53 Cultural Rights: Tenth Anniversary Report,” accessed May 29, 2024, <https://www.ohchr.org/en/documents/thematic-reports/ahrc4053-cultural-rights-tenth-anniversary-report-report-special>.

<sup>30</sup> UNESCO, “Declaration of Principles of International Cultural Co-operation,” accessed May 28, 2024,

propose that cultural rights are not only individual rights belonging to “everyone,” but also collective rights belonging to “nations and peoples.” In 1976, the *Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It* expanded the concept of culture from activities of producing, collecting, and preserving knowledge and works by a few outstanding individuals to “include all forms of creativity and expression of groups or individuals, both in their ways of life and in their artistic activities.” It emphasized that the free choice and voluntary participation of the largest number of people and groups in a wide variety of cultural activities are extremely important for the fundamental values and dignity of human beings.<sup>31</sup>

UNESCO’s six major cultural conventions, namely the *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* of 1954 and its 1954 and 1999 Protocols, the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* of 1970, the *Convention Concerning the Protection of the World Cultural and Natural Heritage* of 1972, the *Convention on the Protection of the Underwater Cultural Heritage* of 2001, the *Convention for the Safeguarding of the Intangible Cultural Heritage* of 2003, and the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* of 2005, all emphasize that cultural heritage and cultural diversity are common heritage of humanity. They are vital for individuals and groups to maintain their cultural identity, enjoy cultural achievements, and participate in cultural creation. These conventions provide an important international normative framework for establishing the collective human rights attributes of cultural rights.<sup>32</sup> For example, the Preamble of the *Convention for the Safeguarding of the Intangible Cultural Heritage* acknowledges the important role of “communities, and in particular indigenous communities, groups and, in some cases, individuals” in the production, protection, continuity, and recreation of intangible cultural heritage. It calls on the contracting states to ensure the maximum possible participation of these communities, groups, and individuals and to protect their rights through forms such as intellectual property rights.<sup>33</sup> The World Heritage Committee, the implementing body of the *Convention Concerning the Protection of the World Cultural and Natural Heritage*, adopted an initiative proposed by New Zealand in 2007, which added “community” as the fifth strategic objective of the *Convention*. This move strengthened the collective cultural rights perspective in the protection of World Heritage.<sup>34</sup>

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<https://unesdoc.unesco.org/ark:/48223/pf000114048>, page=82.

<sup>31</sup> UNESCO, *Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It*, Resolution of the 19<sup>th</sup> Session of the General Conference of UNESCO, 1984, page 211-224.

<sup>32</sup> Yvonne Donders, “A Right to Cultural Identity in UNESCO,” in *Cultural Human Rights*, Francesco Francioni and Martin Scheinin eds. (Leiden: Brill Publishers, 2008), 317-340.

<sup>33</sup> UNESCO, *Basic Documents of the Convention for the Safeguarding of the Intangible Cultural Heritage* (2022 edition), page 3, 10 and 48.

<sup>34</sup> UNESCO, “The ‘fifth C’ for ‘Communities,’ Decision 31 COM 13B,” accessed May 29, 2024,

The Recommendation concerning the *Status of the Artist* adopted by UNESCO in 1980 acknowledges that the power and vitality of art largely depend on the living and welfare conditions of artists, whether they are individuals or collectives. It defines that “‘Artist’ is taken to mean any person who creates or gives creative expression to or re-creates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association.”<sup>35</sup> This recommendation sets forth a series of measures for the protection of the rights and interests of artists, as well as their freedom of expression and communication. It covers a wide range of areas, including legislation, policy, education, employment, working conditions, training, social recognition, dissemination, and trade union organization.

The 2017 *Recommendation on Science and Scientific Researchers* provides a detailed interpretation of the aspect of cultural rights related to “sharing in scientific advancements and their benefits.” It confirms that one of the primary conditions for scientific progress is ensuring “a fair status for those who actually perform research and development in science and technology, taking due account of the responsibilities inherent in and the rights necessary to the performance of that work.” The recommendation calls on all member states to improve conditions, establish relevant mechanisms, and take all appropriate measures to ensure that the rights and responsibilities of scientific researchers are fully realized, respected, protected, and promoted.<sup>36</sup> The Committee on Economic, Social and Cultural Rights issued *General Comment No.25 on Science and Economic, Social and Cultural Rights* in 2020 based on the principles established in the 2017 *Recommendation on Science and Scientific Researchers*. This General Comment further elaborates on and protects the rights of scientific researchers as a professional group.<sup>37</sup>

Based on UNESCO’s relevant normative instruments, the *Final Declaration* of the 2022 World Conference on Cultural Policies and Sustainable Development (MONDIACULT 2022) states that cultural rights encompass both individual and collective rights, with a particular focus on women, youth, children, indigenous peoples, people of African descent, persons with disabilities, and marginalized groups. The *Final Declaration* outlines six key areas for the realization of cultural rights: (1) Inclusive access to culture and

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<https://whc.unesco.org/en/decisions/5197/>.

<sup>35</sup> UNESCO, The Recommendation concerning the Status of the Artist, Resolution of the 21<sup>st</sup> Session of the General Conference, 1981, page 212-228.

<sup>36</sup> UNESCO, The Recommendation on Science and Scientific Researchers, accessed May 30, 2024, <https://unesdoc.unesco.org/ark:/48223/pf0000265809/PDF/265809eng.pdf.multi#page=69>.

<sup>37</sup> Office of the United Nations High Commissioner for Human Rights, E/C.12/GC/25 General Comment No.25 (2020) on Science and Economic, Social and Cultural Rights (Article 15(1), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights), accessed May 30, 2024, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2020-article-15-science-and>.

participation in cultural life; (2) Strengthening the economic and social rights of artists, cultural professionals, and practitioners, promoting their mobility and enhancing their social status; (3) Protection and promotion of artistic freedom and freedom of expression; (4) Protection and enhancement of cultural content and linguistic diversity; (5) Maintenance of peoples' and communities' rights to cultural identity and heritage; (6) Protection and restitution of cultural property.<sup>38</sup> Under the promotion by UNESCO, the dual nature of cultural rights as both individual and collective rights has been widely recognized by the international community.

## **II. Protection Mechanisms and Practices of Cultural Rights**

The United Nations human rights protection mechanisms generally consist of two parts. The first is the Charter-based mechanism, which is established based on the *United Nations Charter* and the UDHR, and relies on UN bodies with human rights responsibilities. This includes the Third Committee of the United Nations General Assembly, the United Nations Human Rights Council, and the Office of the United Nations High Commissioner for Human Rights (OHCHR), among others. The second is the Treaty-based mechanism, which is established based on core international human rights treaties and relies on the bodies responsible for implementing these treaties. In the area of cultural rights, the main body is the Committee on Economic, Social and Cultural Rights, established pursuant to Economic and Social Council Resolution 1985/17.<sup>39</sup> These United Nations human rights bodies are all involved in the protection and monitoring of cultural rights in various ways. For example, the United Nations Human Rights Council established a special procedures mandate in the field of cultural rights through Resolution 10/23 in 2009, namely the Special Rapporteur in the field of cultural rights. The mandate of the Special Rapporteur includes collecting best practices in the protection and promotion of cultural rights, identifying potential obstacles, and enhancing cooperation with states, United Nations specialized agencies, non-governmental organizations, and other stakeholders.<sup>40</sup> In addition to the above, UNESCO has focused on the specific domain of culture, advancing the protection of cultural rights within the United Nations system through the monitoring and implementation of conventions and recommendations, the promotion of international cultural agenda-setting, and the creation of practical examples for the protection of cultural heritage rights. UNESCO has thus become an important component of the United Nations' cultural rights protection mechanism.

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<sup>38</sup> UNESCO, "UNESCO World Conference on Cultural Policies and Sustainable Development-MONDIACULT 2022 Final Declaration," accessed May 28, 2024, [https://articles.unesco.org/sites/default/files/medias/fichiers/2023/01//6.MONDIACULT\\_EN\\_DRAFT%20FINAL%20DECLARATION\\_FINAL\\_1.pdf](https://articles.unesco.org/sites/default/files/medias/fichiers/2023/01//6.MONDIACULT_EN_DRAFT%20FINAL%20DECLARATION_FINAL_1.pdf).

<sup>39</sup> Sun Meng, "The Study of UN Human Rights Machinery," *World Economics and Politics* 7 (2017): 118-139.

<sup>40</sup> UN Human Rights Special Procedures, "A/HRC/RES/10/23 Independent expert in the field of cultural rights," accessed May 29, 2024, <https://undocs.org/A/HRC/RES/10/23>.

### **A. Supervision and implementation of relevant conventions and recommendations on cultural rights**

UNESCO has formulated a total of 23 conventions and 18 recommendations in the cultural domain, which cover various aspects of the protection and realization of cultural rights. In addition to these culturally specific instruments, the *Recommendation on Science and Scientific Researchers*, updated in 2017, and the *Recommendation on Education for Peace and Human Rights, International Understanding, Cooperation, Fundamental Freedoms, Global Citizenship, and Sustainable Development*, updated in 2023, are also closely related to cultural rights. These international normative instruments are primarily monitored through two mechanisms to promote the protection of cultural rights. The first is the regular requirement for member states to submit implementation progress reports on the conventions and recommendations. The second is the acceptance of individual complaints within the scope of the conventions and recommendations.

Regular reviews of reports on the implementation of international conventions and the advancement of recommendations by sovereign states are commonly used working methods by United Nations agencies. UNESCO's six major cultural conventions have each established independent governing bodies that set reporting standards and cycles to oversee the implementation of convention obligations, including the protection of cultural rights, by the contracting states (see Table 1).<sup>41</sup> For international normative instruments that do not have independent implementation bodies, UNESCO established a Committee on Conventions and Recommendations within the Executive Board in 1965 to be responsible for monitoring implementation. Member states are required to submit implementation progress reports every four years, and the Committee compiles an overall report on the implementation of conventions and recommendations for review by the Executive Board and the General Assembly.<sup>42</sup> Since 2021, the Committee has focused on monitoring five recommendations related to cultural rights, in line with the updates of UNESCO's normative instruments. These include the *Recommendation concerning the Status of the Artist* (1980), the *Recommendation on the Historic Urban Landscape* (2011), the *Recommendation concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society* (2015), the *Recommendation on Science and Scientific Researchers* (2017), and

<sup>41</sup> UNESCO, "Periodic Reporting of the 1954 Convention and its two Protocols," <https://www.unesco.org/en/heritage-armed-conflicts/periodic-reporting?hub=415>; UNESCO, "National Reports of the 1970 Convention," <https://www.unesco.org/en/fight-illicit-trafficking/national-reports?hub=416>; UNESCO, "Quadrennial Periodic Reports of the 2005 Convention," <https://www.unesco.org/creativity/en/policy-and-monitoring/periodic-reports>; UNESCO, "Periodic Reporting of the World Heritage Convention," <https://whc.unesco.org/en/periodicreporting/>; UNESCO, "Periodic Reporting of the ICH Convention," <https://ich.unesco.org/en/periodic-reporting-00460>, accessed May 29, 2024.

<sup>42</sup> UNESCO, "196EX/Decision 20 Report of the Working Group on the Methods of Work of the Committee on Conventions and Recommendations," accessed May 29, 2024, <https://unesdoc.unesco.org/ark:/48223/pf0000232890>.

the *Recommendation on Education for Peace and Human Rights, International Understanding, Cooperation, Fundamental Freedoms, Global Citizenship and Sustainable Development* (2023).<sup>43</sup> Whether it is the independent convention implementation bodies or the Committee on Conventions and Recommendations under the Executive Board, UNESCO's regular report review is based on the consent of sovereign states, adhering to principles such as uniform standards, transparent procedures, and encouraging dialogue. It focuses on summarizing and compiling the overall implementation of normative instruments globally and regionally based on member reports, highlighting common challenges faced. This approach aims to enhance the status and influence of culture and cultural rights within the overall United Nations agenda.

**Table 1 The Monitoring and Implementation of UNESCO's Conventions and Recommendations Related to Cultural Rights**

Convention/Recommendation	Governing Body	Reporting Standard	Reporting Cycle	Scope of Application
<i>The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict</i>	Conference of Parties to the 1954 Convention, Meeting of Parties to the 1999 Protocol, Committee of the Second Protocol	Article 26(2) of the <i>Hague Convention</i>	4 years	133 States Parties
<i>Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property</i>	Conference of Parties to the 1970 Convention, Subsidiary Committee, Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation	Paragraphs 116-117 of the <i>Operational Guidelines for the 1970 Convention</i>	4 years	143 States Parties

<sup>43</sup> UNESCO, "214EX/Brochure CR/2 Committee on Conventions and Recommendations 2022 edition," accessed May 29, 2024, [https://unesdoc.unesco.org/ark:/48223/pf0000381093\\_chi](https://unesdoc.unesco.org/ark:/48223/pf0000381093_chi).

Convention/Recommendation	Governing Body	Reporting Standard	Reporting Cycle	Scope of Application
<i>Convention Concerning the Protection of the World Cultural and Natural Heritage</i>	Conference of States Parties to the 1972 Convention; World Heritage Committee	Paragraphs 199-210 of the <i>Operational Guidelines for the 1972 Convention</i>	8 years	195 States Parties
<i>Convention on the Protection of the Underwater Cultural Heritage</i>	Meeting of States Parties to the 2001 Convention; Scientific and Technical Advisory Body	<i>Operational Guidelines for the Implementation of the 2001 Convention on the Protection of the Underwater Cultural Heritage</i>	/	76 States Parties
<i>Convention for the Safeguarding of the Intangible Cultural Heritage</i>	General Assembly of States Parties to the 2003 Convention, Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage	Paragraphs 151-159 of the <i>Operational Guidelines for the Implementation of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage</i>		195 States Parties
<i>Convention on the Protection and Promotion of the Diversity of Cultural Expressions</i>	General Assembly of States Parties to the 2005 Convention, Intergovernmental Committee	Article 9 of the <i>Operational Guidelines for the Implementation of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions</i>	4 years	153 Parties
<i>Recommendation Concerning the Status of the Artist</i> <i>Recommendation on the Historic Urban Landscape</i>	Executive Board Committee on Conventions and Recommendations	<i>Working Methods of the Committee on Conventions and Recommendations</i>	4 years	194 UNESCO Members

Convention/Recommendation	Governing Body	Reporting Standard	Reporting Cycle	Scope of Application
<i>Recommendation on the Protection and Enhancement of Museums and Collections, Their Diversity and Social Role</i>				
<i>Recommendation on Science and Scientific Researchers</i>				
<i>The Recommendation on Education for Peace and Human Rights, International Understanding, Cooperation, Fundamental Freedoms, Global Citizenship and Sustainable Development</i>				

**Source: Prepared by the author based on information from the UNESCO Legal Office.**

International human rights law commonly holds that “without remedy, there is no right.” UNESCO has also considered establishing individual complaints procedures as a complementary means to promote the implementation of normative instruments in the field of culture.<sup>44</sup> In 1967, the 77<sup>th</sup> session of the Executive Board, considering the context of the international community’s adoption of the two human rights covenants, concluded that the mandate of the Committee on Conventions and Recommendations should be correspondingly expanded. Consequently, it established a procedure for receiving individual complaints on human rights issues, modeled on the Economic and Social Council’s Rule No.728.<sup>45</sup> This mandate and its specific

<sup>44</sup> Sun Meng, *The Justiciability of Economic, Social and Cultural Rights: Standards and Practices* (Beijing: Intellectual Property Publishing House Co., Ltd., 2011), 28.

<sup>45</sup> UNESCO, *UNESCO Procedure for the Protection of Human Rights: The Legislative History of the 104 EX/3.3 Procedure*, 2009, page 6-27.



operational procedures were ultimately established at the 104<sup>th</sup> session of the Executive Board in 1978, making UNESCO one of the few specialized agencies within the United Nations system to have a mechanism for individual human rights complaints. The Committee on Conventions and Recommendations, in accordance with the provisions of the “104<sup>th</sup> procedure,” determined that four categories of rights are justiciable: the right to education, the right to share in the benefits of scientific progress, the right to freely participate in cultural life, and the right to access information, including freedom of expression. Complaints should be submitted by individuals, groups, non-governmental organizations, or the victims themselves who have firsthand knowledge of the alleged violations. The Committee forwards these complaints to the concerned governments and requests them to provide relevant information. If the Committee decides that a complaint is admissible, it enters into a substantive dialogue with the concerned government, with the aim of “improving the situation of the alleged victims rather than condemning or punishing the concerned government.” In practice, the “104<sup>th</sup> procedure” has also developed a tradition of confidential deliberation, prohibiting the disclosure of the complaint, the deliberation process, and the conclusions to non-member states, the public, and the media. It also insists on making decisions through consensus rather than voting, thereby creating a distinctive approach to handling individual human rights complaints that sets UNESCO apart from other institutions, such as the United Nations Human Rights Council. From 1978 to 2023, the Committee on Conventions and Recommendations examined 618 individual human rights complaints. Among these, 414 complaints have been substantively dealt with and have led to changes in the situation of the alleged victims. However, 204 complaints have been deemed “inadmissible” by the Committee or are still pending discussion to determine their admissibility.<sup>46</sup> It is undeniable that the Committee on Conventions and Recommendations has, to some extent, played a quasi-judicial role in promoting the protection of cultural rights. However, it should also be noted that the majority of communications come from human rights groups and individuals in developed countries, who lodge complaints about human rights issues in developing countries. The deliberation process of the Committee often becomes an occasion for Western developed countries to promote so-called “universal values,” and to use human rights issues as a pretext to bully weaker nations and interfere in the internal affairs of other countries. There is still considerable room for improvement in the fairness and impartiality of the “104<sup>th</sup> procedure.” The influence and shaping power of developing countries, including China, over this procedure also need to be enhanced.

### **B. Promotion of international agenda on culture and development**

One of the main reasons why cultural rights have long been underemphasized within the United Nations system is that the international

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<sup>46</sup> UNESCO, “219 EX/CR/2 Committee on Conventions and Recommendations,” accessed September 28, 2024, [https://unesdoc.unesco.org/notice?id=p%3A%3Ausmarcdef\\_0000388451\\_eng](https://unesdoc.unesco.org/notice?id=p%3A%3Ausmarcdef_0000388451_eng).

community has not placed enough importance on culture itself and has had a narrow understanding of it.<sup>47</sup> One of UNESCO's key approaches to advancing cultural rights is to clarify the meaning of culture and its role in promoting peace and development, thereby fostering a close connection between culture and the international development agenda.

Former UN Secretary-General Boutros Boutros-Gali, in a 1968 symposium on "cultural rights as human rights," argued that culture should not be understood merely as the literary, philosophical, or artistic creations of a small number of intellectual elites. Instead, it should be seen as a way of life, particularly one that is exclusive to certain groups.<sup>48</sup> With the rise of national independence movements and the emergence of "Third World" countries on the international stage in the 1970s and 1980s, UNESCO actively promoted the decolonization and de-Westernization of culture and cultural rights, shaping an international cultural and development agenda that is more in line with the principles of peace, development, inclusiveness, and dialogue. In 1982, UNESCO redefined culture at the World Conference on Cultural Policies in Mexico (Mondiacult), adopting a broad, anthropological definition: "in its widest sense, culture may now be said to be the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions, and beliefs."<sup>49</sup> The definition of culture by UNESCO in 1982 declared the indispensable role of cultural rights in promoting national self-determination, independence, and international understanding and tolerance. It helped to form a new international consensus on culture, which the United Nations system and regional international organizations such as the European Union have widely cited.

UNESCO launched the "World Decade for Cultural Development" campaign from 1988 to 1997, which aimed to promote the cultural dimension of development that the international community focused on. The Decade had four strategic goals, three of which are directly related to cultural rights: affirming and enriching cultural identities, expanding cultural participation, and promoting international cultural cooperation. Under this framework, UNESCO also established a specific project to study the international development dimension of cultural rights.<sup>50</sup> The United Nations established the World Commission on Culture and Development and entrusted UNESCO with the specific tasks. A series of reports on the promotion of cultural heritage and the creative industries

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<sup>47</sup> Janet Blake, "On Defining the Cultural Heritage," in *Cultural Heritage Rights*, Anthony J. Connolly (Hampshire: Ashgate Publishing, 2015), 33-58.

<sup>48</sup> Yvonne Donders, "A Right to Cultural Identity in UNESCO," in *Cultural Human Rights*, Francesco Francioni and Martin Scheinin, eds. (Leiden: Brill Publishers, 2008), 317-340.

<sup>49</sup> UNESCO, "Mexico City Declaration on Cultural Policies, World Conference on Cultural Policies," accessed May 29, 2024, <https://unesdoc.unesco.org/ark:/48223/pf0000052505>.

<sup>50</sup> Albert Bourgi, Jean-Pierre Colin, Pierre Weisse, *International Aspects of Cultural Rights* (Paris: UNESCO Publishing, 1988), 41-61.

was published.<sup>51</sup> The report of the World Commission on Culture and Development emphasized that the cornerstone of international cultural relations should be equality, reciprocity, and the principle of non-interference in other states' internal affairs. It advocated for newly independent states to assert their rights to cultural identity, affirm or reaffirm their cultural sovereignty over national heritage, and reclaim lost cultural property. The report also called for the establishment of a new order in information dissemination and the formation of a culture of peace.<sup>52</sup> Under this cultural agenda framework, UNESCO has actively advocated the concept of dialogue among civilizations and launched the "Integral Study of the Silk Roads: Roads of Dialogue" project, which has had a profound impact on promoting mutual understanding and appreciation among different civilizations and between the East and the West.<sup>53</sup>

In 1998, UNESCO held the World Conference on Cultural Policies for Development in Stockholm. The conference aimed to place culture at the center of the vision of decision-makers in various governments. It also emphasized that the ultimate goal of cultural promotion for development should be the full realization of cultural rights.<sup>54</sup> In 2000, the 55<sup>th</sup> session of the United Nations General Assembly adopted a resolution on culture and development. The resolution expressed encouragement at the positive response from the international community to the outcomes of UNESCO's "World Decade for Cultural Development" and the World Conference on Cultural Policies for Development in Stockholm. It invited all member states, organizations within the United Nations system, and non-governmental organizations to actively participate in UNESCO's programs and activities aimed at promoting cultural cooperation, dialogue among civilizations, and cultural rights.<sup>55</sup> Under the promotion by UNESCO, the year 2000 was declared the "International Year for the Culture of Peace" by the United Nations General Assembly. This declaration was based on the organization's concept of a culture of peace and was implemented through the *Declaration and Programme of Action on a Culture of Peace*. Both documents highlight that the development of a culture of peace is closely linked to the respect for and promotion of human rights.

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<sup>51</sup> Javier Pérez de Cuéllar, *Our Creative Diversity: Report of the World Commission on Culture and Development* (Paris: UNESCO Publishing, 1995); UNESCO, *World Culture Report: Cultural, Creativity, and Markets* (Paris: UNESCO Publishing, 1998); UNESCO, *World Culture Report: Cultural Diversity, Conflict and Pluralism* (Paris: UNESCO Publishing, 2000).

<sup>52</sup> Albert Bourgi, Jean-Pierre Colin and Pierre Weisse, *International Aspects of Cultural Rights*, UNESCO, 1988, page 41-61.

<sup>53</sup> Liu Tiewa and Zong Huawei, "The Dimension of Civilizational Politics in Multilateralism: Review of UNESCO's Agenda in Promotion of Dialogue among Civilizations," *Foreign Affairs Review* 5 (2022): 53-77.

<sup>54</sup> Halina Niec, "Cultural Rights: At the End of the World Decade for Cultural Development," CLT-98/Conf. 210/Ref. 2, December 1997, accessed May 29, 2024, <https://unesdoc.unesco.org/ark:/48223/pf0000109754>.

<sup>55</sup> United Nations General Assembly, "A/RES/55/192. Resolution of the 55<sup>th</sup> Session of the United Nations General Assembly: Culture and Development," accessed May 29, 2024, [https://digitallibrary.un.org/record/430036/files/A\\_RES\\_55\\_192-ZH.pdf?ln=en](https://digitallibrary.un.org/record/430036/files/A_RES_55_192-ZH.pdf?ln=en).

In the 21<sup>st</sup> century, UNESCO has positioned culture as an accelerator for achieving the Millennium Development Goals. The cultural turn in the international development agenda has become increasingly evident, with the empowering role of culture becoming an important element in development theory and practice.<sup>56</sup> In 2009, UNESCO first proposed the Culture for Development Indicators Suite (CDIS), a set of indicators designed to measure cultural participation and development. The same year is also considered “a turning point for the increased attention to cultural rights within the United Nations system,”<sup>57</sup> marked by the Human Rights Council’s establishment of a special procedure on cultural rights’ domain, and the issuance of General Comment No.21 on the right to take part in cultural life by the Committee on Economic, Social and Cultural Rights. In 2013, UNESCO held the international conference “Culture: Key to Sustainable Development” in Hangzhou, China, which unprecedentedly elevated the status of culture in the collective agenda of the international community; thus, culture has become an empowering cross-cutting element and driving force in the current United Nations 2030 Agenda for Sustainable Development, and is considered capable of directly or indirectly promoting the achievement of all 17 Sustainable Development Goals.<sup>58</sup> The Special Rapporteur in the field of cultural rights, in the report submitted to the 78<sup>th</sup> session of the United Nations General Assembly in 2023, called for further support for cultural development and respect for cultural rights within the development framework. The report also urged cultural rights to occupy a more prominent place in human rights discussions to truly realize the grand vision of the United Nations 2030 Agenda for Sustainable Development, which is to “leave no one behind.”<sup>59</sup>

### **C. Creation of practical examples for the protection of cultural heritage rights**

UNESCO has continuously created practical examples for the protection of cultural heritage rights, enhancing the international community’s attention to and emphasis on cultural rights; it has also promoted the specific realization of cultural rights in various forms and carriers of cultural heritage, including tangible and intangible, movable and immovable heritage. Cultural heritage rights can be understood as the legal rights of individuals, peoples, states, and humanity as a whole to acknowledge, preserve, and enjoy specific forms of human culture.<sup>60</sup> The primary instruments for stipulating and protecting these

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<sup>56</sup> Rosemary J. Coombe, “The Expanding Purview of Cultural Properties and Their Politics”, in *Cultural Heritage Rights*, Anthony J. Connolly ed. (Hampshire: Ashgate Publishing, 2015), 59-78.

<sup>57</sup> UN Human Rights Special Procedures, “A/HRC/40/53 Cultural Rights: Tenth Anniversary Report,” accessed May 29, 2024, <https://www.ohchr.org/en/documents/thematic-reports/ahrc4053-cultural-rights-tenth-anniversary-report-report-special>.

<sup>58</sup> UNESCO, “The Hangzhou Declaration: Placing Culture at the Heart of Sustainable Development Policies,” accessed May 29, 2024, <https://unesdoc.unesco.org/ark:/48223/pf0000221238>.

<sup>59</sup> Alexandra Xanthaki, “A/78/213 Development and cultural rights: the international governance,” accessed May 29, 2024, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/78/213&Lang=E>.

<sup>60</sup> Anthony J. Connolly, *Cultural Heritage Rights* (Hampshire: Ashgate Publishing, 2015), xv.

rights are UNESCO's international conventions in the cultural domain: These conventions regard the safeguarding and transmission of cultural heritage as an essential component and an important means of realizing cultural rights, while deliberate destruction of cultural heritage in violation of these conventions should be collectively condemned and addressed by the international community.

After the destruction of the Buddhas of Bamiyan by the Taliban in 2001, UNESCO, referencing precedents from the International Criminal Tribunal for the former Yugoslavia on the violation of international humanitarian law through the destruction of cultural heritage and religious property, issued the *Declaration concerning the Intentional Destruction of Cultural Heritage* in 2003. This was the first time that attacks on cultural heritage were defined as attacks on humanity and fundamental human rights.<sup>61</sup> Between 2012 and 2013, the Malian rebel group Ansar Dine repeatedly attacked the World Heritage site of the ancient city of Timbuktu, destroying several mosques and ancient mausoleums and burning libraries that housed millennia-old manuscripts. In 2012, UNESCO urgently inscribed the ancient city of Timbuktu on the *List of World Heritage in Danger*, drawing the attention of the International Criminal Court (ICC) and actively promoting its review of the case. In 2015, the Pre-Trial Chamber of the ICC charged Ahmad Al-Faqi Al-Mahdi, the leader of Ansar Dine, with the intentional destruction of the World Heritage site of Timbuktu. In March 2016, he was indicted and arrested for war crimes, with UNESCO providing expert knowledge support for the trial of the case.<sup>62</sup> In 2016, the ICC sentenced Ahmad Al-Faqi Al-Mahdi to nine years in prison and ordered him to pay EUR 2.7 million in reparations. This marked the first time the ICC had prosecuted and convicted someone specifically for the war crime of attacking cultural heritage.<sup>63</sup> Former UN Secretary-General Ban Ki-moon described the ruling as a milestone, making the international community realize that attacks on cultural heritage represent a trampling on the entire population and the dignity of a nation.<sup>64</sup> Former UNESCO Director-General Irina Bokova has emphasized that the deliberate destruction of cultural heritage is a serious crime that endangers peace, security, and human rights. This historic ruling is expected to have a significant impact on ending the impunity for the destruction of cultural heritage and the violation of cultural heritage rights.<sup>65</sup>

<sup>61</sup> Ana Filipa Vrdoljak, "Cultural Heritage in Human Rights and Humanitarian Law," in *International Humanitarian Law and International Human Rights Law*, Orna Ben-Naftali ed. (Oxford: Oxford University Press, 2011), 250-302.

<sup>62</sup> International Criminal Court, "Situation in the Republic of Mali in the Case of the Prosecutor v. Ahmad Al Faqi Al Mahdi," ICC-01/12-01//15, 27 September 2016, accessed May 29, 2024, <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1803eb162.pdf>.

<sup>63</sup> UN, "The International Criminal Court sentenced the defendant Mahdi to 9 years of imprisonment in its first case of the destruction of historical and religious heritage," accessed May 29, 2024, <https://news.un.org/zh/story/2016/09/263882>.

<sup>64</sup> UN, "Secretary-General Ban Ki-moon welcomed the International Criminal Court's decision to imprison the extremist Mahdi for the destruction of cultural heritage in Mali," accessed May 29, 2024, <https://news.un.org/zh/story/2016/09/264002>.

<sup>65</sup> Irina Bokova, "Ending Impunity for War Crimes on Cultural Heritage: The Mali Case," International HUMAN RIGHTS

Under the influence of this cultural heritage rights protection example, the United Nations Human Rights Council adopted a resolution on cultural rights and the protection of cultural heritage in 2016, which confirmed the inviolability of cultural heritage rights.<sup>66</sup> In 2016, the United Nations Special Rapporteur in the field of cultural rights conducted a survey on the deliberate destruction of cultural heritage by ISIS. The report highlighted that the intentional and large-scale destruction of cultural heritage in Iraq and Syria by ISIS constitutes a severe violation of the cultural rights of local populations.<sup>67</sup>

In 2017, the United Nations Security Council unanimously adopted Resolution No.2347, condemning the destruction of cultural heritage by terrorist groups and the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other cultural institutions. The resolution encourages member states to strengthen cooperation within the framework of UNESCO's cultural heritage protection norms.<sup>68</sup> This was the first time the United Nations Security Council recognized the role of cultural heritage in international security and peace. It directly responded to the characteristics of modern armed conflicts using "cultural cleansing" as a weapon, reflecting the new development of cultural heritage law and the further dissemination of the concept of cultural heritage rights.<sup>69</sup> The OHCHR convened thematic seminars on the protection of cultural heritage and cultural rights in 2017, 2021, and 2023, demonstrating sustained attention to cultural heritage rights.<sup>70</sup> The Office of the Prosecutor (OTP) of the International Criminal Court (ICC), with the support of UNESCO, published a draft policy on cultural heritage in March 2021. This policy document aims to enhance attention to and responses to attacks on cultural heritage within the legal framework of war crimes, crimes against humanity, genocide, and the crime of aggression. It emphasizes that the OTP will take action to protect and preserve cultural rights whenever cultural issues fall within its jurisdiction.<sup>71</sup> In 2021, Audrey Azoulay, the Director-General of UNESCO, accepted symbolic compensation for the destruction of World Heritage sites in

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Criminal Justice Today, 22 June 2016/, accessed May 29, 2024, <https://www.international-criminal-justice-today.org/arguendo/ending-impunity-for-war-crimes-on-cultural-heritage-the-mali-case>.

<sup>66</sup> UN Human Rights Council, "A/HRC/RES/33/20 Cultural Rights and the Protection of Cultural Heritage," 6 October 2016, accessed May 29, 2024, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/RES/33/20&Lang=E>.

<sup>67</sup> RASHID International, "The Intentional Destruction of Cultural Heritage in Iraq as a Violation of Human Rights," accessed May 29, 2024, <https://doi.org/10.5281/zenodo.3835894>.

<sup>68</sup> The United Nations Security Council: "S/RES/2347 (2017) Security Council Resolution No.2347 (2017)," accessed May 29, 2024, [https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/RES/2347%20\(2017\)&Lang=C](https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/RES/2347%20(2017)&Lang=C).

<sup>69</sup> Hu Xiujuan, "Recent Developments on Cultural Heritage Law in Armed Conflict," *Chinese Review of International Law* 6 (2018): 61-72.

<sup>70</sup> Office of the United Nations High Commissioner for Human Rights, "Third Intersessional Workshop on Cultural Rights and the Protection of Cultural Heritage," accessed May 29, 2024, <https://www.ohchr.org/en/events/events/2023/third-intersessional-workshop-cultural-rights-and-protection-cultural-heritage>.

<sup>71</sup> The Office of the Prosecutor of the International Criminal Court, *Policy on Cultural Heritage*, June 2021, page 10-11.

Timbuktu on behalf of the international community. She emphasized that the international community must continue to mobilize globally and, following the example of Mali, address attacks on cultural heritage occurring today in the Sahel region, as well as in Iraq, Syria, Yemen, and Libya.<sup>72</sup> In 2022, UNESCO established a regular dialogue mechanism with the UN Special Rapporteur in the field of cultural rights. This collaboration aimed to jointly advocate for and advance cultural rights through a human rights-based approach to cultural heritage protection, both in armed conflict and peacetime.<sup>73</sup>

In summary, UNESCO has promoted the development of mechanisms and practices for the protection of cultural rights through a variety of means and pervasive pathways. Although it may not always explicitly invoke the name or slogan of “cultural rights,” it has effectively integrated cultural rights into the international consensus and collective action for peace, security, development, and dialogue among civilizations. These efforts ensure that the protection of cultural rights is not merely confined to national macro-legal systems or the provisions of international conventions, but is genuinely combined with cultural heritage, cultural life, and cultural traditions, thus having a realistic carrier closely connected with individual well-being and collective memory. Moreover, the organization’s initiatives, projects, and activities aimed at enhancing the status of culture and cultural rights are based on member consensus. They take into consideration and respect the cultural diversity of different regions, countries, and peoples. The flexible nature of its approaches is more in line with the cultural characteristics of cultural rights and can more effectively and sustainably promote the gradual and full realization of cultural rights around the world.

### **III. New Developments and Trending Features in the International Agenda for the Protection of Cultural Rights**

Faced with complex and interrelated global challenges such as science and technology, climate change, global pandemics, war and conflict, extremism, hate speech, and disinformation, the United Nations system is increasingly recognizing the need to propose and advance a new collective action agenda on cultural rights. The 2022 World Conference on Cultural Policies and Sustainable Development, organized by UNESCO, provided an opportunity and impetus for the new development of the international agenda on cultural rights. In the conference’s *Final Declaration*, 150 countries worldwide reaffirmed that culture encompasses a range of fundamental human rights and pledged to create a

<sup>72</sup> UNESCO, “Mali and UNESCO receive symbolic reparation on behalf of international community for destruction of Timbuktu’s mausoleums,” accessed May 29, 2024, <https://www.unesco.org/en/articles/mali-and-unesco-receive-symbolic-reparation-be-half-international-community-destruction-timbuktus>.

<sup>73</sup> UNESCO, “Decision 17. COM 6 Dialogue with the Special Rapporteur in the field of Cultural Rights, Ms. Alexandra Xanthaki, on the role of cultural rights for the protection of cultural property in the event of armed conflicts,” accessed May 29, 2024, <https://unesdoc.unesco.org/ark:/48223/pf0000384108?posInSet=4&queryId=ebbd7df0-6a39-4492-8917-dcf3078ae68c>.

conducive environment to respect and implement cultural rights in all cultural fields, including both individual and collective cultural rights.<sup>74</sup> As a follow-up to the World Conference on Cultural Policies and Sustainable Development, UNESCO and the OHCHR, with the support of the Swiss National Commission for UNESCO and the University of Geneva, jointly organized the thematic dialogue “BRINGING FORWARD CULTURAL RIGHTS: WHAT’S NEXT AFTER MONDIACULT” (also known as the “Geneva dialogue on cultural rights”) in 2023.<sup>75</sup> UNESCO and the OHCHR jointly proposed sixteen perspectives and recommendations for advancing cultural rights in the future, which can be summarized as four key priorities for a new international agenda on the protection of cultural rights.

First, it is essential to ensure the “foundational” status of cultural rights within the human rights framework. According to the definition of cultural rights provided by the World Conference on Cultural Policies and Sustainable Development, the fundamental characteristics of cultural rights are their universality, inclusiveness, and participatory nature. This right should not be regarded as a “luxury” that adds to an already privileged situation or as a “residual” that can be sacrificed when resources are scarce. Instead, it should be considered a “basic” human right that must be realized and a “basic” condition for the realization of other human rights. To this end, the thematic dialogue recommended implementing the guiding principles of the *Final Declaration* of the World Conference on Cultural Policies and Sustainable Development. It called on states to explicitly establish the basic principles for the protection of cultural rights in their national policies and to develop implementation guidelines for all duty-bearers responsible for the protection of these rights. Cooperation should be strengthened among UNESCO, the Special Rapporteur in the field of cultural rights, the OHCHR, and relevant non-governmental organizations to jointly develop a set of policy discourses that explain the definition and connotations of cultural rights. The protection, accountability, and redress of cultural rights should be emphasized within the existing regulatory mechanisms for various international normative instruments related to cultural rights, and the progress and monitoring status of the realization of cultural rights should be included in the *Global Report on Cultural Policies* to be published in 2025. The systematic nature and inter-departmental coordination of cultural rights protection should be enhanced, and partnerships and alliances should be established specifically for the protection of cultural rights in conflict situations and humanitarian crises. Participatory approaches should be advocated in policy

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<sup>74</sup> UNESCO, “UNESCO World Conference on Cultural Policies and Sustainable Development-MONDIACULT 2022 Final Declaration,” accessed May 28, 2024, [https://articles.unesco.org/sites/default/files/medias/fichiers/2023/01//6.MONDIACULT\\_EN\\_DRAFT%20FINAL%20DECLARATION\\_FINAL\\_1.pdf](https://articles.unesco.org/sites/default/files/medias/fichiers/2023/01//6.MONDIACULT_EN_DRAFT%20FINAL%20DECLARATION_FINAL_1.pdf).

<sup>75</sup> UN Human Rights Office of the High Commissioner, “UNESCO & Human Rights: Geneva Dialogues for Enhancing Cooperation and Effectiveness, Main Outcomes of the Third Thematic Dialogue,” accessed May 30, 2024, <https://www.ohchr.org/sites/default/files/documents/issues/culturalrights/activities/summary-unesco-hr-dialogue-2023-rtc.pdf>.



discussions related to cultural rights, the voices of civil society organizations, local communities, and stakeholders should be amplified, and policy dialogue spaces that respect diversity should be created. There should be a focus on and advocacy for considering the public good nature of culture from the perspective of cultural rights, to avoid culture becoming a tool manipulated by state power or a commodity controlled by private capital, and to regard cultural rights as an important strategic field for future cultural policy-making. The importance of cultural rights in the digital space should be emphasized, and the impact of emerging technologies such as artificial intelligence on social public space and cultural diversity should be mitigated by upholding cultural rights.

Second, it is necessary to protect the rights and freedoms of artists, cultural industry workers, and creative professionals. Both the World Conference on Cultural Policies and Sustainable Development and the Geneva dialogue on cultural rights have pointed out that with the rise of populism, violent extremism, and fundamentalism, the rights and freedoms of artistic and cultural creation are facing unprecedented challenges. Since 2015, UNESCO has been working with some non-governmental organizations to monitor artistic freedom and believes that this right has experienced a general regression worldwide. In 2022, 26 percent of artists in Europe faced restricted or even attacked creative freedom, 22 percent in North and South America, 15 percent in the Asia-Pacific region, and 9 percent in Africa.<sup>76</sup> The Geneva dialogue on cultural rights recommends a comprehensive and systematic collection of data on the rights and freedoms of artists and other cultural practitioners. It emphasizes the importance of fully utilizing the periodic reporting mechanisms of UNESCO's main cultural conventions and advocates for the direct participation of artists and other groups in these reports. The dialogue also suggests integrating the monitoring mechanisms of the 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* and the 1980 *Recommendation concerning the Status of the Artist*. It calls for increased attention and tracking of artists' rights complaints by the UN Human Rights Council, the UN Committee on Economic, Social and Cultural Rights, and the Working Group on Arbitrary Detention. The dialogue highlights the need to address the inadequate and uneven protection mechanisms for artists and cultural practitioners at the national level and to strengthen dialogue and capacity-building between UN bodies and national governments.

Third, the diversity of cultural identities, languages, and content should be protected in public policies at the national, regional, and local levels. The *Final Declaration* of the World Conference on Cultural Policies and Sustainable Development reaffirms the commitment of states to protect and promote the diversity of cultural expressions and the international obligation to respect and protect cultural identities. The Geneva dialogue on cultural rights further

<sup>76</sup> Freemuse, "The State of Artistic Freedom Report 2023," accessed May 30, 2024, <https://freemuse.org/media/cvajxuvr/saf-2023-compressed.pdf>.

emphasized that the core of safeguarding cultural rights and dignity is to maintain cultural diversity. Efforts should be made through the formulation and implementation of public policies to eliminate all forms of intolerance, discrimination, exclusion, etc. It is suggested to conduct a self-assessment of public policies on cultural rights in accordance with the relevant principles of the *Final Declaration*, covering topics such as religious and belief tolerance, linguistic diversity, rights of indigenous peoples, and inclusive cultural education. The dialogue also encourages the development of public policy frameworks for cultural rights.

Fourth, a human rights-based approach should be advocated in issues such as cultural heritage, cultural identity, and the repatriation of cultural artifacts, and the role of cultural rights in building peace should be leveraged. The Geneva dialogue on cultural rights highlighted that a cultural rights-based approach can better leverage the role of cultural heritage sites, living cultural heritage, and historical artifacts in promoting dialogue, reconciliation, and lasting peace. The approach can also address the injustices and social divisions caused by contentious historical memories, narratives, and discourses related to colonialism and war conflicts. It is particularly important to note that the repatriation of cultural property involves significant collective cultural rights of nations, communities, and indigenous peoples. More context-specific and decolonized methods are needed to accelerate the return of cultural property. The dialogue suggested mainstreaming a cultural rights perspective in normative discussions on post-conflict reconciliation, peacekeeping, and peacebuilding. It also proposed using the cultural rights framework as a basis for promoting global policy dialogue and policy-making on the repatriation of cultural artifacts, so as to play the key role of cultural rights in building peaceful, just, and inclusive societies. Besides, the Geneva dialogue also put forward two comprehensive recommendations: First, to promote the interconnection and integration of UNESCO's six cultural conventions, to enhance the perspective of cultural rights systematically, and to establish implementation standards for cultural rights applicable to all conventions. Second, to focus on and protect the rights and interests of cultural rights defenders, considering it a priority and specific indicator for implementing the consensus of the World Conference on Cultural Policies and Sustainable Development.

In the context of advancing a new agenda for cultural rights, UNESCO and related UN bodies are actively promoting interdisciplinary and interdepartmental collaboration, which has led to two trend-setting characteristics in the emerging cultural rights agenda: First, strengthening the relevance of culture and science, and making the right to participate in science (also known as the right to science and technology) another specific cultural right. UNESCO believes that new scientific and technological revolutions, such as digital technology, artificial intelligence, and neuroscience, as well as global climate change, pose unprecedented challenges to cultural rights. In response, the organization has adopted several key instruments in recent years, including

the *Recommendation on Science and Scientific Researchers*, the *Declaration on Ethical Principles in relation to Climate Change*, the *Recommendation on the Ethics of Artificial Intelligence*, and the *Recommendation on Open Science*. These instruments aim to advocate for and ensure the humanistic value and ethical norms of scientific and technological development, making scientific knowledge and technological progress a driving force for maintaining and promoting cultural diversity and the gradual and full realization of cultural rights. Building on these UNESCO normative instruments, the United Nations Special Rapporteur in the field of cultural rights, in the thematic report for 2024, confirmed that science is part of culture and that the right to participate in science is an element of the right to take part in cultural life. The report also proposed “exploring the establishment of a Special Rapporteur on the right to science and technology, fully understanding the right to science and technology as a cultural right.”<sup>77</sup>

On the other hand, cultural rights should be promoted through education, and a framework for arts and cultural education should be established to advance education in cultural rights. UNESCO defines the right to education as the right of all persons “to receive or impart systematic instruction.” It emphasizes that education is not a privilege exclusive to a few but a fundamental human right, thus possessing attributes such as fundamentality, universality, and priority. Moreover, it has an empowering role in promoting the realization of other rights.<sup>78</sup> UNESCO believes an inseparable intrinsic connection and overlap exists between the right to education and cultural rights. Accordingly, it has developed a series of international normative instruments to define and protect the right to education, but generally considers the right to education as a specific content of cultural rights in the broad cultural context. In 2023, the organization updated the 1974 *Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms*, emphasizing that education should be rooted in the concept of human rights and provide a transformative impetus for the promotion of human rights. In 2024, UNESCO issued the *Framework for Arts and Cultural Education*, positioning “arts and cultural education” as an educational tool, a methodology, and a field of learning, research, and practice. It covers all teaching and learning related to culture and the arts, their forms of expression, integration with them, or use as a means. The aim is to harness the unique resources of culture (including the arts) and education to enhance synergies and promote the accessibility and fair inclusiveness of cultural rights.<sup>79</sup>

<sup>77</sup> The United Nations Human Rights Council: “A/HRC/55/44: Right to participate in science - Report of the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki,” accessed May 30, 2024, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/55/44&Lang=C>.

<sup>78</sup> UNESCO, *Right to Education Handbook* (Paris: UNESCO Publishing, 2019), 23 and 28.

<sup>79</sup> UNESCO, *UNESCO Framework for Arts and Cultural Education*, accessed May 30, 2024, [https://www.unesco.org/sites/default/files/medias/fichiers/2024/04/WCCAE\\_UNESCO%20Framework\\_EN\\_CLT-EDWCCAE20241.pdf?hub=86510](https://www.unesco.org/sites/default/files/medias/fichiers/2024/04/WCCAE_UNESCO%20Framework_EN_CLT-EDWCCAE20241.pdf?hub=86510).

This is the first time UNESCO has issued an international normative document that horizontally links the two major fields of education and culture and is based on a human rights perspective. It is seen as a “reinvestment in cultural capacity and a rethinking of the potential of education.” UNESCO advocates that learners acquire the knowledge, skills, values, attitudes, and behaviors needed to promote human rights, peace, and sustainable development through arts and cultural education, and it is currently developing an operational guide to implement the Framework for Arts and Cultural Education, which aims to conduct monitoring through a voluntary reporting mechanism every four years to promote cultural rights in education.

#### **IV. Reflections on China’s Participation in the Protection of Cultural Rights at the United Nations**

The concepts, mechanisms, and practices of cultural rights protection within the United Nations system are constantly evolving, and the emerging international agenda for cultural rights protection is gradually taking shape. These changes provide China with an important platform and opportunity to engage deeply in global human rights governance. Respecting and protecting human rights has been an important task that China has always emphasized and adhered to since the founding of the People’s Republic of China, and it is also a main thread in the Communist Party of China’s governance of the country. As the world’s largest developing country, China emphasizes giving economic, social, and cultural rights equal importance to civil and political rights, and stresses the equal, balanced, and coordinated development of all human rights. Xi Jinping Thought on Culture contains important ideas and intellectual resources to promote cultural rights, which provides a fundamental guidance for China to comprehensively improve the level of human rights protection in the coordinated development of material civilization, political civilization, spiritual civilization, social civilization, and ecological civilization, and guides the development of China’s human rights cause to achieve historic accomplishments continuously. Following the Global Development Initiative and the Global Security Initiative, General Secretary Xi Jinping proposed the Global Civilization Initiative in 2023, which profoundly addresses significant questions regarding how different civilizations can coexist and the development direction of human civilization, emphasizing inclusiveness and peace. It provides essential inspiration and impetus for promoting cultural diversity, sustainable development, and the realization of cultural rights worldwide. As China enters a new stage of high-quality development, and the country’s human rights progress reaches a new starting point. China should continue to pursue a human rights development path that fits its national conditions while further engaging in global human rights governance. By practicing the Global Civilization Initiative and actively participating in human rights affairs across various institutions and fields within the United Nations system, especially through the UNESCO platform, China can contribute more wisdom and strength to the global cultural

rights cause.

First, China should fully and deeply engage in the work framework of UNESCO's international normative instruments related to cultural rights, demonstrating its commitment and achievements in "respecting, protecting, and realizing" cultural rights. Overall, based on its ratification or accession to 29 international human rights instruments, China has actively participated in the Universal Periodic Review (UPR) mechanism of the United Nations system for the implementation of relevant normative instruments. For example, China submitted its *National Human Rights Report* to the UN Human Rights Council and underwent all four rounds of UPR in 2009, 2013, 2018, and 2024. It also participated in the reviews of its three periodic reports by the Committee on Economic, Social and Cultural Rights in 2005, 2014, and 2023. With an open and candid attitude, China has engaged in dialogues with UN bodies and representatives from various countries, proactively introducing the institutional advantages and practical achievements of China's "development-based human rights approach."<sup>80</sup> In comparison, China's participation in human rights issues and mechanisms within specialized agencies such as UNESCO should be further enhanced. The six conventions of UNESCO in the cultural domain, as well as recommendations on artists, researchers, museums, etc., require member states to submit regular reports on the implementation of human rights obligations. These also provide an international platform for countries to showcase their achievements and experiences in human rights protection. Based on its experience in participating in the UPR of the UN Human Rights Council and the implementation reviews of relevant treaty bodies, China can demonstrate how it has advanced cultural rights through measures such as consolidating the foundation for the development of cultural rights, establishing a public cultural system covering urban and rural areas, inheriting and promoting fine traditional culture, popularizing scientific knowledge, and developing cultural undertakings for ethnic minorities.

Second, China, as a major country in terms of both tangible and intangible cultural heritage, can extract and summarize its practical experience in the protection of cultural heritage rights and share specific examples and wisdom in the protection of cultural rights with the international community. As of 2024, China has 59 items listed in UNESCO's *World Heritage List* and 43 items in the *Representative List of the Intangible Cultural Heritage of Humanity*, ranking second and first in the world, respectively. The protection and inheritance of cultural heritage are important aspects of Xi Jinping Thought on Culture and also a key area of China's long-term and close cooperation with UNESCO. China

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<sup>80</sup> Xiao Wu, "Reflections on China's Achievements and Institutional Advantages in Human Rights Protection from the Fourth Universal Periodic Review," *China News Release* 2 (2024): 11-14; Huang Jinrong, "A Misjudgment of the Human Rights Treaty Body: A Comment on the Consideration of ESCR Committee on the Third Report of China on the Implementation of ICESCR," *Chinese Journal of Human Rights* 1 (2024): 63-91; Sun Meng, "China and the United Nations Human Rights Protection System: A Case Study of the Universal Periodic Review Mechanism," *Foreign Affairs Review* 2 (2015): 50-51.

can further strengthen the human rights perspective in cultural heritage protection, refine its Chinese discourse and narrative on cultural heritage rights, and share its concepts and experiences in protecting cultural heritage and protecting collective cultural rights with other developing countries, especially those in Africa and small island developing states. These efforts can lead to the creation of more examples of South-South cooperation in the protection of cultural heritage rights.

Third, China should participate in the formation of the emerging international cultural rights agenda with forward-looking thinking, promoting a closer association between cultural rights and cultural diversity, as well as inter-civilizational exchanges and mutual learning. China maintains that human rights are historical, specific, and realistic, and cannot be separated from the sociopolitical conditions and historical and cultural traditions of each country. This perspective is deeply in line with UNESCO's mission to safeguard cultural diversity and advocate for dialogue among civilizations. General Secretary Xi Jinping first proposed the "New Civilization Concept" on cultural exchanges and mutual learning to the international community at UNESCO in 2014. In 2023, China, together with Cuba, initiated and promoted the adoption of the draft resolution on "Human Rights and Cultural Diversity" in the Third Committee of the United Nations General Assembly. In 2024, China successfully established the International Day for Dialogue among Civilizations in the United Nations General Assembly, emphasizing that cultural exchange and mutual learning can enrich the common understanding of human rights among different countries and peoples, and are of great significance in promoting the implementation of cultural rights around the world.<sup>81</sup> China should closely monitor the cutting-edge issues and important trends of cultural rights on the UNESCO platform, actively participate in discussions and actions in fields such as the establishment of the right to science and technology and the promotion of the framework for arts and cultural education, and increase its influence and shaping power over the international agenda and norms.

Fourth, China should encourage diverse stakeholders in the field of cultural rights, including professional groups, non-governmental organizations, experts, scholars, and professionals, to participate in human rights governance within the United Nations system. This will allow for a more multi-dimensional and vivid international communication and exchange of cultural rights, and more effectively counteract Western -centrism, value biases, and double standards in the discourse of cultural rights. Since the advent of the new era, international disputes over human rights discourse have intensified, especially against the backdrop of China-U.S. competition and tense geopolitical situations. Some Western countries have continued to exert pressure on China over "human rights"

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<sup>81</sup> The United Nations General Assembly, "A/C.3/78/L.44 Human Rights and Cultural Diversity," [https://digitallibrary.un.org/record/4026080/files/A\\_C.3\\_78\\_L.44-ZH.pdf?ln=fr](https://digitallibrary.un.org/record/4026080/files/A_C.3_78_L.44-ZH.pdf?ln=fr); "A/78/L. 75 International Day for Dialogue among Civilizations," accessed May 29, 2024, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/78/L. 75&Lang=C>.

issues, attempting to tarnish China's development achievements and national image, and to disrupt and hinder China's development. General Secretary Xi Jinping emphasized the need to steer global human rights governance toward a direction that is more equitable, just, rational, and inclusive. This requires conducting multi-dimensional, multi-level, and multi-channel dialogues and exchanges on human rights, as well as gaining initiative and discourse power in the international human rights arena through these interactions. Cultural rights involve a variety of actors, including artists, researchers, heritage managers, and practitioners in the cultural and creative industries. It is necessary to encourage all of them to actively voice their opinions in human rights governance. In particular, support should be provided for their participation in the micro-level governance of human rights, such as monitoring and reviewing relevant human rights instruments, individual complaints, thematic research, and reporting, to enhance the effectiveness and persuasiveness of human rights dialogues. In debates that confront Western biased discourse head-on, it is important to clarify the truth, promote the common values of humanity, and reject the politicization and instrumentalization of human rights.

## **V. Conclusion**

Cultural rights are undeniable, essential, and inseparable fundamental human rights, with an empowering nature that transcends various domains. The realization of cultural rights means that individuals and collectives have greater opportunities to achieve health, access education, accomplish achievements, demonstrate creativity, and fully possess self-esteem and human rights.<sup>82</sup> From its inception, the United Nations has issued the UDHR, which includes cultural rights. As the lead agency within the United Nations system for cultural affairs, UNESCO has adopted a broad and profound view of cultural rights and implemented a "human rights-based approach" in its cultural activities. Through specific and practical cultural issues such as protecting cultural heritage, safeguarding the status of artists, developing cultural spaces, and encouraging the cultural and creative industries, UNESCO has promoted respect for, protection of, and realization of cultural rights.

UNESCO has also driven the United Nations system to increasingly value cultural rights. It has also incorporated these rights into the global sustainable development agenda. It has also actively led the shaping of new collective action plans for cultural rights to better unleash the intrinsic creativity, cohesion, resilience, inclusiveness, and sustainability of culture. China should actively participate in cultural rights protection affairs within the United Nations system as a major world civilization and a responsible country in today's international system. It should advocate and implement the Global Civilization Initiative, transforming more Chinese wisdom and solutions into international consensus. This will promote the harmonious coexistence of the universality and diversity of cultural rights, as well as the co-building of a community with a shared future

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<sup>82</sup> UNESCO, "Culture: Global Public Good," *Courier* 3 (2022): 4.

for mankind.

(Translated by *LI Donglin*)