

Elsa Stamatopoulou. **Cultural Rights in International Law**. Leiden/Boston: Martinus Nijhoff Publishers, 2007. Pp. 258. €105. ISBN 9789004157521.

Does Man have a right to culture? Can people freely express their own cultural distinctiveness, be it in a language, physical appearance, or a specific set of norms and values? Should the state intervene to support and protect cultural rights of individuals, minority groups, or even the majority? And what role can the international community play in this endeavour to further cultural rights? Can a careful and balanced scrutiny of cultural claims contribute to a constructive 'dialogue among civilizations'?¹ Does culture necessarily clash with other human rights? Notwithstanding early case law and the formal entry of cultural rights into the human rights catalogue after World War II,² cultural rights have been neglected for a long time and have been less developed than civil, political, economic, and social rights.³ The book under review gives an excellent and systematic overview of the existing law and practice concerning cultural rights and, by offering answers to the questions mentioned above, surely contributes to the development of legal doctrine.

International legal instruments do not include a right to culture, but refer to cultural rights (at 110). Cultural rights include a series of different entitlements, such as the right to education, the right to participate in

¹ GA Res 56/6, 9 Nov. 2001, *Global Agenda for Dialogue among Civilizations*, A/RES/56/6.

² See, for instance, Universal Declaration of Human Rights, Art. 22; GA Res 217 A, UN GAOR, 3rd Sess., Pt. I, Resolutions, UN Doc A/810 (1948).

³ See Symonides, 'Cultural Rights: A Neglected Category of Human Rights', 158 *Int'l Social Science J* (1998) 595. In the past decade, however, cultural rights have received increased attention: see, for instance, W. Barth, *On Cultural Rights: The Equality of Nations and the Minority Legal Tradition* (2008); F. Francioni and M. Scheinin (eds), *Cultural Human Rights* (2008).

cultural life, the right to enjoy the benefits of scientific progress, the freedom for scientific research, and the possibility for individuals to speak their own dialects, to name a few. The reasons cultural rights are a less developed legal category *vis-à-vis* other human rights are complex and have a legal and political nature. From a legal standpoint, cultural rights remain difficult to define. Culture has a fluid and elusive nature, being not a static concept but rather a dynamic force which adopts different forms across time and space.⁴ Definitions of culture, thus, rarely succeed in capturing its essence. From a political standpoint, governments have feared that cultural entitlements could determine claims of self-determination and ultimately jeopardize national unity. In this sense, scholars have emphasized the link between culture, politics, and international conflicts.⁵ In addition, cultural rights have been perceived as less important than other human rights.⁶ Some authors even argued that the cultural provisions in the existing legal instruments do not establish real rights, but rather political commitments of a programmatic character. Finally, authors have discussed how cultural elements may clash with other human rights standards.⁷

Stamatopoulou clarifies that cultural entitlements do not necessarily clash with other human rights and, if a conflict arises, international law instruments address this tension in favour of internationally proclaimed

human rights.⁸ For instance, the UNESCO Declaration on Cultural Diversity states that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.⁹ Stamatopoulou also stresses the legal nature of cultural rights and analyses the existing legal instruments in the field. While a more analytical approach would have been welcome, this descriptive part has the merit systematically to illustrate the recent legal developments in the field, including reference to soft law instruments. While the author acknowledges that the significance of an international soft law instrument should not be overemphasized, she highlights that soft law may become ‘a site of positive ideological exchange’ (at 35).

Chapters II and III deal with cultural diversity. Chapter II includes a description of the relevant international legal instruments. More interestingly, the author also reviews the role of the United Nations treaty bodies with respect to the right to participate in cultural life. Until the end of 2009, the Committee on Economic Social and Cultural Rights had issued only General Comment No. 17 on Article 15(1)(c) of the International Covenant

⁴ Preamble, UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted on 20 Oct. 2005, and entered into force on 17 Mar. 2007.

⁵ S.P. Huntington, *The Clash of Civilizations and the Remaking of the World Order* (1996).

⁶ Donders lists and criticizes these approaches: see Donders, ‘A Right to Cultural Identity in UNESCO’, in F. Francioni and M. Scheinin (eds), *Cultural Human Rights* (2008), at 317, 318.

⁷ Paul, ‘Cultural Resistance to Global Governance’, 22 *Michigan J Int’L* (2000–2001) 51

⁸ Convention for the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, Art. 7; Convention on the Elimination of All Forms of Discrimination Against Women, 1249 UNTS 13, Art. 5; Convention on the Rights of the Child, UN GA Res 44/25 of 20 Nov. 1989, Art. 24, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN GA Res 47/135 of 18 Dec. 1992, Art. 4; UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, Art. 2. This Convention entered into force on 20 Apr. 2006. For the text see http://portal.unesco.org/en/ev.php-URL_ID=12025&URL_DO=DO_TOPIC&URL_SECTION=-471.html.

⁹ UNESCO Universal Declaration on Cultural Diversity, Art. 4. The Declaration was adopted on 2 Nov. 2001. For the text see www2.ohchr.org/english/law/diversity.htm.

on Economic, Social and Cultural Rights,¹⁰ regarding authors' right to benefit from the protection of the moral and material interests resulting from their scientific, literary, or artistic production. Stamatopoulou emphasizes the need for further reflection, stressing that the Committee did not focus on cultural rights adequately (at 51). The criticism was well founded; on 21 December 2009, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 21 on the right of everyone to take part in cultural life (Article 15(1) (a) ICESCR).¹¹

Importantly, the author emphasizes that in many circumstances other committees treat cultural rights superficially and/or formally (at 55). She also reconstructs in a systematic way the work of the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, and several Special Rapporteurs. According to Stamatopoulou, 'the survey of the work of human rights bodies shows that cross-fertilization among them in the area of cultural rights has been missing . . . The subject is treated unsystematically, occasionally motivated by political interests of the moment, and loses the authority that it should have in taking its rightful place on the human rights agenda' (at 70). The author notes that the General Assembly's role on cultural rights has remained limited, and unsurprisingly so, as the subject should be primarily elaborated and studied by human rights bodies (at 72). She also states that it would be desirable for the Security Council to systematize and formalize its ideas on exceptions to sanctions

connected with the right to participate in cultural life (at 73).

With regard to the United Nations Educational, Scientific and Cultural Organization (UNESCO),¹² Stamatopoulou emphasizes that this organization has contributed, albeit often in an implicit manner, to the understanding of cultural rights as human rights in all its standard-setting efforts. However, she also criticizes UNESCO in several respects. First, she points out that 'UNESCO approaches human rights and cultural rights in particular with considerable political caution . . . [and] has mostly focused on inter-state relations regarding culture, rather than on the cultural human rights of people' (at 79–80). Secondly, the author stresses that UNESCO is producing too many international instruments too fast, without preparing them adequately. On the one hand, too many instruments may create a loose legal environment. On the other hand, the author contends that the preparation of the legal instruments adopted by UNESCO does not seem to meet the standards required for a standard-setting of universal character. The risk is that the adopted standards fall below existing international standards and 'thus weaken or dilute the existing international human rights regime' (at 81–82). A parallel critique relates to the limited participation of civil society in the drafting process (at 81). Thirdly, Stamatopoulou points out that cooperation between UNESCO and other UN organs has not been systematic (at 82).

Chapter III examines the limitations to cultural rights and explores their content. The author cautions that not every custom or folklore is a right. To support this claim, she refers to Article 29 of the Universal Declaration on Human Rights, which places certain limits on the exercise of freedoms and on the compatibility clause often found in human rights treaties that cultural practices which violate human rights are not part of the freedom to enjoy cultural life. With regard to the content

¹⁰ International Covenant on Economic, Social and Cultural Rights, 15 Dec. 1966, 993 UNTS 3. General Comment 17 on Art. 15(1)(c) of the Covenant, regarding the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author was issued in Nov. 2005.

¹¹ General Comment 21 on the right of everyone to take part in cultural life (Art. 15(1)(a) ICESCR), available at: www.2.ohchr.org/english/bodies/cescr/docs/gc/E-C-12-GC-21.doc.

¹² The Constitution of UNESCO was signed on 16 Nov. 1945 and came into force on 4 Nov. 1946: 4 UNTS 275 (1945).

of cultural rights, she highlights the difficulty of drawing a line between the essential and the non-essential in order to identify a cultural right worthy of promotion, protection, and fulfilment on the part of the state (at 113). As long as cultural practices do not infringe other human rights, the state is expected to respect, protect, and fulfil them.

With regard to the content of cultural rights, the author clarifies that cultural rights impose both negative and positive obligations on states. Negative obligations require the state not to interfere with the enjoyment of culture. Positive obligations include obligations to protect and fulfil cultural rights. Protecting cultural rights means that the state must prevent their violation by third parties – be they individuals or corporations. Fulfilling these rights means that the state must take appropriate legislative, administrative, and judicial measures towards the full realization of such rights. Because of their cross-cutting nature, cultural rights also depend on the implementation of other human rights.

Like economic and social rights, cultural rights are subject to progressive realization. However, they also involve obligations of immediate implementation. As Stamatopoulou emphasizes, ‘the concept of *minimum core obligations* is particularly useful in the case of cultural rights, which are often viewed as a luxury that governments should pay attention to only after fulfilling other more basic needs of the population’ (at 153). According to Stamatopoulou, the so-called minimum core obligations of cultural rights include: (i) non-discrimination; (ii) non-interference in the cultural freedoms of individuals and groups; (iii) the protection of cultural rights if these are threatened by non-state actors through the state’s regular discharge of police and justice functions; (iv) ensuring the participation of society in the definition, preparation, and implementation of cultural policies; (v) promoting policies of respect for cultural rights; and (vi) taking steps towards the full enjoyment and fulfilment of cultural rights. As Stamatopoulou points out, ‘it is up to the state to demonstrate that every effort has been made to use all resources that are at its disposition in

an effort to satisfy those minimum core obligations’ (at 157). With regard to justiciability, the author mentions the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.¹³

Chapter IV discusses cultural rights as they apply to indigenous peoples, minorities, women, children, people with disabilities, migrant workers, and refugees, as well as the poor.¹⁴ While cultural rights are individual rights as they belong to individuals, ‘at the same time the group context is indispensable or a facilitating factor for the exercise of cultural rights’ (at 173). In this regard, the author scrutinizes the remarkable case law of the Human Rights Committee (at 181).

The book provides a detailed overview of the meaning and content of cultural rights in contemporary international law. While the structure of the book is simple and clear, a more analytical approach would have been welcome. There are some minor repetitions, and reference to examples, case law, and state practice is not extensive. Notwithstanding these criticisms, the major merit of the book lies in its equilibrated approach to the study of cultural rights. Stamatopoulou emphasizes that – far from being ‘luxury rights’ – cultural rights are closely connected to human dignity. She systematically reviews the existing legal framework governing cultural rights at the international law level and clarifies the

¹³ On 10 Dec. 2008, the UN GA unanimously adopted the Optional Protocol to the ICESCR during its meeting commemorating the 60th anniversary of the UDHR. The Protocol entered into force after the publication of Stamatopoulou’s book. According to the Optional Protocol, individuals will be allowed to submit communications to the Committee after exhaustion of local remedies.

¹⁴ With regard to women’s rights, Stamatopoulou highlights that international human rights law has proven to be a powerful emancipating discourse. Both the Committee on Economic, Social and Cultural Rights and the Human Rights Committee have criticized cultural practices which violate human rights, especially women’s human rights (Stamatopoulou, at 25–26).

interplay between cultural rights and other human rights. One cannot but agree on such a balanced understanding and appreciate the systematization of the complex legal and policy framework. It has to be seen whether and how international organizations and states will respond to the current challenges posed by globalization. While further studies are needed to investigate the interplay between markets and culture, media and cultural diversity, intellectual property and cultural expressions, foreign direct investment and culture, to name but a few, Stamatopoulou provides a general reflection and an excellent starting point for any scholar interested in cultural rights and international law,

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