

Cultural diversity and international law. In the field of human rights and identities

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Cultural diversity, Multilingualism and Ethnic minorities in Sweden

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Résumé de l'article

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Cultural diversity and international law

IN THE FIELD OF HUMAN RIGHTS AND IDENTITIES

JOSEPH YACOUB

Abstract: This communication was submitted to the International Conference "Cultural Diversity, Multilingualism and Ethnic Minorities in Sweden" (Ambassade de France en Suède, Institut français, Stockholm, Sweden, 2-3 september 2009). The topic deals with "Cultural diversity and international Law". The author tries to make clear the evolution of international law in matter of cultural diversity. In other words, the question is: How has the international law come to integrate cultural rights and diversity within its corpus?

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International Conference 2-3 September 2009 – Stockholm, Sweden

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Cultural diversity and international law

In the field of human rights and identities

Joseph Yacoub¹

Mon sujet traite de la diversité culturelle et le droit international, dans le domaine des droits de l'homme et des identités.

Je vais tenter d'éclaircir l'évolution du droit international en matière de diversité culturelle. En d'autres termes, la question qui se pose est la suivante : comment le droit international est-il parvenu à intégrer les droits culturels et la diversité dans son corpus ?

Avant de parler dans ma langue maternelle (l'araméen ou syriaque), permettez-moi de fournir quelques informations.

Je suis né en Syrie dans une famille assyro-chaldéenne venue de Perse (Iran), qui avait fui en Géorgie, au Caucase, durant la première guerre mondiale.

Quand la vie m'a souri, j'ai entendu la voix de ma mère me parler en syriaque (soureth), qui est une langue importante, parlée par Jésus.

Le syriaque est donc ma langue maternelle. A présent, elle est une langue parlée par plus de 70 000 locuteurs en Suède et environ 20 000 en France.

Immédiatement après, j'ai appris l'arabe qui était la langue de mon environnement.

Ma langue intellectuelle est le français. Je l'ai appris à l'âge de dix ans dans les écoles françaises au Liban. Dans les écoles françaises, c'était formidable ! car j'ai appris non seulement le français mais en même temps l'anglais, qui continue d'être mon autre langue d'usage.

La langue syriaque possède deux idiomes principaux : l'oriental et l'occidental. Même si mon dialecte maternel est l'oriental, je voudrais saluer mes amis syriaques présents dans les deux dialectes.

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"All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such²."

"As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature³."

"(...) Culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and belief⁴."

"All peoples contribute to the diversity and richness of civilisations and cultures, which constitute the common heritage of humankind⁵."

Introduction: Growing awareness of cultural diversity

We are living increasingly a period of challenges. One of the most important challenges facing our planet is the necessity of dialogue among civilisations, diverse cultures and thoughts, various religious traditions, many value systems, different patterns of belief, rituals, lifestyle and practices for the benefit of mutual understanding, a better integration, social cohesion and living together, and in view of the unity of humankind. Our human history is based on diversity which constitutes "the common heritage of humanity", and beyond diversity, it is rooted in unity and solidarity⁶.

It must be added that over the last decades, international community has adopted several legal instruments on matter of cultural diversity and human rights in order to enlarge and enrich our approach of pluralism and for finding ways to broaden and deepen our common perception.

In an inter-linked and inter-connected world, cultural diversity has become a fundamental reality of humanity and at the center of current debate. Like a turning-point phenomenon. Dialogue can serve to strengthen cultural diversity, generating creativity, because it seeks common ground. We live in a world plenty of diverse wealth, consisting of a plurality of cultures which should be preserved⁷.

² UNESCO, "Declaration on race and racial prejudice", 1978.

³ UNESCO, "Universal Declaration on cultural diversity", in Preamble and art. 1, 2 November 2001.

⁴ *Idem*.

⁵ "United Nations Declaration on the rights of indigenous peoples", Preamble, 13 September 2007.

⁶ ONU/UNESCO, "Notre diversité créatrice", in *Rapport de la Commission mondiale de la culture et du développement*, Paris, Éditions UNESCO, 1996, 343 pages.

⁷ "Les enjeux de l'interculturalité dans le cadre de la mondialisation", dossier, in *Études interculturelles*, Revue d'analyse publiée par la Chaire UNESCO de l'Université catholique de Lyon, n° 1, 2008, Université catholique, Lyon, pp. 7-107. "Investing in Cultural Diversity and Intercultural Dialogue", in *UNESCO World Report*, October 2009.

The greatest importance of the Universal Declaration of Human Rights (December 10, 1948)

Human Rights issues are placed at the heart of contemporary debate. Every year, the Universal Declaration of Human Rights (UDHR) is commemorated by the whole international community as an essential and decisive event. On last 10 December 2008, the 60th anniversary of the Universal Declaration of Human Rights (UDHR) has been celebrated. The debate on universality, natural right and the individualistic philosophy of UDHR, which was adopted by United Nations General Assembly in 1948, continues to be a crucial factor and still feeds talks in local, national and international area. The theoretical grounds of human rights and their philosophical foundations, confronted to cultural and diversity particularities, are becoming more than ever an important topic that are discussing showing various ideas and opinions about.

In the aftermath of the second World War, among many leading personalities we can mention : René Cassin, Eleanor Roosevelt, Charles Malik, Peng-Chun Chang, Hernan Santa Cruz, Alexander E. Bogomolov, Charles Duke, John Peter Humphrey..., belonging to different countries and areas of cultures and philosophy, endowed with good willingness, and sharing a common humanism, have sought to endorse and make approved a Declaration of Human Rights by all the nations facing Nazism Barbary, the cruel and ill treatment of the war.

This Declaration is of paramount importance which established a set of civic, political, economic, social and cultural rights. It is a triumph for human dignity inherent in everyone regardless race, ethnic group, colour, sex, language, religion, national origin:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” (art. 1)

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (art. 2.2)

Sixty years afterwards, a lot of transformation has been occurring. Our perception of Human Rights is more extensive and due to cultural diversity, migration movements, the eruption in the 1960s and 1990s of the right of peoples to self-determination and independence, the rise over the last decades of ethnic, national, religious and linguistic minorities (in Europe and elsewhere

around the world), and recently the resurgence of the rights of indigenous, aboriginal and native peoples⁸.

Cultural diversity: a new approach of the concept of culture

We are aware that cultural diversity of human societies has become a fundamental anthropological and societal reality. There are so many examples of such variety crossing all societies without exception, which have become multicultural at a larger scale (like Sweden and France). No country is uniform.

In this field, one must mention the large contribution of UNESCO in terms of anthropological approach of culture which is innovative, and in the area of international law production standards. In this sense, the adoption of the UNESCO Universal Declaration on Cultural Diversity on November 2, 2001 was a very important step towards multiculturalism, and a vital achievement⁹. This Declaration was followed by a Convention in the same sens which was adopted in 2005, actively supported and ratified by both France and Sweden.

It is said that cultural diversity is "The common heritage of humanity", and that "culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identity of the groups and societies making up humankind." (art. 1).

The importance of language heritage

We can mention the enormous linguistic heritage of humanity (around 6700 tongues) and the duty of safeguarding the large number of languages used everywhere in the world, mainly those under threat, potentially endangered, some of them unfortunately at risk of disappearing. One can say a language lost is a loss for the whole of humanity¹⁰.

⁸ Yacoub, Joseph, *Les droits de l'homme sont-ils exportables ? Géopolitique d'un universalisme*, Paris, Ellipses, décembre 2004.

⁹ UNESCO. "Universal Declaration on Cultural Diversity. A vision, a conceptual platform, a pool of ideas for implementation, a new paradigm", in *Cultural Diversity*, series n° 1, Katérina Stenou Editor, Division of cultural policies and intercultural dialogue, UNESCO, 2002, 61 pages.

¹⁰ UNESCO, "Sharing a world of difference. The earth's linguistic, cultural and biological diversity, in *UNESCO/World Wide Fund for nature/Terralingua*, UNESCO Publishing, 2003, Paris; UNESCO's Atlas of the World's Languages in Danger", New Edition, February 2009; Perucca Brigitte, "L'UNESCO recense 2 500 langues en péril. De multiples programmes de sauvegarde des idiomes témoignent d'une prise de conscience mondiale", in *Le Monde*, 19 février 2009; Atlas interactif sur www.unesco.org; "SOS langues". Programme Sorosoro Fondation Chirac, in *Le Monde*, Cahier spécial, 3 octobre 2009.

Pertaining to languages, France has sent a positive sign. We have to mention the recent amendment brought to the French Constitution on July 21, 2008. The new article (75) introduced, stipulates: "The regional languages belong to France patrimony"¹¹.

In this regard, the rights of minorities and indigenous peoples are obviously recognised and guaranteed, as a visible sign of cultural diversity:

"The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope." (art. 4 of UNESCO Declaration on Cultural Diversity).

Defining the concept of culture

As language, each culture is unique. The first task is to define culture. In this regard, the mentioned UNESCO Declaration on cultural diversity provides in its preamble a new and broaden definition of culture which is given in the light of anthropological perspective, different by several aspects from the narrow approach previously supplied by the UDHR which had limited culture to arts and literature¹²:

"(...) Culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and belief."

This key definition is in compliance with the conclusions of the World Conference on cultural policies, held in Mexico City, on August 6, 1982, which should be taken into account in view of its importance. Undoubtedly, this Conference was a turning-point.

In fact, the first most well-founded definition of culture in international arena was provided by UNESCO in 1982 describing culture as:

¹¹ Yacoub, Joseph, "La reconnaissance des langues régionales comme patrimoine de la France", in *Politeia, Revue semestrielle de droit constitutionnel comparé, Les Cahiers de l'Association française des Auditeurs de l'Académie internationale de droit constitutionnel*, n° 15, printemps 2009, Bordeaux, France, pp. 543-545.

¹² "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. 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." (art. 27).

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"(...) The whole complex of distinctive spiritual, material, intellectual and emotional features that characterise a society or social group. It includes not only the arts and letters, but also mode of life, the fundamental rights of the human beings, value systems, traditions and beliefs".

The text goes on to say that it is through culture that

"we discern values and make choices" and that "man expresses himself, becomes aware of himself, recognises his incompleteness..."

On the subject of cultural identity, the Declaration of Mexico specifies that

"Every culture represents a unique and irreplaceable body of values since each people's traditions and forms of expression are its most effective means of demonstrating its presence in the world." (para.1)

It is added that cultural identity is

"a treasure that vitalizes mankind's possibilities of self-fulfilment by moving every people and every group to seek nurture in its past, to welcome contributions from outside that are compatible with its own characteristics, and so to continue the process of its own creation." (para. 3)

Moreover, far from impeding the communion of universal values that unite peoples, cultural characteristics enrich it (para. 6). All this "points to the need for cultural policies that will protect, stimulate and enrich each people's identity and cultural heritage, and establish absolute respect for and appreciation of cultural minorities and the other cultures of the world. The neglect or destruction of the culture of any group is a loss to mankind as a whole". (para. 8)

In addition, cultural rights are an important part of human rights. There are a set of documents and a wide ranging of international standards clarifying its content. The World Conference on Human Rights (Vienna, Austria, 14-25 June, 1993) deserves to be mentioned. It acknowledges that Human Rights, embracing cultural rights component, are universal, indivisible, interdependent, and related to one another.

Now, it is commonly admitted that the achievement of cultural rights is a required condition to integration, societal cohesion, stability and peace.

The right of peoples to autonomy, self-government and self-determination

Meanwhile, within a historical short time there has been a significant increase in the number of States due to decolonization process beginning in the 1960s. In this connection, I will mention

the right of peoples to self-determination which was absent from the UDHR. The UN Declaration on the granting of independence to colonial countries and peoples, which was adopted on December 14, 1960, stipulates in this view:

“The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation” (art. 1)

“All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (art. 2)

The international society is currently counting nearly 195 states whereas it was numbering only 58 in 1948. In 1948, 2/3 of humanity was living under the burden of colonialism. Other peoples remain however deprived of their national rights and are still waiting for their recognition.

The rights of minorities

Minorities are a significant example that illustrates the story of human biodiversity. Minorities have come to occupy a central position throughout the world. Our planet is a conglomeration of countless national and ethnic, cultural, religious and denominational, linguistic, nomadic, territorial, non-territorial, indigenous and tribal minorities... There are so many examples of the diversity of humanity and so much variation from country to country¹³.

Minority movements are increasing significantly everywhere. Within the space of a few decades, the ethno-cultural configuration of the world and the geographical distribution of populations have changed considerably as a result of migration movement, and ethnic and cultural blending and intermixing (inter-marriages, discovery of languages and new countries, inter-states and regional integration process, the change occurred in terms of national belonging, citizenship issue, the new phenomenon of Diaspora and its impact). Societies have become multicultural. This raises the question of whether we are witnessing the emergence of new societies by the forthcoming decades. This issue is not restricted to just one continent, it affects the whole planet. Communities are becoming progressively aware of their identities (multicultural identities, transcultural identities or lack of identity). Many people are waking up everywhere in the world, claiming their rights, organising themselves and becoming active in new manners, making their emergence on the international stage¹⁴.

¹³ Yacoub, Joseph, *Les minorités dans le monde. Faits et analyses*, Paris, Desclée de Brouwer, 1998.

¹⁴ Yacoub, Joseph, “Pour la reconnaissance des minorités et des peuples autochtones” (English translation), ENARgy, Réseau européen contre le racisme, Bruxelles, octobre 2008, pp. 4-5.

Within states there are always minorities. Each time a new Nation-State has been formed, it has left on his periphery marginalized, poorly assimilated peoples and communities. Looking at the social realities, it can be seen that virtually all states have within them groups of peoples who are anthropologically different and are differentiated by their own ethnic, cultural, religious and linguistic identity¹⁵.

The international community¹⁶ has adopted standards for the promotion and protection of the rights of minorities, which are often accompanied by mechanisms for their application. Twenty-six years after the adoption of the UDHR, the international Covenant on civil and political rights came into being in 1966. Its article 27 recognizes officially for the first time minorities as a category of international law. It states:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the rights, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

Inside the political context surrounding the fall of Berlin Wall, the collapse of Soviet Union and the increase of ethnic conflicts in Eastern Europe, former USSR, Caucasus, Africa, Asia... the United Nations General Assembly adopted a Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities on 18 December 1992. This Declaration stresses the collective identity and ethnic affiliation of minorities in its first article:

“1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”.

2. States shall adopt appropriate legislative and other measures to achieve those ends”.

The rights of indigenous peoples

On the other hand, Indigenous or aboriginal peoples¹⁷, having been subjected to conquest, occupation, discrimination, forced assimilation into the national dominant mainstream and destruction (genocide, ethnocide, ecocide) for a long time, are claiming their rights to life, integrity and security, land property, natural resources, their identity and cultural traditions, their

¹⁵ Idem.

¹⁶ We refer to UN, Council of Europe, EU, OSCE etc.

¹⁷ “Les peuples autochtones”, dossier, in *Études interculturelles, Revue d’analyse de la Chaire UNESCO de l’Université catholique de Lyon*, n° 2, 2009, Lyon, pp. 7-128.

own institutions, their sacred objects, the remains of their forefathers... of which they have been deprived¹⁸. Finally, the United Nations General Assembly, witnessing indigenous revival and accompanying the aspiration of native peoples, finalized a Declaration in this sense on September 13, 2007, nearly 60 years after the adoption of the UDHR. Adopted by France, this instrument of historic significance highlights the interlinkages between individual and collective rights:

“Indigenous peoples have the right to the full enjoyment as a collective or as individuals, of all rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law” (art. 1).

Besides, this legal document acknowledges the right to self-determination in favour of indigenous peoples. By virtue of that right indigenous peoples “freely determine their political status and freely pursue their economic, social and cultural development” (art. 3). In exercising their right to self-determination, they “have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions” (art. 4)¹⁹.

Necessity to enlarge our approach of Human Rights

As can be observed, the ideology of human rights is becoming more sensitive than the past to collective, cultural and community rights, without denying individual civil and political rights firmly incorporated into the UDHR and strongly confirmed by the two international Covenants which were endorsed in 1966. In this regard, there are an amount of examples in various fields and countries that can be used and mentioned mixing individual and collective rights (Kurds, Assyrians/Syriacs, Hmongs, Tibetans, Sami, Inuit...).

From now on, peoples are recognised as citizens and as distinct groups. In other words, it means that the 1948 Declaration, despite its importance, was constantly improved by another international and regional standard which are enlarging and enriching its humanistic soil. Cultural rights hold now an important component of human rights.

¹⁸ “Fiers d’être Indiens”. in *Politique, identités, culture. De l’Arctique à la Terre de Feu, Courier International*, juin-juillet-août 2007, hors-série, Paris, 114 pages. And “Towards knowledge societies”, in *UNESCO World Report*, UNESCO publishing, 2005, Paris, pp. 147-157.

¹⁹ Yacoub, Joseph, “La question des peuples autochtones : retour aux fondements culturels et identitaires”, in *Études interculturelles, Revue d’analyse publiée par la Chaire Unesco de l’Université catholique de Lyon*, n ° 2, 2009, Lyon, pp. 13- 32.

As a conclusion, we shall say that the corpus of Human Rights has become a collective work to which all humanity is collaborating under the influence of peoples awakening and due to the rise of cultural diversity awareness²⁰.

²⁰ Yacoub, Joseph, "Les droits de l'homme, une œuvre collective de l'humanité", in *Revue trimestrielle des droits de l'homme*, n° 78, 1^{er} avril 2009, Nemesis/Bruylant, Bruxelles, pp. 375-401.