

Multiculturalism and International Law: Discussing United Nations Standards

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Abstract

This paper aims to assess the contribution of current international human rights law to the multicultural debate. The paper argues that although international law has not engaged in a sustained way with the concept, the basic elements of multiculturalism are promoted by current standards. Among these discussed are the recognition of cultural attachments in the public sphere, the need for interaction among cultures and the understanding of sub-national groups as equal partners in the evolution of the society. A closer look at the standards and their dynamic interpretation by United Nations bodies also reveals helpful answers to difficult challenges currently posed by multiculturalism, including extremism and clashes between cultural practices and other human rights.

I. Introduction

Although multiculturalism has been discussed for quite some time, in the last few years it has taken a prime position in popular discussions. Several commentators have claimed that multicultural policies are to blame for the rise of extremism, as these policies encourage the segregation of cultural groups.¹ Many insist that religious and cultural attachments should remain in the private sphere and should not be supported nor encouraged by the state.² In several European states, including France and Turkey, this is enshrined in law.³ Multiculturalism is further accused of ignoring the national identity; even more so, of inciting disrespect towards it. The argument goes that individuals are encouraged to develop their national/ cultural allegiances,

rather than their national identity. State officials have also taken part in the debate: The United Kingdom Chairperson of the Commission for Racial Equality, Trevor Phillips, has suggested that multiculturalism has brought us in a position of racial segregation where ‘we’ve focused far too much on the “multi” and not enough on the common culture’.⁴ A year later, the former UK Home Secretary Jack Straw MP wrote that wearing the veil is a ‘visible statement of separation and of difference’.⁵ In 2007, the discussion has once again focused on immigrants; many commentators now put forward serious restrictions to immigrants, including suggestions for EU immigrants, a new development. Similar discussions are simultaneously taking place in other states, especially after ethnic tensions unfolded in France and in Australia. In November 2007, Italy passed a controversial law that allows the deportation of EU citizens with previous convictions, a radical step that may not stand the test of EU law.⁶ Issues of immigration, loyalty to the state, extremism, alienation and exclusion have all become interlinked.

To this debate international law has at first glance remained an outsider: human rights literature has not focused on the concept of multiculturalism, while discussions have not so far engaged with the standards of international law when arguing in favour or against multiculturalism. Yet, if the aim of international human rights law is to ensure that domestic policies satisfy common standards of individual protection, any debate on state policies relevant to cultural membership and diversity cannot be complete without taking into account the states’ obligations, if any, according to international law. This paper argues that although the scarcity of references to the term ‘multiculturalism’ suggests otherwise, on closer inspection, current human rights law endorses the components of multicultural policies and reflects a multicultural vision. The paper aims to highlight the multicultural elements in international instruments and international bodies’ opinions and to discuss current challenges concerning multiculturalism.

II. **Multiculturalism and International Law**

Multiculturalism is not a term explicitly mentioned in any human rights or international law instrument. Also, very sparse references can be found in United Nations discussions. This can be mainly justified by the volatile reception that the term has enjoyed -especially in states' platforms-, but also by its elusive definition.⁷ Different versions of the concept appeal to different commentators. Multiculturalism is used as a descriptive term which suggests a poly-ethnic society; an ideology which accepts that ethnic groups wish to maintain their language and cultural traditions within the state; a principle for social policies that aim to eliminate structural disadvantages and to ensure substantial equality and access; and policies that include special institutions designed to implement the principles of participation, access and equality.⁸ Parekh emphasizes the distinction between a multicultural society, a society where cultural diversity exists, and multiculturalism (or a 'multiculturalist' policy), the normative response to the cultural diversity of the society.⁹

The limited usage of the term 'multiculturalism' by United Nations fora follows the above descriptions. In 2006, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination and all Forms of Discrimination included a section in his report on multiculturalism,¹⁰ where he confirmed that political agendas currently focus on protecting the 'national identity' with racist overtones. Still, the term 'multiculturalism' was used to express the reality of multi-ethnic societies, rather than any policy or ideal. Hence, no analysis was included on the need for or the challenges of multiculturalism. More elaborate was the analysis during the

2005 discussions on the multiculturalism by the Committee for the Elimination of All Forms of Discrimination. The Chairperson confirmed that the Committee members often disagreed on the term¹¹ and explained that the discussion was aimed at reaching a common understanding of the concept; however, no consensus was reached. A future recommendation on the issue was suggested, but such step has not been taken. A reference to ‘multiculturalism’ by the Chairperson of the UN Working Group on Minorities¹² and growing such references by treaty bodies in the concluding observations to state reports are some of the other limited references to the term within the United Nations context. Even though they suggest a positive understanding of the concept as a vehicle for equality and harmony at the national level, they too avoid explain the meaning of the concept.

Would a definition of ‘multiculturalism’ by United Nations bodies be desirable? Not necessarily so; international law refrains from sharp and tight definitions that may limit the flexibility of applying instruments to different circumstances.¹³ Concepts such as minorities and indigenous peoples have not been defined; on the contrary, debates within relevant international law fora have confirmed that the quest for formal definitions can be a lengthy and futile exercise that is often used as a means to delay the imposition of State obligations and ultimately the protection of human rights. Rather, an analysis of the elements of the concept appears more viable and desirable. Such elements include the formal recognition of cultural groups in the public sphere and the recognition of rights to such groups and/or its members. Multiculturalism also involves a state policy of rethinking the national story and national identity; the understanding that all identities are in a process of transition; the development of a balance between cohesion, equality and difference; addressing and eliminating all forms of racism; reducing material inequalities; and building a pluralistic human rights culture.¹⁴ The present

paper will show that these issues have been discussed by United Nations bodies and some of them form part of the current standards of international law; standards that the states have agreed to respect.

III. **Importance of Culture**

Multiculturalism is primarily about respecting and celebrating the culture of the individual in the public sphere. Why culture should be protected has been answered in different ways: There is the argument that we cannot perceive ourselves away from the allegiances we belong to (communitarian view).¹⁵ Also, the argument has been made that everyone has the right to form their own perception of good in whatever way they choose (liberal view). International law recognises the importance of culture for the individual. UNESCO instruments for example have been very explicit in protecting culture; even though one should not forget that originally some of them aimed at the protection of States national culture.¹⁶ Still, the 1966 UNESCO *Declaration of the Principles of International Cultural Co-operation* has declared the respect that nations should have to ‘the distinctive character of each culture’, whereas the 2001 UNESCO *Declaration on Cultural Diversity* notes that culture is at the heart of contemporary debates on identity and social cohesion¹⁷ and affirms that respect for the diversity of cultures is necessary for international peace.¹⁸ The Declaration goes on to say that the diversity of cultures is as important as biodiversity for nature.¹⁹ It views the defence of cultural diversity as ‘an ethical imperative, inseparable from respect for human dignity’. The text supports cultural pluralism²⁰ and links the protection of culture to human rights. The 1989 UNESCO *Recommendation on the Safeguarding of Traditional Culture and Folklore* protects specifically the culture of sub-

national groups,²¹ while the (2005) *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* maintains that cultural diversity can be protected only through human rights, including the right to choose cultural expressions (article 1). The convention recommends the recognition of equal dignity and equal respect of all cultures, ‘including the cultures of persons belonging to minorities and indigenous peoples’ (article 3) and urges States to create an environment that would encourage the protection and promotion of indigenous cultures (articles 7 and 8). To date 80 states have ratified the convention, a legally binding instrument which came into force in early 2007.²²

Human rights treaties have confirmed the importance of culture by recognising a right to culture. Since the recognition of the right of everyone to participate in the culture of the community in article 27(1) of the *Universal Declaration on Human Rights*, cultural participation has been the main aspect of the right that international instruments have focused on, as evident by article 15 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*; article 5(e)(vi) of the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* that recognises the right to equal enjoyment and participation in cultural activities (Article 5(e)(vi)); and article 31 of the *Convention on the Rights of the Child (CRC)* recognising the right of children to participate freely in cultural rights and the arts (Article 31).²³ However, monitoring bodies have tried to open up the scope of the provisions of cultural participation to include other aspects of the right to culture. For example, the Committee on Economic, Social and Cultural Rights (CESCR) has noted that the right to participation in cultural life also includes ‘the right to benefit from cultural values created by the individual or the community’.²⁴ Still, the right to enjoy one’s culture is mainly recognised through minority and indigenous provisions. It is established in article 27 of the *International Covenant on Civil*

and Political Rights (ICCPR); further elaborated in the UN *Declaration on Persons belonging to Ethnic or National, Religious and Linguistic Minorities (Declaration on Minorities)*; and included in the generic prohibition of discrimination in religion, cultural rights, education and participation in cultural activities in the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*.²⁵ Also, ‘culture’ as a term ‘crops up in a broad range of international instruments indicating the potentially far-reaching significance of culture in different fields of human rights’.²⁶

International law has shunned away from a rigid definition of the term ‘culture’. Although until the 1980s, instruments focused on state culture and artists’ rights,²⁷ gradually the work of UNESCO and UN treaty monitoring bodies revealed a broader scope of the concept. In its *General Comment 25 (50)*, the Human Rights Committee has observed that ‘culture manifests itself in various forms’ and gave as examples traditional activities, such as fishing or hunting and the right to live in reserves protected by law.²⁸ In the *Kitok* and *Lubicon Lake Band* cases the Committee reaffirmed this wide understanding of culture.²⁹ General Recommendation XXIII (51) of CERD on the rights of indigenous peoples also gave a broad scope of the concept that includes ‘distinct culture, history, language, way of life as an enrichment of the State’s cultural identity’. Similarly, the UN Committee on Economic, Social and Cultural Rights has noted that ‘culture’ should be given a wide reading.³⁰ Therefore, international law seems to prescribe to current sociological understandings of culture, which view culture as

the sum total of the material and spiritual activities and products of a given social group which distinguishes it from other similar groups, [. . .] a coherent self-contained system of values, and symbols as well as a set of practices that a specific cultural group reproduces over time and which provides individuals with the required signposts and meanings for behaviour and social relationships in everyday life.³¹

In this broad sense, the right to culture incorporates protection for knowledge, belief, art, morals, law, customs and other capacities and habits. Culture is related to language, literature, philosophy, religion, science and technology as well as ‘ideological systems’ (knowledge, beliefs, values, etc).³²

This wide understanding has a great influence on the scope of the right to culture and supports the further recognition of collective cultural rights: If culture relates to all aspects of life of a sub-national group, the collective element of the right to a culture seems generic and its recognition necessary. However, the wide understanding of culture also raises concerns about whether the right to culture protects areas already protected by the right to religion, language or education. Indeed, using the right to culture as an umbrella right would run the danger of distorting the meaning and scope of the right and would eventually demean and devalue it. The right to culture must be mostly understood as incorporating aspects that are not already covered by other rights, especially when these rights are very solidly protected in international law. At the same time, one has to recognise that the borders between culture and religion or ethnicity are sometimes very unclear, especially since the meaning of culture incorporates belief. The Human Rights Committee General Comment 22 on the right of thought, conscience and religion³³ has also advocated for a wide understanding of the right to religion, including the right to hold beliefs, ‘theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief’. Since the right to culture is not as well established as the right to religion in international law, this blurring of the terms religion and culture enables the better consolidation of some claims by using the right to religion as their legal basis.

IV. Minority rights/ Special Rights

Even if one recognizes the importance of culture, there can still be some skepticism about the recognition of cultural membership in the public sphere. Critics often focus on two issues: first, the alleged impact cultural attachments may have on the autonomy of the individual and second, the argument that state institutions should not operate on culture-relative criteria.

Indeed, the attachment to one's cultural framework, some believe, encourages blind fanaticism and ultimately strips away members of such groups of their free and informed decisions. If the individual is perceived as a fundamentally autonomous agent, she must remain free to act in accordance with her own rationality and her independent notion of what is good and valuable without the influence of cultural frameworks.³⁴ However, in a globalized world, it is unrealistic to expect an uncompromised degree of autonomy. The individual does not live in her own glass bubble protected by any influence; every day, she comes in contact with various opinions, different views and approaches. Indeed, it is doubtful whether a secular environment can sufficiently protect this notion of autonomy: Taylor and Kymlicka uphold that moral autonomy can only be developed through a self-understanding that can only be sustained in interaction with others. According to Taylor, the autonomous, self-determining individual needs a social matrix that promotes in practice this exact idea of autonomy and gives opportunities for the individual to practice and develop her autonomy.³⁵ Kymlicka argues that each person needs the *security* of the cultural framework from which she makes her choices.³⁶ Cultural membership seems crucial to the development and ultimately the autonomy of the individual. For this, the recognition of equal respect for every culture is paramount.

Recognition of cultural attachments in the public sphere can also lead to decision-making according to specific cultural or religious values and criteria; this can get in the way of objective

decisions based on culturally neutral, pre-determined criteria. Therefore, secularism has prevailed in western states, the idea of a state which does not take a position on cultures and remains neutral.³⁷ However, can a state really be neutral? I believe that this is not possible.³⁸ In the face of unequal circumstances between the majority and minorities, unequal opportunities and unequal treatment, state neutrality is in effect an affirmation of the way of life, the choices and the ideas of the dominant group within the state.³⁹ The neutral state does not promote justice; rather, it maintains the status quo. Members of cultural groups do not have the same opportunities to live and work in their own culture and make their own choices to the same degree as the members of majority cultures. The only way to rectify their disadvantage is by providing them with special rights. Then, they will be given similar degree of opportunities as members of the majority culture. Thus, special rights are accepted in order to ensure equality of circumstances and redress the vulnerability of non-dominant groups. Within this context, the question is shifted from *whether* the state must take a position by recognizing collective rights to *which* position the state will take, the position of the dominant group by maintaining a seemingly neutral position or the position of the vulnerable groups by recognising collective rights in an attempt to redress the balance.

Even though this discussion seems on-going in political theory, international law has long accepted special measures as legitimate means by which to approach equality. Even as far back as in 1935, the Permanent Court of Justice had made in its Advisory Opinion in the case of *Minority Schools in Albania* the distinction between formal equality (ultimately, the neutral state thesis) and substantial equality (attempted by the recognition of collective rights). The Court noted that equality in fact ‘excludes the idea of a merely formal equality’.⁴⁰ The Court explained: “Equality in law precludes discrimination of any kind; whereas equality in fact may involve the

necessity of different treatment in order to attain a result which establishes an equilibrium between different situations."⁴¹

Later, in 1966, Judge Tanaka noted in his ICJ dissenting opinion in the South West African cases that ‘a different treatment is permitted when it can be justified by the criterion of justice (...) [or] reasonableness [as] generally referred to by the Anglo-American school of law’.⁴² Current international norms favor positive measures in order to push minorities to reach the standards set in general human rights.

Even though article 27 ICCPR does not make the option of positive measures clear, in its General Comment, the Human Rights Committee has made clear that tolerance and non-discrimination are not adequate measures to fulfil article 27 of the ICCPR.⁴³ Also, in the discussions on State reports, the Human Rights Committee has repeatedly insisted on stressing this option to the States. In 2007, for example, the Committee urged the Georgian government ‘to take all appropriate measures’ to ensure that minorities have adequate political representation and participation and to enjoy their languages;⁴⁴ Austria and the Czech Republic to take positive measures with respect to the Roma.⁴⁵ The *United Nations Declaration on Minorities* also allows for positive measures for minorities; article 1 of the Declaration specifically mentions that States must protect the existence and identity of minorities, shall create the necessary conditions and take all appropriate measures to achieve those ends.⁴⁶ Still, the clearer message in support of positive measures is given by the *International Convention against All Forms of Discrimination*. The Convention encourages special measures “to ensure the adequate development and protection of certain racial groups and individuals belonging to them.”⁴⁷ Of special interest is the comment of the Committee about the opinion of the USA that special measures are “allowed,” but not required. The Committee’s response was as follows:

With regard to affirmative action, the Committee notes with concern the position taken by the State party that the provisions of the Convention permit, but do not require States parties to adopt affirmative action measures to ensure the adequate development and protection of certain racial, ethnic or national groups. The Committee emphasizes that the adoption of special measures by States parties when the circumstances so warrant, such as in the case of persistent disparities, is an obligation stemming from article 2, paragraph 2, of the Convention.⁴⁸

Similar was the reception of the report of France. Although members of the Committee acknowledged the republican tradition in France, they expressed their doubts about whether an anti-racist strategy could succeed “if the State did not address the particular features of a community in addition to the universality of human rights.”⁴⁹

At the same time, the convention sets limitations to affirmative action: special measures must only be taken for the advancement of minority rights; they are temporary in nature until equality is reached; and should not lead to separate rights for different groups.⁵⁰ Indeed, it must be acknowledged that not all affirmative measures have positive consequences. Hadden notes that governments have a genuine choice in the measures they can apply when dealing with minorities and enumerates the policies states may adopt.⁵¹ Positive measures can at times have negative consequences: Measures specifically for members of cultural groups focus on the minority element of their identities and separate them on the basis of this from the rest of the population; apart from ignoring other elements of their identity, these measures can perpetuate their exclusion.⁵² This concern became obvious, for example, in the 2006 CERD concluding observations to South Africa: although the Committee welcomed the adoption of positive measures by the state, it cautioned that such action may lead to the ‘maintenance of unequal or separate rights for those groups after the objectives for which they were taken have been achieved’.⁵³ Positive measures also lead in some cases to more hostile attitudes by the rest of the populations, as such measures are perceived as unfair to them. This can increase the tensions

between the communities and the negative perceptions of minorities with of course negative consequences for their rights. Any affirmative action will need to take the costs into account; yet, these considerations should not result in the abandonment of affirmative action altogether. As Dworkin concluded in his discussion on American higher education, unless and until a large and sophisticated study proves otherwise, ‘we have no reason to forbid affirmative action as a weapon against our deplorable racial stratification, except our indifference to that problem, or our petulant anger that it has not gone away on its own’.⁵⁴

V. National Identity, Segregation and International Law

If the state recognizes and protects non-dominant cultural groups, there is a view that national identity will be devaluated.⁵⁵ It has been argued that multiculturalism ‘is dangerous because it destroys political community ... (and) demeaning because it devalues citizenship’.⁵⁶ Trevor Phillips, the Chairperson of the Commission for Racial Equality, has suggested that multiculturalism as applied in the United Kingdom has lead to segregation, because ethnic groups live in separate entities with no interaction with each other. ‘In recent years’, he said, ‘we’ve focused far too much on the ‘multi’ and not enough on the common culture’.⁵⁷

It cannot be denied that multiculturalism challenges the dominant culture and recognises more allegiances than only that to the state. Challenges to the monotheism of the state are not a novelty in international law. The idea that human rights is not just a matter of domestic affairs, the expansion of the number of entities that enjoy legal personality,⁵⁸ the recognition of sub-national communities⁵⁹ and autonomous regimes⁶⁰ have all been important knocks to the dominance of the state. International law currently recognises that individuals may have loyalties

to groups smaller than the state such as families, local communities, ethnic, religious and cultural groups, as well as groups bigger than the state, such as transnational communities, regional organisations (e.g. the European Union) or even the international society. Hence, international instruments protect the family; for example, article 23 ICCPR recognises that that the family is ‘the natural and fundamental group unit of society and is entitled to protection by society and State’.⁶¹ International law also protects the ‘existence and the national or ethnic, cultural, religious and linguistic identity of minorities’.⁶² It also recognises that people living in the same continents have common values, a ‘common culture’; hence it accepts regional systems of human rights protection. This is expressed for example, in article 1(a) of the Statute of the Council of Europe, which proclaims that the aim of the organisation is ‘...to achieve greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage...’ Finally, international law accepts the common culture we all share, as evident by the recognition of the right to the culture of the mankind. All these groups represent a series of multiple loyalties that the individual may have and represent various cultures that the individual can be influenced by.

Does the recognition of groups other than the state, the recognition of multiple identities undermine the national identity? Does multiculturalism encourage the proliferation of ‘fundamentalist’ views?⁶³ My answer to this question is negative. On the contrary, it is the emphasis on *one* culture that runs to the danger of inciting extremism. Gilroy urges against ‘the comfort blanket of imagined monoculture’.⁶⁴ United Nations bodies also seem to agree on this matter. The 2005 World Summit Outcome has recognised the importance of inclusion of minorities for the promotion of global security by noting that ‘the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute

to political and social stability and peace and enrich the cultural diversity and heritage of society'.⁶⁵ The 2006 report of the UN Special Rapporteur on Contemporary Forms of Racism explains:

Political agendas are increasingly focused on protecting the “national identity”, “defending the national interest”, safeguarding the “national heritage”, giving priority to “national preference in employment”, or combating “illegal foreign immigration”. Against the background of the general trend towards multiculturalism in most societies, this rhetoric becomes the new political expression of discrimination and xenophobia owing to its two main political projections: a rejection or non-recognition of multiculturalism and cultural diversity and especially an identification of all those the nation needs to defend itself against, namely non-nationals, ethnic, cultural or religious minorities, immigrants and asylum-seekers. Political, social, economic and cultural discrimination constitutes the natural expression of this defensive and protective national rhetoric.⁶⁶

The idea of *a single* culture excludes the group from the influences of other cultures and perpetuates the false perception that cultural membership is pre-determined and firmly fixed. Groups become rigid and pushed into mutually exclusive oppositions. The approach of ‘otherness’ generally denies the particularities of the various groups and overlooks variations among the individuals belonging to the same group. It leads to the fear of the other group (xenophobia), nationalism and incites discourses about the purity and virtue of a particular group and its culture.⁶⁷

The continuing discrimination and exclusion of certain groups from the mainstream society would go to some extent to explain the radicalisation in Europe:⁶⁸ individuals coming from oppressed groups, groups that are excluded from the public life are more likely to alienate themselves even more, to create a completely separate system and to try to undermine the state’s sovereignty. Modood reminds us of the ‘ethnicity paradox’, the conviction of American sociologists Park and Thomas that allowing ethnic communities to take root and flourish in the

new soil was the most satisfactory way of promoting long-term integration and participation in the institutions of the wider American community. Modood notes: “Allowing more space to ethnic communities to do their own thing enables them to become a feature of the new society and creates a secure base from which participation in the institutions of the wider community follows.”⁶⁹

Mason notes that ‘a sense of belonging to a polity can provide the basis for patriotism understood simply as the love of its central institutions and practices’.⁷⁰ According to him, a person has a sense of belonging to a polity, when she can identify with most of its major institutions, perceives them as valuable, conducive to their flourishing, reflective of her concerns;⁷¹ ultimately, when she has the ability to find her way around them and to experience participation in them as natural.⁷² The recognition of multiple loyalties creates the space for such sense of belonging, which in turn strengthens national identity without disarding other cultural frameworks.

So far it has been argued that recognition of multiple cultural frameworks allows space for the national identity. Even more so, by accepting other important cultural allegiances, multicultural policies avoid unnecessary choices to be made between the national and other identities. However, the mere recognition of multiple identities does not lead to a truly multicultural society; measures aimed at the protection of the groups’ distinctiveness can lead to segregation. Indeed, truly multicultural policies do not aim at the co-existence of various cultures as separate entities that happen to exist and develop independently within the state. Studies have shown that the existence of separate and mutually exclusive systems does not protect the minorities in question; on the contrary, it contributes to the exclusion of these groups⁷³ and the worsening of the tension and hostility between the various groups of the society.

International law is eager to emphasize the importance of *interaction* among groups living within the same state. For example, article 13 of the *International Covenant on Economic, Social and Cultural Rights* establishes that ‘education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups...’. The *Convention on the Rights of the Child* states that education must develop respect for the child’s ‘own cultural identity, language and values’ as well as for ‘the national values of the country in which the child is living’.⁷⁴ The *Madrid Declaration on Religious Education* also proclaims that the child must not be exposed to intolerance in the name of her religion. The 1966 UNESCO *Declaration of the Principles of International Cultural Co-operation* declares that ‘...in their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind’.⁷⁵ The Declaration makes clear that cultural co-operation, aiming at the mutual benefit of the nations practicing it, is a right and a duty for all peoples and nations and should be exercised in a spirit of broad reciprocity. All nations must respect the distinctive character of each culture, while promoting their enrichment in an atmosphere of friendship and peace.⁷⁶ The UN *Declaration on Minorities* also stresses the need for mutual knowledge and understanding between minorities and the majority within the state (article 4.4). The *Framework Convention for the Protection of National Minorities* refers to ‘a pluralist and genuinely democratic society’ as the model to be achieved and emphasizes in the preamble that ‘that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment of each society’. The convention urges members of both minority and majority groups to learn more about their respective histories, traditions, languages and cultures

(Article 4.4). The OSCE *Copenhagen Document* also re-asserts the importance of the spirit of tolerance and intercultural dialogue, mutual respect and understanding that should exist among the minorities and the majority.⁷⁷ The idea of reciprocity among cultures is also emphasized in the Comment of the *Committee on Human Rights* in relation to the protection of cultural rights: “The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, *thus enriching the fabric of society as a whole.*”⁷⁸

Calls for the promotion of dialogue among various communities, especially in order as part of the battle against extremism and counter exclusive ideologies, has recently moved higher on the international agenda. In 2005, the Alliance of Civilizations, an initiative to promote such dialogue, was formed by former Secretary-General Kofi Annan. The report of the High-level Group of Experts, whose role is to explore the roots of polarization between societies and cultures and to recommend a practical program of action, notes in its paragraph 6.22 that

[E]stablishing coherent integration strategies requires regular dialogue among representatives of government and immigrant communities, civil society representatives, religious organizations and employers, engaging at local, regional, national and international levels. While informal and *ad hoc* engagement is valuable, institutional structures that support dialogue on a regular ongoing basis can ensure the efficacy of such approaches in promoting greater integration. Such efforts help achieve a balance between the demands of integration and the need to maintain one’s cultural and religious identity.⁷⁹

United Nations monitoring bodies have also emphasised the need for interaction between all groups within the state. At the end of 2006, the Human Rights Committee noted with concern the de facto segregation in public schools in the USA and asked the state to take measures to stop such segregation.⁸⁰ During the same time, the Committee also emphasized that

Bosnia/Herzegovina should intensify its efforts to re-establish mutual trust between different ethnic groups and accounting for past human rights abuses. Another committee, CERD has also been critical of attempts of segregation: the committee strongly criticized segregated areas in Nepal for Dalits, especially after allegations that public funds are used for the construction of separate water taps for Dalits.⁸¹ The committee also suggested to Guyana the establishment of a Constitutional Committee on Inter-Cultural Dialogue.⁸² At the same time though, United Nations bodies are too aware of how states can use arguments of segregation to disempower minority groups. Hence, CERD condemned measures by Denmark that obliged minorities to be dispersed, as this could have an impact on their right to freedom of residence and their enjoyment and practice of their cultural rights.⁸³ Usually, the programs for the inter-cultural awareness focus on education. The unification of segregated schools, the teaching of the history of minorities rather than just of the majority, the removal of mono-ethnic, mono-religious symbols and flags from schools, a core curriculum that is sensitive to the diverse attributes of the various ethnic groups⁸⁴ are issues that are often being discussed.

Within this vision of international law that includes plurality of voices and cultures in the public sphere, groups must be seen as equal partners with the majority group, rather than mere negotiators or imitators. In this manner international law follows the idea of critical pluralism that Addis has put forward.⁸⁵ Contrary to paternalistic pluralism, where sub-national groups are viewed as ‘others’ and their rights are protected as a means to ‘save’ them from the majority, in *critical* pluralism, sub-national groups are seen as partners in the evolution of the society. Following critical pluralism, the state actively engages in a dialogue with groups in order to find the best way and resources to allow cultures flourish. Moreover, the state creates institutions that enable the rest of the population to open itself up to all groups, by accepting them all as dialogue

partners.⁸⁶ The recent UNESCO *World Commission Report* emphasises the importance of cultural pluralism and political democracy.⁸⁷ Critical pluralism is encouraged in international law through various provisions on participation of minority groups to the decision-making process of the (democratic) society they live in.⁸⁸ A notable example is the UN *Declaration on Minorities* which proclaims that members of minorities have the right to participate *effectively* in decisions at the national and, where appropriate, regional level.⁸⁹

The recognition of the multiplicity of cultures and their treatment as equal partners allows them to contribute to the evolution of the national identity. Expecting members of cultural groups to accept the dominant 'way of life', a phrase often repeated, translates to excluding them from taking part in the shaping of this society, excluding them from taking active part and even changing and bringing new values to the national identity. Accepting exactly what they have found: this is what is often required of them. However, through dialogue and interaction, the society will evolve with the participation of the minorities. Trevor Phillips was right to say that the common British identity should be strengthened, but in the evolution of this identity minorities have an important role to play.

VI. **Accommodation of Different Allegiances**

So far, this paper noted that international law recognises the importance of culture, stresses the equal respect of all cultures and acknowledges that the individual enjoys various loyalties. The paper also argued that international standards have shunned away from the idea of the neutral state, but have accepted that political institutions may need to take into account ethnic, religious or cultural allegiances.

One of the main challenges for multiculturalism lies with the management of these allegiances when in conflict. Within a multicultural society clashes between cultural practices and values and human rights often occur. In the past, United Nations bodies have seemed eager to ignore such clashes, to avoid any discussion on such difficult issues; however, gradually such issues have started being discussed more openly.⁹⁰ International instruments recognise that the right of religion or belief ‘may be subject to limitations’, including morals and the rights of others.⁹¹ The multiplicity of cultural frameworks that can influence the individual and the dialogue that international instruments encourage can contribute to the resolution of such clashes. Indeed, one can perceive the multiple cultural frameworks that may influence the individual as concentric circles around the individual. The values of her family, the culture of her ethnic, religious and cultural group, her national identity, the values of the continent/region she lives in and finally, the loose values of humankind; all influence to a varying degree her choices and decisions in life.

This model of concentric circles emphasises the overlapping elements that cultural frameworks have. The discussion on the ‘clash of civilizations’ has emphasised the conflicts of cultures⁹² in a way that the commonalities of cultures have been largely neglected. Different cultures are not always in conflict with one another. Even when they differ on an issue, more dialogue can often reveal common underlying values. Although primarily interested in social groups, Young’s approach is particularly helpful for cultural frameworks. She views different groups as:

[O]verlapping, as constituted in relation to one another and thus, as shifting their attributes and needs in accordance with what relations are salient. In my view, this relational conception of difference as conceptual helps make more apparent both the necessity and possibility of political togetherness in difference.⁹³

In Young's model, difference does not mean otherness, or exclusive opposition, but rather specificity, variation, heterogeneity. Different groups potentially share some attributes, experiences or goals. Their differences will be more or less salient depending on the groups compared and the purposes of the comparison. The characteristics that make one group specific and the borders that distinguish it from other groups are always *undecidable*. Yet, all groups understand themselves as participants in the same society, subject to inter-action, exchange and inter-dependency.⁹⁴ The interaction sometimes causes friction and conflicts that are resolved following institutions and procedures of discussion that all participants have accepted as legitimately binding. It is important that the groups are not pushed towards a forged cultural consensus or a symbolic order.⁹⁵ Viewing the cultural frameworks as concentric circles around the individual is consistent with Young's concept of 'the heterogeneous public'.

The model of concentric circles also allows for the revisibility and re-evaluation of cultural practices that are against human rights. As Kymlicka explains,⁹⁶ these are important processes that can lead to mutual corrective engagements. Through dialogue, group practices are challenged to accommodate in their own world the objective reality of the other. They interact, exchange ideas and benefit from the cultures of all the groups rather than just from their own culture exclusively. If cultures are respected and celebrated, they become more open and more willing to re-evaluate practices and values. It must be recognised that the re-evaluation of cultural practices contributes to the evolution of the culture, avoids its stagnation and makes it more relevant to the needs and realities of today's society.⁹⁷

Following my line of thought, the role of the state is not to remain blind to cultural attachments, but to protect them as much as to enable dialogue among them in a way that dialogue within them is possible. However, the role of the state is not to push itself for changes

within the culture. Any revisions must come from the group itself; even more so, it must come from the affected members within the group. Who represents who in this process of dialogue and change is fundamental. The modalities of ensuring full participation and real representation is a difficult one; and possibly one where general rules do not always apply. Kukathas has pointed out the differences and conflicts of interests that could exist within any one group. He notes that when elites are confronted with modernization, they often develop distinct interests from the masses and in some cases they abuse the masses for personal ends.⁹⁸ Ensuring the multiplicity of voices, through political bodies, pressure groups, consultative bodies, party political influence, notwithstanding the unstructured nature of the process, and encouraging the voices of the vulnerable members of all communities can only create hope that the dialogue will be inclusive.⁹⁹

Regarding cultural practices that affect women, the future of any cultural practice must primarily lie with the women of the culture in question; and this choice must be real. In his 2007 annual report, Prof. Ertürk, Special Rapporteur on Violence against Women noted that:

[I]dentity politics and cultural relativist paradigms are increasingly employed to constrain in particular the rights of women. Essentialized interpretations of culture are used either to justify violation of women's rights in the name of culture or to categorically condemn cultures "out there" as being inherently primitive and violent towards women. Both variants of cultural essentialism ignore the universal dimensions of patriarchal culture that subordinates, albeit differently, women in all societies and fails to recognize women's active agency in resisting and negotiating culture to improve their terms of existence.¹⁰⁰

States have been known to use the concept of culture or religion to justify violations of women's rights. For example, in the recent discussion on the report of Saudi Arabia to CEDAW, the state delegate started the debate by citing the 1966 Declaration on Cultural Diversity and stressed this as the main criterion to assess women's human rights in his country.¹⁰¹

Sunder notes that the United Nations have not managed to empower women to decide on clashes between their rights and their culture. State reservations on CEDAW that give prevalence to religious or customary laws have not been decided with the consent of the women affected. She notes that ‘many women argue that their governments –and the international human rights community- have improperly deferred to traditionalists and so-called cultural leaders’ interpretations of private laws without taking proper account of modernizing views’.¹⁰² Maybe Sunder is too harsh on the United Nations. On other occasions, United Nations bodies have stressed the need for consultation with the affected women. When Greece noted that Muslim women face violations in Greece as a result of the non-application of Greek law, but the application of Muslim law on the Muslim minority regarding marriage and inheritance,¹⁰³ the Human Rights Committee asked for increased awareness of Muslim women of their rights and the availability of remedies, so that *they* could make informed decisions.¹⁰⁴ When Nigeria stated in its report to CERD that the decision of Muslim women to be subject to Muslim law -and thus harsher sentences- was theirs, the committee questioned the validity of the statement.¹⁰⁵ An attempt of the Central African’s Republic to suggest that women themselves ‘do not want to have the same rights as men, despite the state’s efforts’ has been rightly rejected by the Human Rights Committee.¹⁰⁶ In the 2006 concluding observations on Canada, the Human Rights Committee expressed its concern about the discriminatory effects of the Indian Act against Aboriginal women and their children in matters of reserve membership and matrimonial property on reserve lands and urged the state to seek solutions with the informed consent of indigenous peoples. The Committee also stressed that ‘balancing collective and individual interests on reserves to the sole detriment of women is not compatible with the Covenant.’¹⁰⁷ A recent positive example of women deciding on their cultural practices is the Charter on Feminist

Principles for African Feminists that was adopted in Ghana in November 2006. In this Charter, African women themselves evaluated and rejected some cultural practices that violate women rights.¹⁰⁸

However, ensuring the validity of individuals' decisions on cultural practices that affect them is not without its challenges. On the one hand, it is important that the individual reaches this decision without inappropriate interference; on the other, it is equally important to respect the individual's decision, rather than label her as a victim of culturally generated false consciousness in need of liberation.¹⁰⁹ Friedman sets a three steps test to determine whether the individual has made the decision freely: a. she must be 'able to choose among a significant and morally acceptable array of alternatives'; b. she must be 'able to make their own choices relatively free of coercion, manipulation and deception'; and c. she must have been 'able to develop, earlier in life, the capacities needed to reflect on their situations and make decisions about them'.¹¹⁰

Further, the individual must have the choice to exit the cultural group, should she feel restricted by its cultural values and practices. Kukathas places a lot of weight on the right of exit of individuals provided that they have an open market society in which to enter.¹¹¹

Unfortunately, the right to exit is not always adequate for the protection of individuals against oppressive methods of groups. If someone has been denied education, literacy and the right to learn about the world outside the group, she does not really have a substantial freedom to leave because she lacks the preconditions (knowledge and experience) to make a meaningful choice.¹¹²

Also, the right to exist puts the onus on women: it is the woman who has to leave and abandon her membership and group.¹¹³ Ultimately, such a solution seems to sidetrack the problem: it maintains a 'systematic and structural problem within (...) cultures and religions'.¹¹⁴ For these

reasons Halev sets some minimal standards that are needed to ensure that exit is really an option. These standards include freedom from physical abuse, decent health care and nutrition, the ability to socialize with others, a minimal education and a mainstream liberal society.¹¹⁵

VII. The Role of International Human Rights Law

Even if the individual consents to a cultural practice that affects her, will consent be adequate when this practice violates a human right? In other words, will consent always validate a cultural practice, no matter how much it goes to the core of another human right? Also, what happens when the group has re-evaluated the cultural practice in question and still believes it to be valid even though it does violate the core of human rights? Must the international community stand by and continue to tolerate violations of human rights because the individual or the group in question refuse to acknowledge them? Some commentators argue that in these cases individual rights must prevail.¹¹⁶ Even though United Nations bodies have not yet taken a clear position to such dilemmas, some references appear to support the prevalence of other human rights over the right to culture in such cases. The UNESCO *Declaration on Cultural Diversity* reads: ‘No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope’.¹¹⁷ The Declaration seems to imply a pre-determined hierarchy where-by individual rights always prevail over cultural rights, ranging from patriarchal ideology to limited land rights.¹¹⁸ The Commission on the Status of Women also emphasised in its statement in 2001 that multicultural approaches could reinforce existing power relations between men and women in marginalised communities; implying that in this case women rights must prevail.¹¹⁹

It is my belief that even then, a pre-determined prevalence of individual rights over

cultural rights is a simplistic solution that creates even more problems. A system that recognizes sub-national cultures in the public sphere up to the point where these cultures are inconsistent with the dominant culture does not seem appropriate. In fact, such an approach rings of cultural imperialism. It should not be forgotten that liberalism is in itself the expression of a distinct moral faith and way of life; is in itself a culture.¹²⁰ Insisting on the liberal model without adequate regard for other values justifies the complaints of vulnerable societies that international law has done nothing to salvage them and much to damage them; it is law that promises liberation, but oppresses.¹²¹ Recent ‘contextual justice theories’ put forward by Parekh and Carens have confronted this criticism.¹²² Such theories aim to reconcile universal egalitarian principles of justice with claims based on identities and cultures of collectivities. Although framed within liberalism, contextual justice theories do not view universal principles -such as personal autonomy- as overriding principles that have to be accepted as they are, but suggest that adjustments may be needed to these principles in order to accommodate cultural and identity claims. Adjustments must be tailored to the particular circumstances of each context. Certainly, the level of these ‘adjustments’ is important: too much takes us to the point of cultural relativism; no adjustment at all takes us to the Kymlicka approach of overriding western liberal principles.

Certainly, human rights law does not accept any hierarchy among human rights, apart from the non-derogatory rights. Any conflicts between rights, principles and norms are generally solved on an *ad hoc* basis, after taking into account various considerations. The idea of concentric circles, also used by Parekh and Carens,¹²³ stresses the existence of ‘a wider circle’, common values that are common to the whole humanity, called by Kelly ‘international public reason’.¹²⁴ International public reason stems from the belief that international community operates as a society of societies with its own public culture and conception of public reason.¹²⁵

Rockefeller has noted that from the liberal's point of view, it is this identity, the individual's universal human identity and potential, that is the most important one.¹²⁶ Although from a different starting point, feminist critics have also come to the same conclusion: Benhabib has stressed that to move away from universal claims about the importance of equality as a universal value underpinning through feminism is to throw away the foundations that constitute 'the branch on which we sit'. Butler, in a 'similar, but different' way to Carens, argues for the critical acceptance of such foundations.¹²⁷

These foundations, the common values to the whole humanity are expressed in the international decisions, including treaties, customary law, general principles and soft law. They include the principle of non-derogation of some rights, such as the right to life and prohibition of torture. They also include *the core* of human rights, the essence of each human right. In my view, no cultural practices and beliefs can violate these values and no real adjustment can be initiated to these rights. This is clearly the position that the United Nations bodies have taken: For example, they have stressed that female circumcision cannot be tolerated at any time, no matter how embedded it is within the culture of the group, even when the women involved have given their consent for it.¹²⁸ Family violence and abuse, including forced marriage, dowry deaths and acid attacks have also been identified as unacceptable, irrespective of their being cultural practices.¹²⁹ The General Assembly has also condemned honour killings and has emphasised that 'such crimes are incompatible with all religious and cultural values'.¹³⁰

On the contrary, I believe that cultural practices that restrict human rights, but do not go as far as violating the core of these rights, can be tolerated in the name of cultural diversity. Whether these 'grey' cultural practices should be accepted by the state even when the concerned individual agrees to be bound by these practices, should be a matter of judgment that will be

reached after intercultural dialog. This will necessarily be an *ad hoc* decision, where all elements, interests and rights are taken into account. In making these decisions, several principles must apply. International adjudication has elaborated such principles.¹³¹ In *Lovelace*,¹³² *Kitok*¹³³ and *Länsman*,¹³⁴ the Human Rights Committee has asked for the existence of a reasonable and objective justification for the prevalence of one right over the other; consistency with human rights instruments; the necessity of the restriction; and proportionality. Further, it is argued that the complete neglect of one right –be it collective or individual- for the safe realisation of the conflicting right would in most cases violate the principle of necessity.¹³⁵ Hence, in the concluding observations on Denmark, CERD recalled that the exercise of the freedom of expression carries special duties and responsibilities'.¹³⁶ In this manner, the Committee implied that the core of both rights must be respected, even though on occasions the freedom of opinion can be curtailed.

So for example, if these criteria are applied to the current controversy surrounding the headscarves, an adult woman who has reached the decision to wear a scarf after careful reflection because of her deep beliefs without considerable coercion or manipulation by others and while living in a relatively open community must be free to do so.¹³⁷ Even if it is accepted that the covering of the head restricts women rights, such restriction does not attack the core of the right and can be justified in order to allow the exercise of the right to culture. Anaya stresses that any assessment about a cultural practice must allow a certain deference for the group's own interpretive and decision-making processes in the application of universal human rights norms, just as states are accorded such deference.¹³⁸ When Muslim educated women suggest that wearing a headscarf is an empowering practice, because it allows professional women to move from the familiar settings of their rural homes and 'emerge socially into a sexually integrated'

urban world that is ‘still an alien, uncomfortable social reality for both women and men’,¹³⁹ the state and ultimately the international community must take these views seriously into account and place them in the general context. Based on these variants, this will be an *ad hoc* decision. Wearing the burca for example is a different matter. Even if the women wearing it have decided to do so in an open environment, where they were exposed to a variety of cultural frameworks, and this was their own choice, such a practice cannot be justified in the name of any culture, as it violates the core of women’s rights, it insults human dignity; hence it should not be allowed.

VIII. Conclusions

Current debate on multiculturalism and its limitations has largely neglected the obligations that states have agreed on under international law. International standards have moved on from viewing the public sphere as an arena where cultural allegiances have no position. Currently, they stress the need for equal respect to every culture, be it the national, sub-national or regional, and urge states to protect such cultural loyalties. Also, states are strongly encouraged to take positive measures in order to ensure the effective protection of sub-national groups and their cultures. Further, cultural groups must be recognised as equal partners and be allowed to have an input in the evolution of the national identity. Such inclusion promotes integration. Equally important is the need for interaction among groups within the society, as knowledge of cultural frameworks other than one’s own discourages xenophobia and discrimination. Further, the multiplicity of cultural frameworks encourages the revisibility of cultural norms and practices, so that cultures evolve in a manner consistent with the common values the humanity has agreed on. Such common values are in the core of human rights and they form barriers to cultural practices.

However, if a cultural practice does not violate these commonly agreed values, then the opinion of the group and the consent of the person affected must be the determining criterion. In addition, in clashes can be resolved; ad hoc decisions on which right will prevail at each case, reached by applying established criteria rather than a pre-determined hierarchy.

Universal human rights bodies have more or less remained silent in clashes that involve the right to culture and other rights. Recently though, more and more discussions are being held within the United Nations on these issues. This can only be a positive step away both essentialised interpretations of cultures on the one hand and continuing violations in the name of culture and can contribute to the continuing struggle for a truly multicultural international society.

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⁵ Lancashire Telegraph, 06/10/2006.

⁶ “Italy starts deporting Romanians”, BBC News 24 on the 5th November 2007, <http://news.bbc.co.uk/1/hi/world/europe/7078532.stm>.

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¹⁴ *The Future of Multi-Ethnic Britain: The Parekh Report* (London, 2001).

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¹⁶ A. Xanthaki, *Indigenous Rights and United Nations Standards* (Cambridge: Cambridge University Press, 2007), chapter 5.

¹⁷ Preamble, para. 6.

¹⁸ Preamble, paragraph 7.

¹⁹ Article 1.

²⁰ Article 2.

²¹ Art. 6 para.1 of the Declaration.

²² For a discussion of the convention and its background, see R. Albro, 'Managing Culture at Diversity's Expense? Thoughts on UNESCO's Newest Cultural Policy Instrument' (2005) 35 *The Journal of Management, Law and Society* 247- 253.

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²⁴ Report of the International Committee on the Seventh Session, UN Doc. E/1993/22, paras. 202 and 223.

²⁵ Article 5.

²⁶ J. Almqvist, *Human Rights, Culture and the Rule of Law* (Oxford: Hart Publishing, 2005), p. 8.

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²⁸ Human Rights Committee, General Comment 23 (Fiftieth Session, 1994), Report of Human Rights Committee, Vol. 1, GAOR, Forty-ninth Session, Supplement no. 40, (A/49/40), 107-110.

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⁴⁰ See Permanent Court of International Court of Justice, Advisory Opinion on *Minority Schools in Albania*, SPCIJ, Series A/B, No. 64, 1935.

⁴¹ *Ibid.*

⁴² Dissenting Opinion of Judge Tanaka in International Court of Justice, *South West African cases*, Judgement of 18 July 1966, pp. 305.

⁴³ *General Comment 18(37)*, United Nations *Human Rights Committee Report A/45/40* (1990), Volume I, 173–175.

⁴⁴ United Nations, *Concluding Observations of the Human Rights Committee on Georgia*, CCPR/C/GEO/CO/3 of 15 November 2007, para. 17(b).

⁴⁵ United Nations, *Concluding Observations of the Human Rights Committee on Austria*, CCPR/C/AUT/CO/4 of 30 October 2007, para. 21. Also see United Nations, *Concluding Observations of the Human Rights Committee on the Czech Republic*, CCPR/C/CZE/CO/2 of 9 August 2007, paras. 16-17.

⁴⁶ *United Nations Declaration on the Rights of Persons belonging to Ethnic or National, Religious or Linguistic Minorities*, adopted by General Assembly Resolution 47/135 of 18 December 1992.

⁴⁷ Article 1.4 and 2.2 of the Convention.

⁴⁸ *Concluding Observations of the Committee on the Elimination of All Forms of Racial Discrimination: United States of America*, 14/08/2001, UN Doc. A/56/18, paras. 380-407 at para. 399.

⁴⁹ Mr. Thornberry in the discussion of the Report of France 2005 in CERD, *Consideration of Reports, Comments and Information submitted by State Parties under article 9 of the Convention, France*, UN Doc. CERD/C/SR.1675 of 28 February 2005, para. 54.

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⁶⁵ General Assembly Resolution 6/1 (2005), World Summit Outcome, adopted on 24 October 2005, UN Doc. A/res/60/1, para 130.

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⁶⁷ I.M. Young, 'Together in Difference: Transforming the Logic of Group Political Conflict' in W. Kymlicka (ed.) *The Rights of Minority Cultures* (Oxford University Press, Oxford, 1995), pp. 155–178.

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⁸¹ Concluding Observation of CERD on Nepal, UN Doc. CERD/C/64/CO/5 of 28 April 2004, para. 12.

⁸² Concluding Observations of CERD on Guyana, UN Doc. CERD/C/GUY/CO/14 of 4 April 2006, para. 22.

⁸³ Concluding Observations of CERD on Denmark, UN Doc. CERD/C/DEN/CO/17 of 19 October 2006, para. 17.

⁸⁴ Concluding Observations of CERD on Bosnia, UN Doc. CERD/C/BIH/CO/6 of 11 April 2006, para. 23.

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⁸⁶ Ibid. at p. 621.

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¹⁰⁵ Concluding observations of CERD on Nigeria, UN Doc. CERD/C/NGA/CO/18 of 1 November 2005, para. 20.

¹⁰⁶ Concluding Observations of the Human Rights Committee on Central African's Republic, UN Doc. CCPR/C/CAF/CO/2 of 27 July 2006, para. 9.

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¹⁰⁸ For the text and the background of the Charter, <http://www.awdf.org/pages/?pid=1&sid=62>, last accessed 20/04/2007.

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¹²³ Carens, as above, pp. 34-35; Parekh, as above, 126ff.

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Cultural Rights, *General Comment 14 (2000) on the Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4. Several other UN bodies have criticised the existence of this practice; for example, the Human Rights Committee in Concluding Observations on Yemen, UN Doc. CCPR/CO/84/YEM of 9 August 2005; the Committee for the Rights of the Child in Concluding Observations on Burkina Faso, UN Doc. CRC/C/15/Add.19 of 25 April 1995;

¹²⁹ Committee on the Elimination of Discrimination against Women, *General Recommendation 19 (1992) on Violence Against Women*, UN Doc. A/47/38; see also (1994) *UN Declaration on the Elimination of Violence Against Women*.

¹³⁰ General Assembly, Third Committee, Resolution on ‘Working towards the Elimination of crimes against women and girls committed in the name of honour’, UN Doc. A/C.3/59L.25 of 15 October 2004, para. 10.

¹³¹ Robinson stresses the importance of international adjudications in these situations. A. Robinson, ‘Would International Adjudication enhance contextual theories of justice? Reflections on the UN Human Rights Committee, *Lovelace, Ballantyre and Waldman*’ (2006) 39 *Canadian Journal of Political Science* 271-291.

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¹³⁹ L. Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992) pp. 223-224.