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Culture, Rights and the Post-2015 Development Agenda

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Too many people still see culture as hermetically sealed manifestations. Like crystal shards, these may shine brightly and bedazzle us, but only reflect fragments of culture. Culture is like a prism through which we perceive—and are perceived by others—understand, respond to, and engage with our human, natural and manufactured environment, as individuals and collectives. It is how we assign meaning to our lives and what we think progress means.¹

I. Introduction

This chapter focuses on efforts to ensure that culture and cultural heritage are adequately reflected in the post-2015 Development Agenda (hereafter ‘post-2015 Agenda’) and in the newly agreed Sustainable Development Goals (the SDGs),² in the context of the emerging recognition of the human right to culture. The post-2015 Agenda sets out a philosophical and practical framework for sustainable development and implementation of policy on a worldwide basis up to the year 2030. The chapter observes that despite the reasonably vigorous attempts by various public and non-government protagonists to place culture and heritage concerns into the Agenda, these attempts were not successful. Now the focus must be achieving this objective through various mechanisms which will implement the SDGs and their targets. It is argued that if the principle or concept of sustainable

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¹ Farida Shaheed, United Nations Special Rapporteur in the field of cultural rights, keynote address, United Cities and Local Governments Culture Summit ‘Culture And Sustainable Cities’, Bilbao—18/20 March 2015, webcache.googleusercontent.com/search?q=cache:bozkp1lkj6EJ:www.ohchr.org/Documents/Issues/CulturalRights/StatementTalkCulture18March2015.doc+&cd=1&hl=en&ct=clnk&gl=au.

² *Transforming our World: A New Agenda for Global Action* and the 2015 Sustainable Development Goals. UNGA A/RES/70/1 <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

development is to be made fully effective in the post-2015 Agenda, cultural aspects must be as strongly reflected in future policy frameworks and legal instruments as the economic, environmental and social features.

The approach of the chapter is to examine the historical antecedents to the post-2015 Agenda and the SDGs, and then to examine the more recent resolutions and policy instruments. A more integrated and holistic approach to culture, cultural heritage, environment, sustainable development and human rights is urged, where cultural rights, environmental rights and sustainable development are not only seen as linked elements of the post-2015 Agenda, but as inseparable from each other. It will argue that the achievement of the SDGs is more likely to be effective if the cultural element is characterised as an integral aspect of the legal and policy frameworks. Critical to this argument is an acknowledgment that the right to culture and cultural life are fundamental aspects of human rights, as recognised in the Universal Declaration of Human Rights³ and the Covenant on Economic, Social and Cultural Rights,⁴ the Covenant on Civil and Political Rights,⁵ as well as in the regional human rights instruments.⁶ Failure to take culture fully into account in the implementation of the SDGs will undermine the determination expressed in the new Agenda to take ‘the bold and formative steps which are urgently needed to shift the world on to a sustainable and resilient path’.⁷

II. The Historical Context

The links between human rights, culture and concepts of sustainable development can be traced to legal and policy instruments, national and international jurisprudence, and multifarious meetings and consultations over the last seven decades. In addition to the international human rights regime already

³ Art 27(1) ‘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.’ Universal Declaration of Human Rights, GA res 217A (III), UN Doc A/810 at 71 (1948); see also Farida Shaheed, *Report of the independent expert in the field of cultural rights*, who focuses on ‘the extent to which the right of access to and enjoyment of cultural heritage forms part of international human rights law’ A/HRC/17/38 (2011).

⁴ Art 1(1) ‘The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life’ Covenant on Economic, Social and Cultural Rights, 993 UNTS 3.

⁵ Art 1.1 ‘All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’ Covenant on Civil and Political Rights, 999 UNTS 171, entered into force 23 March 1976.

⁶ American Convention on Human Rights, OAS Treaty Series No 36, 1144 UNTS 123, (1969), Preamble and Art 26, and the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (‘Protocol of San Salvador’), OAS Treaty Series No 69 (1988); in particular Art 14(1) provides: ‘The States Parties to this Protocol recognize the right of everyone: a. To take part in the cultural and artistic life of the community...’; African (Banjul) Charter of Human and Peoples’ Rights: Art 17 (2) ‘Every individual may freely, take part in the cultural life of his community’; ASEAN Human Rights Declaration 2012, Art 32 provides in part: ‘Every person has the right, individually or in association with others, to freely take part in cultural life, ...’

⁷ Note 2, Preamble at para 2.

mentioned, there exist the Club of Rome and its *Limits to Growth* report,⁸ the Stockholm Conference on the Human Environment and its Declaration on the Human Environment,⁹ the World Charter for Nature 1982,¹⁰ the World Commission on Environment and Development and its report,¹¹ which popularised the term ‘sustainable development’.¹² Further meetings and documents were the 1992 UN Conference on Environment and Development and the associated Rio Declaration on Environment and Development¹³ together with *Agenda 21*,¹⁴ the Millennium Development Goals of the early 2000s¹⁵ and the Earth Charter 2004,¹⁶ the Rio+20 Conference on Sustainable Development and the report *The Future We Want*¹⁷ of 2012. In 2015, several more documents emerged. In particular, the post-2015 Agenda already noted, incorporating the Sustainable Development Goals and their associated Targets,¹⁸ is highly significant in terms of setting the international policy agenda policy on sustainable development for the next 15 years. Further, the most recent version of the *Draft IUCN Covenant on Environment and Development*¹⁹ was prepared as ‘in the interest of strengthening momentum for global action to implement the post-2015 Agenda for Sustainable

⁸ Donella Meadows, Dennis Meadows, Jørgen Randers, William Behrens, *Limits to Growth* (New York, Universe Books, 1972) http://collections.dartmouth.edu/published-derivatives/meadows/pdf/meadows_ltg-001.pdf.

⁹ Principle 1 of the United Nations Declaration on the Human Environment 1972 states in part: ‘Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.’

www.unep.org/documents.multilingual/default.asp?documentid=97&articleid=1503.

¹⁰ The United Nations World Charter for Nature (A/RES/37/7) was agreed in 1982. Like the World Heritage Convention, it recognises the link between nature and culture. It states in preambular para (b): ‘Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation.’

¹¹ World Commission on Environment and Development, *Our Common Future* (Oxford, Oxford University Press, 1987) (also known as the Brundtland Report).

¹² Hans Christian Bugge and Christina Voigt, *Sustainable Development in International and National Law* (Groningen, Europa Law Publishing, 2008) vii.

¹³ UN Doc A/48/49 (1993).

¹⁴ ‘*Agenda 21* includes specific reference to these links with regard to indigenous people and their communities: In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities. <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>, para 26.1.

¹⁵ Millennium Development Goals, www.un.org/millenniumgoals/.

¹⁶ ‘Our cultural diversity is a precious heritage and different cultures will find their own distinctive ways to realize the vision.’ *The Earth Charter*, www.unesco.org/education/tlsf/mods/theme_a/img/02_earthcharter.pdf at 5.

¹⁷ ‘We acknowledge the natural and cultural diversity of the world, and recognize that all cultures and civilizations can contribute to sustainable development.’ United Nations, *The Future We Want*, <https://sustainabledevelopment.un.org/content/documents/733FutureWeWant.pdf>, para 41.

¹⁸ Above n 2.

¹⁹ *Draft Covenant on Environment and Development*, Environmental Law Programme of IUCN, International Union for Conservation of Nature and Natural Resources, in cooperation with The International Council of Environmental Law, 5th edn, 2015; http://cmsdata.iucn.org/downloads/eplp_31_rev_4.pdf, see further Section X, below.

Development.²⁰ These instruments represent increasingly sophisticated manifestations of the concepts contained in the earlier documents.

III. The Complexities of Sustainable Development

The term ‘sustainable development’ was defined in the Brundtland Report as ‘development that meets the needs of the present without compromising future generations to meet their own needs.’²¹ The report states that this definition contains two key concepts:

the concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.²²

While the definition may look straightforward, determining its exact meaning in practice is in fact a complex endeavour, and increasingly so with the emergence of the SDGs. It is worth recalling that since its formal legal introduction in various principles of the Rio Declaration, as noted by Bugge and Voigt,²³ the concept of sustainable development has been incorporated into a very wide range of multi-lateral environmental agreements, national and sub-national legislation, reports and policies.²⁴ For example, in recent years the World Heritage Committee has focused more attention on the need to accommodate sustainable development within its concerns.²⁵ Further, within the 2003 Intangible Heritage Convention,²⁶ sustainable development was not only made an explicit element of the definition of intangible heritage, but an *essential* element, if the final sentence of the definition is read conjunctively:

For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, *and of sustainable development*.²⁷

²⁰ *ibid*, Foreword to 5th edn, xiii; the 2030 Agenda for Sustainable Development and the ‘post-2015 Agenda’ as used in this Chapter are the same document.

²¹ *Our Common Future*, above n 11 at 46.

²² *ibid*.

²³ Above n 12, vii.

²⁴ For a critique of the notion of sustainable development, as part of the SDG debate, particularly as it is used in the natural sphere, and the need to focus on the notion of ecological integrity, see RE Kim and K Bosselmann, ‘Operationalizing Sustainable Development as a *Grundnorm* of International Law’ (2015) 24(2) *RECIEL* 115–249.

²⁵ This is particularly so with the adoption of the policy document, *World Heritage and Sustainable Development*; WHC-15/39.COM/5D, 2014; see further Section IX, below.

²⁶ Convention for the Safeguarding of the Intangible Cultural Heritage 2003, 2368 UNTS 3.

²⁷ *ibid*, Art 2 (emphasis added).

As Lixinski notes, '[B]y making compatibility with sustainable development a requirement of the very concept of intangible heritage, the ICH Convention turns sustainable development into one of the core conceptual pillars of the instrument', although, as he notes, the role of the concept in the Convention 'is still somewhat undefined'.²⁸

As a result of increasing concentration on the concept, its meaning has been expanded in various ways and has embraced a broader range of perspectives than what may have been originally contemplated. Further, with an intense focus on the generation of the 17 SDGs, a wide range of human concerns are required to fit into the sustainable development paradigm: poverty, hunger, health, education, gender equality, water conservation, energy, economic growth and employment resilient infrastructure, inequality, human settlements, consumption and production patterns, the phenomenon of climate change and its impacts, conservation and use of the oceans and seas, protection, restoration and use of terrestrial ecosystems, peace, justice and global partnership.²⁹ This suggests that almost every human endeavour must become an element of or indeed, in some cases, purely an instrument for, sustainable development. Given this trend, Lixinski's observation that the convergence of sustainable development and heritage can at times be self-defeating seems apposite.³⁰

One can question whether the principle/concept³¹ of sustainable development may well have been weakened, rather than strengthened, losing its cache of moral force by being shoe-horned into areas for which it was not originally contemplated or designed. As discussed below, in the midst of the various SDG discussions over the past five years in particular, a wide range of initiatives have been undertaken aimed at integrating the right to culture into the realm of sustainable development goals, and secreted into some of the associated SDG Targets.³² Whether weakened or strengthened, the concept of sustainable development is certainly being expanded and transformed through the many initiatives and debates taking place around the implementation of the SDGs.

²⁸ L Lixinski, 'Sustainable Development in International Heritage Law: Embracing a Backwards Look for the Sake of Forwardness?' (2015) 32 *Australian Year Book of International Law* 65 at 71.

²⁹ See SDGs 1 to 17.

³⁰ Lixinski above n 28, at 66.

³¹ The question of whether sustainable development should be characterised as a concept or a principle has attracted a reasonable amount of attention; for example, Separate Opinion of Weeramantry, P, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Judgment*, *ICJ Reports* 1997, at 95: 'The principle of sustainable development is thus a part of modern international law by reason not only of its inescapable logical necessity, but also by reason of its wide and general acceptance by the global community.' See also, M-C Cordonier-Segger, 'Sustainable Development in International Law' in Bugge and Voigt, above n 12, 117–41.

³² There are 169 detailed Targets associated with the 17 SDGs.

IV. Human Rights, Culture and Cultural Heritage

The increasing convergence of human rights, culture and cultural heritage is underlined by a consideration of the reports of the Independent Experts and Special Rapporteurs appointed through the Office of the High Commissioner for human rights. These include the Special Rapporteur on human rights and the environment,³³ the Special Rapporteur on the rights of indigenous peoples,³⁴ and, most importantly in the present context, the Special Rapporteur in the field of cultural rights.³⁵ In an address to the Human Rights Council in 2011, the former Special Rapporteur in the field of cultural rights, Farida Shaheed stated:

Cultural heritage is usually referred to as being tangible, intangible and natural. The concept of heritage reflects the dynamic character of something that has been developed, built or created, interpreted and re-interpreted in history, and transmitted from generation to generation.³⁶

Importantly, she argued that from a human rights perspective ‘cultural heritage is also to be understood as resources that enable the cultural identification and development processes of individuals and communities’, and that consideration must be given to ‘the multiple heritages through which individuals and communities express their humanity, give meaning to their existence, and build their worldviews’.³⁷

In other words, the function of cultural heritage conservation should not be seen as preserving in aspic particular elements of what we inherit from the past,³⁸ but as a constant striving to understand a particular moment in time between the past and the future. Seen in this sense, heritage is an inherently dynamic process, forever in flux.³⁹ These endeavours can be seen to be the most prominently displayed in the recognition and maintenance of the rights of indigenous peoples

³³ Special Rapporteur on human rights and the environment (former Independent Expert on human rights and the environment) www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx.

³⁴ Special Rapporteur on the rights of indigenous peoples, www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx.

³⁵ Special Rapporteur in the field of cultural rights, www.ohchr.org/EN/Issues/CulturalRights/Pages/FaridaShaheed.aspx;

³⁶ Farida Shaheed, the (then) Independent Expert in the field of cultural rights, to the Human Rights Council at its 17th session, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11312&LangID=E. As of 2012, the Independent Expert was appointed as the Special Rapporteur in the field of cultural rights. Karima Bennouna became the new Special Rapporteur in late 2015: www.ohchr.org/EN/Issues/CulturalRights/Pages/KarimaBennouna.aspx.

³⁷ *ibid.*

³⁸ Lixinski discusses the idea of ‘freezing’ of environment and heritage to ‘preserve a romanticized, untainted version of past’, creating problems for affected communities and compromising the relevant legal instruments to achieve their goals; above n 28.

³⁹ See further, BW Boer and S Gruber, ‘Heritage Discourses’ in Kim Rubenstein and Brad Jessup (eds), *Environmental Discourses in International and Public Law* (Cambridge, Cambridge University Press, 2012) at 375, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2720117.

with respect to their heritage and culture. Article 11.1 of the 2007 UN Declaration on the Rights of Indigenous Peoples is the clearest statement of this idea, asserting that indigenous peoples ‘have the right to practise and revitalize their cultural traditions and customs’ which includes ‘the right to maintain, protect and develop the past, present and future manifestations of their cultures.’⁴⁰

Further, the policy developments represented by the last 40 years of environmental debate, from the Stockholm Declaration and Action Plan through to the post-2015 Agenda, require deeper examination. Despite their noble statements and aspirational language, are their proposals and prescriptions capable of achieving the admirable aims espoused, or is it time to take a more critical and perhaps more integrated approach?⁴¹

V. Linking the Right to Environment and the Right to Culture

One strand of this discourse is the emerging right to a clean, healthy and sustainable environment within human rights law, as indicated by the reports of the Special Rapporteur on human rights and the environment.⁴² The environment, broadly defined,⁴³ encompasses cultural aspects, with the consequence that the reports of that Special Rapporteur also become relevant to the field of heritage, culture and rights.⁴⁴

⁴⁰ UN Declaration on the Rights of Indigenous Peoples 2007, A/Res/61/295.

⁴¹ Kim and Bosselmann, above n 24, argue, from an ecological perspective, for the need to revisit sustainable development and to redefine it to take into account ‘planetary boundaries’.

⁴² The mandate for an Independent Expert on human rights and the environment was agreed by the United Nations Human Rights Council in 2012: A/HRC/RES/19/10. The mandate was extended in March 2015 for another three years, and the title of Independent Expert (Professor John Knox) was changed to that of Special Rapporteur; see www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx. A previous endeavour to establish a human right to environment is found in the Ksentini Report, United Nations Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities *Human Rights and Environment: Final Report* Special Rapporteur Ksentini (6 July 1994) UN Doc E/CN.4/Sub.2/1994.

⁴³ For example, the Australian federal legislation, the Environment Protection and Biodiversity Conservation Act 1999 s 528 hosts one of the broader definitions:

[E]nvironment includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and
- (d) heritage values of places; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).

⁴⁴ ‘The right of persons, including indigenous people, to take part in cultural life entails the right to “follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions.”’ (footnote omitted); *Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment Individual Report on the*

The question is whether these developments can extend beyond the already established links between human rights provisions and environmental matters, as recorded in various treaties⁴⁵ and interpreted by regional courts and commissions,⁴⁶ to link human rights, culture and heritage in the context of environmental conservation. Blake, for example, argues that ‘the proposed solidarity right to a healthy natural environment’ requires the addition of ‘dimensions of cultural heritage and sustainability to make it complete.’⁴⁷ She points out that the pillars of sustainability,⁴⁸ as now understood, comprise three elements: environmental, economic and socio-cultural. In the context of local communities, she illustrates the relationship between the environmental and the socio-cultural by reference to linkages between ‘traditional and local cultures and the sustainability of resource exploitation and environmental stewardship.’⁴⁹

It is argued here that if issues of heritage and culture are regarded as inherent aspects of the human environment and concerns for sustainability, they are also relevant to both global and national concerns around the post-2015 Agenda. Blake confirms this line of reasoning in the realm of the 2005 Convention on the Diversity of Cultural Expressions: ‘since culture is a mainspring of development, the cultural aspects of development should be seen as important as its economic benefits.’⁵⁰

This argument is also borne out in the context of trade and cultural diversity. Shi, in her work on *Free Trade and Cultural Diversity in International Law*,⁵¹ notes that globalisation has transformed many things into resources, and that culture is no exception. She traces the development of the role of culture in understanding societies, observing that in the 1980s there was a growing focus on the role of cultural values and attitudes that facilitated or were obstacles to social progress.

International Covenant on Economic, Social and Cultural Rights, Report No 1, December 2013, prepared for the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment, para 37; further, ‘the right of everyone to take part in cultural life entitles indigenous persons both to the protection of their natural environment and to the freedom to use it according to their traditional practices.’ *ibid* para 42.

⁴⁵ See for example the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters 1998 (Aarhus Convention), preambular para 6: ‘Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself.’

⁴⁶ See generally, Donald K Anton and Dinah L Shelton, *Environmental Protection and Human Rights* (Cambridge, Cambridge University Press, 2011) ch 6; for the Inter-American and European human rights systems, see Riccardo Pavoni, ‘Environmental Jurisprudence of the European and Inter-American Courts of Human Rights: Comparative Insights’; for the European human rights system, see Alan Boyle, ‘Human Rights and the Environment: Where Next?’ both in Ben Boer (ed), *Environmental Law Dimensions of Human Rights* (Oxford, Oxford University Press, 2015) chs 3 and 7 respectively.

⁴⁷ Janet Blake, *International Cultural Heritage Law* (Oxford, Oxford University Press, 2015) 121.

⁴⁸ As identified in the UN General Assembly 2005 World Summit Outcome (the Johannesburg Summit of 2002), A/RES/60/1.

⁴⁹ Blake above n 47, 121.

⁵⁰ *ibid*, 216.

⁵¹ Jingxia Shi, *Free Trade and Cultural Diversity in International Law* (Oxford, Hart Publishing, 2013) 43.

She notes that ‘culture has been increasingly wielded as a valuable resource for both sociopolitical amelioration and economic growth.’⁵² She goes on to consider the link between culture as a resource and sustainable development, focusing on the nexus of culture and nature, and thus cultural diversity and biological diversity. She points out that just as biological diversity has gone beyond the protection of individual species and recognises the interconnected nature of the global ecosystem, so too, cultural diversity has a much broader value and, like biological diversity, ‘might gain a new valuation in the international arena.’⁵³

However, one danger lies in the idea that culture will continue to be regarded purely in an instrumental fashion, as a resource for exploitation and justification for ‘business as usual’⁵⁴ activities, rather than as development that is truly sustainable because it is based on a holistic, integrated approach which takes into account environmental, economic, social and cultural aspects.

VI. The Emergence of Culture in Sustainable Development

Over the past few years, there has been more recognition of the concepts of culture and sustainable development. The Millennium Development Goals formulated in the early 2000s were criticised by various bodies because they failed to recognise this link. However, the General Assembly attempted to retrospectively address this issue in a series of resolutions. These included ‘Keeping the Promise: United to Achieve the Millennium Development Goals’ which recognised ‘that all the Millennium Development Goals are interconnected and mutually reinforcing and can therefore be best achieved when pursued in a holistic and comprehensive manner’. It also acknowledged ‘the diversity of the world and recognize that all cultures and civilizations contribute to the enrichment of human kind’.⁵⁵ A further resolution made this link clearer, acknowledging ‘the diversity of the world, recognizing that all cultures and civilizations contribute to the enrichment of humankind, and emphasizing the importance of culture for development and its contribution to the achievement of the Millennium Development Goals.’⁵⁶

The Rio+20 Final Document, *The Future We Want* also emphasised this realisation: in paragraph 30 ‘We recognize that many people, especially the poor,

⁵² *ibid* 51.

⁵³ *ibid*.

⁵⁴ ‘Business as usual’ in this context refers to the notion that government and private sector interests will pay attention to environmental protection and cultural heritage issues only to the extent that they do not significantly affect the traditional business model of development pursued by most countries over the past few decades.

⁵⁵ ‘Keeping the Promise: United to Achieve the Millennium Development Goals’, UNGA Res N 65/1 (2011) www.un.org/en/mdg/summit2010/pdf/ZeroDraftOutcomeDocument_31May2010rev2.pdf, paras 13 and 14.

⁵⁶ ‘Culture and Development’ 28 February 2011 UNGA Res N 65/166 (2011), Preamble.

depend directly on ecosystems for their livelihoods, their economic, social and physical well-being, and their cultural heritage'. In paragraph 41, the Document acknowledges 'the natural and cultural diversity of the world and recognize[s] that all cultures and civilizations can contribute to sustainable development.'⁵⁷

In 2013, the United Nations General Assembly adopted another Resolution on Culture and Sustainable Development.⁵⁸ In a background paper, the Trusteeship Council stated that the Resolution acknowledged that 'culture contributes to inclusive economic development, as cultural heritage, cultural and creative industries, sustainable cultural tourism and cultural infrastructure are sources of income generation and job creation, including at the community level.'⁵⁹ The paper also recognised that culture plays a very broad societal role. In summary, culture is recognised as contributing to inclusive social development for all in relation to cultural diversity, safeguarding of both the cultural and natural heritage, fostering of cultural institutions, strengthening of cultural and creative industries, and environmental sustainability.⁶⁰ The last point on environmental sustainability is an important part of the argument concerning the integrated approach proposed in this chapter and is underscored by the background paper: 'protection of cultural and biological diversity and the natural heritage is crucial to sustainable development.' The paper also mentions a further issue related to culture, acknowledging that 'supporting traditional systems of environmental protection and resource management can contribute to the increased sustainability of fragile ecosystems and the preservation and sustainable use of biodiversity, reducing land degradation and mitigating the effects of climate change.'⁶¹

A high point of identification of the culture and development link is found in the 2013 Hangzhou Declaration, entitled 'Placing Culture at the Heart of Sustainable Development Policies'. A central recommendation was that a specific SDG on culture be included 'based on heritage, diversity, creativity and the transmission of knowledge and including clear targets and indicators that relate culture to all dimensions of sustainable development.'⁶² The Declaration strongly argued that the cultural dimension should be 'systematically integrated in definitions of sustainable development and well-being', recognising also that this would require setting up effective institutional coordination mechanisms both globally and nationally, together with comprehensive statistical frameworks, including targets and indicators,

⁵⁷ *The Future We Want*, Final document of the Rio+20 Conference, A/CONF.216/L.1* <http://rio20.net/wp-content/uploads/2012/06/N1238164.pdf>

⁵⁸ UN A/RES/68/223 www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/3_UNGA_Resolution_A_RES_68_223_EN.pdf.

⁵⁹ Background Paper, 'Culture and Sustainable Development in the Post-2015 Development Agenda', Trusteeship Council, 5 May 2014, 1, www.un.org/en/ga/president/68/pdf/nground_Paper_on_Culture_and_Sustainable_Development.pdf.

⁶⁰ *ibid*

⁶¹ *ibid*.

⁶² Hangzhou Declaration, adopted by a conference in Hangzhou, People's Republic of China, 17 May 2013; www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/FinalHangzhou-Declaration20130517.pdf.

evidence-based analyses and capacity building at all levels.⁶³ It also promoted calls for inclusive social development, leveraging culture for poverty reduction and inclusive economic development, as well as building on culture to promote environmental sustainability. The political, economic, institutional and legal tools that are arguably key to achieving the goals of the Declaration are tangentially mentioned in this document.⁶⁴ Properly utilised, they can clearly assist in ensuring that culture is placed squarely within the sustainable development paradigm.

As a result of the increasingly explicit recognition of the links between culture and sustainability in its deliberations, the UN General Assembly urged Member States and others to ‘give due consideration to culture and sustainable development in the elaboration of the post-2015 development agenda.’⁶⁵ As indicated below, that ‘due consideration’ in fact fell short of formulating a specific SDG on culture.

In the indigenous realm, attempts were made by various groups around the Rio+20 Conference to have culture recognised as an element of sustainable development. For example, the International Work Group on Indigenous Affairs published the Indigenous Peoples International Declaration on Self-Determination and Sustainable Development which urged that culture be recognised as ‘a fundamental dimension of Sustainable Development’.⁶⁶

Consistent with the need for integration urged above, Shaheed has stated that the post-2015 Agenda:

... provides a not-to-be missed opportunity to shift from conceiving of, planning for and implementing development in disconnected siloes to a more holistic approach bringing together the environmental, economic and social dimensions of development in a single embrace. Culture not only sits at the crossroads of these dimensions ... [i]t is the threads linking these dimensions and knitting our lives together which can facilitate or block ownership of development agendas; make them successful or fail. The role of culture for sustainable development is thus absolutely crucial.⁶⁷

The embrace that Shaheed mentions must be broad. She argues that discussion about a common humanity and common future can only be fruitful if exchanges

⁶³ The Declaration’s preamble affirmed that ‘culture should be considered to be a fundamental enabler of sustainability, being a source of meaning and energy, a wellspring of creativity and innovation, and a resource to address challenges and find appropriate solutions. The extraordinary power of culture to foster and enable truly sustainable development is especially evident when a people-centred and place-based approach is integrated into development programs and peace-building initiatives’, *ibid.*

⁶⁴ *ibid.* at 3 and 5.

⁶⁵ Above, n 58, para 1.

⁶⁶ Declaration on Self-Determination and Sustainable Development, Art 1, 19 June 2012, Rio de Janeiro, www.iwgia.org/news/search-news?news_id=542. A Philippines organisation tried to ensure that culture was recognised as ‘the fourth pillar of sustainable development’. Indigenous Peoples International Centre for Policy Research and Education, *Indigenous Peoples Contributions to Sustainable Development*, <http://tebtbba.org/index.php/content/who-we-are>.

⁶⁷ Farida Shaheed, statement to ‘Panel on the power of culture for poverty eradication and sustainable development’, Culture and sustainable development in the post-2015 development agenda, Special thematic debate of the UN General Assembly, 5 May 2014, http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CLT/pdf/farida_shaheed_may5.pdf.

'are rooted in cultural diversity and bring together various world visions'. She adopts the language of the Hangzhou Declaration referred to above, affirming that 'one-size fits-all' models of development are unworkable.⁶⁸

VII. Linking Culture and Sustainable Development

While the efforts to integrate culture into SDGs and the post-2015 development agenda have been intense, they are not a recent phenomenon. The linking of culture and development has been slowly emerging for some decades, with UN Resolutions dating back to the 1980s.⁶⁹ The connections between culture and development were already being discussed in the era of the World Commission on Environment and Development and its Report,⁷⁰ and the subsequent 1992 UN Conference on Environment and Development in Rio. This was further pursued by the establishment of the World Commission on Culture and Development of 1995 and the publication of its report *Our Cultural Diversity*.⁷¹ The instigators of the World Commission on Culture and Development, no doubt inspired by the World Commission on Environment and Development, felt that 'the time had come to do for "culture and development" what had been achieved for "environment and development"', with a view to clarifying and deepening the relationship between culture and development 'in practical and constructive ways'.⁷²

The UNESCO Universal Declaration on Cultural Diversity (specifically drafted in 2001 in contemplation of the 2002 Johannesburg World Summit on Sustainable Development) incorporates a broad meaning of 'culture' in its Preamble, and reaffirms that '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 beliefs'. Importantly, it states in part that 'cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations'.⁷³ Equating the value of cultural

⁶⁸ *ibid.*

⁶⁹ United Nations General Assembly, 'Culture and sustainable development' Sixty-ninth session, Second Committee, Agenda item 21 (b) Globalization and interdependence: A/C.2/69/L.27; this resolution records the various resolutions from 1986; see https://en.unesco.org/sites/default/files/0-unga_resolution_a_res_69_230_en.pdf; see also Section VI, above.

⁷⁰ *Our Common Future*, above n 11.

⁷¹ World Commission on Culture and Development report, *Our Creative Diversity*, 1995, available at <http://unesdoc.unesco.org/images/0010/001016/101651e.pdf>.

⁷² President's Foreword, above n 86, 8; see also *Cultural Diversity and Biodiversity for Sustainable Development*, report of a Roundtable convened by UNESCO and UNEP in September 2002 in Johannesburg during the World Summit on Sustainable Development, <http://unesdoc.unesco.org/images/0013/001322/132262e.pdf>, at 8.

⁷³ UNESCO Universal Declaration on Cultural Diversity, http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOPIC&URL_SECTION=201.html.

diversity and biological diversity was an important observation, particularly in the context of discussions of sustainability, reflecting the culture and development discussion mentioned above in the report *Our Cultural Diversity*. The UNESCO Declaration also linked culture and development explicitly in Article 3, titled 'Cultural diversity as a factor in development'. It provided that:

Cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence.

Further, the UNESCO Declaration's explanatory document noted that '[t]he challenges of cultural diversity, heritage (both tangible and intangible) and sustainable development ... cannot be addressed in isolation from one another', emphasising the need to link these elements 'in addressing the great variety of human creative resources that are needed in order to assure democratic and sustainable development in the era of globalization'.⁷⁴ The debates around the Johannesburg World Summit on Sustainable Development, perhaps with some linguistic strain, employed the concept of 'sustainable diversity',⁷⁵ thus linking sustainable development, biodiversity and cultural diversity.

While the emphasis on environmental conservation has been central to policy initiatives in the area of sustainable development over the past 30 years, cultural considerations have emerged as equally important matters in this field, although attracting rather less attention. With the introduction in 2003 of the Convention on the Safeguarding of the Intangible Heritage and the Convention on the Protection and Promotion of Cultural Expressions in 2005, there has been an expanding realisation of the need to address the importance of culture as a driver of sustainability.⁷⁶ The Declaration incorporates a broad meaning of 'culture' and reaffirms that

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 beliefs.⁷⁷

More broadly, from 1986, the United Nations General Assembly has passed a series of resolutions on the theme of culture and development.⁷⁸ These resolutions were aimed at mainstreaming culture within development policies and strategies. In the last seven years, the emphasis has been on culture and *sustainable* development, as opposed to referring merely to *development*. Thus, from around 2010, in

⁷⁴ UNESCO Universal Declaration on Cultural Diversity, Cultural Diversity Series No. 1 <http://unesdoc.unesco.org/images/0012/001271/127162e.pdf>, 10.

⁷⁵ *ibid* 8.

⁷⁶ For example, 'Culture: a driver and an enabler of sustainable development', Thematic Think Piece, UNESCO, http://www.un.org/millenniumgoals/pdf/Think%20Pieces/2_culture.pdf.

⁷⁷ *ibid* 8.

⁷⁸ UNESCO, 'Culture For Sustainable Development' Resolution A/C.2/70/L.59 http://www.un.org/ga/search/view_doc.asp?symbol=A/C.2/70/L.59&Lang=E refers to all past resolutions concerning culture and development.

contemplation of the completion of the timeframe of the Millennium Development Goals and the beginning of the discussions concerning the post-2015 development agenda, more specific debates commenced about the need to recognise the role of culture in the realm of sustainable development. The 2014 Resolution refers to

the important contribution of culture to the economic, social and environmental dimensions of sustainable development, the role of culture as an enabler of sustainable development and its potential as a driver of sustainable development, and in this regard looks forward to fully integrating culture in the implementation of the post-2015 development agenda.⁷⁹

Notwithstanding this series of resolutions, the Millennium Development Goals of the early 2000s, as if operating in a parallel universe, did not include any specific reference to the significance of culture in the context of sustainable development.⁸⁰ A UNESCO Background Note states that cultural heritage has been ‘absent from the sustainable development debate despite its crucial importance to societies and the wide acknowledgment of its importance at the national level.’⁸¹ However, as noted, subsequent discussions and resolutions recognised retrospectively that culture was a significant contributor to sustainable development.⁸²

Another part of the endeavour to ensure integration of culture and sustainable development has involved a series of conferences, led primarily by UNESCO, one of which produced the 2014 Florence Declaration on ‘Culture, Creativity and Sustainable Development: Research, Innovation, Opportunities.’⁸³ The Declaration contained a robust statement on the issue, arguing that the ‘core principles and priorities to be included in the elaboration process of the post-2015 development agenda’ should fully integrate culture into sustainable development policies and strategies at international, regional, national and local levels. It urged that this process be based on ‘international standard setting instruments that recognize fundamental principles of human rights and freedom of expression, cultural diversity, gender equality, environmental sustainability, and the openness and balance to other cultures and expressions of the world’. The Declaration called for support for strengthened legal and policy environments to promote culture.

⁷⁹ Para 3, 2014. UNGA Resolution, ‘Culture and sustainable development’ A/C.2/69/L.27, https://en.unesco.org/sites/default/files/0-unga_resolution_a_res_69_230_en.pdf.

⁸⁰ See Millennium Declaration 2000 A/res/55/2 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/559/51/PDF/N0055951.pdf?OpenElement> and the Millennium Development Goals.

⁸¹ Giovanni Boccardi and Cécile Duvelle, ‘Introducing Cultural Heritage into the Sustainable Development Agenda’ Background Note to *Cultural Heritage and Sustainable Development: A Rationale for Engagement* www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/HeritageENG.pdf.

⁸² *Post 2015: Reconsidering Sustainable Development Goals: Is the Environment Merely a Dimension?* <https://sustainabledevelopment.un.org/getWSDoc.php?id=699>.

⁸³ Florence Declaration, Third UNESCO World Forum on Culture and Cultural Industries ‘Culture, Creativity and Sustainable Development. Research, Innovation, Opportunities’, 4 October 2014: www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Amman/pdf/ENG_Florence_Declaration_4oct.pdf.

While reference to the role of law is relatively weak, it nevertheless provides support for the argument put forward in this chapter that if it is accepted that culture and sustainable development are inherently linked, the legal and policy frameworks should be strengthened to ensure more explicit inclusion of culture, in all its senses, in the post-2015 Agenda, notwithstanding its feeble status within the SDGs themselves.

As part of the debates regarding culture and development, a global campaign was also waged outside the intergovernmental realm, entitled 'The Future We Want Includes Culture'.⁸⁴ This was conducted by a number of regional and global civil society organisations focused on the incorporation of culture in the new Agenda. The campaign observed, in the same way as noted by UNESCO above, that the Millennium Development Goals of the 2000s omitted any reference to culture. The campaign's Declaration on the Inclusion of Culture in the Sustainable Development Goals mirrors some of the arguments and language from the intergovernmental debates. Compared with the preambular reference to culture in the UNESCO Declaration above, it includes a somewhat more satisfactory definition of culture in the context of the discussion of the SDGs: 'Culture—understood as an ensemble of values, traditions, tangible and intangible heritage, religious beliefs, world views and culture and ways of living—can facilitate the achievement of development goals'. The role of culture as specified in this Declaration also reflects the UNGA Resolution on Culture and Sustainable Development.⁸⁵ Reflecting the intergovernmental language, it endorses culture as 'both a driver and enabler of sustainable development and that the explicit inclusion of targets and indicators for culture in the Sustainable Development Goals will enable transformative change'.⁸⁶

While the trend is applauded, one question is why has there been such a strong push for culture to be incorporated into the sustainable development agenda? UNESCO provides one answer, making a strong general statement for such inclusion on its website: 'Culture is who we are and what shapes our identity. Culture contributes to poverty reduction and paves the way for a human-centred, inclusive and equitable development. No development can be sustainable without it'.⁸⁷ Another answer is more instrumentalist: that the cultural and creative industries promote a very wide range of employment opportunities around the world, as noted by a recent study, *Cultural times: The first global map of cultural*

⁸⁴ 'The future we want includes culture: global campaign statement' <http://culture360.asef.org/news/the-future-we-want-includes-culture-global-campaign-statement/> September 2015.

⁸⁵ Above, n 79.

⁸⁶ *Declaration on the Inclusion of Culture in the Sustainable Development Goals*, www.ifla.org/files/assets/hq/topics/libraries-development/documents/culture_sdgs_-_targets_indicators_201502_-_def.pdf; see also *Culture 21*, Communiqué: 'Culture in the SDG Outcome Document: Progress Made, But Important Steps Remain Ahead', www.agenda21culture.net/images/a21c/culturegoal/4-preSDG_outcomedoct_ENG.pdf.

⁸⁷ UNESCO, 'Sustainable Development Goals for Culture on the 2030 Agenda' <http://en.unesco.org/sdgs/clt>.

and creative industries.⁸⁸ UNESCO Director General, Irina Bokova, stated that the study ‘confirms the powerful argument advocated by UNESCO of the contribution of the cultural and creative industries to sustainable development.’ She goes on to outline the economic benefits of the cultural and creative industries, noting that they are ‘major drivers of the economies of developed as well as developing countries’. Importantly, she also points out that in addition to the economic benefits, the cultural and creative industries ‘generate non-monetary value that contribute significantly to achieving people-centered, inclusive and sustainable development.’⁸⁹ Despite the reference to cultural industries and the enhancement of job prospects in these documents, Bokova suggests that culture and creativity serve much broader functions than acting as mere servants to development. The Declaration on the Inclusion of Culture in the Sustainable Development Goals also acknowledges this contribution in its preamble, referring to the UNEP *Creative Economy Report: Widening Local Development Pathways* in the context of the role of cities and regions as actors of change, ‘whether culture in and for human development acknowledges the monetary and non-monetary aspects of the economy through cultural expression, artistic practice, safeguarding of tangible and intangible heritage, promotion of cultural diversity, urban planning and architecture.’⁹⁰

The promotion of culture within the post-2015 Agenda was taken up in a range of ways by UN bodies. For example, in a UN discussion on Culture in the Post-2015 Sustainable Development Agenda in 2015, prior to the text of the SDGs being released, it was agreed that ‘what is still missing is a globally agreed and shared recognition that development programmes and strategies at the global, regional and local levels should integrate culture within their goals, indicators and targets.’ It went on to say that without these actions and related capacity-building, ‘the potential of culture to contribute to sustainable development risks being largely untapped in many regions of the world.’⁹¹

Those ‘missing’ elements were further addressed by UNESCO, the United Nations Development Programme and the United Nations Population Fund in a collaborative project entitled *Post-2015 Dialogues on Culture and Development*.⁹²

⁸⁸ See <http://www.worldcreative.org>, and UNESCO Press December 2015, ‘New report shows cultural and creative industries account for 29.5 million jobs worldwide’ www.unesco.org/new/en/media-services/single-view/news/new_report_shows_cultural_and_creative_industries_account_for_295_million_jobs_worldwide/#.VnojATar_04.

⁸⁹ Above n 79, 5; the study itself was carried out by the International accountancy firm EY (Ernst Young), which perhaps indicates the importance placed on the economic and broader benefits of culture in sustainable development.

⁹⁰ United Nations Development Programme. *Creative Economy Report: Widening Local Development Pathways* www.unesco.org/culture/pdf/creative-economy-report-2013.pdf

⁹¹ UNESCO, ‘Culture in the Post-2015 Sustainable Development Agenda: Why Culture is Key to Sustainable Development’, www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/Post2015SustainableDevelopmentAgendaENG.pdf.

⁹² United Nations Development Programme. *Post-2015 Dialogues on Culture and Development*, <http://unesdoc.unesco.org/images/0023/002322/232266E.pdf>.

That exercise was devoted to looking at how ‘culture can contribute to achieving sustainable and equitable development for all’.⁹³ (It might be observed that one of the core features of sustainable development is the achievement of equity, both intra- and intergenerationally, arguably making the use of the word ‘equitable’ otiose in this context.⁹⁴) In any event, the dialogues pursued six sub-themes: poverty reduction, education, gender equality and women’s empowerment, sustainable cities and urbanisation, environment and climate change, and inclusion and reconciliation. It noted that the Florence Declaration, which was an end result of the forum that produced *Post-2015 Dialogues*, appealed to governments, civil society and the private sector to, inter alia, ‘support the enhancement of human and institutional capacities; *legal and policy environments* ... and evaluate the contribution of culture to sustainable development’.⁹⁵

UNESCO acknowledged the steps taken in this endeavour, recognising that the 2030 Agenda marked significant progress for sustainable development in many fields, highlighting the fact that this was the first time that an international development agenda had ‘referred to culture within the framework of Sustainable Development Goals related to education, sustainable cities, food security, the environment, economic growth, sustainable consumption and production patterns, in peaceful and inclusive societies’.⁹⁶

VIII. The SDGs, Culture and Rights

The SDGs, which are appended to *Transforming our World*, follow a similar formula to that of the Millennium Development Goals, but with a more extensive articulation of goals and targets.⁹⁷ The goals are stated to be ‘integrated and indivisible, global in nature and universally applicable, taking into account different national realities, capacities and levels of development and respecting national policies and priorities’.⁹⁸

As noted above, the post-2015 Agenda was debated over a series of meetings, an Open Working Group⁹⁹ and consultations. The SDGs and their associated targets are intended to ‘stimulate action over the next 15 years in areas of critical

⁹³ *ibid* 12.

⁹⁴ This is inherent in the definition of sustainable development; see above n 11; see also Rio Declaration, Principle 3: ‘The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.’

⁹⁵ Above, n 92 (emphasis added).

⁹⁶ UNESCO, ‘Sustainable Development Goals for Culture on the 2030 Agenda’, above n 87.

⁹⁷ The MDGs delineated eight goals, and attached 18 specific targets and 48 indicators to measure progress: see www.un.org/millenniumgoals/.

⁹⁸ Above n 2, para 55.

⁹⁹ ‘Open Working Group Proposal on the SDGs’ <https://sustainabledevelopment.un.org/content/documents/1579SDGs%20Proposal.pdf>.

importance for humanity and the planet.¹⁰⁰ Like *Agenda 21*, the *Johannesburg Plan of Action*, the *Millennium Development Goals* and *The Future We Want*, the language is suitably principled and ambitious, but the question remains how much can realistically be achieved in the decade and a half to 2030.

Despite the robust and determined efforts by a range of bodies—the recommendations of the Hangzhou Declaration, the resolutions of the General Assembly, the arguments made by the Special Rapporteur on the right to culture—that a specific goal focused on culture be incorporated into the post-2015 Agenda, such a goal was not in fact specifically included in the SDGs. Notwithstanding the lack of a specific goal, the links between culture and sustainable development were nevertheless incorporated to some degree in *Transforming our World*. Before embarking on a brief analysis of the inclusions, it is worth noting that in its preamble, as well as in several other places, a pledge is made that ‘no one will be left behind’, and that the endeavour will be ‘to reach those furthest behind first.’¹⁰¹ This pledge may well be easier to achieve from an economic than a cultural viewpoint, although of course economic disadvantage is often linked to political and cultural discrimination, especially against minorities.

When analysing the instances of inclusion of culture in the 2030 Agenda, we see it recognised in various ways: it envisions ‘a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity.’¹⁰² Significantly in the context of this chapter, paragraph 36 acknowledges the importance of both cultural and natural diversity, and ‘that all cultures and civilizations can contribute to, and are crucial enablers of, sustainable development’. Further, in examining the SDGs and associated targets, it is evident that they aspire to ensure that the link between culture and sustainable development is recognised in a variety of ways. However, that recognition is not in any sense robust and as indicated below, it is far less than what was hoped for by both the public sector international bodies and the non-government sector.

Target 7, under Goal 4 of the SDGs, aims to ‘ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including ... appreciation of cultural diversity and of *culture’s contribution to sustainable development*’.¹⁰³ Target 8.9 Goal 8 is aimed at policies ‘to promote sustainable tourism that creates jobs and *promotes local culture and products*’,¹⁰⁴ while Goal 12 continues this theme, by including Target 12.b which aims to ‘develop and implement tools to monitor sustainable development impacts for sustainable tourism that creates jobs and *promotes local culture and products*’.¹⁰⁵

¹⁰⁰ Above n 2.

¹⁰¹ Above n 95, para 4.

¹⁰² Above n 2, para 8.

¹⁰³ SDG 4 focuses on education systems and learning opportunities (emphasis added).

¹⁰⁴ SDG 8 is headed ‘Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all’ (emphasis added).

¹⁰⁵ SDG 12 is concerned with sustainable consumption and production patterns (emphasis added).

The link between culture and sustainable development is also seen within the Targets under Goal 11.¹⁰⁶ There seems to be no clear rationale why Target 11.4, which concerns the strengthening of ‘efforts to protect and safeguard the world’s cultural and natural heritage’ was placed between Target 11.3 and 11.5—the former being concerned with enhancing ‘inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management’ and the latter with the reduction of the effects of disasters on people and the economy. It would seem that this was the only place that the target might somehow fit.

Further, while it is commendable that cultural and natural heritage is actually included in Target 11.4, several ambiguities are introduced by referring to the ‘world’s cultural and natural heritage’. Given the particular use of wording, we may assume that this reference is not confined to world heritage,¹⁰⁷ but covers other global heritage categories, such as the intangible cultural heritage and the underwater cultural heritage. It would have been preferable however to make the scope of the target more explicit. A further confusion of the use of ‘world’s cultural and natural heritage’ is whether it covers national and local heritage, given that the vast majority of heritage conservation and development issues occur at these levels. A specific paragraph devoted to world, national and local heritage more generally would have made all of this clearer. If a more specific SDG had been formulated on culture, as was urged by the various stakeholders, the cultural and natural heritage would have found a more appropriate place within that framework.¹⁰⁸ As the target currently stands, it can only be hoped that it will be interpreted along the lines suggested above.

Soon after the SDGs were concluded, the International Council on Monuments and Sites (ICOMOS) issued a statement applauding the inclusion of the cultural and natural heritage in the SDGs, even though they did not include a specific goal on culture. ICOMOS noted that the organisation

has worked from the beginning to make certain that the SDGs put the planet on the path toward truly sustainable development and embrace culture in the ways that successful implementation demands. The final document is inclusive, but falls short of this full understanding.¹⁰⁹

ICOMOS committed itself to ‘expand the role of culture; with leaders implementing the commitments they have made; and with governments, the private sector

¹⁰⁶ SDG 11’s aim is to ‘(m)ake cities and human settlements inclusive, safe, resilient and sustainable’.

¹⁰⁷ Convention concerning the protection of World Cultural and Natural Heritage 1972, 1037 UNTS 151.

¹⁰⁸ The efforts to address sustainable development within the realm of World Heritage are noted in a separate section below.

¹⁰⁹ Statement by ICOMOS on the Adoption of the UN Sustainable Development Goals www.icomos.org/images/DOCUMENTS/Secretariat/2015/post-2015SDG/ICOMOS_Statement_post-2015SDG_EN_20151008.pdf.

and communities realizing the full promise of the SDGs.¹¹⁰ The campaign group mentioned earlier, ‘The Future We Want Includes Culture’, was more specific in its critique, arguing that ‘[w]hilst *Transforming Our World* integrates some references to cultural aspects, it fails to fully take into account the evidence gathered by the international community over the past two decades, of the positive role of culture in development.’¹¹¹ Clearly, despite all the efforts and initiatives set out above, the various players in this highly political game did not have sufficient impact to make the cut.

Nevertheless, the urge to infuse culture into sustainable development will continue to provoke further projects, with various conferences and initiatives underway through UN bodies as well as in the intergovernmental and non-government sectors.¹¹² Two significant developments that are direct responses to the culture in sustainable development movement detailed in previous sections are both concerned with the development of global policy and law. The first is in the area of world heritage and the other in the field of environment and development, as detailed below.

Finally, while the focus is on the cultural dimensions of the goals and targets, it should be noted that the natural dimensions were far more strongly embedded into the post-2015 Agenda and the SDGs than the cultural aspects. In particular, the International Union for Conservation of Nature (IUCN, a hybrid governmental/NGO organisation) was actively engaged in the negotiations,¹¹³ working with other nature-focused conservation bodies, contributing specific language to the post-2015 *Transforming our World* document and to the Goals and Targets.¹¹⁴

IX. World Heritage and Sustainable Development

The World Heritage Convention forms one of the most significant parts of the suite of conventions concerned with the protection and conservation of the global

¹¹⁰ *ibid.*

¹¹¹ The future includes culture: ‘Communiqué: Culture in the SDG Outcome Document: Progress made, but important steps remain ahead’, 2015SDG/Document_September_2015_SDG_ENG_-_Final_-_DEF.pdf.

¹¹² For example, the ‘Culture for Sustainable Urban Development Initiative’, intended ‘to raise awareness on the contribution of culture to sustainable development’, with a Conference on “Culture for Sustainable Cities” launched by UNESCO ‘to nourish the 2030 Agenda for Sustainable Development’ <http://en.unesco.org/events/international-conference-culture-sustainable-cities> and a Global Report and the International Conference focused on a United Nations Habitat launch of a ‘New Urban Agenda’ scheduled for October 2016 <http://unhabitat.org/habitat-iii-conference/>.

¹¹³ IUCN From Rio+20 to 2016—the negotiations www.iucn.org/about/work/programmes/global_policy/gpu_our_work/sustainable_development_goals/.

¹¹⁴ See for example ‘IUCN’s views on the Final Draft of the Outcome Document for the UN Summit to adopt the Post-2015 Development Agenda’, 15 July 2015 http://cmsdata.iucn.org/downloads/iucn_position_paper_on_the_final_draft_15_july_2015.pdf.

heritage.¹¹⁵ Since its implementation in 1972, the Convention has been the subject of what Francioni has referred to as ‘evolutive interpretation’, which he describes as a process ‘to bend the textual meaning of the original intent of the parties to the necessity of reconciling the treaty commitment with new requirements and legitimate objectives of the international community, such as that embodied in the principle of sustainable development’.¹¹⁶

The duty of state parties in Article 4 of the Convention is to ensure ‘the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage...’. The reference to future generations is in keeping with the principle of intergenerational equity, a concept that is often associated with sustainable development.¹¹⁷

As noted by Engelhardt, the World Heritage Convention

carries in itself the spirit and promise of sustainability ... in its insistence that culture and nature form a single, closed continuum of the planet’s resources, the integrated stewardship of which is essential to successful long-term sustainable development—and indeed to the future of life on the Earth.¹¹⁸

The Operational Guidelines to the World Heritage Convention were amended in 2005 to recognise that the ‘protection and conservation of the natural and cultural heritage are a significant contribution to sustainable development’.¹¹⁹ In 2012, the World Heritage Committee ‘recognized the urgent need for the World Heritage community to engage more effectively with the sustainable development agenda’ and called for the preparation of a specific policy to integrate ‘a concern for sustainable development within the operational processes of the World Heritage Convention’.¹²⁰ The need for the policy was set out as follows:

Recognising that the World Heritage Convention is an integral part of UNESCO’s overarching mandate to foster equitable sustainable development and to promote peace and security, and with a view to ensuring policy coherence with the Post-2015 UN sustainable

¹¹⁵ See G Carducci, ‘The 1972 World Heritage Convention in the Framework of other UNESCO Conventions on Cultural Heritage’ in F Francioni with F Lenzerini (eds), *The 1972 World Heritage Convention: a Commentary* (Oxford, Oxford University Press, 2008 (363–75).

¹¹⁶ F Francioni in Francioni with Lenzerini, *ibid*, 6–7.

¹¹⁷ For example, a wide range of legislation in Australia specifies intergenerational equity as a principle of sustainable development; at federal level, see s 3A of the Environment Protection and Biodiversity Conservation Act 1999. Principles of ecologically sustainable development: ‘(c) the principle of intergenerational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.’

¹¹⁸ R Engelhardt, as quoted in *World Heritage and Sustainable Development*, <http://whc.unesco.org/en/sustainabledevelopment>.

¹¹⁹ Operational Guidelines for the Implementation of the World Heritage Convention para 6, <http://whc.unesco.org/en/guidelines/>

¹²⁰ *World Heritage and Sustainable Development*, above n 25, para 9, states in part ‘Once the policy is adopted, it will be necessary to identify the relevant implications in procedural terms, so as to ensure that its principles are translated into actual practice in the implementation of the various processes of the Convention. These should result in proposals for specific changes to the *Operational Guidelines*.’ Capacity building programmes to ensure the application of the policy are also contemplated by para 9.

development agenda, existing international humanitarian standards and other multilateral environmental agreements (MEAs), States Parties should 'ensure an appropriate and equitable balance between conservation, sustainability and development, so that World Heritage properties can be protected through appropriate activities contributing to the social and economic development and the quality of life of our communities'.¹²¹

The Operational Guidelines themselves do not provide any guidance on how such sustainable development concepts are to be implemented, but as a result of the adoption of the policy, specific changes to the Operational Guidelines are expected to facilitate implementation.¹²²

Further, paragraph 90 of the Operational Guidelines concerning use of bio-physical processes and landform features provides that 'no area is totally pristine and that all natural areas are in a dynamic state, and to some extent involve contact with people. Human activities, including those of traditional societies and local communities, often occur in natural areas'.¹²³ The paragraph concludes with a poorly expressed statement that could be regarded as ambiguous: 'These activities may be consistent with the Outstanding Universal Value of the area where they are ecologically sustainable'.¹²⁴ This may mean either that the activities *must* be shown to be ecologically sustainable in order to be regarded as being consistent with the relevant Outstanding Universal Value, or as Lixinski opines, 'it assumes sustainable development is a necessary element for (natural) heritage to be protected in the first place'.¹²⁵ Redgwell argues that although 'such activities are not *ipso facto* inconsistent with the outstanding universal value of the property, they must be "ecologically sustainable"'.¹²⁶ She goes on to state that 'the World Heritage Committee has explicitly recognised the universality of the Convention and its application to heritage in all its diversity is an instrument for the sustainable development of all societies'.¹²⁷

The Operational Guidelines also employ the concept of 'sustainable use' with respect to World Heritage properties, introducing the idea of 'ongoing and proposed uses that are ecologically and culturally sustainable and which may contribute to the quality of life of communities concerned' as long as they do not adversely impact the property's Outstanding Universal Value, and promote the concepts of 'sustainable protection, conservation, management and presentation'.¹²⁸ These paragraphs raise the question of the precise meaning of 'ecologically and culturally sustainable' for which there is no specific answer in the Operational Guidelines.

¹²¹ Annex, Draft Policy for the integration of a Sustainable Development Perspective into the processes of the World Heritage Convention, above n 25.

¹²² Operational Guidelines above n 119, 27.

¹²³ Many of these areas are now recognised under the Operational Guidelines as 'cultural landscapes' under para 47.

¹²⁴ *ibid*, para 90.

¹²⁵ Lixinski, above n 28, 69.

¹²⁶ C Redgwell, 'Article 2' in Francioni with Lenzerini, above n 115, 77.

¹²⁷ *ibid*.

¹²⁸ Operational Guidelines, above n 119, para 119.

To compound matters further, paragraph 132 stipulates that for a World Heritage nomination to be considered as ‘complete’, a range of requirements must be met, including that ‘[s]ustainable development principles should be integrated into the management system.’¹²⁹

Given their focus on linking world heritage and sustainable development in recent years, it is no surprise that the World Heritage Centre and the World Heritage Committee have devoted a good deal of time and resources to putting together arguments for inclusion of culture in the post-2015 Agenda. Given the lack of adoption of a specific SDG on culture, the robust implementation of the new World Heritage and Sustainable Development policy adopted in 2015 has become even more important, not only in acting as a leading guideline for World Heritage stakeholders, but also as a model for all others engaged in cultural heritage policy and practice across the globe.

X. Draft International Covenant on Environment and Development

Another endeavour to influence the SDGs was the updating and publication of the Draft International Covenant on Environment and Development (the draft Covenant).¹³⁰ The foreword to the latest version states:¹³¹ ‘We recognize the spirit of cooperation that has characterized negotiations of the Sustainable Development Goals and provide the updated Covenant as a framework for implementing sustainability at all levels of society’.¹³² The draft Covenant calls for ‘an integrated international legal framework to provide a consolidated ecological and ethical foundation for present and future international and national policies and laws on sustainable development.’¹³³ The specific link between culture and sustainable development is reflected in the preamble to the draft Covenant which speaks of ‘living in harmony with nature’ as being a ‘prerequisite for sustainable development.’¹³⁴ This link is further elaborated in the insightful commentary to this part of the Covenant, which is worth quoting in full:

To a considerable extent, all civilizations spring from and are shaped by the quality of their surrounding natural elements; indeed, the histories of different peoples are

¹²⁹ *ibid* para 132 (5), ‘Protection and management’.

¹³⁰ Above n 19. The first edition of the Draft Covenant was produced in 1994; see P Hassan, ‘The IUCN Draft Covenant on Environment and Development: Background and Prospects’ in A Kiss and F Burhenne-Guilmin, *A Law for the Environment: Essays in Honour of Wolfgang Burhenne* (Gland, IUCN, 1994) 39.

¹³¹ The cover of the draft Covenant states: ‘5th edition released as contribution toward the 2030 Agenda for Sustainable Development adopted by the United Nations General Assembly’.

¹³² Above n 19 at xiii.

¹³³ *ibid*, Preamble.

¹³⁴ *ibid*.

inseparable from the natural conditions in which they have lived for millennia. Nature also inspires human culture. Art, literature and science cannot be understood, or even imagined, without acknowledging the influence of nature and its components. Thus, *cultural diversity, like biological diversity, emerges from the various ecosystems. Human beings must continue to respect this diversity, because no society will achieve sustainable development unless it adapts to and builds upon its surrounding natural systems.*¹³⁵

Article 28 of the Covenant deals specifically with cultural and natural heritage. In summary, it obliges parties to take all appropriate measures to protect cultural and natural heritage, prevent all measures and acts which are likely to harm or threaten such monuments or areas, preserve, *ex situ*, heritage at risk of loss, and, most importantly for the purposes of the argument advanced in this chapter, ‘to safeguard traditional knowledge, craftsmanship and skills for their inherent value, and to achieve environmental sustainability’.

While the draft Covenant has no legal force, many of the concepts and principles contained in it have some normative value and certain elements may well have the status of ‘soft’ law.¹³⁶ While the Covenant is not likely to be sufficient as basis for broad legal reforms aimed at promoting the SDGs and their Targets at national level, its newly included specific reference to the SDGs will no doubt be considered in the international arena and should be taken into account in promoting such reforms.

XI. Conclusions

Since the 1950s, there has been a steady development in the growth of instruments concerning various aspects of heritage, with the movement from physical cultural heritage to inclusion of highly valued aspects of the natural environment. The division, in turn, into tangible and intangible heritage, and the relationship between these two, has made heritage discourses at once broader and more complex.¹³⁷

This chapter has canvassed various aspects of the links between culture, heritage, environment and human rights in the context of the post-2015 Agenda, and in particular, the SDGs and their associated Targets. As noted, the response of the Open Working Group on the SDGs to the various resolutions and declarations that culture be integrated into the SDGs as a specific goal was merely to include mention of it in several of the SDGs. The failure of the process to fully embrace culture in its own right as a specific goal of sustainable development was, it seems,

¹³⁵ Emphasis added; footnotes in original omitted.

¹³⁶ Indeed, the foreword to the first edition of the Covenant records that as one of the reasons why it was necessary to prepare the Covenant was ‘to consolidate into a single juridical framework the vast body of widely accepted, but disparate principles, of “soft law” on environment and development (many of which are now declaratory of customary international law)’; above n 19, xxii.

¹³⁷ See Boer and Gruber, above n 39.

due primarily to the reluctance of various European and North American countries to politically and diplomatically support it, despite the efforts of UNESCO and other bodies mentioned above.¹³⁸

The proposition advanced in this chapter is that if it is accepted that culture in all its forms should be recognised as an inherent aspect of sustainable development, it should consequently have been more robustly reflected in the relevant policy documents and in particular, in *Transforming our World* and in the SDGs and associated Targets. The inherent value of culture, and the right to culture outside the sustainable development paradigm (although acknowledging that culture can and should be a fundamental part of this paradigm), must continue to rigorously inform future policy debates and associated documents if these are to move beyond and simply reinforce a largely instrumentalist framework.

An initial starting point might be, as suggested by the campaign ‘The future we want includes culture’, to push for ‘the inclusion of cultural aspects in National Development Plans, international cooperation mechanisms and other strategies and policies resulting from *Transforming Our World*.’¹³⁹

A more integrated, less atomised approach is thus advocated, whereby the right to culture and heritage, the right to environment and the principle of sustainable development are seen as inherently linked aspects of the post 2015-development agenda. Unless such an approach is taken, lawyers and policy makers will continue to fail the global community with respect to the legal mechanisms and associated institutions required to achieve the potentials of the SDGs and their targets in all of their dimensions, including, in particular, the cultural dimension.

¹³⁸ Antonios Vlassis (2015) ‘Culture in the post-2015 development agenda: the anatomy of an international mobilisation’, *Third World Quarterly*, 36:9, 1649–1662.

¹³⁹ ‘The future we want includes culture’, above n 99, 2.

