

UNIVERSITÀ DEGLI STUDI DI PADOVA

DEPARTMENT OF POLITICAL SCIENCE, LAW,
AND INTERNATIONAL STUDIES

**Master's Degree in
Human Rights and Multi-Level Governance**



CULTURAL RIGHTS IN MOTION

(EXPLORING THE NEXUS BETWEEN MIGRATION AND
CULTURAL HERITAGE)

Supervisor: Prof. PAOLO DE STEFANI

Candidate: GABRIELLE DUARTE CUNHA

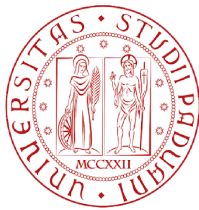
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ABSTRACT

Migratory movements represent a phenomenon that emerges as a transformative characteristic of societies, framing cultural landscapes. The intersection of migratory processes and cultural rights presents a complex system of opportunities and challenges relating to cultural heritage. By providing a comprehensive analysis of the nexus between migration and cultural rights — focusing on challenges and opportunities for cultural heritage preservation — this thesis examines from a legal perspective how human mobility influences the social dynamics of communities and the identification, protection, presentation, conservation, and transmission of natural and cultural heritage within the context of globalisation. In the perspective, in particular international law of human rights, these components — human mobility and cultural expressions — are addressed to examine how human rights frameworks interact with migration dynamics to shape migrants' access to and engagement with local cultural heritage.

Keywords: cultural rights, migration, cultural heritage

Estrada de terra, na minha terra

Na minha terra
há uma estrada tão larga
que vai de uma berma à outra.

Feita tão de terra
que parece que não foi construída.
Simplesmente, descoberta.

Estrada tão comprida
que um homem
pode caminhar sozinha nela.

É uma estrada
por onde não se vai nem volta.

Uma estrada
feita apenas para desaparecermos.

Mia Couto, 2016

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Acronyms

AMMR	Asylum and Migration Management Regulation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CRPD	Convention On The Rights of Persons With Disabilities
CRRF	Comprehensive Refugee Response Framework
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIDHR	European Instrument for Democracy and Human Rights
EP	European Parliament
ESC	European Social Charter
EU	European Union
EUCO	European Council
FCMN	Framework Convention for the Protection of National Minorities
GCIM	Global Commission on International Migration
GCM	Global Compact for Safe, Orderly and Regular Migration
GCR	Global Compact on Refugees
GFMD	Global Forum on Migration and Development
GMG	Global Migration Group
HLD	High-Level Dialogue on International Migration and Development
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICH	Intangible Cultural Heritage

ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IcSP	Instrument contributing to Stability and Peace
ILO	International Labour Organization
IOM	International Organization for Migration
MDG	Millennium Development Goal
MoW	Memory of the World Programme
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
SDG	Sustainable Development Goal
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Fund for Population Activities
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
WHC	UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage

Introduction

Migratory movements represent — in contemporary international relations — a phenomenon that emerges as a transformative characteristic of societies, framing cultural landscapes. In the context of globalisation, the intersection of migratory processes and cultural rights presents a complex system of opportunities and challenges relating to the identification, protection, presentation, conservation, and transmission of cultural and natural heritage.

The intersection of migratory processes and cultural rights is a multifaceted expression of the continuous interaction between human beings and physical environments with different identity manifestations and traditions. This interaction significantly impacts the social dynamics of communities, encompassing a wider spectrum of integration, reinterpretation, and exchange of cultural experiences and heritage practices (Human Rights Council, 2023).

From a legal perspective, in particular international law of human rights, these components — human mobility and cultural expressions — are traditionally managed by multilateral collective principles, norms, institutions, procedures, and structures (Lazarou, 2014; Smith, 2020). Human rights correspond, therefore, to a specific framework of paramount rights with moral characteristics guaranteed by international law and facilitated through legal, political, and social practices (Donnelly & Whelan, 2020).

The international law of human rights circumscribes a comprehensive apparatus that includes universal civil, political, economic, social, and cultural rights recognised in the multilateral arena (Goodhart, 2016). In this apparatus, the statement of principles reflects the shared recognition of a collective interest in the institutionalisation of values, through the use of the law, that guarantee fundamental rights, ensure individual freedoms, and the protection and promotion of cultural traditions of communities (Pustorino, 2023).

The pivotal framework that articulates inalienable universal rights is the International Bill of Human Rights, fundamental in shaping international law and legal practices and defining the responsibilities of States (OHCHR, 2024b). The statement is composed of three multilateral documents — within the scope of the United Nations (UN) — essential for the adoption and legitimation of human rights as fundamental

guarantees to individuals: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Universal Declaration of Human Rights, promulgated in 1948 through resolution A/RES/217 A (III), constitutes the foundation for the protection and promotion of human rights, presenting normative parameters for the construction of international law (Hernandez et al., 2018). The Declaration became a milestone of protection concerning the recognition of individual freedoms and rights, expanding the notion of human rights regionally and internationally (Jubilut & Apolinário, 2010).

Consequently, the UDHR is the pioneering multilateral document to categorise specific parameters related to the fundamental freedom of movement or cultural guarantees as inherent and universal human rights (Bruno et al., 2021). Although non-binding, the rights established by the Universal Declaration are a relevant criterion in the analysis of global governance (Betts, 2011), regardless of the nature of the right, whether linked to human mobility or cultural practices.

The Universal Declaration defends the right to freedom of movement by stating, in Article 13, that everyone has the right to freedom of movement within the territorial limits of a State, as well as by ensuring the right to leave any country and return to it (UNGA, 1948). The mentioned article is responsible for discerning migratory movements as a human right, locomotion is described as freedom (Corrêa & Antunes, 2005). Additionally, concerning human mobility, the UDHR enshrined, in Article 14, the right to seek and enjoy asylum in other countries (UNGA, 1948).

Regarding cultural expressions and practices, the UDHR determines, in Articles 22 and 27, the realisation of indispensable cultural rights for human dignity and individual development, and that the cultural life of a community must be available for everyone to participate in, accessing artistic and scientific representations (UNGA, 1948). However, the document does not clarify a collective definition of cultural rights, despite defining that this rights category encompasses the right to self-determination, freedom of thought, conscience, and religion (UNESCO, 1970).

To complement the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted in 1966 — into force in 1976 — to continue

developing international human rights law (OHCHR, 2024b). The ICCPR and the ICESCR further articulate the rights enshrined in the UDHR, structuring specific legal arrangements and defining the obligations and protections entailed by each category of human rights (Brown, 2016).

The International Bill of Human Rights, combined with a myriad of sources of international law and developed standards for rights, establishes not only a foundational framework for human rights but also emphasises the significance of respecting, protecting, and fulfilling cultural systems (OHCHR, 1991). The intersection with other sociopolitical spheres, for instance, migratory processes, becomes particularly salient when considering human rights indivisibility, interdependence, and interrelation (Donnelly & Whelan, 2020).

Substantially, human mobility facilitates global cultural interchange, portraying diverse cultural practices, identities, and knowledge sharing, characteristics that can be perceived heterogeneously by receiving societies (Castles, de Haas & Miller, 2020). The intersection of migratory processes and cultural rights reinforces the mutable component of culture: cultural landscapes are constantly shaped through interaction between societies and institutions (Schierup & Ålund, 1987). The recognition of cultural rights for migrants is, therefore, essential in the International Bill of Human Rights framework.

The ICCPR specifically addresses, in Article 27, the rights of minorities, including migrant communities, to enjoy their cultural manifestations, including religious and linguistic aspects (UNGA, 1966). Similarly, the ICESCR establishes, in article 15, that every person has the right to take part in cultural life and enjoy the benefits related to the diffusion and development of scientific and cultural aspects. The division does not imply that one human rights category is more relevant than another (Donders, 2010).

Despite the relevant international human rights law foundation regarding human mobility and cultural expressions, there is no extensive connection between the themes in contemporary international relations, as stated by the Special Rapporteur A/HRC/52/35: Cultural Rights and Migration, in the field of cultural rights (Human Rights Council, 2023). Particularly, the intersection of migration and cultural rights is

even more scarce when considering the system of opportunities and challenges relating to cultural and natural heritage (Bruno et al., 2021).

In the context of heritage, the Convention Concerning the Protection of the World Cultural and Natural Heritage — the World Heritage Convention, adopted in 1972 and ratified in 1975 — highlights the importance of identifying, protecting, presenting, conserving, and transmitting cultural and natural heritage (UNESCO, 1972). The World Heritage Convention emphasises a shared commitment by the international community to safeguarding heritage and fostering intercultural cooperation and diversity.

Furthermore, the Convention for the Safeguarding of the Intangible Cultural Heritage — adopted in 2003 and into force in 2006 — addresses the progressive construction of cultural practices and their permanent recreation by the communities associated with it (Bruno et al., 2021; UNESCO, 2003). In this regard, cultural diversity is comprehended as the common heritage of humanity, endorsing the cultural capabilities and values of communities (UNESCO, 2005). Cultural heritage operates as a repository of identity and well-being, providing continuity, connection, and resilience for individuals, social groups, and communities (UNESCO, 2022).

Considering the relevance of the interaction between human mobility and cultural rights illustrated, particularly focusing on cultural heritage, the thesis investigates how cultural rights frameworks intersect with migration dynamics to shape migrants' access to and engagement with local cultural heritage. This intersection is framed in order to register and recognise the challenges and opportunities for cultural heritage preservation in the context of human mobility, assessing the effectiveness of human rights mechanisms in addressing the nexus between migration and cultural heritage from an interdisciplinary perspective.

The principal research objective is to analyse the legal frameworks and international human rights institutions related to the aforementioned nexus, investigating how migration affects the preservation of cultural heritage among immigrant communities. This investigative process will cover, throughout its four chapters, discussions relating to human rights and other sociological phenomena, such as cultural identification, preservation of traditional practices, politicisation of migration, inclusivity among immigrant populations, mass tourism, and overtourism.

Chapter I – Cultural Landscapes: a Cultural Foundation of Human Rights explores legal frameworks and international human rights law related specifically to cultural rights at the international level, encompassing culture as an inalienable right inherent to all individuals, groups, and communities. Delving into the complexity of cultural rights, the chapter analyses the UNESCO Universal Declaration on Cultural Diversity, the Convention on the Protection and Promotion of the Diversity of Cultural Expression, and other instruments, until the consolidation of the Special Rapporteur in the Field of Cultural Rights.

Chapter II – Global Migration Governance: Human Mobility and International Law continues presenting an international human rights foundation, highlighting specifically the frameworks related to global migration governance. The discussion includes two essential normative divisions: the first focuses on the conceptualisation of terms and their definitions according to the Glossary on Migration, developed by the International Organization for Migration (IOM); the other discusses the process of acceptance of migration governance within the scope of the UN, including the historical chronology of this process through its main documents.

Chapter III – Cultural Heritage: Protection and Legal Framework addresses international commitments regarding the protection of cultural heritage, providing an overview of the concept of cultural heritage and its links with the cultural rights agenda. UN Conventions and Declarations are addressed in order to understand how the identification, protection, presentation, conservation, and transmission of cultural and natural heritage are represented, with particular attention to the Convention Concerning the Protection of the World Cultural and Natural Heritage and the Convention for the Safeguarding of the Intangible Cultural Heritage.

Chapter IV – The Nexus Between Migration and Cultural Heritage: Intersectionalities at The European Union Level considers how cultural rights frameworks intersect with migration dynamics to shape migrants' access to and engagement with local cultural heritage. In this context, the analysis involves, firstly, an understanding of how the international frameworks presented in the previous chapters are translated at the regional level in the European Union (EU) and, finally, how these social dynamics are permeated and influenced by them. The final chapter illustrates, as a case study, the nexus between migration and cultural heritage.

In summary, the thesis explores the intricate relationship between human mobility and cultural rights, with a particular focal point on cultural heritage from a normative perspective. By examining international legal frameworks, regional human rights reverberations, and interdisciplinary perspectives, this research aims to uncover the challenges and opportunities inherent in this nexus. The methodological approach includes a comprehensive literature review, legal analysis, and a case study to provide a holistic understanding of the subject. The findings of this study will contribute to the ongoing discourse on cultural rights and migration, offering valuable insights for policymakers, practitioners, and scholars.

Chapter I – Cultural Landscapes: A Cultural Foundation of Human Rights

Cultural landscapes are essential to the construction of identity and the continuity of societies, embodying a myriad of historical, social, and cultural practices that define a collective experience. These landscapes can be defined based on a natural space or *locus*, in which cultural groups operate, forming a cultural landscape. Accordingly, the perspective perceives the natural area as the medium, cultural groups as an agent, and the cultural landscape as the result of the interaction between the two categories (Sauer, 1925, as cited in Sodano, 2017).

The concept of cultural landscape includes subjunctive interactions between a factual physical site and human expressions¹, forming a unit (Leighly, 1969, Chapter 16, p. 326). These interactions encompass collective meanings, values, beliefs, and memories, creating a landscape different from the natural one, due to the cultural components formed by and transformed into it (Sodano, 2017). Cultural landscapes are repositories of dynamic and diverse cultural identities, playing a crucial role in safeguarding cultural rights.

In the ambit of international human rights law, cultural rights are a category of rights vaguely defined²: “the definition of ‘cultural rights’ is difficult, for it may be said that these ‘rights’, perhaps more than others, change from situation to situation.” (UNESCO, 1970, p. 10). Historically, cultural rights are conceived as second-generation³ human rights, complementing those of the first generation, and recognising extensive circumstances and basic goods necessary for human dignity (Goodhart, 2016). Culture, however, is recognised⁴ for producing a sense of belonging and community (Donders, 2010).

¹ “We may think of people as associated within and with an area, as we may think of them as groups associated in descent or tradition. In the first case, we are thinking of culture as a geographic expression, composed of forms which are a part of geographic phenomenology. In this view there is no place for dualism of landscape.” (Leighly, 1969, Chapter 16, p. 326).

² As defined by Donders (2010), the lack of precision in the definition of 'cultural rights' comes from the also imprecise conceptualisation of 'culture', which refers to various manifestations and practices, such as cultural products, literature, and lifestyle.

³ According to Goodhart (2016), the understanding of generational rights is based on the ideals of liberty, equality, and fraternity of the French Revolution, without corresponding to the historical and chronological reality of human rights development internationally. Human rights are divided into first-generation (civil and political), second-generation (economic, social, and cultural), and third-generation (solidarity rights, such as environment, peace, and development). However, this generational framework does not imply a hierarchy, since human rights are multidimensional and indivisible (Smith, 2020).

⁴ Although recognised by most States through constitutional law, cultural rights formalisation is often neglected (Meyer-Bisch, 1993).

What is culture? For the individual it is certainly a quest for knowledge, an effort at understanding the unknown, a way of situating himself and probably a way of passing on knowledge (concepts, memories), or just passing on the questioning and the need thereof. It embodies the hopes, the fears, the pride, the joy and the misery of a family or group or community. Seen as a conscious structure it can be (and is) used to expand the power of the community over members of that community or other communities; as a structure it sometimes serves as a nostalgic refuge for the economically weak and the politically disinherited. There can be no criteria to measure and compare various cultures without those criteria being defined by the relative political and economic strength of those cultures (UNESCO, 1970, p. 39)

1. International Bill of Human Rights

Provided that cultural rights are an indispensable part of the human rights system, they present a foundation on international law: the protection of cultural rights is enshrined in several international documents⁵, based on the aforementioned Universal Declaration of Human Rights, promulgated in 1948 (Hernandez et al., 2018; UNGA, 1948). The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights define and delve into the scope of cultural rights, delimiting them in an enforceable and binding manner⁶ (Donders, 2010; Smith, 2020).

The ICCPR includes, in Article 1, the right to self-determination of peoples, so that they can freely pursue their economic, political, and cultural development: in this sense, cultural development is understood as a basic fundamental right linked to democratic objectives (Smith, 2020; UNGA, 1966). Moreover, Article 27 promotes access to cultural traditions for ethnic, religious, and linguistic minorities: “persons belonging to such minorities shall not be denied the right, in community with the other

⁵ “The obligation to respect, protect, fulfil and implement human rights applies entirely to cultural rights. Nevertheless, which cultural rights can be considered internationally protected? What is their legal content? How to put pressure on States for the full implementation of cultural rights?” (Bruno et al., 2021, p. viii).

⁶ Smith (2020) argues that the ICCPR and the ICESCR received enthusiastic international support as an International Bill of Rights, however, this enthusiasm was not manifested politically: the Covenants took almost ten years to come into force. In addition, both have an Optional Protocol, recalling further achievement of the purposes of the Covenants.

members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” (UNGA, 1966, p. 56).

The ICESCR elaborates on the protection of cultural rights as fundamental for human dignity and community development. The Covenant determines, as the ICCPR, in Article 1, the right to self-determination, and, in Article 3, the principle of equality between men and women when accessing cultural rights (UNGA, 1966). This elaboration demonstrates that a "progressive realisation" of rights based on mutual effort is necessary to properly enforce and monitor the commitment to human rights (Saul, Kinley, & Mowbray, 2014).

In addition to these rights, Article 6 also associates cultural development with access to employability and the right to work (UNGA, 1966). Article 15 presents a direct and expressive association of cultural rights as positive law⁷, defending that everyone has the right to participate in cultural life⁸, enjoy scientific progress, and benefit from the results of authorial productions, whether scientific, literary, or artistic. The ICESCR is, according to the Center for Economic and Social Rights (2022), the most articulate international document on cultural rights.

As explained by Smith (2020), the ICESCR organises the rights which are more ‘idealistic’ in nature — an active commitment is essential for its fulfilment —, contemplating the right to education, the right to social security, the right to appropriate housing, and adequate leisure, for example. Provided that the Covenant enforces human rights law and is a binding and monitored⁹ human rights document, the rights included in the text consist of provisions and obligations to be achieved progressively by the State Parties and Signatories (Pustorino, 2023).

⁷ However, Bruno et al. (2021) declare that the ICESCR generally does not attach a positive duty to the State Parties and Signatories, as they are usually dependent on resources and an active commitment by the agents.

⁸ Pustorino (2023) defends that the most relevant cultural rights are the right to participate in the cultural life of States (and their respective communities), and the right to education, both presenting numerous international legal instruments and mechanisms.

⁹ “On the basis of the Optional Protocol approved by the UNGA, further to Resolution No. 63/117 of 10 December 2008, CESCR has been granted new competences in the examination of communications coming from States, individuals or groups of individuals subject to the jurisdiction of States parties claiming to be victims of a violation of one of the rights protected by the Covenant. While the competence of the Committee to receive individual communications is automatic following the ratification of the Protocol in question, for State communications it is necessary that both the State sending the communication and the State accused of the violation have made a specific declaration of acceptance of the competence of the CESCR to receive and consider such communications.” (Pustorino, 2023, p. 5).

Moreover, they reinforce equality¹⁰ and non-discrimination¹¹ as general principles of law, prohibiting discrimination under all circumstances because of the negative impact it has on the progress of human rights (United Nations, 2014). Cultural rights are, therefore, an intrinsic facet of human rights that is constantly developing and transforming, enabling the inclusion of new parameters to be analysed internationally and evoking different interpretations of the definition of this right category and its scope of protection (Caust, 2019; Human Rights Council, 2010; UNESCO, 1970). In this sense, cultural landscapes are also constantly changing:

The works of man express themselves in the cultural landscape. There may be a succession of these landscapes with a succession of cultures. They are derived in each case from the natural landscape, man expressing his place in nature as a distinct agent of modification. Of special significance in that climax of culture we call civilisation. The cultural landscape then is subject to change either by the development of a culture or by a replacement of cultures. (Leighly, 1969, Chapter 16, p. 333)

Addressing again the issue of the lack of definition of the concept of culture, it is evident that cultural expressions — even if vaguely defined — occur in a physical environment, continually being an agent of transformation, resulting in cultural landscapes (Comparato, 2015; Sodano, 2017). Culture is also recognised not as a unitary entity, but as multiple cultural expressions and traditions, encompassing diverse identities and sociocultural groups, which interact with each other, generating or not metamorphosis in their cultures and the environments in which they are manifested (Sodano, 2017; UNESCO, 1970).

The Human Rights Council (2010) clarifies that, although the notion of cultural rights is underdeveloped internationally or there is no consistent definition of the term, it can be understood as a historical process that includes references such as language,

¹⁰ Equality is defined as the right to treatment as equal in international human rights law (Goodhart, 2016).

¹¹ “States must ensure that their constitutions, as well as domestic laws and policies, do not discriminate on prohibited grounds against a particular individual or group. They must also adopt measures to prevent, alleviate, or eliminate the occurrence of conditions or attitudes that cause or perpetuate discrimination with respect to the Covenant’s rights.” (United Nations, 2014). A difference in treatment would only be legitimate if it has a specific objective compatible with the rights provided in the ICESCR and if the measure is proportional to justify unequal treatment.

ethnicity, and religion. This process is continuous, consequently impacting international human rights parameters and their jurisdiction and practices. As UNESCO (1970, p. 29) argues, “the static aspect which a given culture may have on analysis, should not blind us to the fact that no culture has any chance of survival unless it is constantly renewed and recreated.”.

Delving into the complexity of cultural rights — while maintaining the interdisciplinary approach —, it is interesting to highlight that second-generation rights were anomalous to a series of legal systems, demonstrating the need for development at the international level of a system of protection that familiarises cultural rights (Saul, Kinley, & Mowbray, 2014). Cultural rights, therefore, are part of a stage of institutionalisation of rights internationally, influencing regional and local legal practices and systems (Comparato, 2015).

2. United Nations Approaches to Cultural Rights

Historically, there has been an increasing demand for the protection of cultural rights, in the context of human dignity, and the preservation of sociocultural identities of individuals, groups, and communities (Bruno et al., 2021). As Donders (2010, p. 18) argues, “different concepts of culture lead to different approaches towards cultural rights.”. Therefore, the international human rights framework adopted more specific definitions and parameters through other international documents, more specifically, declarations and conventions¹².

The Declaration of the Principles of International Cultural Cooperation, adopted in 1966, highlights an international engagement with cultural rights, tending to reinforce them through the practice of international law (Bourgi, Colin & Weiss, 1987). From this period onwards, the United Nations, especially the United Nations Educational, Scientific and Cultural Organization, began to contribute significantly to the institutionalisation of cultural rights in international relations, leading a myriad of regional and global conferences.

Sustained by this and the continuous intensification of cultural development in globalisation, the UNESCO Universal Declaration on Cultural Diversity was

¹² Declarations and conventions are non-binding international documents.

proclaimed in 2001¹³. Article 1 states that cultural diversity is a common heritage¹⁴ of societies — taking multiple forms across time and space — and that the plurality of identities and cultural representations must be celebrated and encouraged: “it is the common heritage of humanity and should be recognised and affirmed for the benefit of present and future generations.” (UNESCO, 2001).

According to Bruno et al. (2021), this Declaration provides one of the most complete definitions of cultural rights. It infers that human rights and cultural diversity are interdependent categories, they have a dual relationship (Ravel, 2009, Chapter 14, p. 200). Moreover, the statement clearly defines the idea that cultural rights have an individual¹⁵ and a collective dimension: the enjoyment of cultural rights is not only guaranteed to individuals, based on the principle of human dignity but also to members of a group or cultural community (Donders, 2012).

Consequently, the UNESCO Universal Declaration on Cultural Diversity (UNESCO, 2001) defines 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. (p. 62)

It includes, in Article 2, that policies that support cultural diversity and encourage cultural pluralism guarantee social cohesion and the maintenance of peaceful and democratic communities: “it is essential to ensure harmonious interaction among people and groups with plural, varied and dynamic cultural identities as well as their willingness to live together.” (UNESCO, 2001, p. 62). In addition, Article 3 states that cultural diversity facilitates human development, integrating the economic, intellectual, moral, and subjunctive spheres of humanity.

¹³ “The Cultural Diversity Declaration was adopted by consensus. It is not a legally binding instrument and mainly includes principles to be respected by the Member States. The States did, however, express their interest in elaborating further standard-setting instruments in the field of cultural diversity.” (Donders, 2012, p. 174).

¹⁴ The UNESCO Universal Declaration on Cultural Diversity explores the notion of cultural heritage and its importance for humanity (UNESCO, 2001). The Articles regarding the topic will be explored in Chapter III – Cultural Heritage: Protection And Legal Framework.

¹⁵ Human rights, as individual rights, guaranteed by human dignity, do not exclude the fact that identity as a cultural construction does not occur exempt from other individuals. It is also a collective product of societies (Meyer-Bisch, 2009).

According to CETIM (2013), the respect for cultural rights proportionate and effective support to communities open to pluralism and cultural diversity, evolving the international human rights law framework and its mechanisms. Advancing the multicultural framework implies an intrinsic respect for the human rights of minorities and underrepresented groups in societies, including that all cultures should be guaranteed cultural rights present on UN official documents, regardless of its binding nature.

The international guarantee of cultural rights, as Cast (2019) argues, depends on legal engagement on the part of States in order to enforce the cultural rights of everyone — with particular attention to the international treaties — in their individuality and collectivity. Without legal substance and active implementation, the development of cultural rights presents gaps and limitations that impact the enjoyment and fulfilment of rights by individuals, groups, and communities.

Concerning cultural rights development and implementation, asserting a principle is insufficient: creating and supporting policies for cultural access and enjoyment is indispensable for managing cultural diversity and pluralism (UNESCO, 1970). Considering it, cultural rights success as human rights encompasses the perception that each person and each collective have their set of distinctive spiritual, material, intellectual, and emotional features that fashion their heritage and interact in the cultural landscapes of societies.

Regarding cultural diversity and human rights, the Declaration promotes that:

Article 4 – Human rights as guarantees of cultural diversity

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

Article 5 – Cultural rights as an enabling environment for cultural diversity

Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms. (UNESCO, 2001, p. 63)

Cultural rights must be protected and safeguarded — according to international human rights law, standards, and practices — in connection to other fundamental rights, to guarantee that everyone can freely access the right to participate in the cultural life of the communities (Bruno et al, 2021). Raising social awareness is another factor mentioned in Annex II - Main lines of an action plan for the implementation of the UNESCO Universal Declaration on Cultural Diversity, highlighting cultural cooperation¹⁶ as the indicated pattern of action (UNESCO, 2001).

Donders (2012) adds that human rights provide a framework for protecting diversity not only between cultures but also within them. Bruno et al (2021) complement by supporting the perspective, adding that, however, cultural rights are rarely regulated judicially due to the reluctance to establish effective commitments with positive obligations: “international and national courts have not had many chances to contribute to the substantive development of this category of human rights.” (p. 33). Aiming to promote cultural rights enforceability and achieve its realisation, UNESCO approved, in 2005, a convention on cultural rights and cultural diversity referring to the Declaration.

The Convention on the Protection and Promotion of the Diversity of Cultural Expression — adopted in 2005, and into force in 2007 — defines multiple terms associated with cultural rights, including cultural diversity, cultural content, cultural

¹⁶ The Declaration defines that cooperation is not restricted to States as agents of international relations, but extends to other forms of organisation, such as civil society, considered relevant agents for social transformation in international relations (UNESCO, 2001).

expressions, cultural activities, goods and services, cultural industries, and cultural policies and measures (UNESCO, 2005). Moreover, it states the principle of interculturality, referring to the “existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and multiple respect.” (UNESCO, 2005, p. 14).

According to Donders (2012), the negotiation process has two main aspects: the first with an approach derived from human rights and, more specifically, from a cultural rights framework; the other was developed from a trade perspective, aiming to reduce the negative impacts of globalisation in cultural practices and expressions. He argues that the States¹⁷ preferred to adopt the Convention on the Protection and Promotion of the Diversity of Cultural Expression based on the second approach, focusing on cultural goods¹⁸ and expressions.

The Convention further articulates in Article 2 - Guiding Principles that:

1. Principle of respect for human rights and fundamental freedoms

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.

2. Principle of sovereignty

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.

¹⁷ According to Bourgi, Colin and Weiss (1987), defining the field of culture in terms of human rights is a controversial topic for the States.

¹⁸ “In the international legal system, the protection of cultural goods of particular artistic, religious and historical importance is ensured both in peacetime and in wartime, since there is an advanced special legal framework on the protection of such assets during non-international and international armed conflicts.” (Pustorino, 2023, p. 220).

3. Principle of equal dignity of and respect for all cultures

The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.

4. Principle of international solidarity and cooperation

International cooperation and solidarity should be aimed at enabling countries, especially developing countries, to create and strengthen their means of cultural expression, including their cultural industries, whether nascent or established, at the local, national and international levels. (UNESCO, 2005, p. 7-8)

Furthermore, it ensures the relationship between the protection and promotion of cultural diversity based on respect, fulfilment, guarantee, and non-violation¹⁹ of cultural rights, confirming the commitment established in the UNESCO Universal Declaration on Cultural Diversity (CETIM, 2013). Given this perspective, defending cultural rights and cultural diversity is an ethical imperative directly connected to the principle of human dignity and sustained as an individual and collective right: if cultural rights include enjoying a particular tradition or experience, and celebrating its diversity, their substance is collective²⁰ (Saul, Kinley, & Mowbray, 2014).

Aiming to delve into and expand the discussions about cultural rights and their importance for the fulfilment of human rights in general, other initiatives seek to conceptualise cultural rights and establish evaluation parameters for them, as is the case of the Fribourg Declaration on Cultural Rights. The Fribourg Declaration — a cooperative document proclaimed in 2007 — considers that clarifying cultural rights within the human rights framework generates a specific understanding that can prevent

¹⁹ According to the Center for Economic and Social Rights (2022, p. 9): “A human rights violation occurs when a State fails to act in accordance with a human rights obligation under national, regional or international law. Importantly, a violation may either be the result of something the State has done (an act of commission), or the result of something it did not do but should have done (an act of omission).”

²⁰ “Nevertheless, the collective nature of human rights arguably emerged, despite further international instruments and their relevant minority rights provisions tried to expose the cultural rights’ collective character.” (Bruno et al., 2021, p. 34).

cultural relativism and violation of cultural rights, expressions, and traditions while supporting their visibility (Fribourg Group, 2007).

According to the Human Rights Council (2010), this Declaration highlights the scope of cultural rights about “identity and cultural heritage, freedom of identification with one or several communities and the right to change such identification, access to and participation in cultural life, education and training, information and communication, and cultural cooperation.” (p. 5). Provided the objective to specify a rationale for cultural rights, Article 2 defines that:

For the purposes of the present Declaration:

- a. The term "culture" covers those values, beliefs, convictions, languages, knowledge and the arts, traditions, institutions and ways of life through which a person or a group expresses their humanity and the meaning they give to their existence and to their development;
- b. The expression "cultural identity" is understood as the sum of all cultural references through which a person, alone or in community with others, defines or constitutes oneself, communicates and wishes to be recognised in one's dignity;
- c. "Cultural community" denotes a group of persons who share references that constitute a common cultural identity that they intend to preserve and develop. (Fribourg Group, 2007, p. 5)

As stated by Donders (2012), the Fribourg Declaration represents a solid achievement in the field by collecting and concentrating human rights provisions in international law and practice connected to culture to enhance the realisation of cultural rights. In addition, the proclamation of this Declaration highlights the argument provided by Caust (2019), in which international groups embraced cultural rights, engaging to define and implement its agenda at the local, regional, and international levels.

The existence of cultural rights requires scrutiny as they are essential to maintaining democracy and are directly associated with collective security and human development (Meyer-Bisch, 2009). Furthermore, Meyer-Bisch argues that, in the

Fribourg Declaration, this scrutiny is oriented by an approach centred on the persons, responsible for composing their cultural landscapes, which explains why the definition of culture provided by the document is broad, in order to ensure its operability.

The practical component of the Declaration is explicit in its Articles 9, 10, 11, and 12, aimed at the implementation of cultural rights: the statements imply obligations²¹ for each person, cultural groups, and communities, and responsibilities for all cultural actors, regardless of the sector, whether public, private or civil (Fribourg Group, 2007). Therefore, the document establishes a guide for the governance of cultural rights at different levels:

Article 9 (principles of democratic governance)

The respect, protection and fulfilment of the rights expressed in the present Declaration imply obligations for each person and community. Cultural actors in the three different sectors - public, private and civil - have a particular responsibility within the framework of democratic governance to interact and, if need be, to take initiatives for the purpose of:

- a. Ensuring respect for cultural rights and developing means of consultation and participation in order to guarantee their realisation, in particular for those who are most disadvantaged by virtue of their social status or the fact that they belong to a minority;
 - b. Guaranteeing in particular the interactive exercise of the right to adequate information to ensure that cultural rights are taken into consideration by all actors in the social, economic and political spheres;
 - c. Training their personnel and raising public awareness on the understanding and respect for all human rights and cultural rights in particular;
 - d. Identifying and taking into account the cultural dimensions of all human rights in order to enhance universality through diversity and to encourage the appropriation of these rights by all persons, alone or in community with others.
- (Fribourg Group, 2007, p. 8-9)

²¹ Although that is the language used, the Fribourg Declaration is a non-binding document.

Article 11 defines responsibilities addressed to agents in the public sector, focusing on collective engagement and cooperation to intensify the interaction of the Declaration among relevant stakeholders and organisations at the international level (Fribourg Group, 2007). Moreover, Article 12 addresses specifically the mandates and frameworks of international organisations, that should guarantee the systematic inclusion of cultural rights in their provisions, and contribute to the development of evaluating and monitoring mechanisms.

3. The Special Rapporteur in the Field of Cultural Rights

The emergence of cultural rights and related issues internationally resulted in the appointment of an independent cultural rights expert, in 2009, by the United Nations Human Rights Office of the High Commissioner, through resolution 10/23: Independent expert²² in the field of cultural rights (Caust, 2019; HRC, 2009). The expert is responsible for identifying obstacles to the fulfilment of cultural rights — submitting recommendations to the HRC —, and exploring the relation between cultural rights and cultural diversity through reports while collaborating with States and other stakeholders (HRC, 2009).

Provided the international advancements and the embracement of cultural rights by other agents (such as non-governmental organisations - NGOs), the Human Rights Council established a list of priority issues related to the implementation and fulfilment of cultural rights organised in the Report of the independent expert in the field of cultural Rights: A/HRC/14/36²³, in 2010 (HRC, 2010). The focus, however, is not to attempt to define culture or cultural rights²⁴, but to illustrate and address their

²² Following the establishment of an independent expert in the field of cultural rights within the HRC, the mandate was renewed another five times in order to expand the understanding at the United Nations level of the cultural rights framework and mechanisms. The most recent mandate renovation was through resolution A/HRC/RES/55/5, in 2024 (HRC, 2024).

²³ Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council: “In its resolution 10/23, the Human Rights Council refers to the right to enjoy the benefits of scientific progress and its applications, enshrined in article 27 of the Universal Declaration of Human Rights and article 15, paragraph 1 (b), of the International Covenant on Economic, Social and Cultural Rights.” (Human Rights Council, 2010, p. 7). In addition, the independent expert clarifies that she “has also selected a list of priority issues she proposes to address. These issues relate to two main topics: (a) cultural rights, globalisation of exchanges and of information, and development processes; and (b) participation, access and contribution to cultural life, without any discrimination.” (Human Rights Council, 2010, p. 1).

²⁴ “It is not the intention of the independent expert to attempt to define culture. This is not necessary, and may be inappropriate.” (Human Rights Council, 2010, p. 4).

development and implementation by numerous agents of international relations, influencing them to engage and support the field:

Many explicit and implicit references to cultural rights as understood above are found in international instruments and the practice of human rights mechanisms. Explicit references include rights that expressly refer to culture. Implicit references include rights that although not expressly referring to culture may constitute an important legal basis for the protection of cultural rights as defined above. It must be stressed that cultural rights are so closely interconnected with other human rights that it is sometimes difficult to draw a line between cultural and other rights. The references below have been identified on a preliminary basis as the most important ones, and should not be considered exhaustive. (HRC, 2010, p. 6-7)

“In 2009, the United Nations Human Rights Office of the High Commissioner appointed an independent cultural rights expert, since 2012 known as the Special Rapporteur in the Field of Cultural Rights.” (Caust, 2019, p. 7). The Special Rapporteur, in 2012, noted that cultural rights must be assessed equally by men and women, focusing on the principles of equality and non-discrimination through resolution A/67/287 (UNGA, 2012). In summary, the special report underlines that women must have the same access to contribute to and to participate in the cultural life of communities.

Furthermore, the UN General Assembly (2012) establishes that gender is understood as a component of cultural complexity embedded in culturally diverse and plural societies and that it is necessary to prevent and combat discriminatory practices between and within the communities. “This means that women must be able to embrace or reject particular cultural practices and identities as well as to revise and (re)negotiate existing traditions, values or practices, regardless of their provenance.” (UNGA, 2012, p. 10).

In 2018, the Special Rapporteur examined the cultural approach to the principle of universality of human rights through resolution A/73/227: Universality, cultural diversity and cultural rights - Report of the Special Rapporteur in the field of cultural rights (UNGA, 2018a). According to Pustorino (2023), there is a necessity in

the ambit of international human rights law and mechanisms to balance two fundamental and characteristics that occur simultaneously: universalism and multiculturalism²⁵ of human rights.

Universality means that human beings are endowed with equal human rights simply by virtue of being human, wherever they live and whoever they are, regardless of their status or any particular characteristics. Universality must be understood as closely related to other core human rights principles of interdependence, indivisibility, equality and dignity. (UNGA, 2018a, p. 4)

Furthermore, the principle of universality of human rights must be understood in specific contexts, since it does not imply that all individuals will have access to the same human rights presenting equal definitions or content, varying geographically (Pustorino, 2023). The existence of regional instruments and mechanisms, combined with the fact that States can opt not to ratify international institutions or make reservations or restrictions on them, results in diverse scopes of interpretation²⁶ and application of human rights.

According to Goodhart (2016), cultural relativism is a challenge to the principle of universality since it is a conceptual rejection — generally rooted in cultural relativism — that argues that human rights are only valid for the cultural narratives on which they were based. Moreover, Donnelly and Whelan (2020) discuss that universality as a characteristic can be uncomfortable with an international political order structured by sovereign States: universal human rights are harmonious with a cosmopolitan perspective on international relations, considering persons as relevant agents in the cultural landscape.

To assert a human rights is to make a fundamentally political claim, in two senses. First, it is to make a demand on society, to insist that things be arranged

²⁵ “Multiculturalist demands become important whenever they affect and change the legal system requiring, for instance, special representation rights, or other legal rights and immunities aimed at the protection of cultural minorities.” (Rosas, 2011, p. 3).

²⁶ “However, the question of conflict between different interpretations of a specific universal right should not be overemphasised. In fact, it is not uncommon in practice to find cases of significant dialogue both between national courts and between the latter and courts or bodies of an international nature with a view to applying certain human rights in a basically uniform manner. Particularly noteworthy are cases of coordination by courts of countries with strong local traditions and belonging to geographic areas where there are no effective international systems to oversee observance of human rights.” (Pustorino, 2023, p. 16).

— economically, politically, culturally — so that everyone enjoys equal respect and dignity (...). Another way of saying this is that human rights are normative claims. They express a certain set of political convictions and aspirations concerning the freedom and equality of all people. (Goodhart, 2016, p. 5)

Although some theorists defend that universalism is incompatible with cultural diversity, Donders (2010) argues that, in fact, multiculturalism does not preclude the universal value of human rights, but allows an emphasis on the different cultural characteristics and identities embraced by individuals and their communities. Diversity is considered, according to the perspective, a multidimensional condition of identity (Meyer-Bisch, 2009). As described by the Special Rapporteur in the field of cultural rights, “universality is a framework for inclusion, not exclusion.” (UNGA, 2018a, p. 11).

The Human Rights Council revisited the progress made in the field of human rights and cultural rights through resolution A/HRC/40/53, approved a decade after the establishment of the specialist in cultural rights within the UN framework:

Following the approach of the Committee on Economic, Social and Cultural Rights, both mandate holders have also recalled that cultures are dynamic human constructs, constantly subject to reinterpretation, and added that while it is customary to refer to culture in the singular, that has problematic methodological and epistemological consequences and should always be understood as plural. (HRC, 2019, p. 4)

In addition to the illustrated topics focused on cultural rights as human rights, the Special Rapporteur in the field of cultural rights explored other specific issue areas in their annual reports, recommendations, and resolutions, such as A/HRC/17/38, A/HRC/31/59, and A/71/317 on cultural heritage²⁷; A/HRC/43/50 on cultural rights defenders; A/75/298 on cultural rights and climate emergence; A/HRC/49/54 on cultural rights as an empowering tool; and A/76/178 on cultural mixing and diversity (OHCHR, 2024a).

²⁷ Resolutions linked to cultural heritage will be addressed in Chapter III – Cultural Heritage: Protection And Legal Framework.

Furthermore, as presented by the Center for Economic and Social Rights (2022), international human rights law provides a set of specific provisions through conventions at the level of the United Nations, including²⁸: the International Convention on the Elimination of All Forms of Racial Discrimination - ICERD (1965, 1969); the Convention on the Elimination of All Forms of Discrimination against Women - CEDAW (1979, 1981); the Convention on the Rights of the Child - CRC (1989, 1990); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families - ICRMW (1990, 2003); and the Convention On the Rights of Persons With Disabilities - CRPD (2006, 2007).

These conventions²⁹, although related to cultural rights considering their particular focus groups, are not further explored in the context of this thesis because they do not strictly concern the nexus between migration and cultural heritage, the central perspective of the analysis. However, it is important to note that every identification — whether individual or collective — is premised on cultural references³⁰, therefore presenting essential identity, values, and meanings that partly define the subjects of law (Meyer-Bisch, 2009).

4. Summary

The concept of cultural landscapes is essential in understanding cultural rights, indicating the resulting *locus* in which cultural groups interact with a natural or original space: a *locus* encompassing collective values, identities, memories, and diverse forms of human expression. Cultural landscapes are repositories of cultural identities, encompassing countless individual and collective expressions of humanity, respecting the dynamism of culture, which is a category continually constructed and transformed by people as cultural agents.

In international law, there is no homogeneous definition of culture. The term constitutes, however, the category of cultural rights, an indivisible and basic component for human dignity and, consequently, a category of human rights. Recognised as

²⁸ The dates presented in parentheses in this paragraph refer, respectively, to the date of adoption of the convention, and to the date on which it came into force.

²⁹ Except the ICRMW, which will be explored in Chapter II – Global Migration Governance: Human Mobility And International Law.

³⁰ Cultures should not be understood as immutable entities but as vehicles of thought and action in constant and continuous transformation (UNESCO, 1970).

second-generation rights, cultural rights are delimited in international human rights law from the constitution of the International Bill of Human Rights, including provisions on aspects considered relevant to the context of culture in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights

In this context of the United Nations, there has historically been a demand for respect for cultural rights in order to preserve identities and expressions. This demand resulted in a series of declarations and conventions focused on this category of rights, such as the Declaration of the Principles of International Cultural Cooperation (1966) and the UNESCO Universal Declaration on Cultural Diversity (2001). Both establish cultural diversity as a parameter of policy and action, reinforcing the individual and collective dimensions of cultural rights: pluralism is supported as a facilitator of social cohesion and maintenance of democratic communities.

The preponderance of culture for the fulfilment of human rights has raised initiatives from civil society in order to contribute to the cultural rights agenda, as is the case of the Fribourg Declaration (2007), a document focused on individuals and communities as responsible for composing cultural landscapes. This prevalence is reflected in the scope of the UN, which determined a Special Rapporteur in the Field of Cultural Rights responsible for identifying obstacles to the protection of cultural rights, as is the case with the resolution A/73/227: Universality, cultural diversity and cultural rights - Report of the Special Rapporteur in the field of cultural rights, discussing the possibilities of understanding cultural diversity amid the universalism of human rights.

Cultural rights encompass, among others, the appreciation of cultural diversity, the right to cultural expressions and values, freedom of religious practice and linguistic use, access to education, and the right to participate in cultural life. International human rights instruments, in addition to establishing protection standards for cultural rights in a broad sense, organise specific categories of protection, as is the case with the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), and the Convention on the Rights of Persons with Disabilities (CRPD).

Chapter II – Global Migration Governance: Human Mobility and International Law

Global migration governance corresponds to the repository of institutional frameworks developed from international law in order to regulate human mobility and establish standards of rights, obligations, and actions towards them. Global governance is a concept that implies a multilateral agenda³¹ structured in international institutions and mechanisms, as well as in international organisations, and aimed at the collective operationalisation of political issue areas (Betts, 2011). Regarding human mobility, governance is fragmented.

The global governance of migratory processes, the second category of analysis of this thesis, does not present a sufficiently coherent multilateral framework that regulates international migratory movements (Betts, 2011). In contemporary international relations, there is a lack of protective and regulatory measures on human mobility (Brettell & Hollifield, 2015). This is not evidence, however, that global migration governance is inexistent or that there is a lack of commitment by international agents, as stated by Betts and Kainz (2017):

Today, though, with growing recognition of the importance of international cooperation to ensure that states can collectively maximise the benefits and minimise the costs associated with migration, while simultaneously meeting human rights obligations, there is a renewed willingness to consolidate and enhance global migration governance at the multilateral level. (p. 1)

In fact, human mobility began to acquire political salience following the formation of the international law of human rights: an institutionalist approach to migration is predominant, influenced mainly by the United Nations and its specialised agencies (Castles, de Haas, & Miller, 2020). Due to its history derived from the multilateral ambit, global migration governance focuses on the manifestations of the

³¹ According to Lazarou (2014), multilateralism is understood as a regulatory and organisational structure of interactions between the various agents of international relations, and is, consequently, a concept that gains scope given the contexts generated from these iterations. Considering this, the typical conception of the term multilateralism is defined as a situation in which three or more States work together in order to achieve shared objectives (Keohane, 1990; Seitenfus, 2005). However, as Adler (1999) and Lazarou (2014) argue, multilateralism is considered an institution built according to a collective understanding, that is, it reflects the interests and identities of the agents of international relations, as well as having the capacity to influence the behaviour of those agents.

migratory phenomenon in international relations, encompassing its continuous transformation (Crépeau & Atak, 2016).

Understanding global migration governance requires two essential normative divisions: firstly, classifying and comprehending the concepts relating to human mobility and, sequentially, acknowledging the multilateral institutional instruments and mechanisms framed into the multilateral ambit, highlighting above all the progress made by States within the UN scope. In order to establish coherent definitions compatible with international politics, this thesis uses the concepts as expressed in the Glossary on Migration, organised by the International Organization for Migration (IOM), in its most recent version.

1. Glossary on Migration

According to the IOM (2019, p. 137), migration is defined as “the movement of persons away from their place of usual residence, either across an international border or within a State.”. Considering this standard definition, migration is a phenomenon that may occur in numerous forms and scales. Migratory movements are driven by a diverse set of elements, defined as drivers of migration, which are a “complex set of interlinking factors that influence an individual, family or population group’s decisions relating to migration, including displacement.” (IOM, 2019, p. 58).

Betts (2011) and Castles, de Haas and Miller (2020) contribute by defining that migration can be either a voluntary or an involuntary (or forced) movement. The first term is linked to decisions that result in migration when they are influenced by social and economic conditions related, for example, to the work environment and professional opportunities. The other is characterised by a decision contrary to the will of the migrant, that is, a decision is made to migrate because it is necessary, as in the case of wars and environmental crises or catastrophes.

According to Betts (2011), however, defining migration in terms of voluntariness is controversial, since migration is a multifactorial phenomenon that is not defined solely by a social, economic, cultural, or political context. In addition, he argues that the components generally linked to voluntary migration, such as work environment and professional opportunities, are also indefinite: evidence shows that many migrants have difficulties in accessing local labour markets and, when they do, they have a

limitation, with an unequal distribution of benefits, exacerbating the negative effects of migration.

Migration is also contextualised in geographical terms, encompassing internal and international migration. Internal migration is “the movement of people within a State involving the establishment of a new temporary or permanent residence.” (IOM, 2019, p. 108), while international migration regards “the movement of persons away from their place of usual residence and across an international border to a country of which they are not nationals.” (IOM, 2019, p. 113). The person who migrates, the migrant, is also defined using these terms: internal migrant and international migrant.

In the context of forced migration, internal migrants are defined as internally displaced persons:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border. (IOM, 2019, p. 109)

While international forced migrants are defined as refugees³². The Glossary on Migration presents three acceptable significs — UNHCR mandate, *prima facie*, and 1951 Convention — related to the historical progress of the refugee law framework, further discussed on the following pages:

Refugee (mandate)

A person who qualifies for the protection of the United Nations provided by the High Commissioner for Refugees (UNHCR), in accordance with UNHCR’s Statute and, notably, subsequent General Assembly’s resolutions clarifying the scope of UNHCR’s competency, regardless of whether or not he or she is in a country that is a party to the 1951 Convention or the 1967 Protocol – or a relevant regional refugee instrument – or whether or not he or she has been

³² According to Betts (2011), the refugee category presents a concise and institutionalised international regime, since the rights guaranteed to people who fall under the statute are described and operationalised, unlike the legal reality of other migratory categories.

recognised by his or her host country as a refugee under either of these instruments.

Refugee (prima facie)

Persons recognised as refugees, by a State or the United Nations High Commissioner for Refugees, on the basis of objective criteria related to the circumstances in their country of origin, which justify a presumption that they meet the criteria of the applicable refugee definition.

Refugee (1951 Convention)

A person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (IOM, 2019, p. 170-171)

These are, therefore, the main concepts and definitions essential for understanding global migration governance. For the purposes of this thesis, the concept of migrant from this textual mention refers predominantly to international migrants, whether driven by voluntary or involuntary conditions, since the objective is to investigate how migration affects the preservation of cultural heritage among immigrant communities. Regardless of that, the analysis of migratory governance encompasses the broader scenario.

2. Migration Governance Framework

Using Betts and Kainz's (2017) framework, global migration governance is a process comprehensible through a historical outline, composed of four sequential stages: Stage I - Initial Migration Governance (1919-1989); Stage II - Taking Stock: encompassing the effects of globalisation (1994-2006); Stage III - The Age of Migration and Development (2007-2015); and, finally, Stage IV - The New Governance Prospect,

starting in 2016, with the New York Declaration, the Global Compact for Safe, Orderly and Regular Migration (GCM), and the Global Compact on Refugees (GCR).

2.1 Stage I - Initial Migration Governance (1919-1989)

In Stage I - Initial Migration Governance, the multilateral framework that governs migratory processes was consolidated, as previously discussed, from the International Bill of Human Rights, with related citations in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and also in the International Covenant on Economic, Social and Cultural Rights. It is clear, once again, that the United Nations³³ represents a fundamental political space for multilateral diplomacy and representation of States, as explained by Karns and Mingst (2010), justifying the reasons why such an organisation is responsible for the institutionalisation of human rights.

In the context of migration, human rights are relevant as political artefacts, being validated and applied socially (Hunt, 2009). According to Corrêa and Antunes (2005), the application of human rights through international law represents the recognition of the existence of an apparatus that acts individually on human beings, conceiving them as subjects of social rights. Thus, such internationalised rights affect people, that is, they aim to guarantee protection to the individual, regardless of their conditions.

Delving into human rights related to migration, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights approaches are generic but important provisions on the issue are addressed. Fundamentally, it is also considered that the UDHR establishes that “everyone has the right to a nationality” (UNGA, 1948, p. 74), which indicates, according to Comparato (2015), that human dignity and human rights do not depend on a nationality to be applied, promoted, protected, and fulfilled.

The ICCPR establishes, in Article 2, that States must protect and respect all individuals, and should not discriminate against anyone because of any distinction, including “race, colour, sex, language, religion, political or other opinion, national or

³³ Several international organisations are part of the scope of the UN, including the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and the International Labour Organization (ILO).

social origin, property, birth or other status.” (UNGA, 1966, p. 53). Moreover, under the same provision, it states that each State Party has positive legal obligations, being necessary to adopt measures to contemplate all the rights enshrined in the Covenant, including this one.

Moreover, it presents articles addressing inhuman or degrading treatment or punishment; slavery and the slave trade; forced or compulsory labour; arbitrary arrest or detention; freedom of thought, conscience, and religion; and others, which are also linked to situations that many migrants have to deal with. Article 12 enshrines that everyone lawful within a territory has the right of movement and the freedom to choose a place of residence, and shall be free to leave a country, and not be deprived of entering in the country of origin (UNGA, 1966).

Specifically about foreigners, Article 13 defends that:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority. (UNGA, 1966, p. 54)

Article 14, related to equal rights before courts and tribunals, indicates that an individual who cannot understand or speak the language used in these situations should be guaranteed assistance from an interpreter. In addition, Article 20 enshrines that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” (UNGA, 1966, p. 55), while Article 24 applies the principle of non-discrimination regarding children. It is evident that the provisions provide both positive and negative obligations to the States regarding the application of the ICCPR.

Finally, it is important to notice that Article 27 focuses on minorities, social groups in which migrants can be placed:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with

the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. (UNGA, 1966, p. 56)

The ICESCR, like the ICCPR, presents a provision related to non-discrimination, Article 2, with a particular point referring to the possibilities of implementing cultural rights by developing countries to non-nationals (UNGA, 1966). Article 13 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, and further the activities of the United Nations for the maintenance of peace.” (UNGA, 1966, p. 51). Furthermore, the Covenant includes articles focusing on the right to work; social security benefits; adequate standards of living; and physical and mental health.

The International Covenants, despite presenting extensive commitments related to human mobility and migrants, are not the first UN documents to address it. The United Nations Convention Relating to the Status of Refugees — also named the Refugee Convention, adopted in 1951 — and the supplementary 1967 Protocol, are the reference point of protection for this specific migration category, encompassing the recognised definition for refugees, guiding the United Nations High Commissioner for Refugees, and institutionalising principles of international law for the particular context of refuge (UNHCR, 2010).

The Refugee Convention guarantees that international protection is a right: everyone has the right to seek and obtain refuge, however, the concession by national States is not guaranteed, since the decision depends on domestic processes and legislation³⁴ (Carvalho, 2019). There is also a double limitation³⁵ in the definition of the Convention, restricting its applicability to specific temporal and geographic contexts (UNHCR, 2010). The aforementioned limitation was only revoked with the approval of the Protocol Relating to the Status of Refugees, in 1966, in force from the following year.

The notion that migration should be governed or managed internationally only emerged during the early 1990s, aiming to create an international framework for human

³⁴ According to Jubilut and Apolinário (2010), due to the amplitude of the refugee thematic, several States expand international law by creating and promulgating national laws to regulate the situation of these migrants in their territories.

³⁵ See United Nations General Assembly (2010).

mobility (Crépeau & Atak, 2016). Especially influenced by the contextual impact of globalisation — with its incentives for the movement of people, even though opportunities do not keep up with the level of such stimulus —, migration has become a widely covered topic, as explained by Vasconcelos and Botega (2015). Migratory movements, despite this, did not have, in the context, legal support and international mechanisms for their responsible and safe materialisation.

According to Lazarou (2014), a series of events arising from the globalisation process, such as epidemics and terrorist threats, have accentuated the importance of the multilateral ambit in influencing and establishing international politics. In this sense, Betts (2011) reiterates that global migration governance does not only involve multilateral institutions, rules, and norms at the level of international organisations, such as the United Nations, but also that multiple initiatives, whether bilateral or regional, emerge in order to manage migration and fulfil the political and legal provisions, and social necessities.

Still influenced by Stage I - Initial Migration Governance, another international instrument that regulates human mobility, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)³⁶, was adopted in 1990, and into force in 2003 (UNGA, 1990). This document specifically focuses on migrations designated as voluntary. According to Castles, de Haas and Miller (2020), the main purpose of the Convention is to reduce the vulnerabilities presented to migrant workers and their families.

The Convention must be applied following the principle of non-discrimination³⁷, to all the people under the categories of migrant workers and relatives (UNGA, 1990). Article 2 explores the definitions for the terms:

For the purposes of the present Convention:

³⁶ The ICRMW confirms the perception of Ruggie (1993) on multilateralism in the context of globalisation, defending that a unique multilateral order was created and internationally accepted, especially when it relates to commercial and financial practices and areas. Jubilut and Apolinário (2010) point out that this convention is comprehensive, however, few States have adhered to its text.

³⁷ “Part II: Non-discrimination with Respect to Rights, Article 7, States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.” (UNGA, 1990, p. 4).

The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. (UNGA, 1990, p. 262)

While Article 4 presents a definition for members of the family:

For the purposes of the present Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognised as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned. (UNGA, 1990, p. 263)

In Part III: Human Rights of All Migrant Workers and Members of their Families, the ICRMW reaffirms the fundamental rights recognised in the Universal Declaration of Human Rights, and in the two Covenants, including the cultural rights of migrants. Particularly interesting is Article 17: "migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity." (UNGA, 1990, p. 264).

In addition, Article 31 says that States should encourage and ensure respect for the cultural identity of migrants and their families, not preventing them from maintaining links with the country of origin (UNGA, 1990). Complementing this statement, Article 34 poses an obligation to the individuals: migrant workers and the members of their families must respect the cultural identities and traditions of the inhabitants of the receiving State, and comply with local laws and regulations of the destination country, or eventual State of transit.

Betts and Kainz (2017) argue that this period of global migration governance prior to the 1990s is characterised as a substance without architecture, since the declarations and treaties are disconnected and scarce, despite the evident stimulus for the institutionalisation of the migration issue in international politics. In this context, Betts (2011) introduces that globalisation is the responsible element for shaping this

architecture, developing higher levels of acceptance of migration as a primordial topic for political multilateral dialogue.

Accordingly, globalisation establishes a new sociopolitical order in the international system, inaugurating Stage II - Taking Stock: encompassing the effects of globalisation (Betts, 2011; Kocher, 2011). According to Lazarou (2014), international relations and human rights have undergone a structural transformation following globalisation, expanding power structures and agents with the capacity to influence international policies, and remodelling multilateralism and its agendas. Globalisation is, therefore, a factor that complexifies international politics and international human rights law.

Global governance — rather, pieces of global governance to manage a wide variety of international issues and problems — is already now a reality with many different actors, including the UN, having authority, resources, and processes in place. Yet none of these other actors, be they regional security organisations, the G-20, NGOs, MNCs, even powerful states, can begin to replace the UN in its entirety. The real question for the UN is whether it will be a central or a marginal player in global governance in the twenty-first century. (Karns & Mingst, 2012, p. 290)

2.2 Stage II - Taking Stock: encompassing the effects of globalisation (1994-2006)

Papastergiadis (2000) argues that globalisation and migration can be understood as twin processes³⁸ due to the mutual influence between the two concepts. In addition, Hear and Sørensen (2003) defend that contemporary human mobility is interpreted as a manifestation of and a consequence of globalisation, being consolidated by its dynamic. This consolidation is a factor that supports and accentuates international migratory movements, consequently diversifying and complexifying migration trends and mobility (Betts, 2011).

Wenden (2016) argues that the period that corresponds to Stage II - Taking Stock is strictly conducted by a paradoxical condition: there is a process of expansion and diversification of migratory movements and, simultaneously, the regionalisation of

³⁸ According to Papastergiadis (2000, p. 3): “The twin processes of globalisation and migration have produced changes in the geopolitical landscape that have compelled social scientists to rethink their conceptual frameworks.”.

these movements, advancing the international framework on migration. This condition resulted in the permanence of migration governance as a substantial topic³⁹ in international relations. “The notion of ‘migration management’ was initiated in the early 1990s with the aim of achieving a new international framework on global mobility and migration.” (Crépeau & Atak, 2016).

In 1993, as Betts and Kains (2017) illustrate, the United Nations General Assembly convened an international conference to consider the conditions of specific migratory categories, resolution A/RES/48/113: Convening of a United Nations conference for the comprehensive consideration and review of the problems of refugees, returnees, displaced persons and migrants. Based on a comprehensive approach, the document aims to influence States to undertake reviews in order for the UN to provide recommendations on migration, also influencing the inclusion of human mobility as a theme linked to development (UNGA, 1993).

As stated by the United Nations (1995), the dialogue on migration as an internationally relevant topic occurs based on the collective understanding that migration is linked to notions of development. This recognition emphasises the principle of interdependence, and international cooperation as a means of expanding global and regional agendas. Thereby, the approach of international agents prioritised theories that classify locomotion, in this case, human, as an inherent element of development, particularly economic development⁴⁰ (Castles, de Haas, & Miller, 2020).

The growing importance of international migration as a contributor to the integration of the world economy has led to renewed interest — including analysis of institutional and policy reforms designed to ameliorate its impact — in source and destination countries, international organisations, and the research community. However, the renewed policy and research interest, until recently, was not matched by the available knowledge. (Özden & Schiff, 2007, p. xi)

³⁹ Dannreuther (2007) argues that, in this period, human mobility, especially international migration, underwent a process of securitisation. According to Baeninger (2016), the governability of international migrations supported in isolation by national legislation — mostly linked to traditional notions of sovereignty — tends to securitise the migrant person and, therefore, perpetuates a perspective that conceives them as a threat to the national identity.

⁴⁰ Mello (1995) defends, however, that the interconnection with development, in this period, was fragile, since the concept, even if articulated, is scarce.

In addition, the period favours the occurrence of two distinct logics regarding human mobility — especially international migration — and development: the first comprises the creation of migration policies from the State's perspective and, therefore, from a perspective that overrides the sovereignty of this entity; while the other is largely influenced by the stigmatisation of the migrant (Schiller & Faist, 2010). Consequently, it gives impetus to the stage of international migration as part of development dialogues, distanced from the previous stage sustained by human rights (Betts & Kainz, 2017).

In this context, it is noted that United Nations resolutions tend to highlight not only States as agents influencing the agenda but also other agents⁴¹ that currently exist globally, such as international and regional organisations (UNGA, 1994). Multilateralism is deepened in the context of globalisation, as stated by Wight (2006), through the diversification of agents and power structures, forming subsystems and decision centres that compete for agendas based on the aforementioned principle of interdependence.

Under the influence of multilateralism, the United Nations General Assembly convened, in 2003, the High-Level Dialogue on International Migration and Development (HLD), scheduling the First HLD for 2006. According to the General Assembly, the objectives outlined for the international forum within the scope of the organisation involved⁴² the definition of policies relating to international migration (Faria, 2015). The resolution A/RES/58/208 defines the purpose and the fundamental characteristics of the multilateral dialogue:

- (a) The purpose of the high-level dialogue is to discuss the multidimensional aspects of international migration and development in order to identify

⁴¹ Lazarou (2014) defines that collective actions have become the norm to offer effective responses to issues and problems that go beyond the geographic barriers of a State.

⁴² Also in 2003, the General Assembly inaugurated the Global Commission on International Migration, an international panel addressing migration from comprehensive and specialised perspectives (IOM, n.d.). The Global Commission's mandate had the objective of offering viable and coherent responses to the issue of migration. The GCIM maintained its operation from 2003 to 2006, a brief period justified by divergences regarding the understanding of migration as an integral part of development (Faria, 2015). The discrepancies between developed and developing countries were highlighted: the former reiterated the economic principles of development, while the latter called for a broad understanding of development, also including human rights, such as the cultural rights of migrants. The High Level Dialogue aimed to expand the perspective on the impacts of migration in relation to the theme of development, in order to cooperate with its institutionalisation and legitimation in multilateral structures, and to contribute to studies on its multidimensionality (UNGA, 2018b). Finally, it sought to link itself to the United Nations development agenda by emphasising the possible contributions to achieving each Millennium Development Goal (MDG), as argues Faria (2015).

appropriate ways and means to maximise its development benefits and minimise its negative impacts;

(b) The high-level dialogue should have a strong focus on policy issues, including the challenge of achieving the internationally agreed development goals;

(c) Round tables and informal exchanges are useful for dialogue;

(d) The outcome of the high-level dialogue will be a Chairperson's summary, which will be widely distributed to Member States, observers, United Nations agencies and other appropriate organisations; (UNGA, 2003, p. 4)

Complementing, the resolution A/RES/60/227, of 2005, formalise the forum's scope of action, defining that it should also address the relationship between migration and human rights:

(a) Round table 1 will focus on the effects of international migration on economic and social development;

(b) Round table 2 will focus on measures to ensure respect for and protection of the human rights of all migrants, and to prevent and combat smuggling of migrants and trafficking in persons;

(c) Round table 3 will focus on the multidimensional aspects of international migration and development, including remittances;

(d) Round table 4 will focus on promoting the building of partnerships and capacity-building and the sharing of best practices at all levels, including the bilateral and regional levels, for the benefit of countries and migrants alike; (UNGA, 2005, p. 2)

In addition to the resolutions establishing and deepening the First HLD, the UNGA approved in 2006 the resolution A/RES/61/208⁴³, supporting the Belgian

⁴³ In addition, the resolution also considered the Global Migration Group (GMG), "an inter-agency group established by the United Nations Secretary-General, bringing together the heads of relevant UN agencies working on migration. The GMG sought to promote the wider application of relevant international and regional instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to the issue of international migration. In 2018, the

initiative to promote an autonomous initiative, the Global Forum on Migration and Development (GFMD)⁴⁴, in operation since 2007 (IOM, 2024; UNGA, 2006). According to Faria (2015), the GFMD represented a maintenance of the status quo regarding global migration governance, as it transferred the dialogue to an informal arena, outside the UN system, and mostly led by developed countries, particularly European ones.

While thematically linking migration issues with development issues increased the acceptance among states to discuss migration in a broader and more formal setting than in the framework of bilateral agreements or regional consultation processes, such discussions remained foremost between states' Ministries of Interior. At the time, the focus remained predominantly on migration and less on development. However, this set the stage for gradually including the development community into discussions on migration, and for instigating the shift to connect migration and development issues of international cooperation leading up to the Agenda 2030. (Betts & Kainz, 2017, p. 5-6)

In summary, Stage II - Taking Stock is characterised by two trends: the first concerns the paradoxical process of globalisation and regionalisation of migration — including legal instruments and mechanisms — while the other refers to the tensions between developed countries, and countries in development, with regard to the scope of UN mandate on migration (Betts & Kainz, 2017). All the initiatives presented constitute the institutional progress in relation to migration at the international level, emphasising the importance of multilateralism for resolving transnational issue areas.

2.3 Stage III - The Age of Migration and Development (2007-2015)

These characteristics demarcated the guidelines that oriented the dialogues and debates of Stage III - The Age of Migration and Development (Farias, 2015). Particularly, the First HLD influenced the proliferation of national, regional, and

Secretary-General replaced the GMG with a new inter-agency coordination mechanism, the United Nations Network on Migration.” (OHCHR, n.d., Introduction section).

⁴⁴ Initially, the GFMD was not endorsed by groups of developing countries, mainly because their representatives did not accept this forum as the body for continuous dialogue on migration issues, since it is not linked to the UN, which results in multilateral commitments without substance and enforceability (Faria, 2015). Converging, Betts and Kainz (2017) explain that GFMD results in recommendations, but avoids the formal creation of binding agreements or standards.

multilateral institutions and mechanisms, whose focal approach was international human mobility, in order to create political spaces for consensus on the topic, even though they were outside the structure of the United Nations (Betts & Kainz, 2017).

Stage III - The Age of Migration and Development is composed of two fundamental debates that illustrate international perspectives on migration: the first concerns migration security, mainly irregular migration management and transnational border management; while the other concerns migration as a development factor, especially with regard to voluntary migratory movements — of economic nature (Betts, 2011). The latter is guided by the principle of “triple wins” — for migrant people, for countries that mostly produce migratory flows, and for those who receive them (Woods et al., 2013).

Of particular note during this period was the approval by the UN General Assembly (2008) of resolution A/RES/63/225, calling for the Second HLD for the year 2013, and correlating human mobility with a broader perception of development not restricted to the economic plane: migration was considered a factor for the implementation of the United Nations Millennium Development Goals (MDGs)⁴⁵. The continuation of the forum reinforces, according to Crépeau and Atak (2016), the period of proliferation of institutions, mechanisms, and legal instruments that focus on human mobility.

Faria (2015) demonstrates that the Second HLD again presented a debate between developed countries and developing countries, with the latter wanting to prioritise the forum as an official and permanent space for dialogue on migration, which was again denied. The conflicting dynamics raised important international questions about the role of the UN in global migration governance. Moreover, it resulted in the Making Migration Work: An Eight-point Agenda for Action, which establishes points of international consensus for the inclusion of migration in the international development agenda after 2015 (Faria, 2015; União Interparlamentar, 2018).

Accordingly, as established in the United Nations General Assembly (2013) Report of the Secretary-General (A/68/190), the eight points are: i. protect the human

⁴⁵ “The Millennium Project was commissioned by the United Nations Secretary-General in 2002 to develop a concrete action plan for the world to achieve the Millennium Development Goals and to reverse the grinding poverty, hunger and disease affecting billions of people.” (UN, n.d., UN Millennium Project section).

rights of all migrants; ii. reduce the costs of labour migration; iii. eliminate migrant exploitation, including human trafficking; iv. address the plight of stranded migrants; v. improve public perceptions of migrants; vi. integrate migration into the development agenda; vii. strengthen the migration evidence base; and viii. enhance migration partnerships and cooperation.

Concerning the human rights of migrants⁴⁶, the evidence shows that Stage III - The Age of Migration and Development realigns the migration agenda with the human rights agenda⁴⁷:

Member States should be encouraged to ratify and implement all relevant international instruments related to international migration, including the core international human rights instruments, relevant ILO conventions, the protocols against human trafficking and migrant smuggling and the Convention relating to the Status of Refugees. Alternatives to the administrative detention of migrants should be explored, while the detention of migrant children should be avoided. Countries should eliminate all discrimination against migrants with regard to working conditions and wages and with regard to fundamental economic, social and cultural rights. Migrant children should have equal access to education, and all migrants should have access to essential health services. (UNGA, 2013, p. 1)

Furthermore, it is relevant that this document presents a point about the integration of migrants⁴⁸, stating that:

⁴⁶ The rapprochement of agendas is also evident in the resolution 10/23: Independent expert in the field of cultural rights, of 2009, as declared in Part B. Participation, access and contribution to cultural life, without any discrimination, Point 5. Cultural rights of non-nationals, in particular migrant workers and members of their families: “As the number of migrant workers has grown steadily over the past decades, addressing the implementation of their cultural rights is an increasingly compelling issue. In various countries around the globe, debates are held on the rights and obligations of nonnationals, in particular migrant workers and members of their families. Such discussions are sometimes held in rather tense atmospheres, and involve issues relating to, inter alia, the integration or assimilation of non-nationals into the wider society, the principle of universality of human rights, and measures to be taken to respect or accommodate cultural diversity.” (Human Rights Council, 2009, p. 20).

⁴⁷ According to Faria (2015), migrations are also characterised as possible drivers of sustainable development, including a more positive approach to the phenomenon of migration, and including it in the human dimension of development.

⁴⁸ In the context of the Second HLD, the United Nations General Assembly (2014) demonstrated concern about the high number of children in migratory situation, often unaccompanied, and with various social and economic vulnerabilities. In relation to migrant and displaced children, Triandafyllidou (2016) characterises that such vulnerabilities are, in transit or destination countries, contrasted with educational gaps, especially when associated with two factors: the first being precisely the socioeconomic condition

There is a need to combat discrimination, xenophobia and intolerance against migrants and their families by creating greater public awareness about the situations migrants experience and the contributions they make to countries of origin and destination. Such efforts could be promoted through a partnership of the private sector, labour unions, the media, educational institutions and migrants themselves, based on the latest available evidence and highlighting the rights and responsibilities of both migrants and non-migrants. (UNGA, 2013, p. 2)

Continuing the work developed in the High-Level Dialogues on International Migration and Development, the UNGA (2014) called for the Third HLD through resolution A/RES/69/229, for 2019. The Third HLD was directly impacted by institutional changes relating to operating precepts of multilateralism in the UN and, given its importance in politics, in international relations in general. This transformation occurred due to the adoption, in 2015, of the Addis Ababa Action Agenda, and the Transforming our World: the 2030 Agenda for Sustainable Development (UNGA, 2015).

Articulating these two development-oriented agendas within the scope of the United Nations derives from a situation composed of two main concepts, described by Karns and Mingst (2012): the first concerns the constant challenges to the uncritical implementation of liberal economic measures, which do not aim to reduce inequalities within and between countries; the other refers to the historical and institutional redefinition of development parameters in national and international agendas, especially from the inclusion of definitions regarding human development and environmental sustainability.

While the Addis Ababa Agenda seeks to financially structure and coordinate the necessary transformations for supporting and fulfilling sustainable development, the Transforming our World: the 2030 Agenda for Sustainable Development renovates and updates the Millennium Development Goals, setting new development indicators for

and the other being linguistic differences, a clear infringement of cultural and children's rights. Moreover, "human rights mechanism recommend that States should institute information campaigns in order to tackle discrimination which may prevent children from integrating fully in the school system. Such campaigns should be aimed both at public officials working on migration, especially at local level, as well as the general public." (United Nations, 2014, p. 93).

people, planet, and prosperity (UNGA, 2015). According to Piovesan (2014), the new agendas present a more ethical notion of development and globalisation, recognising structural inequalities, and prioritising inclusiveness for human rights.

In relation to human mobility, there is a specific recognition of their contribution to the consolidation and achievement of the Sustainable Development Goals (SDGs)⁴⁹ and objectives:

We recognise the positive contribution of migrants for inclusive growth and sustainable development. We also recognise that international migration is a multi-dimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses. We will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons. (UNGA, 2015, p. 12)

The document also emphasises the particular needs of migrants in relation to development policies, stating that there is a commitment to the management and execution of practices aimed at modifying unequal dynamics (UNGA, 2015). Moreover, the agendas value the integration of migrants in their documentation, recognising the positive effects of migration (Irvine, 2018; Solomon & Sheldon, 2018). This integration is more visible in the Sustainable Development Goals, as described by Betts and Kainz (2017):

One of the key points of contention was where migration should be integrated into the agenda. Ultimately, migrants were specifically included into four SDG goals among other groups, concerning the access to rights concerning the elimination of trafficking and violence against women (Goals 5 and 16), the provision of safe environments for migrant workers (Goal 8), and data collection on migratory status (Goal 17). Migration also found its way into Goal 10 ‘Reduce inequality within and among countries’ in the form of Goal

⁴⁹ “Engagement with United Nations-led global processes, including for the 2030 Agenda, takes place through national governments. In each country, governments are responsible for translating the Sustainable Development Goals (SDGs) into legislation and policies, and developing a plan of action to address them. Goal reporting should also be done at the national level, as follow-up and review will take place over a 15-year period at the High-Level Political Forum (HLPF).” (Irvine, 2018, p. 55).

10.c to reduce the cost of remittances and Goal 10.7 ‘Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned ‘and well-managed’ means in practice. (p. 9)

The adoption of the Addis Ababa Action Agenda, and the Transforming our World: the 2030 Agenda for Sustainable Development, represent the conclusion of Stage III - The Age of Migration and Development. The delimitation of the agendas highlights the international acceptance of migration as a discussion topic linked to development that should be managed in the multilateral ambit, which, according to Hear and Sørensen (2003), is a collective perception constructed from the 1990s onwards.

2.4 Stage IV - The New Governance Prospect

Although the Addis Ababa Action Agenda and the 2030 Agenda define that the objective of the United Nations is to achieve orderly, safe, regular and responsible migration, there is no definition for these components in the scope of the objectives, making them fragile. Irvine (2018) argues that, however, the political will indicates a precedent for intertwining global migration governance with the structures of the United Nations and, thus, creating the capacity to provide binding provisions based on multilateral cooperation on the topic outlined.

“Responding to the complexity of human mobility, States will need to develop a long-term strategic vision of what their mobility policies will look like a generation from now, with precise timelines and accountability benchmarks.” (Crépeau, 2018, p. 651). In addition, Crépeau and Atak (2016) highlight solidarity and responsibility-sharing between States as components that should guide global migration governance, raising effective commitments that transform the international system, and building new identities within it.

It is in this context, Stage IV - The New Governance Prospect is founded, with the proclamation, also by the UN General Assembly, in 2016, of the New York Declaration for Refugees and Migrants. The New York Declaration is a political document that considers responses and policies aimed at contemporary international migratory movements. The expansion of the migration agenda within the scope of the UN — particularly through a human rights perspective — supports the notion

developed by Laczko e Lönnback (2013) that migrations are multifaceted, transcending diverse arenas, such as the cultural and the social.

As Solomon and Sheldon (2018) point out, the main institutional characteristic ensured by the Declaration is the perspective shift of international relations agents in relation to migration issues: there is an indication that commitments should be supported by facilitation and preventive diplomacy, and not longer by prohibitive policies. To facilitate human mobility management, the UN also formalised its partnership with the International Organization for Migration (IOM) in 2016, being the organisation's first agency responsible for managing migration phenomena broadly (Betts, 2011).

Resuming the New York Declaration⁵⁰, the text reaffirms the principles of the 2030 Agenda for Sustainable Development regarding human mobility, especially by emphasising that the 2030 Agenda recognises the centrality of migrant people in achieving Sustainable Development Goals. Consequently, the Declaration elaborates on international commitments applicable individually or collectively to migrants and refugees (Paula & Alkmim, 2023).

Among the commitments highlighted by Betts and Kainz (2017) are: protecting the human rights and fundamental freedoms of migrants and refugees; guaranteeing access to the education system for children in migratory conditions; and improving practices and services aimed at humanitarian assistance. However, it is necessary to note that the New York Declaration⁵¹ focuses especially on large movements of people, and not on regular human mobility, corresponding to a document that does not aim to govern migration broadly:

Though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms.

⁵⁰ The adoption of the New York Declaration indicates, for Betts and Kainz (2017), an international consensus for prioritising multilateralism in the United Nations as the political arena for dialogues focused on migration governance.

⁵¹ “Commitments in the Declaration include to: protect the human rights of all refugees and migrants, regardless of status; ensure that all refugee and migrant children are receiving education within a few months of arrival; support those countries rescuing, receiving and hosting large numbers of refugees and migrants; work towards ending the practice of detaining children for the purposes of determining their migration status; condemn xenophobia against refugees and migrants and support a global campaign to counter it; strengthen the positive contributions made by migrants to economic and social development in their host countries; improve the delivery of humanitarian and development assistance to those countries most affected, including through innovative multilateral financial solutions, with the goal of closing all funding gaps (...)” (Betts & Kainz, 2017, p. 10-11).

They also face many common challenges and have similar vulnerabilities, including in the context of large movements. “Large movements” may be understood to reflect a number of considerations, including: the number of people arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement that is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another. “Large movements” may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes. (UNGA, 2016, p. 2)

Regarding the realignment and the inclusion of human rights in the new international migration agenda, two proposals derived from the New York Declaration are relevant: the Global Compact for Safe, Orderly and Regular Migration (GCM), and the Global Compact on Refugees (GCR). The two frameworks were adopted in 2018, after two years of consultations aimed at more comprehensive approaches, cooperative measures among participating countries, and responsibility-sharing⁵² (Crépeau, 2018).

The Global Compact for Safe, Orderly and Regular Migration (GCM) presents collective commitments relating to international migration processes signed by States and supported by intergovernmental agencies and civil society organisations (UNGA, 2018b). It is framed in direct correspondence with the previously mentioned target 10.7 of the 2030 Agenda. The GCM is permeated by the principle of shared responsibilities and unity of purpose, and it also establishes that the objectives and policies influenced by the Compact must value win-win cooperation, a desired situation to maximise the benefits of international migration (Betts & Kainz, 2017).

The GCM outlines twenty-three objectives for safe, orderly and regular migration:

⁵² “Investment in facilitating mobility, and fostering the diversity that comes with it, requires a type of political leadership that is utterly lacking in current migration policy debates. Only a long-term vision and strategic planning will ensure that social integration policies are in place and that all institutions – including parliaments, executives, administrations, courts, tribunals, national human rights institutions, education and health care institutions, employers, unions, labour inspectorates, and the media – do their part in facilitating mobility while respecting the rights of all.” (Crépeau, 2018, p. 651).

Figure 1

Global Compact for Safe, Orderly and Regular Migration Objectives

1. Collect and utilise accurate and disaggregated data as a basis for evidence -based policies.
2. Minimise the adverse drivers and structural factors that compel people to leave their country of origin.
3. Provide accurate and timely information at all stages of migration.
4. Ensure that all migrants have proof of legal identity and adequate documentation.
5. Enhance availability and flexibility of pathways for regular migration.
6. Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work.
7. Address and reduce vulnerabilities in migration.
8. Save lives and establish coordinated international efforts on missing migrants.
9. Strengthen the transnational response to smuggling of migrants.
10. Prevent, combat and eradicate trafficking in persons in the context of international migration.
11. Manage borders in an integrated, secure and coordinated manner.
12. Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral.
13. Use migration detention only as a measure of last resort and work towards alternatives.
14. Enhance consular protection, assistance and cooperation throughout the migration cycle.
15. Provide access to basic services for migrants.
16. Empower migrants and societies to realise full inclusion and social cohesion.
17. Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration.
18. Invest in skills development and facilitate mutual recognition of skills, qualifications and competences.
19. Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries.
20. Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants.
21. Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration.
22. Establish mechanisms for the portability of social security entitlements and earned benefits.
23. Strengthen international cooperation and global partnerships for safe, orderly and regular migration.

Note. From: United Nations General Assembly (UNGA). (19 December 2018b). Global Compact for Safe, Orderly and Regular Migration. A/RES/73/195. <https://undocs.org/A/RES/73/195>

Particularly interesting for the purposes of this thesis is Objective 16: Empower migrants and societies to realise full inclusion and social cohesion. The section outlines commitments regarding the social and cultural rights of migrants, with a set of specific actions to fulfil the objective, with particular attention to integration:

(a) Promote mutual respect for the cultures, traditions and customs of communities of destination and of migrants by exchanging and implementing best practices on integration policies, programmes and activities, including on ways to promote acceptance of diversity and facilitate social cohesion and inclusion.

(f) Establish community centres or programmes at the local level to facilitate migrant participation in the receiving society by involving migrants, community members, diaspora organisations, migrant associations and local authorities in intercultural dialogue, sharing of stories, mentorship programmes and development of business ties that improve integration outcomes and foster mutual respect. (UNGA, 2018b, p. 25)

According to Solomon and Sheldon (2018), it is crucial, in this context, to understand not only the commitments signed internationally but also how they will be fulfilled and which practices will guarantee their implementation and effectiveness for safe, orderly and regular migrations. In contemporary international relations, for Crépeau (2018), international agents, especially States, recognise that processes of facilitating global mobility and, consequently, international migration, are inevitable and that they must then articulate their policies in order to foster expanded governance at the multilateral level, given its potential for development.

Addressing now the Global Compact on Refugees (GCR), the initiative is coordinated by the United Nations High Commissioner for Refugees (UNHCR) and determines that the agency is responsible for the Comprehensive Refugee Response Framework (CRRF) and should promote the inclusion of refugees. The GCR⁵³ establishes four interdependent objectives for guidance: i. alleviate pressures on

⁵³ Moreover, the Global Compact on refugees organises the Global Refugee Forum every four years.

countries that receive and host refugees; ii. promote self-resilience for refugees; iii. expand access to resettlement practices in third countries and iv. support conditions for the voluntary return of refugees to their country of origin (UNHCR, 2018).

At the heart of the CRRF and the GCR is the idea that refugees should be included in the communities from the very beginning. When refugees gain access to education and labour markets, they can build their skills and become self-reliant, contributing to local economies and fuelling the development of the communities hosting them. Allowing refugees to benefit from national services and integrating them into national development plans is essential for both refugees and the communities hosting them, and is consistent with the pledge to “leave no one behind” in the 2030 Agenda for Sustainable Development. (UNHCR, 2024b, Why inclusion is key section)

The document expresses the political will of international agents, especially States, to develop international cooperation practices at a broad level, supporting people in refugee conditions, even though commitments are not binding (UN, 2024a). Furthermore, the principle of shared responsibilities is emphasised, delimiting the insufficiencies of isolated national dynamics and policies with regard to measures to protect migrants and promote their rights and freedoms in countries that receive them (UNHCR, 2018).

“After a period of institutional proliferation and fragmentation in global migration governance, the launch of the Global Compacts offers a means to better anchor migration within the UN system.” (Betts & Kainz, 2017, p. 11). The explanation for this collective tendency is composed of two components, as described in the chapter: primarily, the confidence-building process in the previous stages of global migration governance, fundamental to creating a multilateral learning process; ultimately, the political salience acquired by migration — facilitated through the Addis Ababa Action Agenda and the Transforming our World: the 2030 Agenda for Sustainable Development.

3. Summary

Global migration governance is a concept that illustrates the fragmented repository of multilateral frameworks developed to regulate human mobility through the institutionalisation of rights and obligations in the international context. Historically, the notion of migration governance emerges from its link to development policies, especially with regard to international migration, resulting in its political salience and, additionally, in the regulation of migration in international law, including international human rights law.

Even though the notion of global migration governance is fragmented, international institutions, whether multilateral or regional, have shared definitions, parameters, and mechanisms to achieve protection and management objectives. Regarding shared definitions, international law actors develop and support standard definitions for categories of migration, for example, by establishing that migrations can be either voluntary or forced, or internal or international. The standards facilitate the categorisation of the migrant but are not exempt from criticism or alternative formulations, as is the case with the controversial definition between voluntary and forced movement, given the complexity involved in the decision to migrate.

The migration governance framework is comprehended through its historical development, composed of four stages: Stage I - Initial Migration Governance (1919-1989) Stage II - Taking Stock: encompassing the effects of globalisation (1994-2006); Stage III - The Age of Migration and Development (2007-2015); and, Stage IV - The New Governance Prospect (2016-). Each stage is influenced by geopolitical conditions and international agreements, reflecting the international politics of its times.

Stage I is associated with the emergence of migration governance within the scope of the United Nations, mainly considering the provisions developed from the International Bill of Human Rights. In this context, international documents value the protection of migrant people, listing several rights that, according to international law, should be guaranteed to them, such as the protection of minorities so that they have the freedom to express, individually or collectively, their culture, religious practices and their language.

Stage II is substantially impacted by the dynamism of globalisation, understood as a twin process of international migration, given the increase in human mobility in the period. Globalisation, in addition, generated a process of regionalization of migration, that is, the flow of people from a given region to the same region increased. The complexification of human mobility in this context also generated disagreements in the political sphere, dividing countries in decision-making arenas regarding the establishment of a migration agenda within the scope of the UN.

Stage III associates migration with the notion of human development, having it as a component that facilitates and sustains sustainable development. In this scenario, multilateral discussion forums on human mobility are multiplying, as is the case of the continuous High-Level Dialogue on International Migration and Development (HLD) and the Global Forum on Migration and Development (GFMD). The shift in international commitment is evidenced by the adoption of two development agendas: the Addis Ababa Action Agenda (2015), and the Transforming our World: the 2030 Agenda for Sustainable Development (2015).

Stage IV is characterised by the implementation of development agendas in the context of migration, in particular international migratory movements, as is the case with the approval of the New York Declaration for Refugees and Migrants. Based on facilitation and preventive diplomacy actions, the global migration governance indicates two new compacts for migrants and refugees, taking them as the focus of action and resuming the human rights agenda in the migration agenda: the Global Compact for Safe, Orderly and Regular Migration (GCM), and the Global Compact on Refugees (GCR).

Chapter III – Cultural Heritage: Protection and Legal Framework

Cultural heritage — incorporating the legacy of physical artefacts and intangible characteristics of cultural significance — is a complexly defined concept in international relations. Traditionally, cultural heritage is framed considering two fundamental research perspectives: the first concerns the parameters of the State, while the other relates to bodies with institutional capacity, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) (Desille & Nikielska-Sekuła, 2024). In both cases, heritage practitioners are prioritised over heritage users.

The conceptualisation of cultural heritage as a legal instrument derives from national constructions, within the scope of domestic law, and international contributions, involving the influences of international law (Jagielska–Burduk, 2022). Within the ambit of the United Nations, including international declarations and commitments on the topic, cultural heritage encompasses tangible and intangible⁵⁴ heritage containing a myriad of social values with cultural significance (UNESCO Institute for Statistics, 2009).

Cultural heritage includes artefacts, monuments, a group of buildings and sites, museums that have a diversity of values including symbolic, historic, artistic, aesthetic, ethnological or anthropological, scientific and social significance. It includes tangible heritage (movable, immobile and underwater), intangible cultural heritage (ICH) embedded into cultural, and natural heritage artefacts, sites or monuments. The definition excludes ICH related to other cultural domains such as festivals, celebration etc. It covers industrial heritage and cave paintings. (UNESCO Institute for Statistics, 2009, Glossary section)

The concept emerges from a continuous historical construction on identities, collective cultural representations, and symbolisms associated with groups, developing the notion of indispensability as a human cultural phenomenon: “the concept of cultural and natural heritage is based on historically changing value systems.” (Central European University, n.d.). In this context, the conception of cultural diversity is

⁵⁴ “Civil law distinguishes material property from intangible property. This makes it possible to define what material property is and how it differs from intangible property. Both may be the object of a civil law relationship, but only material objects can be classified as things.” (Jagielska–Burduk, 2022, p. 18).

recognised as the common cultural heritage of humanity, valuing the diverse cultural value systems (UNESCO, 2001).

1. International Bill of Human Rights

In international human rights law, particularly considering the International Bill of Human Rights — the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights — there is no mention of cultural heritage as a human right (UNGA, 1948; UNGA, 1966). However, as stated by Saul, Kinley and Mowbray (2014), the United Nations clarified that Article 15 of the ICESCR should be interpreted as a human rights reinforcing a positive obligation regarding the protection of cultural heritage.

Cultural heritage operates as a repository of identity and collective identification and representation, providing connection, interdependence, and resilience for individuals, social groups, and communities (UNESCO, 2022). Considering the individual and collective characteristics of cultural heritage and the direct relationship with symbolic social values, it is predictable that individuals, groups, and communities present an interest in participating in the process of identification, protection, presentation, conservation⁵⁵, and transmission of cultural and natural heritage CETIM (2013).

2. United Nations Approaches to Cultural Heritage

In relation to international developments, mainly regarding frameworks related to human rights within the scope of the UN, and, in particular, UNESCO, the mechanisms are diverse and encompass a perspective of cultural heritage as an essential part of human rights (Saul, Kinley & Mowbray, 2014). In addition, cultural heritage is an essential facet in the conception of the cultural landscape, as the concept presents a comprehensive perspective on the interactions between the natural space and cultural groups as an agent (Sauer, 1925, as cited in Sodano, 2017).

⁵⁵ According to the UNESCO Institute for Statistics (2009), conservation of cultural heritage “refers to the measures taken to extend the life of cultural heritage while strengthening transmission of its significant heritage messages and values. In the domain of cultural property, the aim of conservation is to maintain the physical and cultural characteristics of the object to ensure that its value is not diminished and that it will outlive our limited time span.” (Glossary section).

Considering the centrality of cultural heritage for the cultural development of individuals and communities, and for the fulfilment of cultural rights, international initiatives are fundamental in establishing shared standards, relevant approaches, and practices for the protection of both tangible and intangible cultural heritage. As considered by Jagielska–Burduk (2022, p. 9), “cultural heritage, whether material or intangible, always has a certain inherent intangible value that makes it worthy of being preserved.”

As cited in Article 1 of the Declaration of the Principles of International Cultural Cooperation, in 1966, mentioned previously in Chapter I, all cultures are considered to belong to the collective of humanity (UNESCO, 1966). In addition, the document, as stated in Article 3, is responsible for supporting international cooperation in areas related to cultural rights and cultural heritage, namely, education, science and culture (Bourgi, Colin & Weiss, 1987). From this period onwards, UNESCO expanded its activities in the field of cultural rights.

UNESCO (1970) determines, in the context of this declaration, that cultural integration “is not only a factor but also is an effect of objective social processes.” (p. 43). Accordingly, it has three main interconnected aspects: i. among nations and nationalities within the territories of a State; ii. among the peoples of different countries; and iii. shared efforts of all peoples and cultures, framing the concept of cultural diversity as the common heritage of humanity.

The first United Nations Educational, Scientific and Cultural Organization document relevant⁵⁶ in the context of the analysis objectives of this thesis — provisions relating to cultural rights, in general, and cultural rights, in specific — is the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage or the World Heritage Convention (WRC). The WRC, adopted in 1972 and into force in 1975, includes a consolidated framework⁵⁷ for heritage preservation in the context of cultural

⁵⁶ Previous to this convention, some instruments at the United Nations level were approved: the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention); the 1956 Recommendations on International Principles Applicable to Archaeological Excavations (The New Delhi Recommendations); the 1962 Recommendation concerning the Safeguarding of the Beauty and Character of Landscapes and Sites; the 1968 Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works; and the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, 2024).

⁵⁷ In the context of this framework, UNESCO approved the 1976 Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas, and the 1989 Recommendation on the

and natural landscapes, determining an intrinsic relation between the cultural and natural elements (Sodano, 2017).

In Article 1, the WRC defines cultural heritage:

Monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

Groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

Sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view. (UNESCO, 1972, p. 2)

While Article 2 describes the definition of natural heritage:

Natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

Geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

Natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty. (UNESCO, 1972, p. 2)

According to Donders (2012), the World Heritage Convention focuses on protecting cultural and natural heritage through a generational perspective, however, the document does not relate cultural heritage to human rights and fundamental freedoms.

Safeguarding of Traditional Culture and Folklore, underlying, respectively, the necessity to safeguard historic areas, and folklore (UNESCO, 1976; UNESCO, 1989).

The Europe-Third World Centre (CETIM) defends that, although the instrument does not present a direct connection between the two concepts, the possibility of interpreting cultural heritage in the context of human rights and, more specifically, of cultural rights, is extensive, especially considering the effect that communities may have on cultural preservation.

The WRC develops an international model of cooperation and international assistance focused on cultural heritage preservation, including private funding for the initiatives, the Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value or the World Heritage Fund, established in 1977 under Article 15 of the convention (Jagielska–Burduk, 2022; UNESCO, 2024). Another point of interest is described in Article 27, relating to educational obligations on the part of States in order to inform and raise awareness in communities about cultural and natural heritage (UNESCO, 1972).

Francioni & Vrdoljak (2020) mention that the development of cultural heritage at an international level presents an explicit mention of the international community as a protective agent of cultural and natural heritage. Moreover, the WHC incorporates the principle of common heritage of mankind, stipulating legal obligations for States, a principle that influenced the texts of future declarations and conventions on the subject, and covering “both tangible and intangible assets, such as the manifestations and expressions of human ingenuity, art and cultural traditions, which can be realised through forms of expression other than those of a physical or material nature (...)” (Pustorino, 2023, p. 221).

Finally, the World Heritage Convention, within the scope of preservation of cultural and natural landscapes, designates a World Heritage List, including sites with "outstanding universal values" accepted through diverse criteria described in the Operational Guidelines for the Implementation of the World Heritage Convention (UNESCO, 2024). In 2024, the UNESCO World Heritage List includes 1199 properties: 933 cultural, 227 natural, and 39 mixed nature. Furthermore, of the 1199 properties, 48 are transnational and 56 are in danger (UNESCO, 2024).

Although the notion of cultural heritage transcends civil law regulation and property rights, it must be taken into account when building a coherent cultural

heritage protection system. It seems that in national legislation, we can observe an increased interest in leveraging civil law or private law to strengthen the existing cultural heritage protection framework. (Jagielska–Burduk, 2022, p. 3)

In 1992, UNESCO launched the Memory of the World (MoW) Programme⁵⁸ recognising the importance of safeguarding archives and documentary heritage, and understanding them as an intrinsic part of the scientific, intellectual, and cultural representations of humanity (UNESCO, 2023). In this context, UNESCO resumes the interactions foreseen in cultural landscapes, by incorporating meanings, values, identities and, mainly, memories, forming a cultural social space (Sodano, 2017). Memory is framed, therefore, as a constituent part of rights relating to cultural heritage, underlying cultural exchange and diversity (Bruno et al., 2021).

As stated by Sandis (2014), the concept of cultural heritage is substantially changed when this concept of collective memory is included, effectively with a public value related to it. In the international context, considering memory as a transversal concept can facilitate social inclusiveness and cultural integration, “memory and transnational heritage can foster a collective history and sense of belonging across a wide region in ways that go beyond ethnicity or nationality.” (Desille & Nikielska-Sekuła, 2024, p. 3).

Aiming to expand the interconnection between cultural rights and cultural heritage, UNESCO proclaimed⁵⁹, in 2001, the UNESCO Universal Declaration on Cultural Diversity. As previously addressed in Chapter I, Article 1 establishes cultural diversity as a common cultural heritage of humanity, in line with other international human rights instruments (UNESCO, 2001). In addition, Section Cultural Diversity and Creativity, Article 7, defines cultural heritage as the wellspring of creativity, stating that it should “be preserved, enhanced and handed on to future generations as a record of human experience and aspirations, so as to foster creativity in all its diversity and to inspire genuine dialogue among cultures.” (UNESCO, 2001, p. 63).

⁵⁸ In 2015, UNESCO approved the Recommendation Concerning the Preservation of, and Access to, Documentary Heritage Including in Digital Form, the main normative instrument on the topic, reassuring the MoW Programme in the world (UNESCO, 2023). In 2024, the international repository totals 496 inscriptions relating to community memories and historical facts.

⁵⁹ It is noted that, in 2001, UNESCO also approved the Convention on the Protection of the Underwater Cultural Heritage, which entered into force in 2009. For the purposes of the thesis, this document is not further discussed.

According to Desille and Nikielska-Sekuła (2024), framing heritage from the perspective of multiculturalism or cultural diversity puts pressure on States, so that domestic institutions, as well as international ones, understand the transformative nature of culture and, consequently, of heritage. “Thus there is acknowledgement here that cultural rights are a fundamental expression of human rights. But the notion of cultural rights as something that can be included in a nation’s bill of rights or similar, has only recently received broader recognition.” (Caust, 2019, p. 22).

Annex II - Main lines of an action plan for the implementation of the UNESCO Universal Declaration on Cultural Diversity provides a relevant safeguard in the context of minorities and cultural heritage, defending linguistic heritages (UNESCO, 2001). In summary, another relevant factor in the Universal Declaration on Cultural Diversity is the fact that it encourages the formulation of policies and strategies for the enhancement of heritage preservation, particularly intangible heritage, an evident change in approach to cultural manifestations.

It is no coincidence that this changing emphasis is likewise propelled by the changing membership of the United Nations and UNESCO. It reflects the movement of numerical dominance away from Western countries — where cultural manifestations are often conceptualised in domestic law in terms of property law — to States in Africa, Asia, and the Global South where it is viewed in less transactional terms, with an emphasis on custodianship in communal and intergenerational terms. It also reflects the influence of other areas of international law, including human rights law (...). (Francioni & Vrdoljak, 2020, p. 4)

As Jagielska–Burduk (2022) argues, transformations in terms of definitions and approaches accompany the inevitable movement of cultures: cultural heritage accompanies oscillations and progress in terms of culture, identity, and cultural rights. According to the author, this is a positive characteristic because the elasticity and lack of universal definition permit cultural heritage to accompany new cultural developments and, consequently, to include new formulations to protect the outputs of these developments.

The United Nations Educational, Scientific and Cultural Organization decided for the adoption, in 2001, of the Decision 26 COM 9: Budapest Declaration On World Heritage. Its relevance occurs in the context of the World Heritage Convention, determining cooperation initiatives in the field of heritage preservation, consequently complementing the WHC with the Four Cs proposal: credibility, conservation, capacity-building, and communication (UNESCO, 2002).

We, the World Heritage Committee, will cooperate and seek the assistance of all partners for the support of World Heritage. For this purpose, we invite all interested parties to co-operate and to promote the following objectives:

- (a) strengthen the Credibility of the World Heritage List, as a representative and geographically balanced testimony of cultural and natural properties of outstanding universal value;
- (b) ensure the effective Conservation of World Heritage properties;
- (c) promote the development of effective Capacity-building measures, including assistance for preparing the nomination of properties to the World Heritage List, for the understanding and implementation of the World Heritage Convention and related instruments;
- (d) increase public awareness, involvement and support for World Heritage through Communication. (UNESCO, 2002, p. 7)

Continuing the trend on the agenda, the Convention for the Safeguarding of the Intangible Cultural Heritage — adopted in 2003⁶⁰ and into force in 2006 — addresses cultural practices as a concept that encompasses the notion of culture as a non-permanent human characteristic but in development and transformation. Its purpose, as stated in Article 1, is also to raise awareness at the local, national, and international levels to the cultural rights of individuals, groups and communities in the context of cultural heritage, particularly intangible heritage (UNESCO, 2003).

⁶⁰ In 2003, UNESCO also adopted the Declaration Concerning the Intentional Destruction of Cultural Heritage.

Article 2⁶¹ defines that:

The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills — as well as the instruments, objects, artefacts and cultural spaces associated therewith — that communities, groups and, in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. (UNESCO, 2003, p. 2)

The Convention for the Safeguarding of the Intangible Cultural Heritage emphasises the central role of communities⁶² in cultural heritage preservation, promoting a change in the approach, from the notion of human cultural heritage to the cultural heritage of communities, groups, and individuals (Bruno et al., 2021). The active participation of communities is highlighted throughout the text of the convention, illustrating the shift in international treatment of cultural rights⁶³. “This helped in overturning the traditionally western and Eurocentric vision of heritage.” (Sodano, 2017, p. 83).

Moreover, according to Sandis (2014), instruments such as the Convention for the Safeguarding of the Intangible Cultural Heritage are essential to mobilise individuals, groups, and communities for heritage protection and preservation. However, it is not enough to establish regulations and parameters for policies and initiatives from the top-down, which can generate even more damage to heritage, but rather a continuous inventive process for users of cultural heritage and local communities to act in defence of cultural heritage.

⁶¹ Examples of intangible cultural heritage include: performing arts, oral traditions, rituals and festive events (UNESCO, 2003).

⁶² “Recognising that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity (...)” (UNESCO, 2003, p. 4).

⁶³ “Cultural heritage need not be individual in character or important solely for a single group; it can serve to connect representatives of various cultures living in a given region. Cultural heritage is also a sensitive area, since it involves the rights of indigenous peoples, family heirlooms and objects important in religious rites and rituals.” (Jagielska–Burduk, 2022, p. 11).

UNESCO approved, as described in Chapter I, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, promulgated in 2005 and in force since 2007. This document does not present new developments in relation to the field of cultural heritage, reaffirming cultural diversity as the cultural heritage of humanity and the symbolic meanings of communities, including the artistic dimensions and cultural values derived from identities (UNESCO, 2005). However, Caust (2019) argues that the Convention is relevant when suggesting that legal interventions must take place for cultural rights to be enacted and expanded.

The 2005 UNESCO Convention recorded that cultural diversity is in the long-term interests of humanity and notes that achieving cultural diversity and the affirmation of cultural rights depends on freedom of expression being allowed and encouraged. This recognition that cultural diversity and by direct association, cultural rights, are dependent on the recognition and guarantee of human rights, is critical to seeing what is required legally to ensure that these principles are applied. Further within the UNESCO convention is the recognition that the enabling of cultural diversity requires equal access to its expression. (Caust, 2019, p. 22-23)

Returning to the cooperative initiative of the Fribourg Declaration, proclaimed in 2007, it is relevant to point out that the community that formulated it considered identity and cultural heritage as a cultural right in Article 3:

Everyone, alone or in community with others, has the right:

- a. To choose and to have one's cultural identity respected, in the variety of its different means of expression. This right is exercised in the inter-connection with, in particular, the freedoms of thought, conscience, religion, opinion and expression;
- b. To know and to have one's own culture respected as well as those cultures that, in their diversity, make up the common heritage of humanity. This implies in particular the right to knowledge about human rights and fundamental freedoms, as these are values essential to this heritage;

c. To access, notably through the enjoyment of the rights to education and information, cultural heritages that constitute the expression of different cultures as well as resources for both present and future generations. (Fribourg Group, 2007, p. 5)

Article 4 makes references to cultural communities, determining that everyone can decide whether or not to identify with one or several cultural communities (Fribourg Group, 2007). The same article establishes that cultural identities should not be imposed and that cultural assimilations should not occur against one's will. Furthermore, it emphasises that culture is an intrinsic and fundamental element for self-development, encouraging individuals, groups, and communities (Bruno et al., 2021). “It is necessary to conceptualise culture in terms of the sociopolitical realities of the nation States.” (UNESCO, 1970, p. 76).

According to new developments on cultural heritage, the term can also be interpreted from the developmental capabilities of societies in economic terms, strengthening the local economy (Jagielska–Burduk, 2022). The approach considers different values assured to a section of heritage, assuming that granting a higher value would result in greater protection to the specific cultural heritage — it presupposes cultural heritage as an economic resource capable of supporting the local economy through its safeguarding.

The definition of cultural heritage and its scope of protection depends, consequently, on the concept of culture itself and on the identification of cultural values. As explained by Donders (2010), different concepts of culture determine different cultural rights interpretation and its institutionalisation through legal instruments: the concept can be considered from an inclusive approach, considering the right to take part in the cultural life of a community, cultural products (such as literature and arts), and culture encompassing human heritage.

Highlighting the substantial influence of communities in the field of cultural heritage, especially from a change of perspective, considering communities as agents with transformative potential, UNESCO approved, in 2007, Decision 31 COM 13B: The “fifth C” for “Communities” (UNESCO, 2007). It decides on supporting a myriad of communities, recognising the importance to include traditional and local communities in the decisions related to cultural heritage.

The World Heritage Committee (UNESCO, 2007) resolves to add:

A “fifth C” for “Communities” to the existing Strategic Objectives which were adopted as the Budapest Declaration on World Heritage by the World Heritage Committee at its 26th session (Budapest, 2002) which should read as follows: “To enhance the role of communities in the implementation of the World Heritage Convention.” (p. 193)

3. The Special Rapporteur in the Field of Cultural Rights

Complementing the discussion on the relationship between cultural rights and cultural heritage, the Special Rapporteur in the area of cultural rights issued three recommendations focused on cultural heritage: A/HRC/17/38 (2011)⁶⁴, A/HRC/31/59 (2016), and A/71/317 (2016)⁶⁵. They analyse, respectively, the extent to which cultural heritage is considered an integrative part of international human rights law, intentional destruction of cultural heritage as a violation of international law, and human rights approaches to the destruction of cultural heritage in conflictual and non-conflictual contexts.

In resolution A/HRC/17/38, the Special Rapporteur addresses the concept of cultural heritage from the perspective of human rights, using national and international instruments for an inclusive understanding of the term: “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.” (HRC, 2011, p. 4). The expert determines that cultural heritage, in the context of human rights, must comprehend multiple heritages, as well as multiple cultural identifications aimed at generational transmission.

According to Bruno et al. (2021), the resolution not only recommends but also confirms the integration between human rights frameworks, especially cultural ones, and cultural heritage as a standard for policies and initiatives at the international level and in accordance with the United Nations perspective. Based on this approach, it is determined that States must guarantee the enjoyment of cultural heritage to all

⁶⁴ In 2011, UNESCO approved the Recommendation on the Historic Urban Landscape, including a glossary of definitions, considering that “the active protection of urban heritage and its sustainable management is a condition sine qua non of development.” (UNESCO, 2011, p. 50).

⁶⁵ As described by the OHCHR (2024a).

individuals, groups, and communities — including minorities (Saul, Kinley & Mowbray, 2014).

Individuals and groups, the majority and minorities, citizens and migrants all have the right to access and enjoy cultural heritage. As mentioned above, general comment No. 21 stresses that the right to take part in cultural life may be exercised alone, in association with others, or as a community. Therefore, the right of access to and enjoyment of cultural heritage must be considered both as an individual and a collective human right. (HRC, 2011, p. 16)

In line with the conceptual framework of the Special Rapporteur, and based on the Convention for the Safeguarding of the Intangible Cultural Heritage, the United Nations Educational, Scientific and Cultural Organization adopted, in 2015, the Ethical Principles for Safeguarding Intangible Cultural Heritage (UNESCO, n.d.). The document is a guideline containing good practices for protecting, safeguarding and transmitting cultural heritage, divided into twelve specific requirements:

Figure 2

Good Practices: Safeguarding Intangible Cultural Heritage

1. Communities, groups and, where applicable, individuals should have the primary role in safeguarding their own intangible cultural heritage.
2. The right of communities, groups and, where applicable, individuals to continue the practices, representations, expressions, knowledge and skills necessary to ensure the viability of the intangible cultural heritage should be recognised and respected.
3. Mutual respect as well as a respect for and mutual appreciation of intangible cultural heritage, should prevail in interactions between States and between communities, groups and, where applicable, individuals.
4. All interactions with the communities, groups and, where applicable, individuals who create, safeguard, maintain and transmit intangible cultural heritage should be characterised by transparent collaboration, dialogue, negotiation and consultation, and contingent upon their free, prior, sustained and informed consent.
5. Access of communities, groups and individuals to the instruments, objects, artefacts, cultural and natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage should be ensured, including in situations of armed conflict. Customary practices governing access to intangible cultural heritage should be fully respected, even where these may limit broader public

access.

6. Each community, group or individual should assess the value of its own intangible cultural heritage and this intangible cultural heritage should not be subject to external judgements of value or worth.

7. The communities, groups and individuals who create intangible cultural heritage should benefit from the protection of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion or adaptation by members of the communities or others.

8. The dynamic and living nature of intangible cultural heritage should be continuously respected. Authenticity and exclusivity should not constitute concerns and obstacles in the safeguarding of intangible cultural heritage.

9. Communities, groups, local, national and transnational organisations and individuals should carefully assess the direct and indirect, short-term and long-term, potential and definitive impact of any action that may affect the viability of intangible cultural heritage or the communities who practise it.

10. Communities, groups and, where applicable, individuals should play a significant role in determining what constitutes threats to their intangible cultural heritage including the decontextualization, commodification and misrepresentation of it and in deciding how to prevent and mitigate such threats.

11. Cultural diversity and the identities of communities, groups and individuals should be fully respected. In the respect of values recognised by communities, groups and individuals and sensitivity to cultural norms, specific attention to gender equality, youth involvement and respect for ethnic identities should be included in the design and implementation of safeguarding measures.

12. The safeguarding of intangible cultural heritage is of general interest to humanity and should therefore be undertaken through cooperation among bilateral, sub regional, regional and international parties; nevertheless, communities, groups and, where applicable, individuals should never be alienated from their own intangible cultural heritage.

Note. From: United Nations Educational, Scientific and Cultural Organization (UNESCO). (n.d.). Ethics and Intangible Cultural Heritage. UNESCO ICH. <https://ich.unesco.org/en/ethics-and-ich-00866>

Based on the fourth principle, Bruno et al. (2021) determine that Ethical Principles are relevant in respecting the cultural and heritage rights of migrant populations, as their adoption represents a sustained commitment by international agents to this interpretation in the cultural field. Sandis (2014) adds, stating that the ethical challenges of cultural heritage should not follow an economic logic, understanding heritage as a commodity to be controlled, but based on its protection and respect for communities.

The Special Rapporteur in the field of cultural rights reported, in 2016, the resolution A/HRC/31/59, focusing on the intentional destruction of cultural heritage as a violation of human rights. Starting from the legitimacy of heritage as a cultural right, the document highlights the transformative potential of cultural initiatives and the relevance of communities in the identification, protection, presentation, conservation, and transmission of cultural and natural heritage (HRC, 2016a):

It is important to query the precise meaning of terms such as “communities” and “identities” in the realm of cultural rights, which are frequently employed without definition. In international human rights instruments, “community” seems to refer to various interlocking groups, including: (a) the international community; (b) a national community; and (c) indigenous, tribal, minority, migrant, local or other communities formed in accordance with criteria such as language or ethnicity. Guidance as to which kind of category is under discussion is often implicit and contextual. (p. 5)

The specialist⁶⁶ considered one of the fundamental commitments on her agenda in promoting these rights to be the principle of non-discrimination, paying attention to contemporary exclusion and hate speeches (HRC, 2016a). In this sense, guaranteeing the protection of cultural heritage of minorities, as well as the enjoyment of other heritage in the context of the cultural rights by these communities, is a measure supported by human rights frameworks to promote the inclusion and integration of minority groups in societies that encompass them (Desille & Nikielska-Sekuła, 2024).

Still in 2016, the Special Rapporteur issued resolution A/71/317 within the scope of the discussion on cultural rights and their violation as a violation of human rights, tracking, particularly, the destruction of cultural heritage by sociopolitical agents, undermining and erasing cultural diversity and cultural rights (HRC, 2016b). In the recommendations, the specialist determines that social and cultural perspectives of a fundamentalist, discriminatory and extremist nature must be combated in accordance

⁶⁶ As a preliminary recommendation, the Special Rapporteurs defines the necessity to “Ensure the right of all persons, including women, to access, participate in and contribute to all aspects of cultural life, including in identifying and interpreting cultural heritage, and deciding which cultural traditions, values or practices are to be kept intact, modified or discarded altogether and to do so without fear of punitive actions. States should similarly ensure this right with respect to other groups, including persons with disabilities, migrants, indigenous peoples, lesbian, gay, bisexual, transgender and intersex persons and persons living in extreme poverty.” (HRC, 2016, p. 20).

with international standards, in order to protect and fulfil the human rights of minorities, while promoting tolerance and integration.

The processual nature of heritage has been recognised and highlighted, along with its dependence on meaning-making and the mobilisations/actions of the individuals engaging with it. In other words, what people do with heritage, what meaning it gains through the everyday negotiations of its users, has become more important than its materiality and the institutionalised narratives about it. (Desille & Nikielska-Sekuła, 2024, p. 1)

4. Summary

Cultural heritage is a broad and relatively neglected concept in the context of international relations, including tangible and intangible artefacts, sites, traditions, and a diverse set of values relevant to the construction of a particular identity and community. The social significance of cultural heritage derives from the collective recognition of symbolism associated with cultural groups, encompassing the idea that their identification, preservation, and transmission consequently impact and protect notions of identity and belonging, demonstrating their generational character.

Within the scope of the United Nations and, specifically, the United Nations Educational, Scientific and Cultural Organization (UNESCO), cultural heritage is governed by the notion of cultural landscapes. Furthermore, cultural heritage is institutionalised as a collective right, which allows the cultural development of individuals and communities. The UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage or the World Heritage Convention (WRC) (1972), for example, develops a model of international cooperation for the preservation of cultural and natural heritage.

In addition, international institutions define cultural diversity as the common cultural heritage of humanity, which puts pressure on domestic institutions to promote multicultural policies that value plurality. The Convention for the Safeguarding of the Intangible Cultural Heritage (2003) addresses culture as a non-permanent characteristic, illustrating that intangible cultural heritage is not isolated from social transformations, being recreated by communities and groups. Culture, in this sense, is also seen as an element that is not only collective but also individual.

The Special Rapporteur in the Field of Cultural Rights, recognising the relevance of cultural heritage, published three resolutions focused on expanding its agenda: cultural heritage from a human rights perspective; intentional destruction of heritage as a violation of human rights; and heritage destruction in the context of violating cultural rights and erasing cultural diversity. Regarding the identification, transmission, and safeguarding of heritage, communities must be preponderant agents in policies and initiatives, promoting participation and social inclusion.

Chapter IV – The Nexus Between Migration and Cultural Heritage: Intersectionalities at the European Union Level

The intersection of migratory processes and cultural rights is a multifaceted expression of cultural landscapes, encompassing diverse individuals, groups, and communities capable of interacting with the local culture. In the context of cultural heritage, there are several international human rights instruments and governance mechanisms that aim to protect and safeguard heritage and, at the same time, promote the integration, inclusion and participation of all members of communities, including migrants, respecting and fulfilling their cultural rights.

In the European cultural framework, cultural heritage is comprehended through the perspective of the existence of a shared regional cultural landscape, which is composed of common ideals and principles developed from a territorially harmonious cultural diversity (Council of Europe, 1954). Human mobility is a significant element interacting with cultural landscapes in Europe facilitating cultural interchange and reinforcing culture as a continuous mutable component of human expression, including individual and collective perceptions of identity (Apap, 2019; Castles, de Haas & Miller, 2020; Schierup & Ålund, 1987).

EU law creates a certain concept of collective cultural heritage of the European Union, while highlighting national cultural property that cannot be moved outside the borders of a Member State. In the context of phenomena related to population migration, the issues of cultural migration and the need to protect the cultural space of migrants are also considered. (Jagielska–Burduk, 2022, p. 4)

Considering the relevance of how cultural rights frameworks intersect with migration dynamics to shape migrants' access to and engagement with local cultural heritage, this chapter — constructed as a case study in the European Union context — comprehends the nexus between migration and cultural heritage through a localised analysis: firstly, an illustrative reverberation of the international frameworks presented in the previous chapters, demonstrating their influence and complementarity at the regional level in the European Union (EU); and, finally, a focused presentation of initiatives on which the impacts of these social dynamics are perceptible.

1. EU Frameworks and Instruments

With the proposal to analyse the challenges and opportunities in preserving heritage in the context of the nexus between human mobility and cultural heritage, from a human rights perspective and, in particular, cultural rights, this case study encompasses the reflections of the intersection in the context of the European Union. Specifically, the most relevant instruments of the regional human rights framework — including cultural rights, migration-related provisions, and cultural heritage protection — are presented, in order to illustrate regional developments in comparison with international principles.

The dynamic interaction between the components illustrated is explored through the listing, presentation, and verification of the status of legal instruments, rights mechanisms, and initiatives aimed at the nexus and encompassed by the Member States of the European Union. Focusing on the regional framework, the section outlines EU developments considering documents and institutions relevant to the nexus, addressing commitments established within the scope of the European Union (EU) and the Council of Europe (CoE).

Accordingly, the status of frameworks is checked using the database⁶⁷ on signatory countries, accessing information from EU Member States in regard to regional instruments highlighting the nexus.

1.1 Regional Human Rights Mechanisms

The European Convention on Human Rights (ECHR) was adopted, in 1950, by the Council of Europe (CoE), and entered into force in 1953, with the European Court of Human Rights (ECtHR)⁶⁸ as the respective interpretive and decision-making body⁶⁹ (ECtHR & CoE, n.d.). The ECHR, in accordance with the UDHR, has the primary

⁶⁷ The data tables are constructed by designating each EU Member State according to its Country Code (Eurostat, 2024): Austria (AT), Belgium (BE), Bulgaria (BG), Croatia (HR), Cyprus (CY), Czechia (CZ), Denmark (DK), Estonia (EE), France (FR), Finland (FI), Germany (DE), Greece (EL), Hungary (HU), Ireland (IE), Italy (IT), Latvia (LV), Lithuania (LT), Luxembourg (LU), Malta (MT), Netherlands (NL), Poland (PL), Portugal (PT), Romania (RO), Slovenia (SI), Slovakia (SK), Spain (ES), Sweden (SE).

⁶⁸ The ECtHR has, for example, decided that cultural organisations are also associated with the right to freedom of association in the EU context (Donders, 2012).

⁶⁹ “The Convention originally created both a European Commission and a European Court of Human Rights entrusted with the observance of the engagements undertaken by the High Contracting Parties to the Convention, but with the entry into force of Protocol No. 11 to the Convention on 1 November 1998, the control machinery was restructured so that all allegations are now directly referred to the European Court of Human Rights in Strasbourg, France.” (UN, 2005, p. 95).

responsibility to guarantee and protect the fundamental freedoms and rights listed in the convention and its respective protocols (Saul, Kinley & Mowbray, 2014). The ECHR represents a collective regional commitment to the enforcement of human rights.

The ECHR is meant to protect human rights of “first generation”. Economic, social and cultural rights are *prima facie* excluded from its scope of application. However, through an extensive interpretation of the interests protected by ECHR articles, the European Court of Human Rights (ECtHR) has indirectly addressed cultural as well as economic and social interests. (Bruno et al., 2021, p. 46)

According to Smith (2020), the Council of Europe has developed one of the most advanced regional frameworks for the protection of human rights, sustained by the principles, rights, and values institutionalised at the international level with the Universal Declaration of Human Rights. In addition, the author states that the ECHR internalised the UDHR provisions, providing more details to the rights already established, focusing mainly on civil and political rights.

Article 9 declares that, in consonance with the UDHR, freedom of thought, conscience and religion⁷⁰ must be respected as a human right, either individually or in a community, or manifested privately or publicly⁷¹ (Council of Europe, 1950). Article 14 describes the principle of non-discrimination on diverse grounds, including sex, race, colour, political or other opinion, religion, language, national or social origin, birth, and association with a national minority. However, Article 16 determines that nothing in the latter provision prevents the States from imposing restrictions on the political activities of foreigners (aliens in the original nomenclature).

These Articles have been the main point of contention in several cases brought before the ECtHR. The ECtHR formally recognises the Freedom of thought, conscience, and religion guaranteed under Article 9 of the convention to be an

⁷⁰ “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” (ECtHR & CoE, n.d., p. 11).

⁷¹ “In fact, cultural rights include the right to so-called appropriate cultural resources which guarantees everyone the right to express their abilities in the best possible way. Consequently, there is the right to dignity and defence of individual culture and the right to different treatment based on specific cultural needs.” (Bruno et al., 2021, p. 81).

important instrument to protect and preserve minority identities in both public and private sphere, in working, teaching, practice, and observance. Despite this recognition, the issue of the headscarf has been a contentious one in the jurisprudence of the ECtHR. (Bruno et al., 2021, p. 116)

The Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Paris, 20.III.1952) includes Article 2, focused on the cultural right of education, defending that no person should be denied this right (ECtHR & CoE, n.d.). Protocol No. 4 (Strasbourg, 16.IX.1963) presents rights in the scope of human mobility and freedom of movement: Article 2 states that everyone lawfully within a territory has the right and liberty of movement and freedom of choice regarding their residence; and Article 4, prohibiting collective expulsion of foreigners.

No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. (ECtHR & CoE, n.d., p. 37)

Protocol No. 7 (Strasbourg, 22.XI.1984) establishes procedural safeguards in the context of the expulsion of foreigners, delimiting a restrictive provision listing specific situations in which a foreigner may be expelled from a State (ECtHR & CoE, n.d.). Protocol No. 12 (Rome, 4.XI.2000), finally, establishes in Article 1 a general prohibition of discrimination⁷², reassuring equality and reinforcing the original text of the European Convention on Human Rights: “Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law.” (ECtHR & CoE, n.d., p. 50).

Furthermore, the Council of Europe approved the European Social Charter (ESC)⁷³ (1996 Revised Version) intending to guarantee fundamental social and economic rights in the European context, presenting a counterpart to the European Convention on Human Rights, including complementary rights (Council of Europe,

⁷² According to the UN (2005), a separate provision on non-discrimination guarantees to this principle independence from other rights and freedoms.

⁷³ Originally, the European Social Charter dates from 1961. However, the current amended version dates from 1996: Revised European Social Charter of 1996.

1996). It determines that promoting community and social participation in the context of cultural rights is mandatory, defending initiatives for cultural life and integration, including Article 15, focused on people with disabilities, and Article 23, addressing the elderly. Moreover, Article 30 determines that:

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a to take measures within the framework of an overall and coordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b to review these measures with a view to their adaptation if necessary.
(Council of Europe, 1996, p. 14)

Concerning human mobility, the document clarifies that migrant workers who are nationals of a State Party and their families must be protected in the territories of any State of the region, implementing protection clauses of the ICRMW, but limiting its articles to nationals of the region. In addition, the cultural provisions may represent an additional protection to the cultural rights of migrants, extending the rights enshrined to everyone within the territories of Member States (Bruno et al., 2021).

Again within the framework of the CoE, worthy of mention is the European Social Charter (“ESC”), adopted in 1961 and revised in 1996 (“ESCrev”). Part I lays down a series of general principles on the protection of employment concerning both the protection of all workers and that of certain categories of workers considered to be more vulnerable, namely, children, pregnant women, the disabled and migrant workers. (Pustorino, 2023, p. 217)

It provides a long set of obligations that State Parties must undertake, as described in the figure:

Figure 3

European Social Charter (Art. 19): Migrant Workers and their Families

- 1 - to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
- 2 - to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
- 3 - to promote cooperation, as appropriate, between social services, public and private, in emigration and immigration countries;
- 4 - to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
 - a remuneration and other employment and working conditions;
 - b membership of trade unions and enjoyment of the benefits of collective bargaining;
 - c accommodation;
- 5 - to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
- 6 - to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
- 7 - to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
- 8 - to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
- 9 - to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
- 10 - to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;
- 11 - to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
- 12 - to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Note. From: Council of Europe (CoE). (1996). European Social Charter (1996 Revised Version). Council of Europe Portal.
www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163?module=treaty-detail&treatynum=163

The Charter of Fundamental Rights of the European Union (CFREU) — proclaimed in 2000 by the European Parliament (EP), the European Council (EU Council), and the European Commission (EC) — is recognised as a legally binding document, presenting the same status of the EU Treaties. By enshrining human rights provisions, the European Union Member States demonstrate a collective and orderly political will to create both a territorial and institutional area of freedom, security and justice (EU, 2010). As a binding document, the EU Charter is incorporated into the European Union policies and legislative processes (European Commission, n.d.).

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. (EU, 2010, p. 3)

Part II - Freedoms encompasses the Articles 6 to 19⁷⁴. Article 10 incorporates the notion of freedom of thought, conscience and religion, similar to what establishes Article 9 of the European Convention on Human Rights (EU, 2010). Regarding cultural rights, Saul, Kinley, and Mowbray, (2014) state that there is a gap in terms of listing cultural rights, however, Article 13 indicates that scientific research should not have any constraint, while Article 14 establishes the right to education. In addition, Article 17 addresses cultural heritage by asserting the right to property, including the protection of intellectual property (EU, 2010).

About migration governance, the text guarantees the right to asylum in consonance with the Refugee Convention of 1951 and the 1967 Protocol in Article 18, while Article 19 replicates the conditions and terms of expulsion of foreigners

⁷⁴ “The provisions of the ECHR most frequently invoked regarding cultural rights are the following: Article 8 (right to respect of private and family life), Article 9 (right to freedom of thought, conscience and religion) and Article 10 (freedom of expression), as well as Article 2 of Protocol N° 1 (right to education).” (CETIM, 2013, p. 41).

established in the ECHR, adding that “no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.” (EU, 2010, p. 7).

In Part III- Equality, encompassing Articles 20 to 25, the CFREU not only includes Article 20 on equality and Article 21 on the principle of non-discrimination like the ECHR but also guides them in terms of cultural diversity, while Article 22 establishes that the Union must respect cultural diversity, including religious and linguistic (CETIM, 2013). Articles 25 and 26 innovate by pointing out, respectively, respect for the rights of the elderly and people with disabilities, including the right to participate in cultural life and communities (EU, 2010).

All of the Member States of the European Union are signatories and have ratified⁷⁵ the European Convention on Human Rights (ECHR), the European Social Charter (ESC), and the Charter of Fundamental Rights of the European Union (CFREU), posing legal obligations regarding the binding commitments established in the instruments.

1.2 Addressing Cultural Rights

The Council of Europe adopted, in 1954, the European Cultural Convention, which came into force in 1955, aiming to develop and support “cultural diversity, to safeguard European culture, to promote national contributions to Europe's common cultural heritage respecting the same fundamental values and to encourage in particular the study of the languages, history and civilisation of the Parties to the Convention.” (Council of Europe, 1954). According to the convention's ideals, it should promote cultural integration through incentives and policies related to languages, histories, and peoples of Europe.

The European Cultural Convention establishes that all signatories must cooperate and, based on Article 2:

⁷⁵ As stated by the Treaty on European Union (TEU) (EU, 2012a), Article 6: “The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.” (p. 7). Consequently, it is mandatory for all State parties.

a encourage the study by its own nationals of the languages, history and civilisation of the other Contracting Parties and grant facilities to those Parties to promote such studies in its territory; and

b endeavour to promote the study of its language or languages, history and civilisation in the territory of the other Contracting Parties and grant facilities to the nationals of those Parties to pursue such studies in its territory. (Council of Europe, 1954, p. 1)

In the context of cultural rights and diversity, the Council of Europe approved, in 1992, the European Charter for Regional and Minority Languages, and, in 1995, the Framework Convention for the Protection of National Minorities (FCMN), which is the first multilateral legally binding document to protect minorities (United Nations, 2005). According to Smith (2020) and Saul, Kinley and Mowbray (2014), both documents aim to establish a system for the protection of national minorities, including cultural rights associated with minority language use, cultural education and preservation, and rights to transfrontier contact between related minority groups.

As established in the Framework Convention for the Protection of National Minorities (Council of Europe, 1995):

1 Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2 Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others. (p. 2)

Influenced by the Treaty on the EU (TEU), the European Union developed, in 2016, a strategy aimed at promoting international cooperation in the context of cultural diversity and cultural rights: Towards an EU Strategy for International Cultural Relations. Accordingly, EU actions regarding cultural diversity and cooperation should be guided by five principles: i. promote cultural diversity and respect for human rights; ii. foster mutual respect and intercultural dialogue; iii. ensure respect for

complementarity and subsidiarity; iv. encourage a cross-cutting approach to culture; and, finally, v. promote culture through existing frameworks for cooperation (EU, 2016).

Inspired by the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the EU Strategy focuses on cultural diversity as a common value shared by EU Member States. The EU Strategy⁷⁶, however, implements policies and initiatives particularly through existing cooperation frameworks and financing instruments, focusing on thematic programmes, including the European Instrument for Democracy and Human Rights (EIDHR): “this provides assistance to the development and consolidation of democracy, the rule of law and respect for human rights and fundamental freedoms.” (EU, 2016, p. 5).

The EU Strategy for International Cultural Relations also addresses the cultural rights of migrants:

The Enlargement Countries are currently facing new challenges, including the integration of newly arrived migrants, where intercultural dialogue can promote reconciliation and inclusive and democratic societies, and help counter radicalisation. The EU should continue working closely with Enlargement countries to help protect their cultural heritage, promote the development of their cultural and creative industries, and foster their participation in existing EU cultural programmes. (EU, 2016, p. 6)

It also mentions refugees:

Culture, and in particular intercultural dialogue, can contribute to addressing major global challenges – such as conflict prevention and resolution, integrating refugees, countering violent extremism, and protecting cultural heritage. With the 2014 Communication on Cultural Heritage, the EU reaffirmed its commitment to protect cultural heritage, in cooperation with organisations such as the Council of Europe and UNESCO. (EU, 2016, p. 2)

⁷⁶ “As a dynamic economic sector, cultural and creative industries are an important provider of quality jobs and often promote smart, sustainable and inclusive growth. Investments in cultural projects contribute to the competitiveness, attractiveness and social cohesion of cities and regions. Over 70 EU regions have chosen culture and creative industries as a priority for their smart specialisation strategies, recognising these industries as drivers of regional growth and local jobs.” (EU, 2016, p. 8).

Table 1*EU Member States and Cultural Rights*

	Signature	Ratification	Neither signed nor ratified
Convention on the Protection and Promotion of the Diversity of Cultural Expression (2005) ⁷⁷		AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, NL, PL, PT, RO, SK, SI, ES, SE	
European Cultural Convention (1954)		AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, <u>DE</u> , <u>EL</u> , HU, IR, IT, LV, LT, LU, MT, <u>NL</u> , PL, PT, RO, SI, SK, ES, SE	
European Charter for Regional and Minority Languages (1992)	<u>FR</u> , IT, MT, PT	<u>AT</u> , <u>HR</u> , <u>CY</u> , <u>CZ</u> , <u>DK</u> , <u>FI</u> , <u>DE</u> , <u>HU</u> , LU, <u>NL</u> , <u>PL</u> , <u>RO</u> , <u>SK</u> , <u>SI</u> , <u>ES</u> , <u>SE</u>	BE, BG, EE, EL, IE, LV, LT
Framework Convention for the Protection of National Minorities (1995)	<u>BE</u> , EL, <u>LU</u>	<u>AT</u> , <u>BG</u> , HR, CY, CZ, <u>DK</u> , <u>EE</u> , FI, <u>DE</u> , HU, IE, IT, <u>LV</u> , LT, <u>MT</u> , <u>NL</u> , <u>PL</u> , PT, RO, SK, <u>SI</u> , <u>ES</u> , <u>SE</u>	FR

Note. Underlined Member States presented one of the options: R.: Reservations; D.: Declarations, Denunciations, Derogations; A.: Authorities; T.: Territorial Application; C.: Communication; O.: Objection to the framework.

1.3 Addressing Migration

The Treaty on European Union (TEU) - Consolidated Version presents an article on the right to free movement, entitled to the internal borders of the European

⁷⁷ The European Union accessed the convention through the European Community, declaring that there are “competences transferred to the Community by the Member States under the Treaties, in the areas covered by the Convention.” (UNESCO, 2005).

Union, defining it as an “area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.” (European Union, 2012a, p. 5).

The Treaty on the Functioning of the European Union (TFEU) has a series of provisions on the free movement of persons, particularly citizens of the European Union Member States. Articles 20 and 21 of TFEU enshrine that all citizens have the right to move and reside within the territory of other Member States, subject to eventual conditions and limitations provided for by law⁷⁸, while Article 48 addresses the free movement of workers and their dependents (European Union, 2012b). In addition, Chapter II - Policies on Border Checks, Asylum and Immigration outlines four articles focused on human mobility within the European Union.

In particular, Article 79 provided guidelines to migrants from external borders of the EU:

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:
 - (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
 - (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

⁷⁸ “The European Union, indeed, provides incentives and supports for measures taken by Member States to promote the integration of legally resident third-country nationals, but EU law makes no provision for the harmonisation of national laws and regulations.” (Bruno et al., 2021, p. 82).

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

(d) combating trafficking in persons, in particular women and children.
(European Union, 2012b, p. 31)

Another important legislation in the EU aimed at migration governance is the Regulation (EU) No 604/2013 — Dublin III Regulation, which establishes “criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.” (European Union, 2013, p. 1). According to the UNHCR (n.d.), the Dublin III Regulation increases pressures on the EU external borders, harming migrants:

During determination procedures under the Regulation, asylum seekers wait in limbo, often separated from their families and in detention, pending transfer to the state deemed responsible for their claim. In some cases, their claims are never heard. Demonstrated failures to respect the rights of persons transferred under the Regulation have been so severe, that both UNHCR and ECRE have appealed governments to stop asylum applicants from being returned to certain countries. (p. 1)

In 2020, the European Union developed the EU Pact on Migration and Asylum, setting new rules for the governance of migration in the regional context (including EU Member States and Schengen associated countries) aimed at harmonising EU policies on migration (European Commission, 2024). The EU Pact was adopted recently, in 2024, and contains the Asylum and Migration Management Regulation (AMMR), a comprehensive legislation replacing the Dublin III Regulation:

The purpose of the currently applicable Dublin system is to identify a single EU member state as responsible for processing an asylum application. The procedure is based on several criteria, including the first-country-of-entry criterion. In practice, this has meant that a small number of member states have been responsible for processing the majority of asylum claims.

The migration crisis has highlighted the limits of the current system, which creates a burden for frontline member states. Together with the establishment of a new solidarity mechanism, the new AMMR (asylum and migration management regulation), which will replace the Dublin regulation, will contribute to creating a fairer system for sharing responsibility among member states. (European Council, 2024, A need to modify the Dublin rules section)

In addition to the institutional framework of the European Union, the Council of Europe also presents resolutions on human mobility, having specific conventions, agreements, and protocols for migrants or refugees, like the European Convention on the Legal Status of Migrant Workers, adopted in 1977 and into force in 1983. According to the convention, it has the purpose of protecting the status of migrant workers who are nationals of the Member States: “the term ‘migrant worker’ shall mean a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment.” (Council of Europe, 1977, p. 1).

Table 2

EU Member States and Human Mobility

	Signature	Ratification	Neither signed nor ratified
United Nations Convention Relating to the Status of Refugees (1951)			AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, NL, PL, PT, RO, SK, SI, ES, SE
European Convention on the Legal Status of Migrant Workers (1977)	BE, <u>DE</u> , EL, LU,	<u>FR</u> , IT, <u>NL</u> , PT, ES, SE	AT, BG, HR, CY, CZ, DK, EE, FI, HU, IE, LV, LT, MT, PL, RO, SK, SI

Note. Underlined Member States presented one of the options: R.: Reservations; D.: Declarations, Denunciations, Derogations; A.: Authorities; T.: Territorial Application; C.: Communication; O.: Objection to the framework.

1.4 Addressing Cultural Heritage

The Convention for the Protection of the Architectural Heritage of Europe — Granada Convention, adopted in 1985, and into force in 1987 — aims to identify and reinforce policies and initiatives for conserving architectural heritage in Europe based on cooperation and integrated conservation, as established by the Council of Europe (1985). The document recognises architectural heritage as an essential element of the European heritage, including commitments to:

- 1 include the protection of the architectural heritage as an essential town and country planning objective and ensure that this requirement is taken into account at all stages both in the drawing up of development plans and in the procedures for authorising work;
- 2 promote programmes for the restoration and maintenance of the architectural heritage;
- 3 make the conservation, promotion and enhancement of the architectural heritage a major feature of cultural, environmental and planning policies; (CoE, 1985, p. 4)

The CoE also adopted, in 1992, the European Convention on the Protection of the Archaeological Heritage (Revised)⁷⁹, or the Valletta Convention, into force in 1995 (CoE, 1995). According to the Council of Europe (n.d.), its application occurs in the context of cultural and heritage protection in urban environments and spaces, being related to the urban and regional policies planning. In the context of cultural issues, it is interesting to note that the convention perceives archaeological sites as elements of the collective memory of societies, considering:

- i the preservation and study of which help to retrace the history of mankind and its relation with the natural environment;
- ii for which excavations or discoveries and other methods of research into mankind and the related environment are the main sources of information; and

⁷⁹ It replaces the original London Convention of 1969 (Council of Europe, 1992).

iii which are located in any area within the jurisdiction of the Parties. (CoE, 1992, p. 2)

The European Landscape Convention — the Florence Convention —, adopted in 2000, and into force in 2004, encompasses the concept of landscapes to determine a common heritage, areas which are transformed by the interaction between nature and people: cultural landscapes (Council of Europe, 2000). Accordingly, State Parties must identify such landscapes in their territories, analyse the phenomena that transform and modify them, and assess these landscapes, identifying measures for their protection. In addition, the convention emphasises the importance of heritage to sustainable development, arguing that culture enhances individual and collective well-being (Francioni & Vrdoljak, 2020).

For the purposes of the convention, the definition of landscape is:

- a "Landscape" means an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors;
- b "Landscape policy" means an expression by the competent public authorities of general principles, strategies and guidelines that permit the taking of specific measures aimed at the protection, management and planning of landscapes;
- c "Landscape quality objective" means, for a specific landscape, the formulation by the competent public authorities of the aspirations of the public with regard to the landscape features of their surroundings;
- d "Landscape protection" means actions to conserve and maintain the significant or characteristic features of a landscape, justified by its heritage value derived from its natural configuration and/or from human activity;
- e "Landscape management" means action, from a perspective of sustainable development, to ensure the regular upkeep of a landscape, so as to guide and harmonise changes which are brought about by social, economic and environmental processes;

f "Landscape planning" means strong forward-looking action to enhance, restore or create landscapes. (CoE, 2000, p. 2)

In 2001, the Council of Europe related cultural heritage to audiovisual rights, adopting the European Convention for the Protection of the Audiovisual Heritage⁸⁰, into force in 2008, which considers moving image material as an integral part of cultural heritage, being associated with cultural identities and diversity of peoples (CoE, 2001). It determines that the European audiovisual heritage should be guaranteed protection and “appreciation both as an art form and as a record of our past by means of its collection, its preservation and the availability of moving image material for cultural, scientific and research purposes, in the public interest.” (CoE, 2001, p. 2).

The CoE proclaimed the Convention on the Value of Cultural Heritage for Society — the Faro Convention — in 2005, which entered into force only in 2011. With the cooperative “purpose of safeguarding and fostering the ideals and principles, founded upon respect for human rights, democracy and the rule of law, which are their common heritage (...)” (Council of Europe, 2005, p. 1), the convention defines the Faro Action Plan to develop the principles of cultural heritage, policies, and initiatives aiming to promote dialogue and integration among cultures.

It defines cultural heritage as:

a cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time;

b a heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations. (CoE, 2005, p. 2)

According to the framework and ideals, cultural heritage must be understood, in the context of the convention, as an impactful mechanism to actively construct peaceful and democratic societies through participation (CoE, 2005). It establishes a

⁸⁰ It has a special protocol, the Protocol to the European Convention for the Protection of the Audiovisual Heritage, on the Protection of Television Productions.

common heritage of Europe consisting of all forms of cultural heritage localised in Europe, as well as ideals, principles and values, conforming to a shared perspective of community and society, identity and cohesion (Sodano, 2017). Moreover, it guarantees that everyone, alone or collectively, should benefit from and contribute to the identification, protection, presentation, conservation, and transmission of cultural heritage.

As stated by Jagielska-Burduk (2022), the debate on cultural heritage is enriched by cultural diversity: heritage does not need an individual character or an importance assured only by a cultural group, it is also an element that can connect different groups and communities. In addition, Francioni & Vrdoljak (2020) mention that the Faro Convention, in combination with the European Cultural Convention, constitutes a relevant provision not only because it illuminates the contemporary considerations on cultural heritage but also offers a robust framework for intergenerational cultural engagement.

Interestingly, although there is an emphasis on rights and responsibilities, the Convention does not itself seek to establish new cultural rights. Rather, it starts from the important premise that there is already an established right to participate in cultural life, identified in the UDHR and rendered binding on States Parties by article 15.1(a) of the International Covenant on Economic, Social, and Cultural Rights ('ICESCR'), which recognises the right of everyone 'to take part in cultural life'. A key role of the Convention is thus to remind States of the (pre-)existence of this right and to indicate the steps needed to realise it in practice. (Francioni & Vrdoljak, 2020, p. 908)

From the framework perspective, cultural heritage ensures rights and responsibilities to States Parties, which must recognise the public interest in protecting cultural heritage and formulate policies aimed at its protection and sociocultural integration (CoE, 2005). As stated by Meyer-Bisch (2009), cultural heritage is not simply relevant in its terms but as part of the meanings and social values attributed to it by individuals and communities. Considering it, cultural heritage must be sustained by a few measures and initiatives:

- a promote respect for the integrity of the cultural heritage by ensuring that decisions about change include an understanding of the cultural values involved;
- b define and promote principles for sustainable management, and to encourage maintenance;
- c ensure that all general technical regulations take account of the specific conservation requirements of cultural heritage;
- d promote the use of materials, techniques and skills based on tradition, and explore their potential for contemporary applications;
- e promote high-quality work through systems of professional qualifications and accreditation for individuals, businesses and institutions. (CoE, 2005, p. 4)

Complementing the provisions of the European Council, the region — specifically the EU Member States — has an approach focused on cultural heritage, proclaimed in 2014, defined as the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions⁸¹: Towards an Integrated Approach to Cultural Heritage for Europe (European Union, 2014). Considering the statement, cultural heritage is understood by the UNESCO World Heritage Convention, encompassing tangible and intangible heritage through a generational perspective.

Moreover, Jagielska–Burduk (2022) argues that this communication develops the principle of shared responsibility, sustaining that preserving cultural heritage is a common obligation: “which stems from a responsibility for both geographically close and distant cultural heritage components, cannot be fulfilled without targeted educational campaigns and reinforcement of international cooperation.” (p. 310). The communication, furthermore, indicates the lack of data at the level of the European Union and its Member States regarding the dimensions of heritage, including in the area of tourism:

⁸¹ The bodies of the European Union also instituted, in 2011, through Decision No. 1194/2011/EU of the European Parliament and of the Council, the establishment of a European Union action for the European Heritage Label (European Union, 2011).

Heritage has spill-over effects in other economic sectors. For instance, tourism is estimated to contribute €415 billion to the EU GDP and 3.4 million tourism enterprises account for 15.2 million jobs – many linked to heritage, directly or indirectly. 27% of EU travellers indicate that cultural heritage is a key factor in choosing a travel destination. In 2013, 52% of EU citizens visited at least one historical monument or site and 37% a museum or gallery in their respective countries, while 19% visited a historical monument or site in another EU country. (European Union, 2014, p. 4)

Table 3

EU Member States and Cultural Heritage

	Signature	Ratification	Neither signed nor ratified
UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)		AT, BE, BG, HG, CY, CZ, DN, EE, FI, FR, DE, EL, HU,IE, IT, LV, LU, LU, MT, <u>NL</u> , PO, PT, RO, SK, SI, ES, SE	
Convention for the Safeguarding of the Intangible Cultural Heritage (2003)		AT, BE, BG, HG, CY, CZ, DN, EE, FI, FR, DE, EL, HU,IE, IT, LV, LU, LU, MT, <u>NL</u> , PO, PT, RO, SK, SI, ES, SE	
Convention for the Protection of the Architectural Heritage of Europe (1985)	<u>AT</u>	BE, BG, HR, CY, CZ, <u>DK</u> , EE, FI, <u>FR</u> , <u>DE</u> , <u>EL</u> , HU, <u>IE</u> , IT, LV, LT, LU, MT, <u>NL</u> , PL, PT, RO, <u>SK</u> , SI, ES, SE	
European Convention on the		AT, BE, <u>BG</u> , HR, CY, CZ, <u>DK</u> , EE,	

Protection of the Archaeological Heritage (Revised) (1992)		FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, <u>NL</u> , PL, PT, RO, SK, SI, ES, SE	
European Landscape Convention (2000)		AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, <u>NL</u> , PL, <u>PT</u> , RO, SK, SI, <u>ES</u> , SE	
European Convention for the Protection of the Audiovisual Heritage (2001)	AT, BG, EL, PT, RO	HR, <u>FR</u> , DE, HU, LT, LU, PO, SK	BE, CY, CZ, DK, EE, FI, IE, IT, LV, MT, NL, SI, ES, SE
Convention on the Value of Cultural Heritage for Society (2005)	BG, CY, NL	AT, BE, HR, EE, FI, HU, IT, LV, LU, PL, PT, <u>ES</u>	CZ, DK, FR, DE, EL, IE, LT, MT, RO, SK, SI, SE

Note. Underlined Member States presented one of the options: R.: Reservations; D.: Declarations, Denunciations, Derogations; A.: Authorities; T.: Territorial Application; C.: Communication; O.: Objection to the framework.

2. Local Impacts and Interdisciplinary Perspectives

Can international law on cultural heritage, then, replace domestic regulations on heritage protection? It seems this is not possible in the “basic” dimension, although in the past, voices have called for the creation of a protective regime at the international level solely for the most valuable cultural objects. Yet projects aimed at helping secure cultural heritage or supporting the process of rebuilding it where it has been destroyed (e.g., intentional terrorist attacks in Mosul and Timbuktu) show the importance of international cooperation. (Jagielska-Burduk, 2022, p. 11)

With the objective of presenting projects that illustrate initiatives approaching the intersection of migratory processes and cultural rights in the context of opportunities and challenges relating to the identification, protection, presentation, conservation, and transmission of cultural and natural heritage, the research sought to build a repertoire of projects at the European Union level. The research sources, within the scope of this objective, were the official pages of the European Commission, the European Council, the European Funding and Tender Portal, Erasmus, among other regional or national platforms of the Member States.

According to the research carried out, there are few projects at regional level that approach the nexus between migrations and cultural heritage. It is noted that in the absence of projects aimed at the preservation and transmission of cultural heritage indicate that these actions do not generally consider migrant people as agents related to such heritage. In addition, migrant integration projects generally associate them with categories of social or economic projects and, when related to the cultural scope, only some projects related to migrant people.

Considering the situation observed, the final section of this thesis exposes some projects that are relevant in terms of recognising the opportunities and challenges in the integration of the main analysis categories of this thesis. The three projects briefly discussed are: I. Specially Unknown EU, II. HOMEACROSS (Space, Memory and the Legacy of the 1923 Population Exchange Between Greece And Turkey), III. NARVID (United in Narrative Diversity?).

I. Specially Unknown EU (2017-2019)

Specially Unknown is a European integration project for refugees that aims to collect more than one hundred narratives, based on oral history methodology, from refugees from four European cities: Antwerp (BE), Bochum (DE), Paris (FR) and Turin (IT). In addition, those responsible for the interviews also have a history of refuge. There is the recognition of memory as a cultural right and the inclusion of refugees as transforming agents of local culture. The project resulted in the dissemination of collected memories, in addition to artistic representations, in audiences and museums across several European countries.

More Information: <https://speciallyunknown.eu/>

III. HOMEACROSS (2021-2026)

HOMEACROSS is a project coordinated by the Hellenic Foundation for European and Foreign Policy (ELIAMEP) that aims to analyse the impacts of years of migration, refuge, displacement and resettlement in the cities of Izmir (Turkey) and Attica (Greece). The ongoing project seeks to recognise heritage sites linked to historical migrations between the aforementioned cities, and the role of refugees as transformers of both. The cultural landscape is considered not only through heritage and culture formed in the past, but also in its contemporary implications, including contemporary cultural practices derived from the tangible and intangible heritage analysed by the project.

More Information: <https://homeacross.eliamep.gr/>

III. NARVID (2023-2026)

NARVID explores possibilities for transnational exchange in the context of cultural rights and cultural heritage, mainly focused on intercultural exchange, cultural diversity, and combating cultural stereotypes. Based on six countries for research, the project investigates strategies and good practices that result in cultural cooperation and revitalisation of cultural encounters. In addition, the project has work packages that aim to overcome cultural adversities in the context of the countries in focus, exploring opportunities for cultural collaboration that understands culture from its diversity, also including the impacts of migration on cultural exchange.

More Information: <https://nardiv.eu/>

3. Summary

The Member States of the European Union have access to a range of regional instruments, mechanisms and frameworks that govern the research areas of this thesis, namely cultural rights, migration, and cultural heritage. In addition to being under the scrutiny of international frameworks, their actions as States, involving rights and obligations, also depend on agreements and provisions established by regional organisations, such as the European Union and the Council of Europe.

Regarding general human rights instruments, the Member States of the European Union have unanimously adhered to the most relevant in the region: the

European Convention on Human Rights (ECHR) (1950) and its protocols, the European Social Charter (ESC) (1996 Revised Version), and the Charter of Fundamental Rights of the European Union (CFREU) (2000). However, the same does not occur with specific and specialised documents, as most of them do not have unanimous support.

In respect for cultural rights, all Member States of the European Union have adhered to the Convention on the Protection and Promotion of the Diversity of Cultural Expression (2005), within the scope of the UN, and to the European Cultural Convention (1954), within the scope of the Council of Europe. However, only sixteen States ratified the European Charter for Regional and Minority Languages (1992), also from the CoE, while another four only signed the document, and seven neither signed nor ratified it.

In relation to migration, the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) are responsible for regulating and indicating European Union community legislation for migration. As presented, however, regional governance is not harmonious and, in addition, the Dublin III Regulation, recently amended, is recognised for presenting a hostile policy towards migrants, especially those with greater vulnerabilities.

Another relevant factor is that no Member State is a signatory to the United Nations Convention Relating to the Status of Refugees (1951), while only FR, IT, NL, PT, ES, SE have ratified the European Convention on the Legal Status of Migrant Workers (1977). BE, DE, EL, LU signed the document. AT, BG, HR, CY, CZ, DK, EE, FI, HU, IE, LV, LT, MT, PL, RO, SK, SI, a majority of seventeen States, have neither signed nor ratified the convention.

The region's Member States effectively demonstrate their concern for cultural heritage, containing five conventions linked to the topic. All States have ratified the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention for the Safeguarding of the Intangible Cultural Heritage (2003), and the Convention for the Protection of the Architectural Heritage of Europe (1985), with the exception of Austria, which only signed the latter.

The Convention on the Value of Cultural Heritage for Society (2005), however, is a regional document, by the Council of Europe, which does not present the same harmony. Only twelve States ratified the document, while three signed it, and twelve

neither signed nor ratified it. States demonstrate an informal commitment to preserving cultural heritage, but do not express this commitment at the regional level with the principal binding convention.

The institutional framework at European level for understanding the dynamics between human mobility, cultural rights and cultural heritage has reverberations in projects and initiatives. Although there are few actions that present the interconnection between magical phenomena and cultural heritage in different scenarios, they demonstrate that there is an opportunity to invest in the field. These initiatives generate inclusion (Specially Unknown), historical recognition (HOMEACROSS), and cultural diversity (NARVID).

Conclusion

Cultural landscapes are the *locus* for an expressive interaction between migratory processes and cultural rights, with visible and relevant impacts regarding the identification, protection, presentation, conservation, and transmission of cultural and natural heritage. The intersection of cultural rights, human mobility, and cultural heritage has emerged as a pivotal nexus in contemporary human rights, shaping policy frameworks, institutions, and initiatives at the national, regional and international levels.

By examining international human rights frameworks, regional human rights reverberations, and initiatives involving the nexus between migration and cultural heritage, the thesis has navigated through the complex intersection of these themes. Considering the international law of human rights, specialised multilateral frameworks, and European legal instruments, this analysis presents a comprehensive study on the challenges and opportunities related to the understanding of the nexus, including key insights and recommendations regarding the materialisation of international and regional commitments.

At the international level, the intricate legal frameworks underscore the recognition of cultural rights, migratory rights, and heritage as fundamental human rights. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights provide a robust foundation for the protection and promotion of the mentioned rights.

The adoption of the UNESCO Universal Declaration on Cultural Diversity and the Convention on the Protection and Promotion of the Diversity of Cultural Expression demonstrate the international commitment to recognising that the universalism of human rights and multiculturalism are two fundamental characteristics that can occur simultaneously. Cultural relativism, consequently, poses a challenge for the analysed interactions and the protection of cultural rights.

The emergence of cultural rights is visible from the international complexity of the topic, recognised by the establishment of a Special Rapporteur in the Field of Cultural Rights within the scope of the United Nations. The thesis illustrates that such a specialist is essential in determining cultural research agendas, identifying opportunities for the fulfilment of human dignity. In addition, the acquired political salience of

cultural rights is evident through its adoption by civil society communities, framing definitions to the right and approving the Fribourg Declaration.

Regarding migratory movements, there is no expert position that affirms a concrete division between voluntary and forced migrations, however, legal instruments consider them in such a way, determining different rights for different contexts. The evidence demonstrates that global migration governance is only understood and accepted internationally based on its link with another international agenda, the development agenda, reinforced with the adoption of the Addis Ababa Agenda and the Transforming our World: the 2030 Agenda for Sustainable Development.

The broad support for the New York Declaration for Refugees and Migrants, an international political commitment, outlines an international shift on human mobility, indicating that international agents currently recognise the need to regulate migration at a global level. Furthermore, the adoption of the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees denote the resumption of human rights in the migration agenda, having a people-centred framework and based on the division of responsibilities.

In relation to the cultural framework, the United Nations Educational, Scientific and Cultural Organization is responsible for shaping the international framework, instituting declarations and conventions regarding tangible and intangible cultural and natural heritage internationally. In this sense, the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage or the World Heritage Convention is reinforced as the guideline for policies and projects related to cultural heritage.

Furthermore, its documents reiterate intercultural cooperation, cultural diversity and respect for diversity as parameters, highlighting that its frameworks respect the individual and collective cultural rights of individuals, groups, and communities. In this sense, the framework understands the complexity of preserving identities and heritage also in the context of migration, recognising that culture is not an immutable category but is constantly transforming due to social, political, social, economic, and environmental elements.

At a regional level, particularly considering the Member States of the European Union, there is a broad commitment to the basics of the international legal human rights framework, however, when analysing specialised instruments, the evidence shows that this is not the case. Despite establishing cultural rights and rights relating to human mobility with the European Convention on Human Rights, the European Social Charter, and the Charter of Fundamental Rights of the European Union, Member States differ in relation to specific conventions.

Within the scope of international conventions, all Member States adopt those related to cultural rights and cultural heritage, but there is no single signature or ratification of binding legal instruments regarding migration. This demonstrates that at the level of the European Union, its States do not have the commitment to be under international scrutiny regarding migration. Furthermore, EU Member States indicate that there is a prioritisation of initiatives aimed at cultural integration in regional terms, in most cases not involving people from third States.

In addition, it is important to note that when the promotion and protection of cultural rights involve minorities, as is the case with the European Charter for Regional and Minority Languages, the adoption of the legal instrument is precarious. As for regional instruments focused on migrants, a minority category within States, EU countries also demonstrate a legislative gap by not widely adopting the European Convention on the Legal Status of Migrant Workers, ratified by only five States.

The scope of cultural heritage, in comparative terms with its predecessors, is the most developed, presenting five binding conventions. They illustrate the opportunities in preserving and transmitting European heritage based on a common identity, guided by cultural cooperation. Member States indicate a clear concern with tangible cultural heritage with the unanimous adoption of the European Landscape Convention. However, the commitment is less effective when it concerns all cultural heritage, including intangible artefacts, as not half of all countries have ratified the Convention on the Value of Cultural Heritage for Society.

The initiatives illustrated in the last chapter highlight the reverberations of legal instruments and institutional frameworks that comprise the nexus between migratory movements and cultural heritage. They indicate some opportunities and challenges in relation to the inclusion of migrants, such as, for example, in one hand, the

cultural inclusion of refugees in museum projects, as well as the recognition of the contributions of displaced people to the current culture of a place; and, on the other hand, that voices and memories of migrants in vulnerable conditions are easily silenced in local contexts, and that there is still room for discrimination and stereotyping, which must be combated by effective measures.

In this sense, the thesis recognises that human mobility can lead to the enrichment of cultural landscapes through the interaction between cultures of local communities and foreign cultures, fostering inclusive societies. However, good governance through the establishment and adoption of policies, especially those grounded in people-centred interests and human rights instruments, is essential to combat negative effects that may occur, such as the complete erosion of local culture or lack of knowledge of immigrants from cultural heritage.

The interdisciplinary approach adopted in this thesis illustrates that there is evidence from EU Member States demonstrating that the intersection of migration and cultural heritage is not merely a theoretical construct but a tangible concept perceived in real projects and initiatives. Programmes for supporting the nexus are crucial in this context. The research presents insights outlining the contributions of the intersection to build inclusive and resilient communities, preserving both local cultural heritage and contributing from new individuals and groups.

The findings indicate a pressing need for continuously monitoring and evaluating the existing and new instruments and frameworks responsive to the evolving dynamics of migration and cultural heritage. Cross-sector collaboration between policymakers, civil society representatives, and cultural institutions, should prioritise integration strategies that facilitate the inclusion of migrants while safeguarding the cultural rights of all community members and respecting the diversity of cultural identities and expressions.

In conclusion, the thesis has highlighted the profound interconnectedness between cultural rights, migration, and cultural heritage within international frameworks and in the context of the European Union. By recognising existing instruments related to the elements, the EU may navigate the complexities of migration while enriching its heritage, ensuring that the cultural landscapes of Europe remain resilient and inclusive in the face of global transformation.

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