Chapter 10  Culinary Traditions as Cultural Intangible Heritage and Expressions of Cultural Diversity

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1. Introduction

International law deals with food under many of its various aspects. First of all international law should contribute to the fight against hunger: “Ensuring humanity’s freedom from hunger” is included among the aims that the Member States of the Food and Agriculture Organization (FAO) are determined to promote.1 The right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food” is enshrined in Article 25 of the Universal Declaration of Human Rights.2 The same right is recognized by the States Parties to the International Covenant on Economic, Social and Cultural Rights3 in Article 11(1) of the Covenant, while in Article 11(2) they recognize “the fundamental right of everyone to be free from hunger”. As food is essential for life, the right to it should be a fundamental “human right”, that is an element of the right to life.4 Very simply: without food there is no life, without life and human beings there are no human rights.

It goes without saying that nutrition to all should be a common goal of humankind and not only a purpose of international law. In any case, the right to food does not mean the right to “whatever” food. Primarily, food has to be safe.5 International law (lato sensu)

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1 Constitution of the Food and Agriculture Organization of the United Nations (Quebec City, 16 October 1945, in force 16 October 1945), Preamble.
3 International Covenant on Economic, Social and Cultural Rights (ICESCR) (New York, 16 December 1966); 993 UNTS 3.
4 As noted by the Committee on Economic, Social and Cultural Rights (hereinafter “ESCR Committee”), “[t]he human right to adequate food is of crucial importance for the enjoyment of all rights” (General Comment No. 12, The Right to Adequate Food (Article 11), UN doc. E/C.12/1999/5 of 12 May 1999, para. 1).
5 According to the ESCR Committee, the right to adequate food implies its availability “free from adverse substances” (ibid., para. 8; see also ibid., para. 10).
provides for a series of rules which should ensure, *inter alia*, that food is not harmful to human health. Similarly, the rules aimed at liberalizing the trade of goods – among which food is of great importance – and lowering trade barriers are intended to facilitate the free movements of goods and the commercial relations between States and, lastly, to protect consumers; the activity of the *World Trade Organization* (WTO) is fundamental in this domain. At the same time, some trade barriers could prove useful when a certain typical food product has to be preserved; we refer, for instance, to the existence of systems of protected designation of origin.

Other aspects concerning food may lead to conflicts among different branches of international law. For instance, international limits to the spread of pesticides or genetically modified organisms can be of benefit to the environment in general. On the other hand, it sometimes happens that measures adopted to protect the environment conflict with the preservation of some eating habits; for example, if a species is threatened with extinction, the specimens of that species should not be eaten any more, at least not until the species populations have recovered. The case of whales is paradigmatic in this sense.

The possibility to continue to eat a certain food (or a food prepared in a certain way) is thwarted also by the co-existence of different cultures especially when one of them tends to prevail over the others. And also in this field international law can play an important role.

This contribution does not intend to tackle all the problems that food poses at the international law level. More modestly, the purpose of this paper is to examine whether the cultural value of food is taken into account and protected by international law and, in particular, whether food and its preparation can be considered as an intangible cultural heritage and as an element of cultural diversity. To this end conventional instruments will be considered, in particular the Convention for the Safeguarding of the Intangible Cultural Heritage, the Convention concerning the Protection of the World Cultural and Natural Heritage, and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

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6 Some international organizations are particularly active in these fields; suffice here to mention the case of the European Union.

7 Once again, the rules drawn up by the European Union constitute an outstanding example in the field.

8 For discussion of the issue of “cultural food” within the framework of human right treaties, see Maffei, chapter 4 in this volume.

9 Convention for the Safeguarding of the Intangible Cultural Heritage (Paris, 17 October 2003); 2368 UNTS 3; hereinafter “ICH Convention”.

10 Convention concerning the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972); 1037 UNTS 151; hereinafter “World Heritage Convention”.