

Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women's Rights

ISTVÁN LAKATOS

former human rights ambassador, diplomat; current senior adviser of the Ministry for Human and Minority Rights of Montenegro

In light of the fact that recently cultural differences, the challenges of peaceful coexistence among people coming from different cultural background or even references to the existence of parallel societies in certain European cities are monopolizing the public discourse in many countries, it is important to analyse one of the oldest legal discussions about universalism versus cultural relativism. The article seeks to introduce the most important elements of this debate, which started with the adoption of the UN Universal Declaration of Human Rights. The paper demonstrates the discrepancy between the tendencies regarding the academic discussion and the approach by states on culturally sensitive issues. While scholars are taking more nuanced positions recently by acknowledging both the merits of universal human rights projects and the significance of culture in the conceptualization and implementation of human rights, the intergovernmental debates at different UN fora are still characterized by radical universalist and cultural relativists statements by member states as it was demonstrated during the first two cycles of the UPR discussion on women's rights. A special focus was devoted to women's rights as they are considered to be one of the culturally most sensitive ones and most affected by local traditions and practices.

Keywords: universalism, cultural relativism, UN, UPR, women's rights, human rights, Universal Declaration of Human Rights, FGM

„The ideal subject of totalitarian rule is not the convinced Nazi or the convinced Communist, but people for who the distinction between fact and fiction and the distinction between true and false no longer exist.” (Hannah Arendt: The Origins of Totalitarianism)

1. Introduction

Gender based human rights violations are often defended or legitimized by reference to cultural particularities in a given society. In our globalized world where the different political and economic forces resulted in serious migration flows worldwide, the separation of different cultures is not an option anymore as it was in the Middle Ages and we have to find functioning solutions to address the challenge of the coexistence of representatives of different cultures despite the presence of more and more intolerant societies and intercultural clashes. As the further development of most of the cultures is partly influenced by other cultures the comparison of values prevalent in different cultural contexts it is important to specify the basic inter-cultural human values which belong to the common heritage of humanity. This question brings us to the universalism versus cultural relativism debate ongoing since

the drafting and adoption of the Universal Declaration of Human Rights (UDHR). Questions of relativism have persisted in various forms throughout history, but since the creation of the United Nations these have become a dominant theme for cultural anthropologists and human rights experts, as bearing significantly on the enjoyment of human rights and fundamental freedoms. This paper intends to introduce the different forms of cultural relativism and universalism. It aims to find ways to reconcile the two concepts, which is essential for the further development of the international human rights protection system. It seems obvious from in-depth research on the topic that the radical forms of cultural relativism and universalism are undermining the international human rights system on the one hand and reducing its acceptance globally on the other. The misuse of cultural relativism by authoritarian regimes for justifying human rights violations in the name of cultural particularities should be strictly separated from legitimate claims based on traditional practices, supported by the given cultural community and not in contradiction with basic human rights values. The special focus of this paper is not by coincidence women's rights as they are the ones used to belong – or still belong – to the private sphere and therefore regulated by local traditions and not by legal regulations as other parts of the societal life. The paper is introducing through the UN Universal Periodic Review on women's rights the policy followed by the effected states in order to compare it with the approach of academic researches on the same topic. The UN Universal Periodic Review was used as it is the only truly universal human rights mechanism we are having today in which all the 193 member states of the world organization are taking part and it is covering the whole range of human rights issues, without any limitations. Therefore, culturally sensitive issues are also on the agenda and as the review of states is carried out by other states the process has a strong political component, making the given states' human rights policy more visible. Female Genital Mutilation (FGM) has been chosen to demonstrate the sensitivity and complexity of the problem of cultural relativity because it is the practice affected so far more than 130 million women worldwide and provoked the most flagrant criticism from human rights advocates. However, this is the practice having a 2500 years old history, with very strong cultural relevance and which apparently cannot be addressed only through legal measures without being involved in the cultural context of the problem.

2. The Universalism versus Cultural Relativism Debate

2.1. The Universal Declaration of Human Rights

Many scholars in 1947 were of the view that any generalised human rights regime may encounter cultural differences, and because of that, the American Anthropological Society (AAS) cautioned the UN Commission on Human Rights about this danger during the drafting of the Universal Declaration.¹ In their "Statement on Human Rights" they argued that "values and standards are relative to the culture from which they derive."² In their letter they emphasized that the Declaration could not be "a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America."³ Herkovits, the author of the AAS's Statement of 1947 was of the view that anthropologists should advocate for indigenous peoples to defend them from attempts by international agencies, like the

¹ Roger Lloret Blackburn, *Cultural Relativism in the Universal Periodic Review of the Human Rights Council*, ICIP Working Papers: 2011/03, Institut Catalá Internacional per La Pau, Barcelona, September 2011, p. 10.

² Michael Freeman, *Human Rights*, Polity Press 2010, p.120.

³ Nhina Le, *Are Human Rights Universal or Culturally Relative?* *Peace Review: A Journal of Social Justice*, Vol 28, p. 203.

United Nations to globalize Western moral values.⁴ He considered the UDHR as a charter of an idealist European philosophy, which is not universal in practice.⁵

Cultural relativists usually challenged the Universal Declaration on four grounds⁶:

1. It was drafted by cosmopolitan individuals in a privileged situation within their own society, whose views did not reflect the real concerns of the ordinary people.
2. The Declaration only reflected Western values, putting the emphasis on the individual and forgetting about families and social groups. In 1977 Jamil Murad Baroodi, the Saudi delegate to the UN explicitly criticized the UDHR claiming that it was embodying „an exclusively Western approach to the human rights questions”.⁷ In 1984 the Permanent Representative of Iran to the UN went even further stating that the UDHR “did not accord with the system of values recognized by the Islamic Republic of Iran” and “his country would therefore not hesitate to violate its prescriptions”.⁸ Mahathir bin Mohamad, the Prime Minister of Malaysia in 1997 urged the UN to mark the 50th anniversary of the UDHR by revisiting its contents as the human rights norms contained therein appear to focus excessively on individual rights while neglecting the rights of society.⁹ Mutua, highlighted that many articles of the UDHR echo the US Constitution and the jurisprudence of Western European states. According to him, this is due to a dominance of the West in the early UN, and even most of the Latin American delegates shared a Western point of view in this regard.
3. Governments will not accept those international norms if they consider them to be in conflict with their local cultural values or domestic political interest. Consequently, they will not let the international human rights regime dictate what to do with their practices.
4. Certain rights, like the one of private ownership, or marriage, or religious freedom cannot be reconciled with traditional practices and norms of non-Western societies, so they will be interpreted as a sign of Western cultural imperialism.

In response to these challenges, universalists, though admitting that a large part of the world’s population was not represented at the drafting of the Declaration due to continued colonial rule or exclusion from consideration as defeated Axis powers, claimed that several independent experts (Peng-chun Chang – China, Charles Malik – Lebanon, Carlos Rómulo – the Philippines, Hernán Santa-Chile) from the developing world were influential members of the Commission on Human Rights¹⁰ and the first 3 of them were also members of the drafting committee.¹¹ Although Chang held a doctorate from Columbia University, and Malik had attended Harvard University, they were familiar with both international and local norms and managed to understand and reconcile values of distinct cultures.¹² Their Western education was a great asset during the drafting process as they were culturally more sensitive and it helped to avoid legal solutions which would not be accepted by other non-European cultures.

⁴ Richard A. Wilson, *Human Rights, Culture & Context, Anthropological Perspectives*, Pluto Press 1997, p. 2.

⁵ *Ibid* p. 4.

⁶ Nhina Le, pp. 203-204.

⁷ Roland Burke, *Decolonization and the Evolution of International Human Rights*, University of Pennsylvania Press, 2011, p.138.

⁸ *Ibid* p. 142.

⁹ Robert Paul Churchill, *Human Rights and Global Diversity*, Routledge 2016, p. 44.

¹⁰ Nhina Le, p. 205.

¹¹ Alison Dundes Renteln, *International Human Rights. Universalism versus Relativism*, *Frontiers of Anthropology*, Vol 6, Sage Publications 1990, p 28.

¹² Nhina Le, p. 205.

In this context, it is important to note that in 1944 the American Law Institute issued the „Statement of Essential Human Rights”, which was strongly influenced by Latin American lawyers and that this document had a serious impact on the text of the UDHR.¹³ During debate on the Draft Declaration in the UN General Assembly Third Committee – after it had been completed by the Commission on Human Rights – over one third of the proposed amendments concerning the draft Declaration came from four non-Western states, namely Cuba, Panama, Lebanon and Egypt.¹⁴

According to the universalists, the UDHR managed to synthesize “the Anglo-American understanding of individual with the modern “dignitarian” rights tradition of continental Europe and Latin America”.¹⁵ As a result, it acknowledges that “the individual is constituted and sustained by and through its relationships with others”.

The other argument by the Universalists was that the tensions between universal norms and local practices on private ownership, marriage or religious freedom are not zero-sum games and they can contribute to the development of both.¹⁶ They also highlighted how certain traditional practices in non-Western cultures prevent the abuse of power by leaders who refer to cultural differences in order to protect their power. Lastly, in order to prove the universality of the values embodied in the Declaration, several experts referred to the fact that a number of national constitutions drafted after the adoption of the UDHR incorporated some of its provisions.¹⁷ As a result, the prevailing view among states and international lawyers was that “the norms of the UDHR have become binding as part of customary international law, legal principles of the so-called civilized nations” despite the fact that several states abstained during its adoption.¹⁸ As it was put by Charles Norchi: The Universal Declaration “represents a broader consensus on human dignity than any single culture or tradition.”¹⁹ Sybesma-Knol underlined that the Declaration was drafted by a Committee composed of experts representing different cultural traditions and then the provisions of the text found their way to legally binding international documents, ratified by the vast majority of UN member states. The universal nature of these standards was confirmed in 1993, by the World Conference on Human Rights in Vienna.²⁰

In this context, it should be mentioned that out of the 58 countries which drafted the UN Universal Declaration of Human Rights, 20 were from Latin America, besides four African and 14 Asian states. This means that only 20 states belonged to the European and Western World. Non-Western states had quite a significant input on some rights, mainly on economic, social and cultural rights, but several rights like the protection on minorities or self-determination were also raised by them and although they did not make their way into the Declaration, they were subsequently accepted by international law.²¹

¹³ Ayodeji K. Perrin, Human Rights and Cultural Relativism, The „Historical Development” Argument and Building a Universal Consensus, Fall 2005, p 14

http://www.academia.edu/2282438/Human_Rights_and_Cultural_Relativism_The_Historical_Development_Argument_and_Building_a_Universal_Consensus (21 September 2017).

¹⁴ Ibid p. 14.

¹⁵ Nhina Le, p. 205.

¹⁶ Ibid p. 206.

¹⁷ Alison Dundes Renteln, p. 32.

¹⁸ Ibid p. 29.

¹⁹ Diana Ayton-Shenker, The Challenge of Human Rights and Cultural Diversity, United Nations Background Note, DPI/1627/HR-March 1995, p. 2.

²⁰ Neri Sybesma-Knol, The United Nations System for the protection of human rights. What is happening to the principle of universality? In: André Alen, Veronique Joosten, riet Leysen, Willem Verrijdt (eds), *Liberæ Cogitationes. Liber amicorum Marc Bossuyt*. Cambridge Intersentia 2013, p. 696.

²¹ Fernand de Varennes, The fallacies in the „Universalism versus Cultural relativism” debate in human rights. *Asia-Pacific Journal on Human Rights and the Law* 1, 2006, pp.71-72.

It is important to note that the document was adopted with 8 abstentions, with no dissentient votes. Besides the six members of the communist bloc (Poland, Czechoslovakia, Yugoslavia, Byelorussian SSR, Ukrainian SSR and the Soviet Union) South Africa and Saudi Arabia abstained. It was obvious that for South Africa it was challenging to reconcile its Apartheid policy with the principles of the Declaration, while Saudi Arabia claimed that the western, liberal and individualistic approach of the document clashed with the Muslim way of life in the country.²² The Arab states tried to challenge the right to change one's religion, but their attempt was not supported by the majority of states.²³ The Communist bloc had obvious problems harmonising the text of the Declaration with the Marxist approach to human rights. These abstentions were already an indication that human rights priorities and approaches of UN member states were different, although at that early point, just after the horrible events of WWII, it did not lead to open clashes.

There is now, however, a consensus that the values contained in the Universal Declaration *are* universal and they have been largely integrated into the disparate cultural traditions.²⁴ The author of this paper shares Donnelly's presumption that the rights enshrined in the UDHR apply universally and they represent a "minimal response to the convergence of basic cross-cultural human values and the special threats to human dignity posed by modern institutions".²⁵ In his view, this presumption of universality could only be overcome by demonstrating how an anticipated violation is not standard in that society, that the value is not considered basic, or there are alternative protective measures. He argues that such a test can be met rarely and the permissible exceptions are relatively minor and generally consistent with the main thrust of the UDHR.²⁶

2.2. The Notion of Universalism

Proponents of universality are of the view that the human rights guaranteed in international treaties and conventions should be applied in all countries, and that they must prevail even when they conflict with established cultural or religious practices.²⁷ This notion is based upon the equality, indivisibility and universality of all human rights. According to Shestack, "modern universalist theories of human rights can be based on natural law, justice, reaction to injustice, dignity, and equality of respect and concern."²⁸ As it was correctly pointed out by Michael Freeman, universality cannot be confused with conformity, as universality promotes diversity by protecting cultural freedom.²⁹

Universalists firmly believe that human rights and fundamental freedoms are inherent in the nature and dignity of each human being and that there should be a set of basic ethical standards and principles, acceptable to all cultures, religions and political systems.³⁰ As in their view humanity or some particular

²² Declan O'Sullivan, The history of human rights across the regions: universalism vs cultural relativism. *The International Journal of Human Rights*, Vol 2, No.3, 1998, pp. 28-29.

²³ Alison Dundes Renteln, p. 30.

²⁴ Jack Donnelly, Cultural Relativism and Universal Human Rights, *Human Rights Quarterly* Vol. 6 No. 4 (1984) pp. 414-415.

²⁵ *Ibid* p. 417.

²⁶ *Ibid* p. 417.

²⁷ Karen Musalo, When Rights and Cultures Collide. Markkula Center for Applied Ethics, Santa Clara University Nov 12, 2015, p. 2.

<https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/when-rights-and-cultures-collide/> (21 September 2017).

²⁸ Michael E. Goodhart, Origins and Universality in the Human Rights Debates: Cultural Essentialism and the Challenge of Globalization, *Human Rights Quarterly*, Volume 25, No. 4, p. 940.

²⁹ Michael Freeman, p.132.

³⁰ Neri Sybesma-Knol, p. 703.

facet of human nature is the only source of rights, cultures are irrelevant concerning the validity of moral rights and rules.³¹ This is however, the view of the proponents of radical universalism – as it is called by Donnelly – which implies a certain method of cultural imperialism. Radical universalism completely denies national or subnational ethical autonomy and self-determination, by giving an absolute priority to the demands of the cosmopolitan moral community over all other moral communities.³² In light of the above-mentioned arguments Donnelly found that radical universalism couldn't be maintained, as certain moral communities should deserve respect from the outside world.

Donnelly in his later work distinguished three ways in which human rights are universal.

1. International legal universality means that the most important internationally recognized human rights are part of international law and politics and the average ratification rate of the six core human rights instruments³³ among UN member states is surprisingly high, around 90 %.³⁴ What is more striking is, that despite all cultural and political differences, there is almost a universal agreement not just in their existence, but also in their content.³⁵ Although there is no serious international enforcement mechanism, international legal universality can be seen as one of the most important “practical legacy of international action on behalf of human rights”.³⁶
2. Overlapping consensus universality means that the adherents of most leading comprehensive doctrines do in fact endorse internationally recognized human rights. This overlapping consensus, although partial and political and not complete and moral, is real and very important given the endorsement by all civilizations of the moral equality of all human beings. In 1995, The Independent published a research paper showing that there is a considerable overlap in attitude between different religions on various issues including blasphemy, non-observance of religious events, murder, adultery, theft, lying, pre-marital sex, homosexuality, divorce, suicide or cruelty to animals.³⁷
3. Under Functional Universality Donnelly understands the notion that “internationally recognized human rights respond to certain standard threats to human dignity associated with modern markets and modern states”.³⁸ Irrespective of our cultural, religious, political background we all need protection against certain standard threats and human rights are precisely serving that purpose.

Donnelly emphasized that although human rights first developed in the West, this was not due to any particular features of Western culture, which is today a result and not a cause of human rights ideas and

³¹ Sylvain Bayalama, *Universal Human Rights and Cultural Relativism*, Scandinavian Journal of Development Alternatives, Vol.12. No.2, 3, (1993) p. 132.

³² Jack Donnelly, *Cultural Relativism and Universal Human Rights*, p. 402.

³³ The six human rights instruments Jack Donnelly referred to are the following:

- International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- International Covenant on Civil and Political Rights (1966);
- International Covenant on Economic, Social and Cultural Rights (1966);
- Convention on the Elimination of All Forms of Discrimination against Women (1979);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- Convention on the Rights of the Child (1989).

³⁴ Jack Donnelly, *Universal Human Rights in Theory and Practice*. 3rd Edition, Cornell University Press 2013, p. 94.

³⁵ *Ibid* p. 95.

³⁶ *Ibid* p. 95.

³⁷ Rein Müllerson, *Human Rights Diplomacy*, Routledge 1997, p. 77.

³⁸ Jack Donnelly, *Universal Human Rights in Theory and Practice* p. 97.

practices.³⁹ In this context, it is sufficient to note that egalitarian readings of Christian ideas were repressed in the name of Christianity throughout almost all of the Christian history. In his view, no culture is by nature either compatible or incompatible with human rights⁴⁰ and they can be legitimately applied to non-Western societies too,⁴¹ as they can be as effective as or even more effective than either traditional approaches or modern non-human rights strategies.⁴² However, Universalists believe that liberalism is the most suitable political system within which to implement them. Ake even went further by saying that human rights can only exist in atomized, individualistic societies.⁴³

Certain universalists even consider that not all societies possess human rights concepts, as traditional societies focus more on duties than on rights per se, and the life is conceptualised communally within a status-based order. They tend to deny collective or third-generation rights as according to them the subject of human rights is the individual and not the group.⁴⁴

Universalists are generally supportive of regional human rights mechanisms, as they can facilitate the implementation of universal standards at regional level.⁴⁵ While, the UN struggled for some time between 1948 and 1966 to translate the provisions of the UDHR into legally binding instruments, the Council of Europe managed to do it much earlier, by adopting the European Convention on Human Rights in 1950.⁴⁶ The Organization of American States acknowledged the universality of human rights in the American Declaration of 1948 and subsequently in the American Convention of 1969.⁴⁷ The third, most recent regional human rights system was the African one, established by the adoption of the African Charter on Human and Peoples' Rights (also known as the Banjul Charter) in 1981. It was the only one focusing not just on the rights but on the duties as well.

In light of the above mentioned thoughts regarding the role of regional organizations, it is interesting to see how the World Conference on Human Rights (1993) reaffirmed the universality of human rights after holding regional preparatory conferences. From our research point of view the regional conferences held in Tunis for Africa, in San José for Latin America and the Caribbean and in Bangkok for Asia are the most important events. Although there was reference in all 3 documents to the distinctive cultural heritage of the given region, the Bangkok Declaration used the strongest language, stating that:” while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.” During this conference several countries like China, Singapore, Malaysia or Indonesia mentioned their distinctive cultural legacy and values and emphasized the importance of communal/state obligations, while highlighting that the monitoring, implementation and interpretation of human rights should be in the purview of the state.⁴⁸ In this context, it is not surprising that although the Vienna Declaration underlines that the universal nature of human rights “is beyond question” and that they are “universal, indivisible interdependent and interrelated”, there is no reference to the International Covenant on Civil and political Rights, nor to the

³⁹ Ibid pp. 106-107.

⁴⁰ Ibid p. 107.

⁴¹ Sylvain Bayalama, p. 131.

⁴² Ibid p. 132.

⁴³ Ibid p. 132.

⁴⁴ Ibid p.135.

⁴⁵ Declan O’sullivan, p. 43.

⁴⁶ Chaloka Beyani, Reconstituting the universal: human rights as a regional idea, in: Conor Gearty, Costas Douzinas (eds): *The Cambridge Companion to Human Rights Law*, Cambridge 2012, p.177.

⁴⁷ Ibid p. 177.

⁴⁸ Adamantia Pollis, Cultural Relativism Revisited: Through a State Prism, *Human Rights Quarterly* Vol. 18, No. 2, p. 331.

individualist character of human rights and we cannot find the mentioning of freedom of speech, assembly, or religion.⁴⁹ However, the Declaration reaffirms the International Covenant on Economic, Social and Cultural Rights and there is a specific reference to the problem of poverty and the need of economic development.

2.2.1. The role of globalization

Many scholars are in agreement that globalization has an important role in generating the multiculturalization of human rights, making it truly universal.⁵⁰ Goodhart drew a parallel between developments related to capitalist revolution in early Europe and the consequences of today's globalization. The economic transformation of the seventeenth and eighteenth century destroyed traditional organizations and triggered serious upheavals in Europe, where communal values were typical at that time. The "enclosure of common lands, the displacement of peasants, huge migration to towns, and the creation of a rudimentary wage labour market were commonplace".⁵¹ As a result, traditional rights became irrelevant, as traditional ties were broken. The same happened with traditional societies, as the global market economy destroyed them and their moralities and "drew every corner of the planet into a single economic machine" as it was put by Anderson.⁵² The operation of a capitalist model required a certain system of rights and liberties, resulting in a transformation of social structures. This new development through the appearance of social welfare rights, equal rights for women and minorities, religious tolerance was as alien to the West at that time, as it is nowadays to certain developing countries. The above mentioned parallel shows that certain „cultural" differences between the West and the Rest can be explained by socio-economic factors.

In conclusion, we have to see that ideas about liberty, freedom or human dignity were to be found in different cultures. The difference is that the market economy and the modern state had been created first in the West, establishing the necessary conditions for the development and the realization of these ideas.⁵³ The current discussion on cultural relativism is consequently between societies which are at different levels of social development.

2.3. The Arguments of Cultural Relativism

The doctrine of relativism is not a new one, as Greeks had already written about it.⁵⁴ The core of the theory is not just the recognition of cultural differences in thought or in value, but also implies specific ways in which evaluations or judgements are made. The advocates of cultural relativism argue that permitting international norms to override the dictates of culture and religion is a violation of state sovereignty.⁵⁵ However, as it was underlined by Freeman, the reference to state sovereignty is not an

⁴⁹ Ibid p. 331.

⁵⁰ Matthew Lower, Can and should human rights be universal? E-IR essay, Dec 1 2013 <http://www.e-ir.info/2013/12/01/can-and-should-human-rights-be-universal/> (21 September 2017).

⁵¹ Michael E. Goodhart, p. 952.

⁵² Ibid pp. 955-956.

⁵³ Rein Müllerson, pp. 96-97.

⁵⁴ Alison Dundes Renteln, p. 62.

⁵⁵ Karen Musalo, When Rights and Cultures Collide. Santa Clara University, Markkula Center for Applied Ethics, Nov 12, 2015. <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/when-rights-and-cultures-collide/> (21 September 2017).

appeal to cultural relativism, as the principle of sovereignty is as universal as human rights.⁵⁶ State sovereignty is frequently used to discourage unwanted external interference, maintain the peace, but also to protect human rights violations.

According to cultural relativists, rights only exist when a society perceives them as such. Radical cultural relativism considers that culture is the only source of validity of a moral right or rule.⁵⁷ Strong cultural relativism is willing to accept the universal application of a few basic rights, but allows variations for most of the other rights. Weak cultural relativists hold that culture can be one of the important sources of the validity of a moral right or rule.⁵⁸ In order to differentiate weak cultural relativism from weak universalism one has to examine its views about the human nature, the role of communities and rights. Cultural relativists call for a cross-cultural understanding and respect of other ways of life.⁵⁹

According to contemporary anthropologists, cultural relativism is a response to the doctrine of cultural evolutionism as in the 19th century their predecessors looked at Western values as a model for evolution for the rest of the world. Cultural evolutionism certainly had a racist, Eurocentric character and cultural relativism was originally a response to this.⁶⁰

Leaders misusing the notion of cultural relativism are often referring to communal or collective traditions to justify human rights violations, or to subordinate everyone to the interest of the ruling party.⁶¹ However, collective or communitarian ideologies are not always hostile to human rights, and the respect for the rights of the individual does not mean automatically the neglect of families or the larger community.

Cultural relativism is attractive at least from two aspects at first glance. First, it states that everyone is equally entitled to respect and second that this respect entails respect for that person's culture as culture is part of the person's identity.⁶² However, according to Freeman, the principle that we should respect all cultures is a self-contradiction as some cultures do not respect all cultures. He even goes further stating that those cultures that support human rights violations cannot demand our respect, simply because they are cultures.

In the view of cultural relativists, there are no absolute values or principles upon which any culture or society could be judged, apart from those of the given culture, so no moral judgment is universally valid.⁶³ Consequently, if a human right is not indigenous to a particular culture, its validity and applicability is questionable. Cultural relativism is often criticized as it is rejecting the comparative method of research and therefore rendering the search for cross-cultural universals meaningless.⁶⁴

If cultural relativists would adopt the position that human rights are based in human nature and human nature is universal it would be difficult to explain how human rights could be relative in any way.⁶⁵ The solution offered by cultural relativists is that in their view human nature is relative in certain aspects.

⁵⁶ Michael Freeman, p. 126.

⁵⁷ Jack Donnelly, *Cultural Relativism and Universal Human Rights*, p. 400.

⁵⁸ *Ibid* p. 401.

⁵⁹ Sylvain Bayalama, pp. 137-138.

⁶⁰ Alison Dundes Renteln, pp. 62- 63.

⁶¹ Rein Müllerson, pp. 84-85.

⁶² Michael Freeman, pp. 125-126.

⁶³ Michael E. Goodhart, p. 939.

⁶⁴ Alison Dundes Renteln, p. 78.

⁶⁵ Jack Donnelly, *Cultural Relativism and Universal Human Rights*, p. 403.

The cultural variability of human nature therefore requires the allowance for cross-cultural variations in human rights.

Robert Paul Churchill called the notion we are discussing now *exceptionalism*, as some groups would like to have exceptions to the application of human rights norms.⁶⁶ He listed the following arguments typically used by exceptionalists:

1. Human rights norms cannot be truly universal because of the relativity of all norms (*ethical relativism*). According to Churchill there are no compelling reasons to believe that all values must derive their legitimacy from one particular culture.
2. As human rights are Western products they cannot be transferred from one culture to another (*incommensurability claim*) Churchill holds that the legitimacy of a belief does not depend on its historical genesis. Franck argued that human rights are grounded in modern trans-cultural, social, economic and scientific developments, like industrialization, urbanization, information revolution and not in any particular culture.⁶⁷
3. Powerful states attempt to politically control developing countries (*imperialism charge*). According to Churchill this argument is confusing the concern about the validity on universal human rights norms with the questions about the means and motives used to advance the international human rights regime. It does not explain the human rights criticism about Western countries.⁶⁸
4. Introduction of foreign human rights norms will destroy values native to a culture (*Casual complaint* because of the connection between human rights and the decline of traditional cultures) It is often said that human rights are promoting personal autonomy, self-interested individualism that is destructive of social responsibility, duties and communal loyalties. These are often associated with the spread of market economy and other features of modernity, urbanization, and globalization. We have to separate all these from empirical issues. Human rights movements and the transformation of traditional societies are the consequences of the same forces and not of each other.⁶⁹
5. Human rights norms are irrelevant as traditional values provide better protection (*irrelevancy criticism*). Donnelly questions the assumption of the continuing relevance of traditional practices in modern conditions. In his views as traditional societies are in decline, human rights norms are needed to protect the human dignity that was formally protected by traditional values and norms.⁷⁰
6. The immediate implementation of certain human rights would be politically and socially distractive, by undermining the progress in protecting other rights. Some human rights must be suppressed in order to protect other rights (*Trade-off argument*). Those countries supporting the trade-off argument are of the view that there are conflicts between whole categories of rights. Authoritarian regimes assume that allowing the citizens to exercise their rights will lead to a “slippery slope”, destroying social order.⁷¹ They are mistaken in the view of Churchill, by thinking that civil and political rights should be suppressed in order to advance economic

⁶⁶ Robert Paul Churchill, p. 45.

⁶⁷ Ibid p. 59.

⁶⁸ Ibid p. 68.

⁶⁹ Ibid pp. 68-71.

⁷⁰ Ibid p. 71.

⁷¹ Ibid pp. 83-84.

development and that the enjoyment of economic and social rights must precede the enjoyment of civil and political rights. It is also a mistake to think that the premature enjoyment of civil and political rights will result in economic stagnation or social instability. They ignore the diversity and interconnectivity of rights.⁷²

According to Mutua the entire human rights corpus should be debated and restructured with the participation of all societies and cultures.⁷³ The multi-culturalization of the human rights corpus could be attempted in a number of areas, such as balancing between individual and group rights, giving more substance to social and economic rights, relating rights to duties or addressing the relationship between the human rights corpus and economic systems.⁷⁴ In his view the West has imposed its human rights philosophy on the rest of the world and the rights guaranteed by the human rights corpus require a Western liberal democracy.⁷⁵ He goes even further by stating that human rights are used by the West as a foreign policy tool against non-Western states, for example when linked to development assistance with the intention to “civilize” the concerned developing countries.⁷⁶

It is an interesting fact to note that in the 50ies cultural relativist language was mainly used by Western colonial powers, which resisted extending human rights to their colonies, which are – in their view – “at the lower stage of development”. During the negotiations of UNGA resolution 843 of 1954 on the Status of Women in Private Law there were non-Western states which were in the frontline to eradicate harmful customs and cultural practices to women.⁷⁷

The rise of cultural relativism in the Third World was clearly associated with the rise of dictatorships in the 60s, 70s.⁷⁸ The most important similarity between states referring to cultural relativism was not the culture they represented, but the authoritarian character of their governments. They all shared a common fear of outside investigation and loss of power. In this context, it is worth to mention the distinction between internal and external evaluations and their consequences. Those practices which are not even supported by the internal evaluation of the given culture cannot be defended in cultural terms.⁷⁹ The most problematic case is when a practice is acceptable according to internal, but not to external evaluation. The cultural relativism versus universalism focuses on these cases. Of course, the stronger cultural relativism is relying more on the internal evaluation, while the weaker ones are more willing to accept external evaluations too.

As we can see from the above analysis, in most of the cases of cultural relativism the discussion is not about the denial of certain rights; it is more about the different implementation of human rights because of cultural differences. With the exception of the extreme position of strict cultural relativists, fundamental human rights are considered universal and cannot be set aside because of cultural differences. However, due to the different cultural context, the application of the same human rights standard in different situations can have a different result. A classic example of this would be the case, where a politician in the Western World is accused of polygamy and quite likely could obtain a court order to restrict the publication of such information in a newspaper based on the argument that it is permissible to impose restriction on information when such information is damageable to one’s

⁷² Ibid pp. 84-86.

⁷³ Makau Mutua, p. xi.

⁷⁴ Ibid pp. 6-7.

⁷⁵ Ibid p. 59.

⁷⁶ Ibid pp. 24-25.

⁷⁷ Roland Burke, p. 126.

⁷⁸ Ibid pp. 143-144.

⁷⁹ Jack Donnelly, Cultural Relativism and Universal Human Rights, p. 406.

reputation. This would not be the case if this politician would live in a country where polygamy is accepted in the social, moral and legal context of the country as the story would not be considered defamatory.⁸⁰

2.4. The Reconciliation of Universalism and Cultural Relativism

First of all we have to separate those deviations in the implementation of international human rights standards which are related to cultural, historical or religious differences from those references to cultural traditions which are intended to justify human rights violations by the political leadership.⁸¹

It is important to understand that the conflicts between universalism and cultural relativism can have positive effects as well.⁸² They are the opposite sides of the same coin and they can mutually reinforce each other. Human rights advocates can benefit from the cultural sensitivity of cultural relativism when they are developing their human rights campaigns in a specific cultural context, avoiding negative reactions from the host society.⁸³ On the other hand human rights experts can contribute to the development of a culture, making it more adaptive to international human rights standards by helping to reconcile traditional practices with them. As it was so eloquently stated by Kofi Annan: “No single model of human rights, Western or other, represents a blueprint for all states”.⁸⁴

As it was put by Rein Müllerson: “The most important human rights, and gross and massive violations of them are not culturally conditioned”. Their forms may vary according to different cultural practices, but their content is culturally irrelevant.⁸⁵ Moreover, universal human rights standards are not rigid rules, so their interpretation and application can vary depending on the different cultural norms, traditions. The reconciliation of local and international norms is not always possible, but it is possible in many cases, especially in light of the fact that international norms are usually not as detailed as local ones. That is one of the reasons why the practice of the so called “margin of appreciation”⁸⁶ doctrine was established by the European Court of Human Rights to solve that kind of problems under its jurisdiction.⁸⁷ It is important to see that international human rights norms, by contributing to the gradual eradication of inhuman traditional practices are not undermining the cultural foundations of Asian or African societies, but making them more human.⁸⁸

The cultural relativists’ position that human rights are not observed worldwide because they are not integrating the non-Western concepts of dignity is not sustainable as the main elements, values of our present human rights system can be found in almost all the cultures as due to the globalization, people are facing similar threats everywhere and human rights are still the best answers to address them.

⁸⁰ Roger Lloret Blackburn, p. 80.

⁸¹ Rein Müllerson, p. 83.

⁸² Nhina Le, p. 209.

⁸³ Ibid p. 209.

⁸⁴ Ibid p. 209.

⁸⁵ Rein Müllerson, pp. 79-80.

⁸⁶ The national authorities of Contracting States to the Convention for the Protection of Human Rights and Fundamental Freedoms (also known as: European Convention on Human Rights – ‘ECHR’) are permitted a degree of latitude in respect of the manner in which they discharge their obligations under the Convention. This degree of freedom is referred to as the doctrine of the “margin of appreciation”. The doctrine plays a pivotal role in ensuring that the ECHR is workable throughout the Contracting States despite the varied differences found in the national systems of Contracting States.

⁸⁷ Ibid p. 80.

⁸⁸ Ibid p. 84.

Howard suggested an interesting model in order to reconcile cultural relativism and universalism. She would support a national legislation permitting women to „opt out” of traditional practices in favour of universal values. Of course in certain cases – like that only families can use the community owned lands – this reconciliation is not possible, but in some cases it can be a solution.⁸⁹

Dundes Renteln suggested that despite all the difference among individuals there are certain cross-cultural universal values, which are adopted by all societies and which can be used to legitimize universal moral standards.⁹⁰ Dembour proposes that we should take an intermediary position allowing local factors to be taken into account during the implementation of international human rights law.⁹¹ An-Na'im aimed during his works to achieve the cultural legitimacy of international human rights norms. According to him, it can only be achieved if members of a given culture regard the norms to be validated and sanctioned by their own cultural norms, so there is a need for internal legitimation of international human rights law.⁹² His two-stage approach included first an internal discussion within cultures, then a cross-regional dialogue.

In conclusion, we can see that the contemporary discussion moved away from the classical dichotomy of radical universalism versus radical cultural relativism, and scholars have been taking more nuanced positions by acknowledging both the merits of universal human rights projects and the significance of culture in the conceptualization and implementation of human rights.⁹³

„No social group has suffered greater violation of its human rights in the name of culture than women.” Arati Rao (The politics of gender and culture in international human rights discourse)

3. Women's Rights

3.1. The Role of Traditions

The aforementioned example on polygamy brings us to the wider examination of the plight of women, which as we know has been a disadvantaged one throughout history, irrespective of the culture they were living in due to the dominant patriarchal relations.⁹⁴ One of the main reasons why concerns and issues related to women were more affected by traditions, cultural differences was that they were traditionally relegated to the private sphere contrary to questions belonging to the public sphere, which was regulated and scrutinised by the states and were not only governed by cultural values and traditions.⁹⁵ As a result, certain societies continued to defend their unequal treatment of women in the name of preserving certain cultural particularities.⁹⁶ Consequently, as it was so wisely argued by Arati

⁸⁹ Jack Donnelly, *Cultural Relativism and Universal Human Rights*, pp. 418-419.

⁹⁰ Gayatri Patel, *How 'Universal' Is the United Nations' Universal Periodic Review Process? An Examination of the Discussion Held on Polygamy*. *Human Rights Review* (2017) Vol 18, p. 465.

⁹¹ *Ibid* p. 465.

⁹² *Ibid* p. 465.

⁹³ *Ibid* pp. 465-466.

⁹⁴ Bret L. Billet, *Cultural Relativism in the Face of the West. The Plight of Women and Femal Children*. Palgrave Macmillan. 2007, p. 17.

⁹⁵ Gayatri Patel, *How 'Universal' is the United Nations' Universal periodic Review Process? An Examination from a Cultural Relativist Perspective*, PhD Thesis, University of Leicester, 2015, p. 75.

<https://lra.le.ac.uk/bitstream/2381/37501/1/2016PATELGPhD.pdf> (3 November 2017).

⁹⁶ *Ibid* p. 59.

Rao: „no social group has suffered greater violation of its human rights in the name of culture than women.”⁹⁷

3.2. Cultural Relativism and the Discussion on Women’s Rights during the UN Universal Periodic Review (UPR)

An interesting research was carried out by Patel, regarding the recommendations concerning women’s rights during the first two cycles of the UN Universal Periodic Review⁹⁸, the only truly global human rights review we have today. The importance of women’s rights and the specific vulnerable position of women in society were clearly demonstrated by the fact that 3702 recommendations, by 84 % of acceptance, were formulated in this field, representing 17 % of all the recommendations, which made it the most frequently raised issue.⁹⁹ He differentiated several subcategories, like Female Genital Mutilation, abortion, access to health, polygamy, inheritance, forced and early marriage, honour killing, marital rape and domestic violence.

The investigation showed that when observer states took a strict universalist position, asking the concerned government to eliminate a practice and the related cultural norms, the answers were usually defensive and not substantial. However in case of the discussion regarding honour killing or marital rape, observer states refrained referring to international norms in their recommendations.¹⁰⁰ According to the research, challenges to the normative universalism were made on two grounds, on the ground of national sovereignty and on the basis of a strict cultural relativist approach. For example, concerning the recommendations on polygamy Burkina Faso, Chile, Tanzania, Ghana and Libya used religious and cultural norms as a justification of this practice. Regarding FGM, Mali and Liberia mentioned that this practice was deeply embedded in culture, and that therefore the reforms suggested by the observer states could not be accepted.¹⁰¹

One of the most important findings of the research was that when states adopted a strict universalist or a strict cultural relativist position, the discussion has been oversimplified, as both approaches interpret culture as a static, homogenous and bounded entity, which cannot be influenced by external norms or beliefs.¹⁰²

However, during the discussion on FGM, forced and early marriage, domestic violence and honour killing both observer states and states under review recognized the relationship between women’s rights and culture and they appreciated reforms aimed at discouraging the cultural attitudes towards the

⁹⁷ Arati Rao, *The politics of gender and culture in international human rights discourse*. In: *Women's rights, human rights: international feminist perspectives*, edited by Julie Peters and Andrea Wolper. New York, New York, Routledge, 1995. p. 167.

⁹⁸ The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN Member States. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists. The UPR was established when the Human Rights Council was created on 15 March 2006 by the UN General Assembly in resolution 60/251. This mandated the Council to "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States".

⁹⁹ Gayatri Patel, p. 73.

¹⁰⁰ Ibid p. 256.

¹⁰¹ Ibid p. 257.

¹⁰² Ibid p. 259.

practice which are inconsistent with international human rights norms.¹⁰³ This moderate cultural relativist position reflects a modern conceptualization of culture, which has porous boundaries and can be influenced by external norms and reformed over a period of time.¹⁰⁴ The discussion on forced and early marriage where many states adopted a moderate cultural relativist position was more fruitful for example than the discussion on polygamy or inheritance, where states followed a strict cultural relativist position.

3.2.1. The Discussion on Polygamy during the UPR

The question of polygamy has been raised in the case of 18 states during the first 2 cycles of the UPR. A total of 22 recommendations were formulated on that topic, 10 were adopted, 12 were noted by the states under review. It is interesting to note that despite the fact that 14 of the 18 states were African, there was not one recommendation from the region.¹⁰⁵ It clearly indicates the importance of regional solidarity on a highly sensitive issue, which is closely related to traditional practices and cultures deeply rooted in many African societies. Patel in her research differentiated 4 types of recommendations on that topic during the first two cycles of the UPR. The first one is declaring polygamy as a harmful traditional practice, the second one is asking reforms to the domestic legislation on polygamy, the third type of recommendation asks the state under review to ensure the compliance of their domestic laws on polygamy with international human rights standards and the fourth one is asking for the elimination of polygamy. In case of the first one the responses by states under review were usually subdued and states did not commit themselves to reform their current practice.¹⁰⁶

The second type of recommendation was only accepted by Kyrgyzstan during the first cycle among the four states who received it. Burkina Faso's explanation was an interesting one as they said that "polygamous marriage was optional whereas monogamy was the rule" and that polygamy was "one of the secular aspects of the culture of Burkina Faso". Tanzania could not accept the recommendation on the basis of the enjoyment of cultural and religious rights.¹⁰⁷ In the second cycle Equatorial Guinea – the only country receiving that type of recommendation – accepted it and noted that laws prohibiting polygamy were already in place.

Three countries received this type of recommendation during the first and one during the second cycle. During the first cycle it was only Israel which accepted it, saying that it reinstructed the Quaddi's of the sharia courts to refer every suspected case of polygamy to the police. In contrast, Ghana and Libya both noted this type of recommendation. Ghana was explaining that marriages that were customary or faith based "were in conformity with the customs and traditions of Ghana". Libya was explaining that the suggested reforms were "in conflict with the Islamic religion and the customs". Consequently both delegations prioritized their cultural and traditional particularities above the compliance with international human rights norms. In the second cycle Morocco received only that type of recommendation. It was noted without further explanation.¹⁰⁸

The fourth type of recommendation, suggesting the elimination of polygamy without referring to domestic legislation or international human rights norms was accepted by two states under review and

¹⁰³ Ibid p. 261.

¹⁰⁴ Ibid p. 262.

¹⁰⁵ Gayatri Patel, p. 467.

¹⁰⁶ Ibid pp. 468-470.

¹⁰⁷ Ibid pp. 470-471.

¹⁰⁸ Ibid p. 471.

noted by one. Kyrgyzstan and Mauritania accepted the recommendation without further explanation, while Senegal noted it and insisted that the observer state “should take into account the particularities of the Muslim religion which explains the existence of polygamy. In the second cycle The DRC and Russia accepted the recommendation, while Burkina Faso noted it and explained that “those recommendations which were not accepted did not adapt easily to the present cultural and socio-economic realities of Burkina Faso”. It is worth mentioning that Burkina Faso used the same argument in the second cycle than during the first one and it was the only state in the second cycle using cultural justification not to accept a recommendation.¹⁰⁹

Patel found on the basis of her research that regardless of the recommendations, the states under review decided to stick to their selected position on polygamy and therefore the responses were predetermined and prescribed.¹¹⁰ She underlined that because of the strange character of the UPR system – only focusing on the implementation of accepted recommendations – none of the states which noted the recommendations on polygamy were held accountable during the second cycle. It is clear from her research that most of the observer states using the relationship between polygamy and culture, took a strict radical universalist position, by suggesting the abolition of this traditional practice, whereas states under review who did not accept the recommendations on polygamy, justified their position from a strict cultural relativist perspective. Consequently there was meaningful discussion on the topic as the possible reform of cultural norms supporting polygamy was not even discussed.¹¹¹ As it was wisely pointed out by Patel, the UPR discussion by being oversimplified, and lacking a culturally legitimate angle did not generate the political momentum to encourage an internal discussion on the issue aiming at cultural changes.

3.3. Female Circumcision/ Female Genital Mutilation (FGM)¹¹²

In the context of cultural relativism and women’s rights, we have to discuss the term „harmful cultural practices”. This, according to Brems, means practices considered harmful and disadvantageous by an outsider, but being meaningful to certain members in a given culture.¹¹³ In these cases, either the cultural insider does not perceive any harm or disadvantage, or it is justified and compensated for in the wider cultural context. These practices include among other female infanticide, child marriage, arranged or forced marriage, polygamy or veiling. However, the lion’s share of concerns about human rights groups is about female circumcision, which is described as a barbaric torture and mutilation, intended to perpetuate male ownership over women.¹¹⁴

The first confirmation of the existence of this practice was through the discovery of female mummies in Egypt from 484 BC.¹¹⁵ This might suggest that it originated in Egypt and spread from there. Other researchers, however, suggest that FGM developed as an African tribal puberty rite and extended to

¹⁰⁹ Ibid p. 472.

¹¹⁰ Ibid p. 472.

¹¹¹ Ibid pp. 473-475.

¹¹² The WHO defines female genital mutilation as comprising „all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons.” Both female circumcision and female genital mutilation are used for the practice, however, the first one is considered as a more value-free terminology.

¹¹³ Eva Brems, *Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse*, *Human Rights Quarterly* Vol. 19. (1997) p. 148.

¹¹⁴ Ibid p. 148.

¹¹⁵ Bret L. Billet, p. 20.

places like Egypt. Consequently, its origins predate both Islam and Christianity.¹¹⁶ There is no reference to FGM in the Koran and it is a mistaken belief this practice is prescribed by Islam. According to the estimation of WHO over 130 million girls and women have undergone some form of female genital mutilation and an additional 2 million girls are at risk annually.¹¹⁷

The justification of the practice usually includes several factors, like patriarchy, tradition, religion, myth, social cohesion, sexual considerations and economic concerns.¹¹⁸ One of the most important issues related to the cultural clash over this practice is about our culturally constructed lens as it was described by Billet.¹¹⁹ For example, the fact that the collective is having a higher status within the society than the individual is alien for most of us in Western societies.¹²⁰ Without knowing much about the cultural relevance of female circumcision, like the importance of a girl entering womanhood, it is difficult to make an objective assessment about the practice. In that cultural context, parents have two options, neither of them is a real choice.¹²¹ They can force their daughter to go through the surgery and by that they violate her right to her bodily integrity or they can let her avoid the surgery in the interest of the protection of her personal autonomy, but as a result she may face embarrassment and humiliation from the community as she did not go through a culturally recognised tradition. According to Mitchum, the lack of choice renders FGM a violation of women and young girls' fundamental right to dignity, bodily integrity and security.¹²²

Many human rights experts are of the view that FGM should be considered as a violation of international human rights instruments, regarding their provisions on the right to health.¹²³ Both the UDHR, the ICESCR and the CEDAW contain articles related to the protection of health. Others believe that it is also a human rights violation because of the fear associated with the concerned girls. Mitchum holds that those cultural practices which are violating international human rights instruments should be discontinued.¹²⁴

The most common measure suggested by those concerned with eliminating this practice is through legislation. Although, this has often been implemented by Governments in an attempt to illustrate their seriousness about the issue towards the West, it is evident that in many occasions the problem was not solved by the law itself.¹²⁵ An alternative way of addressing the concern is by introducing educational programs which will encourage a positive trajectory towards eradication of the practice in the long run.¹²⁶

The middle ground solution suggested by Billet is to legalize the mildest form of female circumcision, together with an educational campaign focusing mainly on the health consequences of the more severe forms of the practice, as well as providing information for the local population how to more safely perform this practice.¹²⁷ A third suggested step would be to encourage international financial institutions

¹¹⁶ Ibid p. 21.

¹¹⁷ Ibid p. 23.

¹¹⁸ Ibid p. 30.

¹¹⁹ Ibid p. 39.

¹²⁰ Ibid p. 38.

¹²¹ Preston D. Mitchum, Slapping the hand of cultural relativism: female genital mutilation, male dominance, and the health as a human rights framework. *William & Mary Journal of Women and the Law* (2012) Vol.19, p. 586.

¹²² Ibid p. 607.

¹²³ Ibid p. 599.

¹²⁴ Ibid p. 600.

¹²⁵ Bret L. Billet, p. 47.

¹²⁶ Ibid p. 49.

¹²⁷ Ibid p. 50.

to increase assistance to those countries most affected by this practice. These programs could also contribute to increase the status of women within these cultures.¹²⁸

It is important to enumerate those factors, which according to Billet can serve the cultural transformation we are aiming at.¹²⁹

1. Promoting cross-cultural universals, uniting different cultures.
2. The recognition of the fact that cultural development occurs through evolutionary and not revolutionary means.
3. Gradualism opposed to abolition.
4. The importance of the participation of indigenous, internal forces in the gradual process.
5. The functions of a given cultural practice should be taken into account and functional substitutes could be needed for the displacement of an undesirable practice.
6. The power of ethno-centric forces in a society should be acknowledged.
7. The presence of patriarchy should be incorporated into the realization.
8. Evaluation of how women have historically been oppressed.
9. The importance of economic impoverishment, as a common denominator of all these cultural practices.
10. Positive impact of educational programs.

3.3.1. The Evaluation of Female Genital Mutilation (FGM) by the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities

In an interesting study Katherine Brennan analysed how the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities evaluated the practice of FGM and despite the fact that the members of the Committee were influenced by theory of cultural relativism they concluded that Female Genital Mutilation is a violation of women's human rights.¹³⁰ Her conclusion is identical that of this paper in that the international human rights system has a legitimate role to play in evaluating cultural practices and to "propose a set of values to guide behaviour in all societies".

The first attempt by the UN was in 1959, when the ECOSOC requested the WHO to prepare a study on possible ways to eradicate FGM. The World Health Organization refused to undertake the study stating that these operations were "based on social and cultural backgrounds, the study of which is outside the competence of the World Health Organization". Also UNICEF refused to take action until 1980.¹³¹ As a result of a strong campaign by Western and African women in the late 70ies the WHO sponsored conferences about the harmful consequences of FGM.

By the early 80ies due to the changing attitude towards women a sizable opposition to FGM had been created. In 1981 the Minority Rights Group (MRG) presented a comprehensive report during the session

¹²⁸ Ibid p. 51.

¹²⁹ Ibid p. 186.

¹³⁰ Katherine Brennan, *The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study*, *Law & Inequality* Vol. 7 (1989) p. 369.

¹³¹ Ibid p. 378.

of the Sub-Commission about female circumcision.¹³² The representative of the MRG requested the Sub-Commission to establish a working group in order to evaluate the practice of FGM. In 1982 the Sub-Commission decided to take up the issue and the report of the working group was published in 1986. In 1988, the Commission on Human Rights asked the Sub-Commission in a resolution to investigate national and international measures for the eradication of traditional practices which are harmful to women and children.¹³³ From the behaviour of the Sub-Commission, it was clear that its members realized the cultural significance of the practice and the report they prepared analysed the question not just from a human rights point of view but taking into account the historical and cultural factors too. The position taken by the Sub-Commission shows that the members were aware of the cultural sensitivity of the question but did not adhere to a cultural relativist approach meaning that cultural practices cannot be evaluated by human rights norms.¹³⁴

The cultural sensitivity of the Sub-Commission was reflected in two ways. First, the African members and members from countries where FGM is practiced cautioned the other participants to respect the culture from which the practice came. Second, the Western members did not participate in the discussions. The only Western member who was vocal about the issue was Ben Whitaker from the UK, who was the chair of the Working Group on Slavery, which was the first one to discuss the report of the MRG, taking into account a broad definition of slavery established by the Working Group, including abuses of power exercised over children.¹³⁵

The Sub-Commission's decision was influenced by the practical and political realities in Africa. It acknowledged the magnitude of the health problem resulting from FGM and they also took into consideration the growing opposition developed in and outside of Africa. There was no real opposition to study FGM so the Sub-Commission could adopt its resolution without real problems. The way the Sub-Commission managed to avoid the cultural relativism versus human rights theory trap, was to indicate that their goal was to address a health issue and not questioning the underlying cultural values of female circumcision.¹³⁶ The Sub-Commission's work demonstrated that cultural relativism can even have a positive effect on the human rights system. The Working Group of the Sub-Commission did not follow the usual protocol regarding UN reports and did not apply the relevant human rights norms, but instead carefully balanced the cultural function of FGM against its harmful consequences. The report stated that due to changes in the African societies – related to education and urbanization – the practice of FGM did not enjoy as much support as it did previously. The report finally seemed to conclude that FGM constitutes a human rights violation but used evasive language in its conclusion.¹³⁷ The Working Group's intention was to say that FGM "became outmoded because it no longer served a function and because changes in cultural values meant that it became less tolerable".¹³⁸

4. Conclusion

It is my sincere hope that this paper, which could only highlight some parts of the interesting and vitally important intellectual discussion on cultural relativism and universalism managed to indicate the

¹³² Ibid p. 379.

¹³³ Ibid p. 381.

¹³⁴ Ibid p. 382.

¹³⁵ Ibid p. 383.

¹³⁶ Ibid pp. 386-387.

¹³⁷ Ibid p. 390.

¹³⁸ Ibid p. 391.

complexity of this problem and aimed at contributing to the recalibration of our culturally constructed lens through which we look at all developments in the world.

Radical universalism by neglecting cultural particularities in the implementation of international human rights standards is seen as a form of cultural imperialism by developing states and therefore it is not serving the universal acceptance of human rights. On the contrary, this approach provokes strong resistance from most of the cultures outside of Europe thereby undermining the whole international human rights system. Radical cultural relativism on the other hand, by stating that culture is the only source of validity of a moral right or rule, fundamentally undermines the universality of human rights and provides a ground for misusing the concept in the interest of veiling human rights violations.

The discrepancy between the positions taken in academic circles and state practice on this issue is visible in light of the consideration of women's rights during the first two cycles of the UN Universal Periodic Review. While scholars have been taking more nuanced positions recently by acknowledging both the merits of universal human rights projects and the significance of culture in the conceptualization and implementation of human rights, the intergovernmental debates at different UN fora are still characterized mostly by radical universalist and radical cultural relativist statements by member states. The international community has a serious responsibility for not addressing substantially the question of universality and the role of culture in the international human rights enterprise. There is an urgent need for further dialogue on these issues which may trigger internal debates within cultures or societies where traditional practices prevail which are in conflict with the international human rights obligations of the given state. The United Nations could play an important role – like the Council of Europe did in 2008 by preparing a White Paper on Intercultural Dialogue¹³⁹ – in organizing this discussion aiming at a cultural transformation which can contribute to the enhanced cultural acceptance of internationally recognized human rights norms and by this means to the strengthening of the universality of global human rights standards. The United Nations Alliance of Civilizations (UNAOC) could be also used as one of the forums for discussion.¹⁴⁰ It was also clear from the research about the consideration of women's rights during the first two cycles of the UN Universal Periodic Review that real dialogue on culturally sensitive issues only started when states challenging a certain traditional practice in a given county were willing to accept its cultural relevance and they did not refer only to the legal solution. It is the firm conviction of the author that cultures are not closed entities, with rigid borders, but they can be developed or changed as a result of interaction with external effects or influence. This is however, a much longer process than amending a law, but by involving internal forces an organic interculturalization process can happen in a given society making these cultural changes sustainable as it would be the result of internal discussions and not enforced by external forces.

¹³⁹ White Paper on Intercultural Dialogue “Living Together As Equals in Dignity” Launched by the Council of Europe Ministers of Foreign Affairs at their 118th Ministerial Session (Strasbourg, 7 May 2008) https://www.coe.int/t/dg4/intercultural/source/white%20paper_final_revised_en.pdf (24 January 2018).

¹⁴⁰ <https://www.unaoc.org/> (24 January 2018).