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Intangible Cultural Heritage and Human Rights

Case Study in the Immigrant Society of
North Carolina, USA

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Abstract

Questo lavoro è nato dall'evidenza di quanto sia importante analizzare il problema dell'immigrazione dal punto di vista del conflitto culturale che si crea tra coloro che arrivano, gli immigrati, e coloro che ricevono il flusso di immigrazione. La globalizzazione ha esacerbato le relazioni etniche in diversi Paesi, in modo particolare, ma non solo, negli Stati Uniti, dove recentemente stanno nascendo nuove forme di discriminazione. Inoltre la globalizzazione ha accresciuto il divario economico tra le nazioni, intensificando il movimento di lavoratori attraverso i confini.

La definizione di patrimonio culturale pubblicata sul sito internet dell'UNESCO ha ispirato l'idea di questa tesi: "Il patrimonio culturale è espressione di modi di vivere, fatti di costumi, pratiche, luoghi, oggetti, espressioni artistiche e valori, sviluppati da una comunità e tramandati di generazione in generazione. Ne costituisce parte anche il patrimonio culturale intangibile, che consiste in voci, valori, tradizioni, storia orale e così via."¹

Lo scopo del mio lavoro è di analizzare e confrontare le convenzioni internazionali volute dall'UNESCO e la giurisprudenza Inter-Americana riguardo alla protezione della cultura e ai diritti culturali, con un breve accenno anche alla situazione europea, per metterle successivamente in relazione con un caso specifico, lo stato del North Carolina, Stati Uniti, e in particolare le iniziative, leggi e dichiarazioni emesse dal governo e istituzioni dello stato, oltre che dalle organizzazioni internazionali operanti nello stato, sulla protezione e sviluppo del patrimonio culturale delle minoranza immigrate.

La mia ricerca si è svolta presso la "Sanford School of Public Policy" della Duke University, in North Carolina, Stati Uniti, grazie ad una borsa di studio che ho vinto presso la Venice International University. Ho scelto il North Carolina in quanto recente è diventato uno degli Stati americani con la più alta concentrazione di immigrati latino americani. In particolare la contea di Durham, dove si trova l'università, è una delle più attive in termini di promozione culturale, e con il più alto tasso di crescita della popolazione ispanica nelle aree rurali e urbane dello Stato. L'analisi di questo specifico

¹ "Cultural Heritage is an expression of the ways of living developed by a community and passed on from generation to generation, including customs, practices, places, objects, artistic expressions and values. It includes as well intangible cultural heritage, that consists of voices, values, traditions, oral history and so on". <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00311&cp=US>. Mia traduzione.

caso in tutti i suoi aspetti, e in modo particolare quelli riguardanti il patrimonio culturale, rappresenterà una sfida interessante allo sviluppo del diritto internazionale in questo campo.

Gli Stati Uniti vennero inizialmente fondati da colonizzatori bianchi, inglesi e protestanti nel diciassettesimo e diciottesimo secolo. Gli Stati Uniti d'America, come nazione e come ideale, sono stati plasmati secondo i loro valori, istituzioni e cultura. Nel tardo diciannovesimo secolo, tuttavia, nuove componenti etniche arrivarono come immigranti per ampliare l'identità della nazione, fino a che, negli ultimi sessant'anni, l'importanza dell'etnia è scomparsa ed è diventata un elemento di identità nazionale. Dopo i conseguimenti del movimento per i diritti civili e l' "Immigration and Nationality Act" del 1965, gli Americani sono passati a identificare la loro nazione come multi-etnica e multirazziale. "Elementi chiave di quella cultura includono la lingua inglese; il cristianesimo; la dedizione religiosa; un concetto inglese di legge, che comprende la responsabilità dei governanti e il diritto degli individui; valori protestanti di individualismo, etica del lavoro, e la credenza che gli esseri umani abbiano la capacità e il dovere di cercare di creare il paradiso in terra, una "città sulla collina". Storicamente, milioni di immigrati furono attratti dagli Stati Uniti a causa di questa cultura e le opportunità economiche e le libertà politiche che rendeva possibile."²

Negli ultimi decenni del ventesimo secolo, idee di multiculturalismo e diversità sono diventate una sfida per l'integrità nazionale, accentuando la peculiarità della razza, dell'etnia, e del genere sopra la nazionalità. Una delle maggiori sfide per la società Americana è stato ed è il flusso di immigrazione di massa dall'America Latina, in particolare dal Messico. Il grado e la natura di questo flusso è completamente diverso da immigrazioni precedenti, e le politiche di assimilazione attuate in passato non stanno avendo successo. All'inizio della storia della nazione, a metà del diciannovesimo secolo, la corrente principale di immigrati veniva dalle isole britanniche. La prima metà del ventesimo secolo fu caratterizzata da un'immigrazione altamente diversificata, con persone provenienti da diverse nazioni europee. Ora, per la prima volta nella storia Americana, la maggior parte degli immigrati che arrivano nel Paese si esprimono in una sola comune lingua diversa dall'inglese. La crescita di comunità di immigrati permette

² S. P. HUNTINGTON, *The Hispanic Challenge*. Foreign Policy, No. 141 (Mar. – Apr., 2004). page 31-32 [traduzione mia]

ai parlanti spagnoli nella maggior parte degli stati e nelle più grandi città di vivere senza sapere l'inglese.

“La massiva immigrazione ispanica tocca gli Stati Uniti in due modi significativi: importanti porzioni del Paese diventano prevalentemente ispaniche nella lingua e nella cultura, e il Paese nel suo insieme diventa bilingue e biculturale.”³ Questa crescita della presenza ispanica negli Stati Uniti non crea un impulso per l'assimilazione culturale. Con il crescere del numero degli immigranti latini, essi non si percepiscono più come una minoranza, ma diventano più forti nella loro identità e cultura etnica.

Nel primo capitolo di questo lavoro si può comprendere come questo considerevole flusso stia creando problemi in alcuni stati specifici, in particolare quelli del sud est del Paese, dove gli immigranti costituiscono una novità e rappresentano una minaccia per la tradizionale cultura del sud degli Stati Uniti. Si ritiene che i nuovi arrivati portino via il lavoro agli Americani, creino criminalità e tensioni, e rallentino il normale sviluppo dell'area.

Per comprendere meglio il caso specifico del North Carolina, si è studiata inizialmente la questione dell'immigrazione da un punto di vista storico. L'immigrazione è una delle questioni moderne più problematiche e controverse per quanto riguarda sia le cause che la generano sia le conseguenze che porta. Il Paese che riceve il flusso di immigrati deve affrontare problemi che vanno dal regolamentare l'entrata alla supervisione di leggi da emanare riguardo al soggiorno degli immigrati nel Paese. Dal punto di vista sociale, la tendenza è di associare gli immigrati con problemi riguardanti l'aumento della delinquenza e della criminalità. Nel primo capitolo si riassumono questi punti, prima delineando brevemente la storia dell'immigrazione negli Stati Uniti, specificando come, nei primi anni, gli immigrati fossero benvenuti per le necessità del governo di popolare l'area, mentre durante gli ultimi due secoli si è iniziato a regolare le entrate di alcune categorie di persone. Dal punto di vista legislativo, viene descritto come la regolamentazione dell'immigrazione sia passata dalla legislazione del singolo stato al potere federale, fino alle più recenti politiche, e i recenti problemi riguardanti l'immigrazione latina dal sud e centro America.

³ S. P. HUNTINGTON, *The Hispanic Challenge*. Foreign Policy, No. 141 (Mar. – Apr., 2004). Page 40 [traduzione mia]

Nel secondo capitolo si sono presentate e analizzate alcune convenzioni e strumenti internazionali relativi la salvaguardia della cultura e del patrimonio culturale intangibile, delineando le questione dell'integrazione culturale e il conseguente sviluppo del concetto di patrimonio culturale, che sono stati successivamente utili per comprendere le mancanze del sistema legislativo americano in termini di protezione culturale della popolazione immigrata. Assieme alle politiche riguardanti l'integrazione e i processi sociali e culturali che vengono attuati per aiutare un individuo a diventare parte della società, i Paesi e le organizzazioni internazionali hanno stabilito di stilare tutta una serie di convenzioni internazionali tese a proteggere la delicata questione del patrimonio culturale e i diritti delle persone arrivate nel nuovo Paese. Si è pertanto analizzato la Convenzione del 2003 sulla salvaguardia del patrimonio cultural intangibile, la Convenzione del 2005 sulla protezione e promozione della diversità culturale, e per quanto riguarda la protezione dei diritti umani, la Convenzione Internazionale sull'eliminazione di tutte le forme di discriminazione razziale e la giurisprudenza della Corte Inter-Americana in tema di discriminazione. Emerge come una difficoltà nel definire il concetto di cultura accomuna questi strumenti, e lega insieme le convenzioni per trovare la maniera migliore di proteggere e promuovere questi valevoli concetti, tenendo a mente l'importante connessione con i diritti umani e la protezione delle minoranze. Quello che risulta è un nuovo trend di sviluppo, che sottolinea l'importanza del riconoscimento dei diritti culturali e del patrimonio culturale intangibile come qualcosa da stimare, favorire e incoraggiare, specialmente nelle cosiddette nazioni in via di sviluppo e riguardo a questioni di minoranze nazionali. È una consapevolezza del genere che può aiutare a coprire il progresso della globalizzazione e preservare la peculiarità delle popolazioni.

Nel terzo capitolo si è tornati sugli Stati Uniti e in particolare il caso in esame, il North Carolina. Negli ultimi anni il North Carolina è diventato parte del movimento di stati e municipalità locali in cerca di nuove strategie per compensare il fallimento della riforma d'immigrazione federale a livello nazionale. Il North Carolina è diventato un barometro importante per i dibattiti contemporanei sull'immigrazione per la nazione. Per stabilire l'analisi, si è separato questioni riguardanti la legislazione e la cultura, al fine di comprendere i punti di forza e le mancanze della promozione e protezione della cultura delle minoranze. Ciò che si è rivelato è un diffuso sentimento discriminatorio, che si riflette sulla legislazione, sulle istituzioni, e nella vita di ogni giorno. In generale, è chiaro che l'opinione pubblica ha accettato delle restrizioni alle libertà fondamentali nel

nome della sicurezza nazionale, in particolare dopo gli attacchi terroristici dell'11 settembre 2001. Disposizioni esecutive sono state prese per fermare il flusso di immigrazione e impedire ai nuovi arrivati uno stile di vita normale. Più che politiche atte all'inclusione culturale e alla protezione, si è trovato misure xenofobiche e di esclusione, principalmente indirizzate a risolvere il problema degli immigrati illegali. A volte queste misure sono chiaramente discriminatorie, come la disposizione 187 e il programma 287(g), il quale ha indotto molte autorità locali a rintracciare immigrati illegali attraverso mezzi discriminatori.

Si è dunque stabilito come misure di integrazione e comprensive siano principalmente intraprese da organizzazioni no-profit e gruppi locali, che lavorano sul territorio e affrontano problemi e preoccupazioni di tutti i giorni dei nuovi arrivati nella regione. Queste istituzioni sono le uniche a guidare una nuova consapevolezza e sviluppo delle misure intese all'integrazione nel nuovo Paese, e allo stesso tempo a proteggere la cultura originale. Esse aiutano gli immigrati nell'educazione, nella salute, e in questioni istituzionali, oltre che nell'integrazione e allo stesso tempo nella conservazione della cultura e del linguaggio, diventando un ponte tra la tradizione e la nuova patria.

Si è menzionato come il difficile rapporto degli Stati Uniti con l'UNESCO impedisca un implemento e una comprensione delle misure riguardanti la protezione e promozione delle questioni relative alla cultura, e una breve comparazione con la situazione europea ha mostrato come i due diversi approcci creino diverse conseguenze e consapevolezza del processo di immigrazione.

Si è conclusa l'analisi con un tentativo di capire dove le convenzioni internazionali che sono state analizzate possono intervenire per migliorare la situazione. Considerate tutte queste questioni, e tenendo a mente i nuovi sviluppi intrapresi dal presidente Obama per "aggiustare il sistema di immigrazione"⁴, si può concludere che il flusso di immigrazione sta cambiando l'identità americana consistentemente, e che misure che offrano una comprensione culturale dovrebbero essere intraprese al fine di non essere sopraffatto dai nuovi arrivati, o come S. P. Huntington lo ha descritto: "Una continuazione di questa massiva immigrazione (senza una migliorata assimilazione) potrebbe dividere gli Stati Uniti in una nazione con due lingue e due culture. [...] La

⁴Remarks by the President in Address to the Nation on Immigration. at <http://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration> [mia traduzione]

trasformazione degli Stati Uniti in una nazione simile non sarebbe necessariamente la fine del mondo; sarebbe, tuttavia, la fine dell'America che abbiamo conosciuto per più di tre secoli. Gli Americani non dovrebbero lasciare accadere questo cambiamento se non fossero convinti che questa nazione sarebbe una nazione migliore.”⁵

⁵ S. P. HUNTINGTON, *The Hispanic Challenge*. Foreign Policy, No. 141 (Mar. – Apr., 2004). Page 45
[mia tradizione]

Introduction

The definition of Cultural Heritage, published in the UNESCO website, inspired my thesis: “Cultural Heritage is an expression of the ways of living developed by a community and passed on from generation to generation, including customs, practices, places, objects, artistic expressions and values. It includes as well intangible cultural heritage, that consists of voices, values, traditions, oral history and so on”.⁶

This work took its start from the evidence of how it is important to investigate the problem of immigration and the possible cultural clash between the ones who come, the immigrants, and the ones who host. Globalization has exacerbated race relations in many developed countries, particularly, but not only, in the United States, where new forms of discrimination has arisen. Moreover, globalization has enlarged the economic gap between countries, and, therefore, intensified the movement of workers across borders. I am interested in understanding how the measure apt at the safeguarding of the cultural heritage, can be used to protect and promote the cultural diversity of the immigrant society, comprehending the preservation of the language, habits and traditions, and the integration in the new country.

My research has been developed at the prestigious Sanford School of Public Policy at Duke University, North Carolina, USA, thanks to a scholarship that I gained at the Venice International University. I chose North Carolina since nowadays is one of the U.S. states with the highest concentration of Latin immigrants striving to protect their rights. In particular, Durham county, namely the one where the Duke University is located, is one of the most active, presenting the highest rate of growth for Latino populations in the rural and urban area of the state. The analysis of this specific study case in all its aspects, and in particular the ones concerning Cultural Heritage, will provide interesting challenges to the development of the international law in this field.

The aim of my project is to analyze and compare international conventions issued by the UNESCO, as well as the Inter-American jurisprudence regarding cultural protection and cultural rights, with a brief presentation of the European situation. With the results obtained from this comparison, I will analyze the specific case of North Carolina, in particular the initiatives, laws and statements issued by the government and institutions

⁶ <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00311&cp=US>

of the state, as well as the international organizations working in the state on the protection and development of the Cultural Heritage of the immigrated minorities.

To better understand the specific case of North Carolina, I will first study the issue of immigration from an historical point of view. Immigration is one of the most problematic and controversial modern issues for what concerns both the causes that generate it and the consequences that it brings. The country receiving the flux of immigrants faces problems that go from regulation and supervision laws to issues concerning the staying of the immigrants in the new country. From the social point of view, the tendency is to associate immigrants with problems regarding the increase of delinquency and criminality. In the first chapter of my work I will summarize these points, first I will outline a brief history of immigration in the United States, specifying how, in its first years, the immigrants were welcomed in because the government needed to populate the area, while during the last two centuries it has been starting to regulate the entrance of some categories of people. From the legislative point of view, I will describe how the regulation of immigration passed from the single state regulation to the federal power until the more recent policies, and the recent problems concerning the Latin Immigration from South and Central America.

I will then present the issues of cultural integration and the consequent development of the concept of cultural heritage. Together with the policies concerning integration and the social and cultural processes actuated to help an individual to become part of a society, countries and international organizations have established to draft a whole set of conventions apt to safeguard the particular issue of the cultural heritage and rights of the people arriving in a new country. I will study the 2001 UNESCO'S "Universal Declaration on Cultural Diversity", the 2003 "Convention on the Safeguarding of the Intangible Cultural Heritage", the 2005 "Convention on the Protection and Promotion of the Diversity of Cultural Expressions", as well as the "International Convention on the Elimination of All Forms of Racial Discrimination" and the jurisprudence of the Inter-American Court related to the protection of cultural rights. I will as well briefly analyze the European decisions on the subject in order to put my work under a comparative light. With the help of these conventions, I will summarize the issue of the protection of the cultural intangible heritage from a general point of view.

Finally, I will focus on the particular frame of the United States of America and the peculiar case of North Carolina. In the latest years, North Carolina has become part of the movement of states and local municipalities searching for new strategies to compensate the failure of federal immigration reform at the national level. North Carolina has become an important barometer of contemporary immigration debates for the nation. It will be interesting to understand where the federal government has failed and what the international legislations and organizations could do to substitute this failure. I will therefore conclude with an analysis of cases regarding the legislation and cultural matters present in the state, and an attempt to understand where the international conventions can intervene to improve the situation.

CHAPTER I

1.1 Introduction

As a matter of fact, the United States of America are a land of immigration. With the words of Oscar Handlin: “The history of immigration and immigrants is the history of America itself”⁷. Historically, the United States were born as an English colony, and the influence of the multicultural British empire had a profound impact both on the political and the social construction of the new nation. The first example can be found in the First Amendment of the American Constitution, which speaks about freedom of religion⁸: in the newly created immigrants’ state, everyone was free to profess his own religion and confession, a way of saying that everyone was welcomed to join the new land of freedom and opportunities. The spirit of reception can be seen as well in the values at the base of the American democratic experiment: the balance of power, the protection of minority interests and the emphasis on local representation. The idea at the base of the ethnically diversity of the United States was that an interplay of different interests was the best way to protect and foster a working democracy in a vast and diverse country. In the late eighteenth century, Thomas Paine claimed “his adopted country “an asylum for mankind” – a refuge for the entire human species, a beacon for oppressed peoples everywhere.”⁹

The history of culture of modern America has mainly been shaped by the huge waves of immigrants from Southern and East-central Europe in the late nineteenth and early twentieth centuries. The 1920 U.S. Census Bureau related about the growth of the urban population in comparison with the rural one. This led to an alteration in the American’s cultural life, with the development of an alien and un-American heritage. This fact initially generated a conflict, as much of the history of the of the early part of the twentieth century shows a continuous contrast between the culture of the city and the one of the country, between the traditions of the newly arrived and the native born, between the supporters of the Democrat party and the supporters of the Republican

⁷ edited by J.CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 97

⁸ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press: or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

⁹ K.M. PARKER, *The Constitution, Citizenship, and Immigration in American History, 1790-2000*. Washington, D.C.: American Historical Association, 2013. Page 1

party, between the Catholic and the Protestant population, between the so called “wet”, or pro-alcohol and the so called “dry”, or advocates of the Prohibitionism.

In the last sixty years, U. S. cultural influence worldwide have attracted many developing countries citizens, especially from those countries affected by political instability, civil strife, war, and dramatic economic situations. Probably one of the most important factors driving this mass immigration in the United States in these years have been the cultural impact of the economic and social unrest experienced by peripheral nations under U.S. influence. U.S. goods and mass media advertising appeared all over Asia and Latin America, raising the expectations of developing world populations. In most cases, America’s influence can be attributed to older economic, political, and cultural contacts. Particularly, countries with the largest flows of immigration had long histories of contact with the United States. Caribbean and Central American countries have always been the goal of some kind of American expansionism, remodeling their internal economic and social structures to create an expectation of the American way of life.

This immigration flow from developing countries continued in the late twentieth century, when immigrants tended to concentrate in the bigger cities such as New York City, Los Angeles, Miami, Chicago, Washington, San Francisco and Houston. New York and Miami attracted immigrants from the Caribbean, whereas Los Angeles primarily those from Mexico, but also from Central America and Asia. The impact of this new flow of immigration on the native population was great in the last part of the twentieth century. Because of the decrease in the birthrate of the American population, the net effect of immigration on the population had become more noticeable and has altered the ethnic and racial balance by 2000. Linguistic, religious, and cultural diversity of the newcomers has become a big issue. In California, the most linguistically diverse state, more than 200 languages and even more dialects are spoken.¹⁰ Such impressive changes are the new focus of attention in academic and political circles and in the media and public, raising questions about the new immigrants’ economic, social, political and cultural impact on the nation.

¹⁰ D. DANIEL, “Immigrants from the Developing World: Life in America, 1965-1990s”. In: edited by J.CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 260

After the September 11, 2001 terrorist attacks, immigration policy went through greater attention because of the new security concerns. But in comparison to other discrimination in immigration policy held for example towards the Germans during World War I, this one didn't affect the entrance of many immigrants from the Middle East.

Nevertheless, the attack and the following economic recession that hit the country in the first decade of this century complicated the debate over immigration, immigration reform, and assimilation and brought up concerns over national security in new ways.

Integration has always been a problem in American society. It covers issues such as the security of immigrants' residence status, their social and political rights, their membership in host polities and so on. International legal instruments do not cover all of the issues, and the more specialized instruments are ratified by only few states. According to international and domestic law, people entering a state can be categorized either as immigrant or nonimmigrants. They are generally regarded as tourists if they stay for a period inferior to ninety days and do not look for a working occupation. When they enter with the purpose of seeking a permanent residence, a permanent employment, or contracting a self-employed business, then they are regarded as immigrants.

International law respects states' sovereignty over their borders. Hence, states may grant or deny entry on a discretionary basis. Each state requires people entering its territory to hold valid passport and necessary visas. International law leaves it to domestic law the power to decide which standard has to be applied. The U.S. Supreme Court's plenary power doctrine, which grants uncontrolled power on the executive branch in admission matters, does not violate international law.

1.2 Latin Immigration

In the late nineteenth and early twentieth centuries the U. S. government sought to regulate, restrict and sometimes exclude ethnic groups of immigrants wishing to enter the nation, but the privileged relation with the bordering population, especially Mexicans and the Caribbean, always put them out of the exclusion system, and made the United States close an eye on the continuous entering of these population in the nation. For this reason, from World War I until the passage of the 1965 Immigration and Nationality Act, there had been a continuous rise in Latin immigration in the United

States, and by the 1950s this population consisted in the one-quarter of all immigrants to the United States.

Throughout the years, American immigration policy makers traditionally treated the Hispanic population differently from the other immigrants. As it was mentioned, Latinos were not affected by the 1920s Quota Acts, which limited immigration from Europe and excluded the one from Asia¹¹.

Between 1900 and 1930, thousands of Mexican immigrants came into the country, adding an essential quantity to the already existing Mexican American population, some of whom could trace their ancestries to the early Spanish “entradas” into New Mexico and other later southwestern states in the late sixteenth century. With the peculiarity of New Mexico, the new immigrants overlapped these earlier Mexican settlements, and became the majority population. Many arrived as economic refugees escaping displacement provoked by the new economic policies set forth by dictator Porfirio Díaz during his long reign that came to be known as the Porfiriato (1877-1910). Others arrived as political refugees escaping from the Mexican Revolution of 1910 that defeated Díaz but resulted in a decade of civil war in Mexico. As economic and political refugees, these Mexicans became the foundation for a new and expansive Mexican-origin population in the United States.¹²

This special treatment was due to the American’s industries need for cheap labor sources and the U.S. desire to maintain good relations with its neighboring countries. According to this policy, in 1942, Mexico and United States signed various visiting worker agreements, such as a treaty that created the “Bracero Program”, with which contracted Mexican laborers were able to cross the border to take temporary works in American industry and, particularly, agriculture. The term “bracero” comes from the Spanish word “brazo”, meaning arm. The necessity of workforce in the United States in the period of the World War II was continuous. This program, which lasted from 1942

¹¹ “Emergency” Quota Law of May 19, 1921: restricted the number of aliens of any nationality entering the United States to three percent of the foreign-born of that nationality who lived in the United States in 1910. Reed-Johnson Immigration Act of May 26, 1924: instituted the “national origins quota system”. In effect until June 30, 1927, it set the annual quota of any quota nationality at two percent of the number of foreign-born of such nationality resident in the continental United States in 1890. From July 1, 1927, set the national origins quota system: the annual quota for any country or nationality had the same relation to 150,000 as the number of inhabitants in the continental United States in 1920 having that national origin had to the total number of inhabitants in the continental United States in 1920.

¹² M. T. GARCÍA, *The Latino generation: voices of the new America*. Chapel Hill : The University of North Carolina Press, 2014. Page 7

to 1964, was a unique and drastic solution to respond American's labor needs and to control and organize the flux of Mexican migration. The "Bracero Program" permitted controlled numbers of Mexican nationals to enter the United States for seasonal agricultural work at low wages, after which they had to return to Mexico. In particular, this program helped to restore the problem of men shortage created by World War II. In the twenty two years of the program, 4.5 million Mexicans were legally given employment, mostly in Texas and California, starting a process that would continue even after the end of the program: Mexican young men going back and forth their country for temporary and seasonal jobs. Unfortunately, those workers, particularly during the time of the agreement, often weren't treated in a respectable way. Many religious and community groups became irate at the dreadful and unsanitary conditions in which the workers lived and at the mistreatment by growers, some of whom even charged rent for the trees under which the migrants slept.¹³ The Mexican government protested continually about the situation of Mexican nationals in the States, and for this reason, after 1962, did not try to reinstate or to extend the expiration date of the agreement.

With the beginning of the Cold War in the last years of the 1940s, U. S. policies started dealing with the problem of political refugees, and this helped to widen immigration opportunities for some Latin American states involved in the new conflict. By the 1960, with the U.S. World Refugee Year Law, thousands of Cubans escaping the revolution gathered in the United States.

The movement of people from Latin America was generated by various historical developments which occurred in the region as a consequence of the end of World War II and the beginning of the Cold War, such as revolutionary wars in Cuba, Dominican Republic, Guatemala, Mexico, Nicaragua, and others. Other causes of the accelerated migration were economic development, which caused an escalation in the industrial improvement and a consequent decrease of the traditional low-skilled works; natural disasters; and increasing population growth in the states of South America. On the other side, economical, technological, and life style developments in the United States made it more and more an attractive destination for the Latin community. Soon in the years following the end of the II World War, a Mexican community established in the

¹³ D. L. D. HEYCK, *Introduction: Latinos, Past and Present*. In: edited by D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York : Routledge, 1994. Page 7

American Southwest, offering a familiar culture for the newcomers, who started feeling a tighter connection with the United States. Moreover, labor demands in agriculture, light industry, and constructions attracted new jobs and new migration.

Even if initially welcomed, Latinos coming to the United States between World War I and 1965 faced significant challenges. They were perceived as culturally alien by the native population, and considered as “inferior” and “non-white”, a problem in U.S. society, which was still deeply prejudiced against people of color, particularly in the southern states. Mexicans faced harsh discrimination in states like Texas and California. Especially in the latter state, where an important Mexican community had established and kept attracting newcomers, brutal accidents happened. For instance, in June 1943 the so called “Zoot Suit Riots” took place in Los Angeles. The name “zoot suit” came from the style of baggy, highwaisted pegged pants and long coats that were the fashion of the Mexican youth at the time. In a period of strong patriotism as it was that of the period, to dress like that, or even to show proofs of being of Mexican origins, it was a sign of high subversive character. Tensions rose until some thousands Americans servicemen and civilians, angry because eleven sailors had been beaten supposedly by a Mexican-origin gang, rioted through the streets of Los Angeles. They attacked hundreds of Mexicans – youth, adults, men, women, children – while the police observed without intervention. “These disturbances would have been more appropriately termed the “police-inspired” riots, because it was later learned that some members of the Los Angeles Police Department had deliberately provoked the violence in order to demonstrate to the public the need for harsh police methods, hoping that the jury would acquit one of their number who was coming to trial accused of having kicked a prisoner to death.”¹⁴

“The “riots” went on for a week and spread across the country to other cities where servicemen were stationed, as the Los Angeles clashes triggered a wave of race-based attacks throughout the summer of 1943: in San Diego, in Philadelphia, in Chicago; in Evansville, Indiana; in Beaumont, Texas; in Detroit and in Harlem. By the time these “riots” were over, zoot suits and their wearers had been at the center of an intense public debate that involved violence, arrests, police raids, dramatic newspaper coverage, emergency city council meeting, passage of new laws, and more. The development of

¹⁴ D. L. D. HEYCK, *Introduction: Latinos, Past and Present*. In: edited by D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York : Routledge, 1994. Page 6

the so-called riot, and the reactions to it, were covered in every major national newspaper.”¹⁵

“In addition to effects on the local economy, there were international ramifications to the attacks on zoot suit wearers. Mexico was an important American ally. The Los Angeles City Council sent a telegram to the Mexican consulate in Los Angeles expressing regret that “individual incidents of hoodlumism in Los Angeles have been interpreted as at specifically involving nationals of either Mexico or the United States” (*New York Times*, June 11, 1945). This attempt at reassurance flew completely in the face of the copious newspaper coverage of the “riots,” which consistently engaged in Mexican-bashing, and was also contradicted by the police logs, which showed that the overwhelming majority of those arrested were of Mexican descent. Despite official reassurances that the riots had nothing to do with American attitudes toward those of Mexican descent, before long the Mexican government found it necessary to appeal to all Mexican nationals to stay indoors after dark.”¹⁶

“That confidence would not be entrusted in later arrivals to the nation of newcomers. The Latino immigrants of the World War II era, most notably the Mexicans and Puerto Ricans of the *bracero* program and Operation Bootstrap, respectively, were constructed by the popular culture industries (as well as by legal discourse, journalistic account, and so on) as a distressing problem. The discussion that developed around these newer arrivals to the United States mainland reimagined “immigrant” as a cultural locale of fear, mistrust, and often outright hostility. In our rendering, then, “immigrant” will not denote a stable identity but rather a charged field of claims and counterclaims, an area of intense cultural activity where individual agency meets social demand in an ongoing and ever-changing dialectic.”¹⁷

On the other hand, Cuban immigrants, in particular those who arrived as political refugees in the 1960s and 1970s, carried greater skills and capital, but found themselves clustered with the poorest and less educated Puerto Ricans in Eastern Cities. In general, prejudice in the nativist conceptions and racial mistrust, created obstacles to Latinos’

¹⁵ R. RUBIN and J. MELNICK, *Immigration and American popular culture: an introduction*. New York : New York University Press, c2007. Page 50-51

¹⁶ R. RUBIN and J. MELNICK, *Immigration and American popular culture: an introduction*. New York : New York University Press, c2007. Page 57-58

¹⁷ R. RUBIN and J. MELNICK, *Immigration and American popular culture: an introduction*. New York : New York University Press, c2007. Page 10

full participation in American life by denying them jobs, educational opportunities, and housing in integrated neighborhoods.

As I mentioned before, this nationally controlled immigration process ended in 1965 with passage of the Immigration and Nationality Act, or Hart-Celler Act, which disposed a ceiling of 290,000 on annual immigration from all the countries, with only 120,000 visas available to people from the Western Hemisphere, first time immigration quotas to Latin America.¹⁸ Congress replaced the national-origins system with a family preference system, aiming to reunite immigrant families and reduce the existing policy's orientation toward Europe. This mutation of national policy produced great changes in immigration patterns, as Asia and Central and South America became major sources of immigration instead of Europe. The law came after the great social change brought about in the United States by the civil rights movement of the 1960s. In October 1965, President Lyndon Johnson signed the bill under the Statue of Liberty as a symbol of freedom.

The 1965 Immigration and Nationality Act however, however, did not specified sufficient provision to handle large refugees flows, as the ones that occurred in 1965 when Cuban leader Fidel Castro announced that his population was allowed to leave the country freely during the year. President Lyndon B. Johnson had to allow the flow of Cuban refugees to enter the United States as exceptions to the restrictions required by the new act. From 1965 to 1972, approximately 300,000 Cubans were allowed to stay in the country. They settled mainly in Florida, where they got involved in the development of the local construction, trade, and finance industries, actually helping cities like Miami to grow and prosper with their businesses.

This wave of Hispanic immigration between World War I and 1965 has been a change in immigration patterns. Immigration from the developed world, such as Europe and Asia, was replaced by immigration from the developing world. The composition of immigration to the United States changed, and Latinos increased from approximately 2.1 percent in the decade before World War I to approximately 39.2 percent in the 1960s, according to government statisticians. Nearly half of the 3 million documented

¹⁸ T. DRAPER "Latino Immigration". In: edited by J.CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 225

immigrants from Latin America between World War I and 1965 were Mexicans. Those from Central and South America formed respectively the 7 and 15 percent.¹⁹

During the 1970s, Mexicans became a major proportion of total legal immigration in the United States. The highpoint was in 1974, when Mexicans amounted to 18 percent of the total newcomers.²⁰ After 1976, the preference and quota system was applied to the Western Hemisphere as well, forcing Mexico and neighboring country to submit to a 20,000 per country annual limit, and reducing the annual inflow of immigrants by almost half in the following years. After 1978, the number of legal Mexican immigrants raised again thanks to the channel of the immediate relatives of U.S. citizens and new visa regulation, which allowed and eased family reunions. Also Dominican Republic gave a contribution to the immigration in the 1970s, following the U.S intervention to suppress a leftist military uprising in the country. Thousands of Dominicans emigrated and soon became the seventh-largest immigrant community in the United States, concentrating primarily in New York City. All along the 1980s, not only the volume of immigration grew, and especially the population coming from Mexico, but also residence patterns had a change. Attracted by abundant unskilled jobs and cheap housing, immigrant workers lodged in communities that used to have a minimal immigrant presence.

In the 1970s, the problem of illegal immigration from Mexico and Central America became a major focus, and one of main alarm of the American public, forcing the U.S. government to find a way to stop, or at least reduce, this uncontrolled flow of unidentified people. Finally, in October 1986, Congress passed the Immigration Reform and Control Act (IRCA) to ease the problem of illegal immigration by offering some undocumented immigrants the opportunity to legalize their status through an amnesty program, by imposing sanctions to U.S. employers that hired illegal aliens, and by enforcing the controls along the U.S.-Mexican border to protect against future illegal entries. The aim was to slow, if not completely eliminate, the flow of undocumented migrants into the country, and to diminish the number of those already living in the nation. This allowed more than 3 million undocumented aliens to legalize their status in

¹⁹ T. DRAPER “Latino Immigration”. In: edited by J.CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 225

²⁰ D. DANIEL “Immigrants from the Developing World: Life in America, 1965-1990s”. In: edited by J.CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 246

the following years.²¹ In the 1980s, more than 1.6 million Mexican citizens immigrated with a legal status to the United States, and between 1991 and 1993, nearly 1.3 million became permanent residents.²² In addition, INS was now able to investigate, indict and levied fines on corporate and individual employers. In fiscal year 1995, the INS made about 12,000 employers arrested.

Not only immigration from Mexican took advantage of the reform. Immigration from Central America reached a pick as political oppression and government violence raised in the region. Thousands of Nicaraguans, Guatemalans, and Salvadorans found their way to the United States escaping the troubling conditions in their countries of origin. In the 1980s, Salvadoran and Guatemalan immigrants were added to the illegal list, because they were not considered legitimate seekers of political asylum, considering that their governments were democratic and, most of all, supported by the United States. While those people escaped persecution and disorder in their countries, a number of them found protection in the sanctuary movement, an ecumenical religious alliance that used churches as places of asylum and sought to call attention to what sanctuary supporters regarded as the mistaken United States immigration and foreign policies with regard to Central America. Public pressure and court cases of the sanctuary alliance succeeded in 1989 in making the United States reconsider the cases of tens of thousands of Central Americans who had previously been rejected for asylum.²³ The total of Central American immigrant nationals more than doubled, reaching 255,000 in the 1980s. While only 34,500 Salvadorans were admitted in 1970s, in the 1980s more than 213,000 entered. The total entries for citizens of the Dominican Republic increased from approximately 148,000 in the 1970s to about 252,000 in the 1980s. By 1988, INS

²¹ The IRCA program was divided in two parts. Starting from May 5, 1987 and for the following twelve months, illegal aliens who were able to show proofs of having being resided in the United States continuously since January 1, 1982, could apply for amnesty. Those who met these conditions obtained a temporary resident status for a period of eighteenth months, and then could become permanent residents aliens, after proving a minimal understanding of the English language and knowledge of U.S. history. The second part was directed to the undocumented farm workers to which was granted temporary resident status if they could show that had worked in perishable crop agriculture for at least ninety days in the twelve-month period before May 1, 1986. Later they could adjust their status to permanent residents.

²² D. DANIEL, "Immigrants from the Developing World: Life in America, 1965-1990s". In: edited by J. CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 247,

A. ANEESH, "Immigration Agencies and Enforcement: The INS and Its Predecessors". In: edited by J. CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 273

²³ D.L.D. HEYCK, *In the Belly of the Beast: (Im)migration and Exile*. In: : D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York: Routledge, 1994. Page 320

was receiving some 2,000 asylum request per week. Salvadorans were the most numerous, with up to 80,000 legal admission in 1990.²⁴

The issue of illegal immigration has been a case in the United States since 1875, when Congress passed the first immigrant exclusion law against criminals and prostitutes. Various quantitative restrictions laws passed since then, affecting immigration from Europe and Asia, but not completely stopping undocumented immigration. The 1952 Immigration and Nationality Act (INA) imposed penalties on those who were found guilty of harboring illegal aliens, with a special concession to Texas agricultural employers, which remained free to hire agricultural workers who crossed the close border with none legal documents and went back to their country after performing the tasks. The law, as preannounced, did not slow the illegal movement from the Mexican borders. The United States recession in 1953 and fears of overwhelming immigration led to the U.S. Border Patrol so called “Operation Wetback”²⁵, with which it managed to deport more than 1 million undocumented Mexican immigrants, including some United States citizens caught in the indiscriminate roundup, with many other abuses committed in the process.²⁶ As a consequence, the number of the illegal entrances in the nation reduced by 95 percent in the following five years. But the flow soon resumed, reaching a total of 8.3 million in the 1970s and the peak of 1.8 million in the year 1986.²⁷

The revival in illegal immigration started in 1964, with the end of the “Bracero Program”. After that, the Mexican population began to build up along Mexico’s northern border. Some of this flow was only interested in taking a part in the irrigated agriculture in the northern part of Mexico, where there were not enough jobs for everyone, and the populations of border towns, such as Matamoros, Juárez, Nogales, and Mexicali, could not contain all of the newcomers. This pressure gave rise to a big

²⁴ D. DANIEL, “Immigrants from the Developing World: Life in America, 1965-1990s”. In: edited by J.CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 255, 255

²⁵ It was an operation issue by the Immigration and Naturalization Service (INS), with the aim of deporting about one million undocumented immigrants from Southwest United States. The word “wetbacks” comes from a derogatory nickname with whom Mexicans immigrants were called and indicated the most chosen way to enter illegally in the United States: through the water of the Rio Grande, which constitutes a big portion of the U.S.-Mexican border.

²⁶ D.L.D. HEYCK, *Introduction: Latinos, Past and Present*. In: edited by D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York : Routledge, 1994. Page 7

²⁷ T. J. ESPENSHADE, “Immigration Reform, 1980s-1990s”. In: edited by J.CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 265

business in transporting people across the border. There are “coyotes”, those who make plans with emigrant at the Mexican border; “pateros”, those who help one cross the river; and “polleros”, those who help the emigrant across land borders.²⁸ The organization of illegal crossings became with the time a lucrative, and hazardous business, which sometimes can involve payoffs to the Mexican police. With the decline of the demand in the United States for farm workers, more immigrants looked for employments as domestic workers, or in low-wage border industries, such as furniture, clothing, and food service.

In an attempt to decrease the number of illegal emigrants, the Mexican government started creating manufacturing districts along the border in 1966. The Border Industrialization Program (BIP) helped the increase in the building of the “maquiladoras”, foreign-owned assembly plants that required labor-intensive work.²⁹ In 1970, there were two hundred “maquilas” with 19,000 workers; by 1986, there were nine hundred of them, with 255,000 employers.³⁰ The real problem is that those factories have not reduced internal migration, and not even reduced emigration: instead, they have probably worsened both.

As mentioned before, 1986 IRCA law made it harder for illegal aliens to find employment in the United States, and had an initial impact in cutting down the numbers of the illegal entries in the country, but this effect did not last long, as showed by the rising controls imposed on the borders in the following years. The law had unexpected and different results. Since 1986, illegal immigrants have been receiving lower salaries than the rest of the population. The number of so called “hiring corners”³¹, grew five times bigger than before, and new underground sweatshops came into being in cities with large Latino immigrants population, such as Houston or Los Angeles. The proliferation of the production of fake documents grew. Job discrimination against citizens and green-card holders has increased after the passage of the Act because of their ethnicity.

²⁸D.L.D. HEYCK, *In the Belly of the Beast: (Im)migration and Exile*. In : D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York: Routledge, 1994. Page 319

²⁹ D.L.D. HEYCK, *In the Belly of the Beast: (Im)migration and Exile*. In: : D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York: Routledge, 1994. Page 319

³⁰ D.L.D. HEYCK, *In the Belly of the Beast: (Im)migration and Exile*. In: : D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York: Routledge, 1994. Page 319

³¹ “Street corners where immigrants congregate in hopes of being hired as day laborers” D.L.D. HEYCK, *In the Belly of the Beast: (Im)migration and Exile*. In: : D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York: Routledge, 1994. Page 320

Since 1989, the influx of undocumented persons has increased again dramatically, rising to about between two and one half million and four million people in 1992.³² In 1996, the Congress passed three acts focused on undocumented immigrants with criminal records or backgrounds: the Antiterrorism and Effective Death Penalty Act (AEDPA)³³, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), also known as the Immigration Reform Act, and the Personal Responsibility and Work Opportunity Reconciliation Act, also known as Welfare Reform Act (WRA). The IIRIRA purpose was to reduce the number of unauthorized immigrants in the country, with policies directed towards the legal ones.³⁴ One of the most polemical issues in the bill was the one addressed to unauthorized aliens already inside the United States. For example, the act declares that any person who has been in the nation illegally for at least 180 days, must remain outside it for three years unless granted a pardon. Furthermore, those who have been in the United States illegally for more than one year must stay outside the country for ten years unless a pardon is granted. This law applied without considering the fact that the person can be a spouse or children who are U.S. citizens.

The WRA reformed the entitlement policy for poor families and set new limits on the eligibility of noncitizens for welfare benefits and other social services.³⁵ The law banned states from providing funded Temporary Assistance to Needy Families (TANF) to newly arriving aliens for the first 5 years of residents. The law disposed similar constraint regarding food stamps, Social Security Identity, and Medicaid eligibility. In

³² D.L.D. HEYCK, *In the Belly of the Beast: (Im)migration and Exile*. In : D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York: Routledge, 1994. Page 319

³³ “This act was a major reform of habeas corpus as used to challenge criminal convictions. Among other provisions, the law limits both the procedural and substantive scope of the writ. Procedurally, it bans successive petitions by the same person, requiring defendants to put all of their claims into one appeal. Substantively, it narrows the grounds on which successful habeas claims can be made, allowing claims only to succeed when the convictions were contrary to “clearly established federal law” or an “unreasonable determination of the facts in light of the evidence.” From: http://www.law.cornell.edu/wex/antiterrorism_and_effective_death_penalty_act_of_1996_aedpa

³⁴ According to the new law, individuals in the United States wanting to sponsor family members for legal immigration must have family incomes at least 25 percent above the current federal poverty threshold. The Act also increased the number of border patrol officers for border surveillance, giving them the possibility to employ more technologically sophisticated equipment, to construct additional border fences, and fining immigrants for illegal entry in the United States. Measures directed towards illegal immigrants already living within the United States involved an extension of the staff devoted to the detection of employment eligibility violations and those who overstayed their visas, expanding the pilot program to record fingerprints of all undocumented immigrants arrested in the United States.

³⁵ In particular, the WRA abolished the Aid to Families with Dependent Children entitlement program, and substituted it with a variety of state-implemented programs created to provide short-term cash assistance to needy families. It eliminated as well funding for other federal programs, such as food stamps, Supplement Security Income, child care, and child support. The WRA created a system that gave advantage primarily to U.S. citizens, then to refugees, next to legal immigrants, and finally to undocumented immigrants.

1996, an INS (Immigration and Naturalization Service) study estimated the number of illegal, also referred as “undocumented” or “unauthorized”, immigrants in the U.S. at about 5 million and found that the number was increasing by about 275,000 annually.³⁶ More than half of all undocumented immigrants arrived without proper documentation (most of them across the U.S.-Mexican border), and the others came in accordance with the law (usually on temporary business, tourist, or student visas) and then either overstayed their visas or did something to violate the terms. Most of them were young male adults who came to the United States in search of a job.

The result of those acts was different from what expected. Since they primarily affected the conditions of the poor noncitizens, legal immigrants who came before 1996 was more incentivized to naturalize, while perspective immigrants was less incentivized to come at all, especially if their potential sponsor were too poor. The number of legal immigrants decreased, and this affected in particular those with a higher average level of income and skills. The IIRIRA obtained the costs of illegal entry to increase, but this paradoxically caused a return of a desperate illegal immigration in need of a regain of the costs of the prior arrest.

During the 1990s, the overall distribution of immigration returned to its previous pattern: the North American (Mexico and Canada), Caribbean, and Central American shares were 18 percent, 13 percent, and 5 percent. The country with the largest emigration flow was still Mexico.

By 2000, Mexico was the largest supplier of undocumented immigrants. Another INS study estimated the number of Mexican who were illegally in the United States at 2.7 million, 54 percent of the total illegal alien population.³⁷ Additionally, numerous Dominicans and other Caribbean nationals, such as El Salvador, Guatemala, Haiti, Honduras, and the Bahamas, as well as South Americans entered the United States illegally or overstayed their visas. Many of them came in to carry out seasonal work and returned to their countries afterwards, but many of them came to look for and find low-skilled jobs in industries and urban services, such as plant nurseries, landscaping and construction firms, foundries and shipyards, hotels and restaurants.

³⁶ D. DANIEL, “Immigrants from the Developing World: Coming to America, 1965-1990s”. In: edited by J.CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 254

³⁷ D. DANIEL, “Immigrants from the Developing World: Coming to America, 1965-1990s”. In: edited by J.CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 254

Since 2001, as a consequence of the 9/11 terrorist attacks, the major focus of immigration law has been terrorism. The 2001 USA Patriot Act³⁸ and the 2002 Enhanced Border Security and Visa Reform Act³⁹ elaborated the definition of terrorism, aiming to exclusion and deportation, and tightened the requirements for obtaining a visa to enter the United States. The number of the forced removals had grew rapidly after 1996. In the fiscal year 1990, there were 30,000 noncitizens deported. By contrast, in fiscal year 2005, nearly 210,000 noncitizens were deported, the main part of them to Latin America and the Caribbean.⁴⁰

During the 1980s and 1990s, the border patrol grew in tasks and staff. The INS received continuously resources to stop undocumented crossings of the U.S.-Mexican border. These measures doubled the border patrol agents and create the need of more detention space and a 22 kilometers fence along the Mexican border near San Diego, California. Border patrol agents have been provided with additional floodlights, helicopters, computer and tracking technologies, including ground sensors, sophisticated infrared night-vision equipment, and airborne infrared radar, a process that has been called the “militarization” of the U.S.-Mexican border. The agents made an average of 1.5 million of arrests along the southwest border every year.⁴¹

Deportation lead to an ulterior problem. Many of the deported came as children to the U.S., where they grew up and acquired their identities. Once they are sent back to a country to which they do not have actual attachment, they join local gangs and cooperate with international criminal activities.

In recent years, the South and Southeast of the United States have become the new destination for Latin Americans migration. Most of them (57 per cent) were born in Latin America, and the other part actually moved from the west coast, finding places

³⁸ The official title is “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001”. The purpose is to disclose and punish terrorist attacks in the United States and in the world, to intensify law enforcement investigatory tools, and to detect foreign financial institutions that are suspected of criminal abuse. The law also put at risk citizens privacy.

³⁹ The law, signed by President George W. Bush eight months after the 9/11 terrorist attacks, comprises important conditions to the control and safeguards of the American borders, such as requirements that all the branches of INS, intelligence agencies and State Department share internal databases and information on suspected aliens entering the United States.

⁴⁰ K. M. PARKER, *The Constitution, Citizenship, and Immigration in American History, 1790-2000*. Washington, D. C.: American Historical Association, 2003. Page 42

⁴¹ A. ANEESH “Immigration Agencies and Enforcement: The INS and Its Predecessors”. In: edited by J.CIMENT, and J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M. E. Sharpe, 2013. Page 270

like California too costly. Latinos decided to move to Southeastern states responding to the increase of labor demand in the area. Between 2000 and 2010, the Latino population grew 148 percent in South Carolina, 145 percent in Alabama, 134 percent in Tennessee, 122 percent in Kentucky, 114 percent in Arkansas, and 111 percent in North Carolina.⁴²

The increasing arrival and the joint geographical dispersal of the foreign-born population converted the image of many places around the United States. This was the first time in which immigrants began to populate small and medium communities across the nation, most notably in the South and Midwest. In North Carolina for example, the foreign-born population rose from 115,000 persons in 1990 to 630,000 persons by 2007.⁴³ In less than 20 years, the share of North Carolina's school-age youth living in immigrant households rose from 3.4% to 14.2%.⁴⁴

Native residents resented particularly of the recent geographic dispersal of immigration throughout the nation. Controversies has been rising all over the states, as for instance in Farmingville, NY, Hazelton, PA, Danbury, CT, and some others. These debates came from the fact that employers and homemakers are pleased by the immigrants' openness to work long, and often irregular, hours for low wages, but communities often dislike their presence in schools, neighborhoods, and public spaces. In some places, where social divisions were clearly traced between black and white people, the arrival of Hispanic immigrants issued new racial divisions.

Even if the issue of illegal immigration is still unresolved, on the whole, its effect in economic and cultural terms can be seen as positive. Recent studies show that illegal immigrants generate more dollars than they cost the United States taxpayer.⁴⁵ Moreover, they bring with them their art, music, literature, cuisine, and culture values enriching the entire human enterprise. The problem remains the pressure on social institutions, such as schools and hospitals, and on job opportunities for nonimmigrants population.

⁴² H. GILL, *Latinos in North Carolina, a growing part of the State economic and social landscape*. Chapel Hill, NC: UNC Press, 2012. Page 3

⁴³ K. O' NEIL, M. TIENDA, *A Tale of Two Counties: Natives' Opinions Toward Immigration in North Carolina*. *International Migration Review*, Volume 44 Number 3 (Fall 2010). Page 729

⁴⁴ K. O' NEIL, M. TIENDA, *A Tale of Two Counties: Natives' Opinions Toward Immigration in North Carolina*. *International Migration Review*, Volume 44 Number 3 (Fall 2010). Page 729

⁴⁵ D.L.D. HEYCK, *In the Belly of the Beast: (Im)migration and Exile*. In: : D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York: Routledge, 1994. Page 320

1.3 North Carolina

North Carolina has become a center of Latino migration to the South of the United States. This flow of immigration started actually generations ago, even if in the last decades the phenomena has intensified. Between the states that recently attracted Hispanic migration, North Carolina was the first one in terms of Hispanic population change during the 1990s. Between 1990 and 2000, the foreign-born population augmented by more than the 200 percent in clue states such as North Carolina, Georgia, and Nevada.⁴⁶ In North Carolina, Latin population grew by 393 percent – from 76,000 in 1990 to 378,963 in 2000 – with a net absolute increase of 302,000. By 2004, Latin population increased to 560,206. Adding the undocumented and unknown flow of immigration, it can be estimated that a total of 600,913 Hispanics resided in the state in 2004.⁴⁷

In April 20, 2006, a major fact happened, increasing the recognition of the Latino presence in North Carolina. This was a major protest and strike of the Latino population, which took a break from their jobs and marched in solidarity to demonstrate their support for comprehensive immigration reform being considered in Congress. “Across the states, restaurants closed down, their kitchens empty of dishwashers, cooks, and cleaners. Hotels operated on reduced staff and trash accumulated uncollected at office buildings. On construction sites, machinery lay silent, while agricultural labor vanished on farms throughout the state. In poultry and hog slaughtering factories, meat lay untouched. Factories lost staff. Latinos, the backbone of North Carolina’s economy, had stopped working for the day.”⁴⁸

1.3.1 Migration flows

In the last thirty years, hundreds of thousands of people from Latin America, mostly Mexico, have moved to North Carolina, as economic, political, and environmental refugees. The region has been undergoing a period of economic growth, and industries have been in need of cheap labor of Latino migrants. The major factors that brought the recent immigration to the state were a robust labor market, attracting unskilled Latino

⁴⁶ J. L. PINNIX, *Foreword and Commentary on the Impact of Immigration on the Legal Community in North Carolina*. Campbell Law Review. 29 no 2, Winter 2007. Page II

⁴⁷ J. H. JOHNSON and J. D. KASARDA, *Hispanic Newcomers to North Carolina. Demographic Characteristics and Economic Impact*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 70-71

⁴⁸ H. GILL, *Latinos in North Carolina, a growing part of the State economic and social landscape*. Chapel Hill, NC: UNC Press, 2012. Page 2

immigration, and a federally funded program with a social service system, that settled refugees in selected parts of the state.

From the beginning of the 1990s, North Carolina experienced the growth of the influx of immigrants to its territory. The foreign-born population increased by 273.6 percent between 1990 and 2000, growing from 115,077 to 430,000 residents.⁴⁹ The Latino population has more than doubled from 2000 to 2010 and the state has more agricultural guests workers than any other state in the nation.⁵⁰ According to the 2000 Census, North Carolina's foreign-born population was 430,000, with 14 percent immigrants coming from Europe, 21.7 percent from Asia, 4.7 percent from Africa, 3.4 percent from North America (excluding Mexico), and 55.8 percent from Latin America.⁵¹ The majority of the Hispanic population in the state are of Mexican descent: two-thirds of them are from Mexico, followed by immigrants from El Salvador, Honduras, Guatemala, and Costa Rica. The word "Latino" includes different group of people coming from one of the twenty-two countries in the Caribbean, Central America, and South America and with different traditions, language, history, and economic class.

The terms "Hispanic" and "Latino" are basically synonyms, but some recommend the use of one term or the other for varied political or cultural reasons. "Hispanics" alludes to the heritage from Spain, while "Latino" alludes to the heritage from Latin America. The U.S Census has popularized the term Hispanic. The census reports that Latinos in North Carolina are mostly young, unmarried foreign-born men with limited English skills and educations. Nonetheless, some of them arrive with doctoral degree or higher education. Thus, immigrants range from the highly educated working as doctors and scientists in major universities to refugees coming from Central America and the Caribbean, escaping from war or natural disasters.

In 2000, the main sources of immigration to North Carolina were Mexico, India, Germany, Canada, Vietnam, and China. In these three decades, the Latino population in the state grew from less than a half percent of the total population to 8.4 percent, which

⁴⁹ R. BAILEY, *New Immigrant Communities in North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 57

⁵⁰ data from H. GILL, *Latinos in North Carolina, a growing part of the State economic and social landscape*. Chapel Hill, NC: UNC Press, 2012. Page 2

⁵¹ J. L. PINNIX, *Foreword and Commentary on the Impact of Immigration on the Legal Community in North Carolina*. *Campbell Law Review*. 29 no 2, Winter 2007. Page II

is more than 800,000 people.⁵² The Pew Hispanic Center's "Estimates of the Size and Characteristics of the Undocumented Population" affirm that the undocumented and out-of-status population in North Carolina is 300,000.⁵³ Latinos now are the largest minority group in the state.

Hispanics have increasingly concentrated in a number of counties along the state's urban crescent or I-40/I-85 corridor, extending in the central part of the state from Wake County in the east to Mecklenburg County in the southwest.⁵⁴ The two areas in North Carolina with the largest concentration of Hispanic immigrants are locally known as the Triad and the Triangle. Triad refers to the three principal cities in the region: Winston-Salem, in Forsyth County, Greensboro and High Point, in Guilford County. Alamance County showed the highest Latino increase in the state in the last census, at 1,124 percent.⁵⁵ The Triangle is formed by the main cities of Raleigh, Durham, and Chapel Hill. This area comprehend the capital, namely Raleigh and the prestigious and internationally know research area formed by important universities and corporation (the so called Research Triangle Park, created in the 1950s). The Research Triangle Park is the largest planned research center in the United States, hosting a center of medical facilities and tech companies, plus three of the major universities of the state. For this reason, the Triangle area has a different economy and, consequently, a different immigration flow than the Triad. Further than an increasing Latino population, the region hosts many highly skilled foreign-born professionals. With the economic growth of the area, came a necessity in the construction and maintenance of the buildings, new highways, and other public works, in the Triangle area, an estimated 75 to 90 percent of construction workers between 1995 and 2005 were Latino.⁵⁶ In contrast with the Triad, fewer refugees have been resettled in the Triangle. "Counties with the highest rate of growth for Latino populations include the rural and urban counties of Durham, Wake, and Johnston in the central Triangle region; Guilford, Alamance, and Forsyth counties

⁵² H. GILL, *Latinos in North Carolina, a growing part of the State economic and social landscape*. Chapel Hill, NC: UNC Press, 2012. Page 3

⁵³ J. L. PINNIX, *Foreword and Commentary on the Impact of Immigration on the Legal Community in North Carolina*. Campbell Law Review. 29 no 2, Winter 2007. Page II

⁵⁴ J. H. JOHNSON and J. D. KASARDA, *Hispanic Newcomers to North Carolina. Demographic Characteristics and Economic Impact*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 71

⁵⁵ R. BAILEY, *New Immigrant Communities in North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 59

⁵⁶ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 75

in the Triad; and Cabarrus, Catawba, Union, and Mecklenberg counties in the eastern Charlotte metropolitan area. In some of these counties, such as Durham, Alamance, and Mecklenberg, for example, the population of people born in Latin America increased sevenfold between 1990 and 2000. While most of the state's Latino population live in metropolitan areas, the four rural counties of Duplin (18.2 percent), Lee (13.4 percent), Montgomery (13.3 percent), and Sampson (14.3 percent) have Latino populations that make up more than 13 percent of the total county population, reflecting labor demands in pork and poultry processing factories.⁵⁷ Until recent years, Latin population was also concentrated in the area of military bases in Cumberland and Onslow Counties. These two lost Hispanic population (-7.9 percent and 8.3 percent) between 2000 and 2004.

In 2000, North Carolina became the first state for immigration from Latin America. The state had 378,963 Hispanic residents, 4.71 percent of the state population and a 449 percent increase in the Hispanic population since the 1990 Census. The Triad became the third-fastest growing Hispanic settlement in the nation.⁵⁸ In January 2003, the Immigration and Naturalization Service (INS)⁵⁹ reported the bigger increase of undocumented residents in North Carolina between 1990 and 2000, more than 100,000 undocumented residents in the state. The economy of the state rely on the labor of low-skilled workers, from farmers, to manufacturing to the service industries, and the employers are not used to question suspected documents. Many undocumented Latinos find an initial occupation in Mexican restaurants, where they often work long hours for few benefits. They are helped to find an employment through Latino networks, and get false documents from underground entrepreneurs.

⁵⁷ H. GILL, *Latinos in North Carolina, a growing part of the State economic and social landscape*. Chapel Hill, NC: UNC Press, 2012. Page 3

⁵⁸ "Advocates and service providers estimate the growth of the Hispanic population in the region has been even larger than indicated by census data. As early as 1993, the Hispanic League of the Piedmont Triad (HLPT) and *Casa Guadalupe* claimed there were about 25,000 Hispanics living permanently in the Triad. In the summer of 2002, Faith-Action, a nonprofit organization in Greensboro that generates demographic data by extrapolating from the number of Hispanic births at local hospitals, estimated that there were 530,328 Hispanics in North Carolina." In R. BAILEY, *New Immigrant Communities in North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 60-61

⁵⁹ The Immigration and Naturalization Service was the executive arm of the U.S. government, with the task of regulate immigration into the country. It was part of the U.S Department of Justice and for that responsible for the management and implementation of laws relating to the immigration and naturalization of non-U.S. citizens. In March 2003, INS functions were reassigned to three agencies within the new U.S. Department of Homeland Security (DHS).

Latinos in North Carolina comes from different situations of legal residency or citizenship status. It has calculated that about the 51 percent of the Hispanic population in the state are native-born U.S. citizens, 53 percent born in North Carolina and 39 percent born in another state. Another 7 percent of the total population are natural citizens. The remaining 42 percent lack legal immigration status. North Carolina has actually the ninth largest undocumented population in the United States, comprehending those who entered the country without legal documentation and those who overstayed their visas.⁶⁰

1.3.2 Immigration policies

North Carolina has become an important centre of debate over local immigration policy, being the most chosen destination in the Southeast of the United States for the Latino immigrants in recent years.

During the 1990s, federal welfare reform were really harsh in impeding the immigrant integration process. For example, the 1996 Personal Responsibility and Work Reconciliation Act (WRA) modified the eligibility of noncitizens for public assistance. Qualification for major federal benefits (food stamps, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), the Women, Infants, and Children Program (WIC), and Medicaid) was connected to the immigration status and the date of arrival in the United States, confusing immigrant service providers and not helping the immigrants themselves.

Initially, immigrant integration policies and programs elaborated locally and in relation to determined areas of interests, such as the labor market, schools, or the health care system. For example, Catholic Social Services and the Forsyth County Health Department developed a demographic study of the Latino population thanks to the funds of the Kate B. Reynolds Foundation in Winston Salem. In 1997 they published a report called “Social, Economic, and Demographic Profile of the Hispanic Population of Forsyth County of North Carolina”, which became a support for future community planning and programming.

Recently, North Carolina has become on the states and local municipalities involved in the search of strategies to balance the failure of federal immigration reform at the national level. It is one of the states that have passed aggressive state laws and county

⁶⁰ H. GILL, *Latinos in North Carolina, a growing part of the State economic and social landscape*. Chapel Hill, NC: UNC Press, 2012. Page 4

ordinances in the attempt to stop the migration flow by pointing at immigrants and organizations that deal with them. There have also been an attempt to increase the power of local law-enforcement agencies, a task that was traditionally dealt with by the Immigration and Customs Enforcement (ICE) division of the Department of Homeland Security (DHS). To stop the flow of immigrants, the most used strategy has been deportation. “Over the last two years, thirty-four states have entered into agreements with ICE through the 287(g) program and the Secure Communities program. These partnerships allow local law-enforcement authorities to check the immigration status of anyone arrested and to hold undocumented suspects for deportation proceedings.”⁶¹

North Carolina is one the most involved states in deportation policy: “six of the state’s 100 sheriff’s offices – Alamance, Cumberland, Cabarrus, Gaston, Mecklenburg, and Wake counties – along with the Durham Police Department, have implemented 287(g) agreements. State lawmakers passed Senate Bill 229 in 2007, which mandates that any person jailed on felony or driving while impaired charges have his immigration status checked.”⁶² As a result, thousands of immigrants were deported, most of them being separated from their families in the United States. In Beaufort County, Eastern North Carolina, there has been protests against a proposal to identify undocumented immigrants using health and social services by counting Latino last names. In Wake County, people met in front of the county jail to protest against deportation. At state level, different lobbyist and educational leaders pushed for a change in the legislation to open the education system to the immigrants.

Immigration always brings about a challenge to the traditional conception of identity as conceived by a population. Particularly in rural areas, most conservative values can feel attacked by the presence of the demographic change. In the case of North Carolina, concerns has appeared regarding the expansion of urbanization, allocation of resources, the integration of a population with different costumes. All these concerns have led to growing tensions and conflicts between the two groups: “In North Carolina, rallies led by ex-Klansman David Duke in 2000 and the neo-Nazi National Socialist Movement in 2009 made it clear that hate groups have shifted their animosity to immigrants.”⁶³ In

⁶¹ H. GILL, *Latinos in North Carolina, a growing part of the State economic and social landscape*. Chapel Hill, NC: UNC Press, 2012. Page 5

⁶² H. GILL, *Latinos in North Carolina, a growing part of the State economic and social landscape*. Chapel Hill, NC: UNC Press, 2012. Page 5

⁶³ H. GILL, *Latinos in North Carolina, a growing part of the State economic and social landscape*. Chapel Hill, NC: UNC Press, 2012. Page 6

2008, an anti-illegal immigration group was formed in Swepsonville, a neighboring town connected to Saxapahaw by a road that was recently spray-painted with swastika graffiti.⁶⁴

While a portion of the American population highlights the benefits that the new growing immigration bring to the region, particularly in terms of their high productivity and willingness to work for lower wages, permitting to the industries to be competitive, there's another portion of the population that depicts the Latin immigrants as "illegals" who take jobs from natives, depress wages, burden taxpayers, increase crime rates and pose a threat to national unity and regional identity. Between 2000 and 2008, the number of hate groups increased by 48 percent (to 888 groups in mid-2008) across the United States. Between 2003 and 2006, the number of hate crimes against Latinos increased of the 35 percent.⁶⁵

With the beginning of the 2000s, the situation and attitudes towards the immigrants has worsened. Different factors contributed to the increase of anti-immigrant sentiment, especially in the South. The main one have been the 9/11 terrorist attacks, deteriorating economic conditions in the region, the rapid growth rate of Latino immigrant numbers, and increased national attention to undocumented immigration.

In recent years, a number of southern politicians, reducing the issue of immigration to the problem of the "illegals", recurred to inflammatory claims about Latinos. In 2006, a public hearing in Forsyth County, North Carolina, U.S. Representative Virginia Foxx (R-N.C) affirmed that illegal immigration can be compared to an "invasion" with a "major negative impact on education, health care, Social Security, taxes, employment, wages, the environment, crime and countless other areas of American life."⁶⁶

In November 2006, a poll powered by Elon University found 56 percent of North Carolinians had unpleasant feelings towards immigrants living in the states, because

⁶⁴ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 22

⁶⁵ E. LACY and M. E. ODEM, *Popular Attitudes and Public Policies. Southern Responses to Latino Immigration*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 146

⁶⁶ E. LACY and M. E. ODEM, *Popular Attitudes and Public Policies. Southern Responses to Latino Immigration*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 146

they take “jobs, housing and healthcare.”⁶⁷ Critics say that the poll should not be considered surprising because it was conducted at the close of the mid-term elections which included anti-immigrant advertising by destructionists. Topics against immigration are also covered by the media, influencing that portion of the American public whose source of information are AM talk radio and cable news. Even some of the mainstream press sometimes can help to influence the judgment of the main public. In May 2006 the “Business of North Carolina” titled one of its main stories: “Pay Down – by depressing wages, illegal immigration has become an unexpected bonanza for business.” On the other hand, economists believe that without the work of the Hispanic immigrant population the state economy will halt.⁶⁸ Other studies support the idea that immigration workers are not an obstacle for native-born workers. For instance, Dr. Giovanni Pieri, in his study “Immigrants, Skills and Wages: Measuring the Economic Gains from Immigration”, finds that immigrants workers do not compete with most native-born workers. In the 1990s, immigration raised the average wage of the native-born worker by 1.1%. Native-born workers with a high-school diploma or higher, viewed their wages increased between 0.8% and 1.5%.⁶⁹ Many other studies have confirmed that immigrants have a positive impact on a state’s economy. A 2006 study by The Frank Hawkins Kenan Institute of Private Enterprise at the University of North Carolina found that Latin immigrants add more than \$9 billion to the state economy each year. In January 2007, a study by Duke University’s Pratt School of Engineering and the University of California at Berkeley’s School of Information concluded that “immigrants have been major contributors to the U.S. economy over the past decade.”⁷⁰

At state and local levels, immigration affects communities in unequal ways and on different levels. A White House study demonstrated how the economic benefits of immigration concentrate at the federal level, going to programs like Medicare and social security. For example, agencies like the Social Security Administration receive billions of dollars from undocumented immigrants through taxes taken out of paychecks every

⁶⁷ J. L. PINNIX, *Foreword and Commentary on the Impact of Immigration on the Legal Community in North Carolina*. Campbell Law Review. 29 no 2, Winter 2007. Page IX

⁶⁸ E. MARTIN, *Down Mexico Way*. Business North Carolina, May 2006. www.businessnc.com/archives/2006/05/mexico_way.html

⁶⁹ J. L. PINNIX, *Foreword and Commentary on the Impact of Immigration on the Legal Community in North Carolina*. Campbell Law Review. 29 no 2, Winter 2007. Page X

⁷⁰ J. L. PINNIX, *Foreword and Commentary on the Impact of Immigration on the Legal Community in North Carolina*. Campbell Law Review. 29 no 2, Winter 2007. Page X

year.⁷¹ At state and local levels it is easier to see the net cost of illegal immigration, since governments are responsible for costs of education, health care, and correctional facilities. In 2006, the Kenan Flagler Institute at UNC Chapel Hill conducted a study titled “The Economic Impact of the Hispanic Population on the State of North Carolina”, which found that Latinos annually contribute about \$756 million in taxes to the state economy. Moreover, the study found that Latinos cost the state about \$817 million annually: K-12 education (\$467 million), health care (\$299 million), and corrections (\$51 million). Therefore, the net cost of immigration to the state is about \$61 million, or \$102 per Latino resident.⁷²

But there is also a big portion of the Latino population that is already in the third native-born generation in the state, and are now a part of the identity and history of North Carolina, part of its heritage. The aggressive anti-immigrant policies and the prosecution climate with which they have to live, is affecting in many ways their lives, making the state a home where they have to struggle for survival, fairness, and dignity. Notwithstanding, some recent polls have proved that while Americans have increasing concerns regarding border security, they also support legislation offering foreign-born a path towards real citizenship.

Some efforts have also been done during the decades to help this new part of the North Carolinian community to integrate with the rest of the population. In 1986, the Special Agricultural Workers (SAWs) legalization program passed as part of the Immigration Control and Reform Act (IRCA) an authorization to give temporary resident status and eventual permanent status for up to 350,000 agricultural workers. In 1987, the Lutheran Family Services (LFS) expanded its refugee services in Guilford County to include legal assistance to Latinos seeking to change their immigration status. In 1990, Catholic Social Services opened an office in Winston-Salem, called *Casa Guadalupe*, to give primarily legal support to Latino immigrants. This office was lately expanded in the cities of Greensboro in 1998 and in High Point in 2002. As related to the preservation of the culture, in 1991 the nonprofit organization Hispanic League of the Piedmont Triad (HLPT), run by a group of Latino professionals and business people, organized an annual Latino culture festival in downtown Winston-Salem. The organization helped to

⁷¹ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 88

⁷² H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 88

raise the public awareness of the Latino's culture and contribution to the American environment. In the early 1990s, three churches in Kernersville, offered special programs for the Latino population: a Catholic church offered a special mass, an evangelical church led by an Hispanic pastor provided services, and a Baptist church with a Spanish-speaking pastor, created a health and dental clinic.

1.3.3 Employment

North Carolina is mostly an agricultural state, and has depended on migrant labor to foster its economy. It is the second-largest migrant labor state in the East, second to Florida, and the fifth-largest migrant labor state in the nation, with a labor force that is 90 percent Hispanic. All along the 1990s North Carolina's unemployment quotas were below the national average, indicating that there were more jobs than people to fill them. Throughout the decade there had been a strong demand for unskilled and low-skilled workers to increase North Carolina's economy.

Counties like Guilford and Forsyth have different small tobacco lots family run. The North Carolina agricultural industry in general needs a large number of migrant laborers each year. Essentially they work for cucumbers, wine, seafood, chicken, hog, and turkey production and operations. Other traditional harvest depending on seasonal labor include cotton and soybeans in the eastern part of the state, and apples and Christmas trees in the mountains. Latinos play a crucial role in the agricultural production of the state, providing a work force that has slowed the decline of small farms.

Usually the immigrants devoted to the agricultural labor moved according to the season, going back home or north to pick a different crop. On Thanksgiving weekend of 1960, CBS broadcasted Edward R. Murrow's documentary, "Harvest of Shame", showing the poor living conditions of migrant farm workers, most of them working in North Carolina. In 2005, the Alfred I. duPont-Columbia University award-winning documentary, "Standards of Living," found that many farm workers in North Carolina still lived in overcrowded, unsanitary, and unhealthy condition, after more than 40 years. The production concluded that some powerful issues opposed the new state standards for migrant farm worker housing, requiring more showers, toilets, and mattresses for workers.

Some counties of the state are devoted to industries, in particularly textiles, furniture and other minors. Historically important Piedmont industries are textiles and furniture,

which have experienced shifts and decline over the past twenty-five years, and were helped by the cheap cost of migrant labor to stay competitive and expand in the global market. Hispanic immigrants were recruited in the 1908s and 1990s at a time of crisis for the industry. Textile companies like Gold Toe Brands, Carolina Hosiery Mills, and Kayser Roth Company hired Latinos and have relied heavily upon them for labor in manufacturing, warehousing, and shipping.⁷³

North Carolina employers used to hire Latin labor both domestically and abroad. Strategies used were the most various, including advertising in Spanish-language and mainstream outlets in immigrants' gateway communities. They used Hispanic labor recruitment intermediaries, and established connections with local Hispanic nonprofit and government organizations, including the Mexican consulate. As early as the 1970s, textile employers in Alamance County approached the local employment security commission office about recruiting workers in Mexico.⁷⁴

In the textile and hosiery mills, Latinos worked together with white and black employees, who have been working in the factories for generations. Reactions at the arrival of the new immigrants eager to earn the most were different. Most of the original workers resented the willingness of the younger newcomers and their work ethic that resulted in higher pay (as workers are paid by production, not by hour).

Recently, migrant children educational programs and migrant health programs show a new trend. The general public became aware of Latinos as school enrollments went up. In 1996, Alamance-Burlington schools were 3 percent Latino. In 2008, they were 17 percent Latino, according to Superintendent Randy Bridges. In 2008, Eastlawn Middle School in Burlington (a low-income school) had grown to be 35 percent Latino. Haw River Elementary School grew to 50 percent Latino in the same year.⁷⁵

In recent years, the Latino population has been finding better jobs outside agriculture and settled permanently. Construction, road-work, manufacturing and mills were looking for cheap labor too, giving the opportunity to Latinos to find a permanent job and a consequent place to live and stable income. In the decade between 1995 and 2005,

⁷³ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State.* Chapel Hill, NC, UNC Press, 2010. Page 23

⁷⁴ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State.* Chapel Hill, NC, UNC Press, 2010. Page 21

⁷⁵ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State.* Chapel Hill, NC, UNC Press, 2010. Page 35

more and more Latinos found better occupations in office and administrative support occupations (15,164) as in farming, fishing and forestry (20,102). In the same period, the immigrant population working in management, business, and financial employments grew by 8,908, and those employed in professional and related occupations increased by 8,073.⁷⁶

With the arrival of the economic crisis of the 2000s, textile mills started closing and moving abroad, the tobacco industry declined and the agricultural services sought alternative crops. Immigrants were still looking for jobs, and the recession also aggravate the relation with the local population, which was now competing for the same low-paid employments. The tensions were even more fervent in the rural areas and small towns. By early 2003, the unemployment rate in the Triad region exceeded 6 percent.⁷⁷ Nonetheless, the number of Latin workers kept growing in North Carolinian industries. For example, while North Carolina's manufacturers shed 327,470 workers between 1995 and 2005, the number of Hispanics employed by North Carolina manufacturing firms actually expanded by 14,786.⁷⁸

In 2005, the great part of all Latin immigrants in North Carolina were employed in four industries: construction (42.2 percent), wholesale and retail trade (11.5 percent), manufacturing (10.7 percent), and agriculture, forestry, fishing, and hunting (9.2 percent).⁷⁹ In particular, within North Carolina industries, Latin population are focused mainly in blue-collar employments in the constructions trades, agriculture, trucking, and janitorial and maid services. Gender division is really well defined: the male portion is concentrated in construction occupations as laborers, painters, roofers, carpenters, brick masons, and stonemasons; on the other hand, the female portion is concentrated in maid and janitorial services, food processing, retail sales, dry cleaning, and secretarial support occupations.

⁷⁶ J. H. JOHNSON and J. D. KASARDA, *Hispanic Newcomers to North Carolina. Demographic Characteristics and Economic Impact*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 74

⁷⁷ R. BAILEY, *New Immigrant Communities in North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 72

⁷⁸ J. H. JOHNSON and J. D. KASARDA, *Hispanic Newcomers to North Carolina. Demographic Characteristics and Economic Impact*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 73

⁷⁹ J. H. JOHNSON and J. D. KASARDA, *Hispanic Newcomers to North Carolina. Demographic Characteristics and Economic Impact*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 73

Some Latino immigrants coming from Central America have a temporary protective status (TPS), other are in North Carolina as legal permanent residents (LPRs) or under various worker contracts or specialized visas. Most of the young children are U.S. citizens, even if most of the parents have temporary status or are undocumented. The 2000 Census showed the different ethnicity that compose the Hispanic population in North Carolina. It reported 10,317 (65 percent) of the population came from Mexico. Immigrants from Mexico are more likely to be undocumented and live in rental apartments, so it might be that the Census did not report all of them. 3,817 (or 24 percent) are designed as “other”, but it is supposed they came from Central America, namely El Salvador, Guatemala, and Nicaragua. 1,274 (8 percent) came from Puerto Rico.⁸⁰

Usually the immigrants tend to settle near people from the same town or region. In North Carolina this can be seen in the city of Greensboro for example, where there is the largest population from Guanajuato in Mexico, or in Winston-Salem, where there is a small indigenous Mayan community.

1.3.4 Education

The first problems in the educational system started appearing in the late 1990s. For example, in 1997 Siler City related that almost 50 percent of the kindergarten children were native Spanish speakers. The North Carolina public school system does not have a so called English for Speakers of Other Languages (ESOL) curriculum a tool without which teachers have to strive to make themselves be understood by the foreign-born students.

Another problem in North Carolina public schools is the tendency that Latinos youth tend to drop out school as soon as the law no longer requires attendance, at sixteen years old.

For those who are willing to studying, obstacles apply too. In 2002, the Guilford County school system eliminated designed magnet schools and related programs for ESOL students. Children were assigned to neighborhood schools with minimal ESOL

⁸⁰ R. BAILEY, *New Immigrant Communities in North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 63

resources.⁸¹ This problem was solved thanks the intervention of the Council of Great Cities Schools, which, after analyzing the situation, recommended to ensure immigrant community representation in the school decision-making processes.

With higher education comes more legal problems. North Carolina legislation allow only legal residents to be enrolled in state's colleges and universities. The Dream Act, a bill introduced by Senator Orrin Hatch of Utah, allows undocumented students who have a de facto residency in a state to enroll in public universities. A similar bill at state level was considered in North Carolina.

⁸¹ R. BAILEY, *New Immigrant Communities in North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 73

CHAPTER II

2.1 Introduction

Much has been written about the difficulties of defining the expression “cultural heritage”. The concepts of “culture” and “heritage” alone can be liable to different interpretations, and different definitions of the concept can be given according to what aspect we desire to underline, protect or promote. In particular, the term “culture” envelop a wide range of qualitative terminological qualities, embracing almost every aspect of the world contemporary and past society. It can be said that in some ways, culture is society, that is, the expression of its values, beliefs, and ideologies articulated in its language, practices and objects. On the other hand, the term “heritage” refers to something that has been received from a predecessor. Generally speaking, efforts to describe what “cultural heritage” is apply widespread terms in order to identify a culture which is inherited from the past. “Prott and O’Keefe describe cultural heritage as consisting of ‘manifestation of human life which represent a particular view of life and witness the history and validity of that view.’(L.PROTT and P.J.O’KEEFE, *Cultural Heritage or Cultural Property* (1992) 1 *International Journal of Cultural Property* 307) Koboldt similarly described cultural heritage as ‘an expression or representation of the cultural identity of a society in a particular period’(C. KOBOLDT, *Optimizing the Use of Cultural Heritage*, in M. HUTTER and I. RIZZO (eds.), *Economic Perspectives on Cultural Heritage*, Basingstoke: MacMillan Pres, 1997, p. 3) while Loulanski describes cultural heritage as ‘culture and landscape that are cared for by the community and passed on to the future to serve people’s need for a sense of identity and belonging’ (T. LOULANSKI, *Revising the Concept of Cultural Heritage: The Argument for a Functional Approach* (2006) 13 *International Journal of Cultural Property* 207, page 209). And in an early UNESCO recommendation, cultural heritage has been described as ‘the product and witness of the different traditions and of the spiritual achievements of the past and this is an essential element in the personality of the peoples of the world’(Preamble to the 1968 UNESCO Recommendation Concerning the Preservation of Cultural Property Endangered by Public of Private Works).”⁸²

⁸² C. FORREST, *International Law and the Protection of Cultural Heritage*. London; New York: Routledge, 2010. Page 2

Recently, international proposals have promoted the accordance of cultural rights to individuals and groups. “For example, in 1994 the Council of Europe suggested that the European Convention on Human Rights could be amended so as to include an article protecting cultural rights. Thus, groups may have the right to a cultural identity, which they are free to develop and protect.”⁸³ More and more, the protection of groups’ cultural identity and cultural practices are acknowledged as “allowing participation in the positive benefits of a globalised economy, while resisting the bad impacts of globalised culture. This recognition of the importance of a group’s cultural identity is seen as an effective vehicle for development, consistent with twenty-first century socio-economic development: globalization, localization, diversity, sustainability and responsibility.”⁸⁴

UNESCO has been the first international intergovernmental organization dealing with culture. It was funded in November 1945 as an autonomous UN organization or specialized agency under Article 57 of the UN Charter⁸⁵. Article 1 of its Constitution delineate its main objective:

“[...] to contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms [...] without distinction of race, sex, language or religion”.

The Member States of UNESCO can adopt conventions, imposing legal obligations upon the Member States, and recommendations, which do not impose legal obligations. The possibility of adopting declarations and other non-binding instruments has been added later on in time. “It should be mentioned that in addition to standard-setting, UNESCO has played an important role in facilitating discussion and exchange between States and experts in order to improve cultural policies.”⁸⁶ Cultural rights are not

⁸³C. FORREST, *International Law and the Protection of Cultural Heritage*. London; New York: Routledge, 2010. Page 8

⁸⁴ E. MEYERS, *International immigration policy. A theoretical and comparative analysis*. New York: Palgrave Macmillan, 2004. Page 9

⁸⁵ Article 57 of the UN Charter

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.
2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

⁸⁶ Y. DONDEERS, *Cultural Rights and the Convention on the Diversity of Cultural Expressions. Included or Ignored?* Page 170 In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the*

specifically named in its Constitution, but the establishment of normative instruments regarding culture is an important task of UNESCO, as it is evident in the great number of instruments adopted by the Members States of UNESCO in the field of culture.

Culture and cultural diversity is important not only for States, communities or groups, but also for the individuals. The individual's right to a culture, as well as economic and social rights, have developed into a manifestation in the human rights discourse, and it was specifically mentioned in the 1948 Universal Declaration of Human Rights. "The recognition of the importance of pluralism and cultural tolerance in functioning societies, which underpins sustainable development, has fostered the recognition of cultural values and the protection of values and practices that support sustainable development. As such it has become of interest of a range of international organizations, including the United Nations Environmental Programme, the Food and Agricultural Organization, the International Labor Organization, the World Trade Organizations, the World Bank and the International Monetary Fund."⁸⁷

Much of what now is referred to as cultural heritage, was traditionally considered by international law as mere property, and this was actually the term with which it was mentioned in early international instruments.

The first time that the notion of "heritage" was linked to cultural objects was in the 1954 Hague Convention⁸⁸. Article 1 states that the cultural property to be protected would include "movable or immovable property of great importance to the cultural heritage," underlying the idea that the "property" to be protected is that which is linked to some cultural value. The first use of the term "heritage" in a definition occurred in the 1956 UNESCO Recommendation on International Principle Applicable to Archeological Excavations, but this use of the terminology was not followed in subsequent international agreements. The first time the term was used in the title of an agreement was in the 1972 World Heritage Convention⁸⁹, where it was limited to what

Diversity of Cultural Expressions: a tale of fragmentation in international law. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services. 2012

⁸⁷ E. MEYERS, *International immigration policy. A theoretical and comparative analysis.* New York: Palgrave Macmillan, 2004. Page 363

⁸⁸ The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954. It entered into force in August 1956. The Convention created a specific sign to identify protected cultural property during an armed conflict.

⁸⁹ The Convention concerning the Protection of the World Cultural and Natural Heritage, entered into force in December 1975.

concerns immovables, such as monuments, sites and cultural landscapes. “The use of the word heritage suggests the need to preserve a historical asset for future generations and consequently the obligation of present generations to safeguard and protect such an asset.”⁹⁰

2.2 UNESCO 2003 Convention for the Safeguarding of the Intangible Cultural Heritage

2.2.1 Defining the Importance of Intangible Cultural Heritage

Defining exactly what is intangible cultural heritage is nearly impossible. Oral history and literature, music, dance, agricultural and manufacturing skills, rituals and use of symbols, traditional medicine, culinary traditions and traditional sports and games can all be mentioned as examples, but the definition still unfulfilled. “As Arizpe notes, the intangible cultural heritage ‘is not an object, not a performance, nor a site; it may be embodied or given material form in any of these, but basically, it is an enactment of meanings embedded in collective memory.’ (L. ARIZPE, *The Cultural Politics of Intangible Cultural Heritage* (2007) 12 *Art Antiquity and Law* 361, 362)”⁹¹

The first four of UNESCO’s conventions, and most of UNESCO’s recommendations, refer to the protection of the tangible expression of cultural heritage. Nonetheless, in recent years there has been a recognition of the misplacement of the concentration on the tangible rather than on the intangible, meaning that the attention was put on the form rather than the culture value itself. This was actually creating an opposition between the protection of the form and the cultural essence represented by the form. This is the reason why the fifth UNESCO convention on cultural heritage aspired to concentrate on the safeguarding of the intangible cultural heritage.

The adoption by UNESCO of an international convention on the safeguarding of intangible cultural heritage has given a new aspect to international conventional law on the protection of cultural heritage. Many popular cultures value the intangible heritage transmitted from generation to generation as more important than the physical manifestations of that culture. For example, most of the developing countries do not own a rich tangible cultural heritage, made of monuments and old landscape, but rather treasure an orally transmitted cultural heritage, made of traditions, languages,

⁹⁰F. FRANCONI, *The Evolving Framework for the Protection of Cultural Heritage in International Law*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 25-26

⁹¹ C. FORREST, *International Law and the Protection of Cultural Heritage*. London; New York: Routledge, 2010. Page 362

knowledge and so on. Moreover, it can be said that the physical often cannot be grasped without the comprehension of its context within the culture. This knowledge gives to the tangible its cultural value, and requires protection.

2.2.2 First International Instruments for the Protection of Intangible Cultural Heritage

Since the end of the last century, many proposals have been undertaken at the diplomatic level in order to extend the international law to comprise the protection of the intangible cultural heritage and living manifestations of culture and its diversity. As to the recognition of the importance of culture and cultural diversity, the first normative regime to safeguard the intangible cultural heritage can be ascribed to the very creation of UNESCO, whose aim is to promote peace and comprehension between nations through education, science, culture, communication and information.

The very first attempt to create a normative regime can be found in the realm of intellectual property protection. Since the early 1970s, UNESCO started a collaboration with the World Intellectual Property Organization (WIPO) to involve folklore in a variety of model laws on copyright protection. In 1989 UNESCO adopted the Recommendation on the Safeguarding of Traditional Culture and Folklore⁹², which aimed to encourage international cooperation for safeguarding traditional culture and folklore, indicating national measures that each State might take, including identification, conservation, preservation and dissemination of the intangible cultural heritage. Being an act of soft law, the recommendation did not succeed in generating national protective measures. The recommendation “still echoes the cold war climate in its opposition between elite culture and popular and vernacular culture and in the use of the term “folklore”, currently considered demeaning in that it refers only to traditions that have lost their vitality and their capacity to reproduce themselves and that are therefore reinterpreted for mainly for commercial reasons.”⁹³

At the beginning of the 1990s, the Intangible Cultural Heritage sub-programme and the Intangible Cultural Heritage Unit was instituted. In 1993, UNESCO introduced the Living Human Treasures programme, in order to recognize individuals as “the living exponents of traditional culture”⁹⁴ and the only capable of transmitting their ability and knowledge to future generations. It was a program aimed at motivating the development

⁹² Adopted in Paris by the General Conference on 15 November 1989.

⁹³ F. FRANCONI, *The Evolving Framework for the Protection of Cultural Heritage in International Law*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 22

⁹⁴ C. FORREST, *International Law and the Protection of Cultural Heritage*. London; New York: Routledge, 2010. Page 365

of internal legislations in order to guarantee the endurance of traditional arts and crafts at risk of vanishing in the globalized economy, which was still very important for the harmony and unity of society and also the conservation of tangible cultural heritage. This program was extinguished in 2009 and the masterpieces were included into the Representative List of Intangible Heritage.

The first attempts of including the safeguard of the intangible cultural heritage in the World Heritage List was first contemplated in 1996, in particular in relation to the imbalances existing between developed and developing states, which are not rich in physical manifestation of their culture, but rather in intangible heritage, including oral history, dance, rituals and music. In 1997, the Masterpieces of Oral and Intangible Heritage of Humanity programme was created, as an awareness raising and educational tool. The program was created in order to select, through an international competition, the forms and places of celebration of cultural traditions of exceptional quality in the spheres of theatre, dance, mimodrame, music, and similar. By 2005, 90 examples were included on the list.

The World Heritage Convention's Operational Guide⁹⁵ reflects the idea of the inclusion, recognizing as a criteria for the listing of natural heritage sites those which can be directly or tangibly connected to events or living traditions, with ideas, beliefs, or artistic and literary works of exceptional universal value. This was the first time the intangible cultural heritage was recognized when yielding international protection to tangible cultural heritage.⁹⁶

2.2.3 The Convention on Intangible Cultural Heritage

A first step toward the negotiations of the Convention was taken in March 2001, by a meeting of experts organized under the auspices of UNESCO in Grinzane Cavour, Italy, which had to elaborate a definition of the concept "intangible heritage". The definition discussed had an anthropological character, and included in the idea of intangible heritage "any non-corporeal manifestation of tradition-based creativity, spontaneously originated and developed within a cultural community by which it is perceived to be an

⁹⁵ The Operational Guidelines for the Implementation of the World Heritage Convention are a series of instructions to signatory members States on the proper implementation of the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage. They were adopted by the UNESCO World Heritage Committee at its first session.

⁹⁶ On the same pattern, the 2001 International Agreement on Plant Genetic Resources for Food and Agriculture acknowledged the role of local and indigenous farmers and their traditional knowledge in conserve and improve sustainable practices and decrease environmental degradation. In recent year, the recognition of cultural awareness in relation to genetic resources and biotechnology brought to the creation of an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

important component or reflection of the community's social or cultural identity, including, besides the immaterial product of the tradition based creations, the social, intellectual and cultural processes that from generation to generation, by oral transmission, by imitation or by other means of learning have made possible the development of a distinct cultural tradition whose preservation and protection is important for the safeguarding of the cultural diversity and creativity of humanity.”⁹⁷ This definition was changed and adopted in the text (Article 2) of the Convention for the Safeguarding of Intangible Cultural Heritage adopted by the General Conference of UNESCO on 17 October 2003, and brought into force three months after the thirtieth instrument of ratification (Romania), on 20 April 2006. It is not easy to find definitions, especially regarding broad concepts and trying to put it in a legal context. “Rather than a definition, the Convention provides a description of the essential components contained within the concept of intangible cultural heritage. While giving general guidance, this description is flexible enough to serve as a starting point for future practice to be developed by the Committee when deciding on the inscriptions on the List.”⁹⁸

The definition of the intangible cultural heritage for the purposes of the Convention wasn't easy to find, trying to satisfy the requests of stakeholders from States, communities, and group, and the perspectives of anthropologists, social scientists, indigenous groups, legal regulators, and State administrators. A key in the construction of the definition was the necessity to create something sufficiently clear and delimited to allow for regulation. At the end, article 2(1) reported the following definition:

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 recognize 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. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible

⁹⁷F. FRANCONI, *The Evolving Framework for the Protection of Cultural Heritage in International Law*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 22

⁹⁸ T. SCOVAZZI, *The Definition of Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 200

with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

This definition actually present a broad range of intangible cultural heritage, considering practices, representations, expressions, knowledge and skills that communities, groups and individuals acknowledge as part of their cultural heritage. It is more of a description than a definition. Communities and groups are those who can determine their intangible cultural heritage.

The Preamble of the Convention transmits the central aims and principles upon which the conventional regime is structured, placing the Convention in its international context. In recital 2, the human rights background is mentioned with the 1948 Universal Declaration on Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, and the 1966 International Covenant on Civil and Political Rights. In this way, the regime to safeguarding the intangible culture heritage underlines the importance and recognizes as fundamental rights of ethnic, religious and linguistic minorities, as well as economic, social and cultural rights. Remarks to the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, the 2001 UNESCO Universal Declaration on Cultural Diversity and the Istanbul Declaration of 2002 adopted by the Third Round Table of Ministers of Culture, are alluded to underline “the importance of the intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development.” The fourteenth recital stresses the central reason for safeguarding the intangible cultural heritage, identifying “the invaluable role of the intangible cultural heritage as a factor in bringing human beings closer together and ensuring exchange and understanding among them.”

The necessity of the Convention is displayed in different ways. In the fifth recital, it is acknowledged how the processes of globalization and social transformation, as well as the phenomenon of intolerance, menace to bring to deterioration, disappearance and destruction of the intangible cultural heritage. The need for a Convention comes, according to the fourth recital, from the fact that there is a “deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage”, which has not been established in existing international agreements, recommendations or resolutions.

It is important to underline the fact that the international community has the responsibility to safeguard intangible heritage “in a spirit of cooperation and mutual assistance” as mentioned in twelfth recital. In seventh recital is recognized that not only the international community has its role, but also States, “communities, in particular indigenous communities, groups and, in some cases, individuals”.

“The need to ensure respect for the intangible cultural heritage of the communities, groups and individuals was considered to be of the utmost importance as it related the intangible to very specific cultures, not to States who are party to the Convention, but to those, whether in communities, groups or even individuals, who embody that heritage. Whilst concerns were raised about the use of terms such as communities and groups, which remain contentious in international law and particularly human rights discourse, their use in this context was thought necessary to highlight the relationship between the intangible cultural heritage and the cultural entity itself.”⁹⁹

The main obstacle posed to the creation of the Convention was to identify what exactly is in need of protection, and how this protection can be provided. Article 1 states the four purposes of the Convention:

- a) To safeguard the intangible cultural heritage;
- b) To ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned;
- c) To raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;
- d) To provide for international cooperation and assistance.

The idea of “safeguarding” is defined in Article 2(3) as:

measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

The Intangible Cultural Heritage Convention uses the term “safeguarding” instead of “protection”. Blake argues that “safeguarding” is a broader term than “protection” meaning that not only is the intangible cultural heritage protected from direct threats to

⁹⁹ C. FORREST, *International Law and the Protection of Cultural Heritage*. London; New York: Routledge, 2010. Page 370

it but there is also a need for positive action from States to promote intangible cultural heritage.¹⁰⁰ Safeguarding is termed so as to include protection as one of a number of means that will build an environment conducive to the prospering and production of intangible cultural heritage.¹⁰¹

“The safeguarding of the intangible cultural heritage rests on education and particularly raising awareness of its importance. This, however, needs to take place at local, national and international levels, and requires, in particular, an acknowledgment of the link between the national international, upon which the Conventional structure is based.”¹⁰²

“Even if the Convention is formally a traditional instrument of consensual creation of inter-State law, from a substantive point of view it creates a system of international obligations that contracting parties undertake with regard to human groups or traditional communities, established in their territories or abroad, in order to safeguard their traditions and living cultures. In his sense, the idea of safeguarding intangible cultural heritage is closer to the idea of protecting human rights. As in the case of human rights, the object of safeguarding is not a State interest, or a purely material item, but rather the human value of creative autonomy, of the freedom of manifestation of one’s own beliefs and convictions, either individually or in community, in public or in private, of peoples, groups or minorities. (...) The *raison d’être* of the Convention, thus, is that the protection of intangible cultural heritage is not addressed to the safeguarding of a national interest of each State, but rather to the conservation of a collective good of the international community taken as a whole, more specifically, the cultural diversity of the human species in the infinite variety of its manifestations. At the same time, the connection between the Convention of practices and traditions that are not compatible with human rights at the international level – such as discriminatory practices towards women or contrary to human dignity¹⁰³ - and on the other hand in the strong connotation

¹⁰⁰ J. BLAKE, *Commentary on the UNESCO 2003 Convention on the Safeguarding of the Intangible Cultural Heritage*, Leicester: Institute of Art and Law, 2006. Page 23

¹⁰¹ Art. 2(3): “Safeguarding” means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

¹⁰² C. FORREST, *International Law and the Protection of Cultural Heritage*. London; New York: Routledge, 2010. Page 371

¹⁰³ Article 2 specifies that the Convention applies exclusively to cultural heritage that is compatible with internationally recognized human rights, with the principles of mutual respect among communities, groups, and individuals, and with sustainable development.

of intangible heritage as a fundamental element of the identity of human groups that have created it and are their custodians.”¹⁰⁴

Article 2(2) defines the five “domains” in which the intangible cultural heritage can manifest:

- a) Oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
- b) Performing arts;
- c) Social practices, rituals and festive events;
- d) Knowledge and practices concerning nature and the universe;
- e) Traditional craftsmanship.

There is little difference between oral traditions, understood as the “passing on by word of mouth and memorizing information from the past”¹⁰⁵ and the oral expression, understood as “aspects of intangible cultural heritage expressed through the spoken word or in song”.¹⁰⁶ Different examples of oral traditions and expressions can be found in the Representative List, such as “The Arts of the Meddah Public Storytellers” (Turkey) or the “Hudhud Chants of the Ifugao” (Philippines). The negotiators of the Convention discussed above the issue of whether languages could be included among the manifestations of intangible cultural heritage. “Some delegations asked for an explicit reference to languages. Others were of the opinion that the terms “oral expressions” already covered languages sufficiently. At the end, it was preferred to include a language only insofar as it can be considered as a “vehicle of the intangible cultural heritage”. The consequence of this choice seems to be that a language, such as English or Italian, cannot be considered *per se* as a manifestation of intangible cultural heritage. However, it could qualify as such if it becomes a means for the manifestation

¹⁰⁴ F. FRANCONI, *The Evolving Framework for the Protection of Cultural Heritage in International Law*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 23

¹⁰⁵ Edited by W. VAN ZANTEN, *Glossary. Intangible Cultural Heritage*. Netherlands National Commission for UNESCO, 2002. Mentioned in: T. SCOVAZZI, *The Definition of Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 181

¹⁰⁶ Edited by W. VAN ZANTEN, *Glossary. Intangible Cultural Heritage*. Netherlands National Commission for UNESCO, 2002. Mentioned in: T. SCOVAZZI, *The Definition of Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 181

of what already belongs to the domain of intangible cultural heritage.”¹⁰⁷ Languages inserted in the Representative List are the “Language, Dance and Music of the Garifuna” (Belize, Guatemala, Honduras, Nicaragua), the “Oral Heritage and Cultural Manifestations of the Zápara People” (Ecuador, Peru), and the “Whistled Language of the Island of La Gomera” (Canary Island).

Performing arts include “instrumental and vocal music, dance, theatre, storytelling, sung poetry, pantomime, and other spectacular practices representing the creativity of communities.”¹⁰⁸ It was recognized that in some cases the difference between performing arts and oral traditions and expressions is not well defined, such as for vocal music, storytelling and sung poetry.

Social practices and festive events have been considered as including “activities, which manifest ever-changing concepts, knowledge and skills, related, among other things, to social relations, status, methods of decision-making, conflict resolution, and collective aspiration” and “a collective gathering at which events of significance for a cultural community are proclaimed, celebrated, commemorated or otherwise highlighted, usually including dance, music, and other performances.”¹⁰⁹ Under particular circumstances, sport, law, medicine and food practices can also be considered intangible cultural heritage, for instance, the “Kırkpınar Oil Wrestling Festival” (Turkey), the “Naadam Mongolian Traditional Festival”, the “Irrigator’s Tribunals of the Spanish Mediterranean Coast: The Council of Wise Men of the Plain of Murcia and the Water Tribunal of the Plain of Valencia” (Spain), and the “Acupuncture and Moxibustion of Traditional Chinese Medicine” (China). In 2010 three general elements regarding food practices were included in the Representative List, the “Gastronomic Meal of the French” (France), the “Traditional Mexican Cuisine – Ancestral, Ongoing Community

¹⁰⁷ T. SCOVAZZI, *The Definition of Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012.. Page 182

¹⁰⁸ Edited by W. VAN ZANTEN, *Glossary. Intangible Cultural Heritage*. Netherlands National Commission for UNESCO, 2002. Mentioned in: T. SCOVAZZI, *The Definition of Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 183

¹⁰⁹ Edited by W. VAN ZANTEN, *Glossary. Intangible Cultural Heritage*. Netherlands National Commission for UNESCO, 2002. Mentioned in: T. SCOVAZZI, *The Definition of Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 183

Culture, the Michoacán Paradigm”¹¹⁰ (Mexico) and the “Mediterranean Diet” (Spain, Greece, Italy, Morocco). Acknowledging food practice as a mean of bringing people together does not seem sufficient to retain it part of intangible cultural heritage. There is a need to stress the specificity of some food or food preparation. In the case of the Mexican cuisine, specific references can be found.

The structure of the Intangible Cultural Heritage Convention essentially repeats the model of the World Heritage Convention. Impositions of the main obligations are put on the State in whose territory the intangible heritage exist, with an international structure of co-operation and support planned to assist the territorial State. The Convention creates an infrastructure and organs with the aim of depository of knowledge and good practice relating to safeguarding of intangible cultural heritage.

The regime to safeguard the intangible cultural heritage depends upon the sovereignty and territoriality of States. Article 11(a) states that each State Party “shall take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory”. Article 11(b) addresses the issue of identification: States members have the duty to identify the intangible cultural heritage present in their territory.

The importance of communities, groups and individuals is established in Article 15, which requires each State Party to aim to guarantee the broadest possible participation of communities, groups and individuals that create, maintain and transmit such heritage, and to involve them actively in its management. Moreover, Article 11(b) states that States Parties have to ensure that communities and groups participate in the process of

¹¹⁰ The following description show that it case has been considered as a social practice: “Traditional Mexican cuisine is a comprehensive cultural model comprising farming, ritual practices, age-old skills, culinary techniques and ancestral community customs and manners. It is made possible by collective participation in the entire food chain: from planting and harvesting to cooking and eating. The basis of the system is founded on corn, beans and chili; unique farming methods such as milpas (rotating swidden fields of corns and other crops) and chinampas (man-made farming isles in lake areas); cooking processes such as nixtamalization (lime-hulling maize, which increases its nutritional value); and singular utensils including grinding stones and stone mortars. Native ingredients such as varieties of tomatoes, squashes, avocados, cocoa and vanilla augment the basic staples. Mexican cuisine is elaborate and symbol-laden, with everyday tortillas and tamales, both made of corn, forming an integral part of Day of the Dead offerings. Collectives of female cooks and other practitioners devoted to raising crops and traditional cuisine are found in the State of Michoacán and across Mexico. Their knowledge and techniques express community identity, reinforce social bonds, and build stronger local, regional and national identities. Those efforts in Michoacán also underline the importance of traditional cuisine as a means of sustainable development.” In: UNESCO doc. ITH/10/5.COM/CONF.202/Decisions, 19 November 2010, p. 35. In: T. SCOVAZZI, *The Definition of Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 186

identification and definition of the different components of the intangible cultural heritage found in their territories.

Article 2(1) acknowledges the importance of the communities, groups and individuals in three points: “Firstly, communities, groups and individuals are the subjects who are required to recognize an intangible cultural elements as part of their cultural heritage. Secondly, they have a role to play in the transmission and re-creation of their intangible cultural element. Finally, this latter has to give a sense of identity to communities, groups and individuals who are their bearers.”¹¹¹

Scholars argue that the meaning of article 2(1) is that heritage must not only be manifested, but also shared.¹¹² The social factor shows how the elements included in the List established by the Intangible Cultural Heritage Convention are seen as Representative of the intangible cultural heritage of humanity (Article 16). The lists are redacted “to ensure better visibility of the intangible cultural heritage and awareness of its significance” (article 16(1)), and not to state an order of importance.

The Intangible Cultural Heritage Convention reflect the opportunity that a third State can gain rights or duties over the instrument. The first elements of the intangible cultural heritage to be adjoined to the Intangible Cultural Heritage List formed in the Convention, were those that had been listed on the List of Masterpieces of Oral and Intangible Heritage of Humanity created by UNESCO in 1997. However, various states whose intangible cultural heritage is in the 314 now listed¹¹³ in the Intangible Cultural Heritage List are not yet part of the Convention.¹¹⁴ “This difficulty is somewhat alleviated by the fact that the obligations imposed on the States Parties are not onerous, and the benefits easy outweigh the obligations. As such, while a theoretical international law problem, it is unlikely to give rise to a dispute between a State Party and a non-

¹¹¹ S. URBINATI, *The Role for Communities, Groups and Individuals under the Convention for the Safeguarding of the Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 203

¹¹² T. SCOVAZZI, *The Definition of Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 189

¹¹³ “The Representative List of the Intangible Cultural Heritage of Humanity is made up of those intangible heritage elements that help demonstrate the diversity of this heritage and raise awareness about its importance. In 2008 the Committee incorporated 90 elements (formerly proclaimed Masterpieces) into the Representative List and from 2009 to 2014, it inscribed 224 new elements for an overall number of **314 elements on the Representative List.**” <http://www.unesco.org/culture/ich/index.php?pg=00011>

¹¹⁴ For example: Bangladesh, Benin, Gambia, Iraq, Jamaica, Malawi, Malaysia, Russia, Tajikistan, Tonga, Uganda and Vanuatu. In: C. FORREST, *International Law and the Protection of Cultural Heritage*. London; New York: Routledge, 2010. Page 51

State Party with an intangible cultural heritage element on the Intangible Cultural Heritage List.”¹¹⁵

Article 12 states that each State Party “shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory.” The different national lists are to be very different, according to the peculiar resources and forms of intangible cultural heritage present in each State. Article 13 include a range of measures encouraged to “ensure the safeguard, development and promotion of the intangible cultural heritage”, including the selection of a general policy intended at the promotion of the function of the intangible cultural heritage in society, and the assimilation of the safeguarding of such heritage into planning programmes; the establishment of competent relevant bodies, and promoting scientific, technical and artistic studies. Moreover, States shall attempt to embrace appropriate legal, technical, administrative and financial measures planned to promote the creation or strengthening of institutions for instruction in the management of the intangible cultural heritage and the conveyance of such heritage; secure admission to the intangible cultural heritage while respecting habitual practices governing access to specific aspects of such heritage; and instituting documentation foundations for the intangible cultural heritage and permitting access to them.

Three organs are created to constitute the safeguarding system: The General Assembly of States Parties, the Secretariat, and the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage. Article 4 states the General Assembly as the sovereign body of the Convention with the power to adopt its own Rules of Procedure. Article 6 establish that the General Assembly is to meet in ordinary session every two years, though it may in certain circumstances meet in extraordinary session. Article 8(1) stipulates that the Committee is responsible to the General Assembly, which ultimately retains control over the implementation of the Convention and acts to check the activities of the Committee. Article 10 states that the UNESCO Secretariat is to prepare the documentation of the General Assembly and that of the Committee, as well as the draft agenda of their meetings, and shall guarantee the implementation of their decisions.

¹¹⁵ C. FORREST, *International Law and the Protection of Cultural Heritage*. London; New York: Routledge, 2010. Page 51

Article 5 states the institution of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, composed of representative of 18 States Parties, elected by the General Assembly. The Committee may invite to its meetings any public or private bodies, as well as private persons, with recognized competence in the various fields of the intangible cultural heritage, in order to consult them on specific matters (Article 8). The functions of the Committee are set out in Article 7. The most important function is to create the Representative List of the Intangible Cultural Heritage of Humanity and the List of Intangible Cultural Heritage in Need of Urgent Safeguarding. As mentioned before, the central mission of the List is stated in Article 16(1): “to ensure better visibility of the intangible cultural heritage and awareness of its significance, and to encourage dialogue which respects cultural diversity.” “The regime to safeguard the intangible cultural heritage is clearly underpinned by a belief that education, and raising the awareness of the intangible heritage and importance, and garnering respect for that heritage, is the best method of ensuring its continued vitality and viability. [...] As to what representativeness is, an expert meeting in 2002 considered two possible interpretations: (1) as representative of the creative diversity of humanity and (2) as representative of the intangible cultural heritage of a given community or group. As such, it has been argued, the list as a whole ought to be representative, but each individual cultural tradition does not need to be of outstanding universal value, but rather of importance to the given community or group.”¹¹⁶

The intangible cultural heritage is related to a “cultural space” and persistently recreated by communities and groups “in response to their environment” and “their interactions with nature and their history” (Article 2(1)). “A cultural space must be intended according to its social character as “a physical or symbolic space in which people meet to enact, share or exchange social practices or ideas”.”¹¹⁷ The cultural idea of space is not the same as the legal concept of territory over which a State exercises its sovereignty. The same intangible cultural heritage can be part of the territory of two or more States. “To avoid the risk of fragmentation of the same heritage, paragraph 13 of the Operational Directives encourages States Parties to jointly submit multi-national

¹¹⁶ C. FORREST, *International Law and the Protection of Cultural Heritage*. London; New York: Routledge, 2010. Page 378

¹¹⁷ Edited by W. VAN ZANTEN, *Glossary. Intangible Cultural Heritage*. Netherlands National Commission for UNESCO, 2002. Mentioned in: T. SCOVAZZI, *The Definition of Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 197

nominations to the List when an element is found on the territory of more than one of them.”¹¹⁸

The aim of the Convention, to safeguard the intangible cultural heritage, demands the measures intended to instill respect for the intangible cultural heritage of the communities, groups and individuals affected and to raise awareness at the local, national and international levels of the significance of the intangible cultural heritage, and of ensuring mutual appreciation thereof. Recognizing that States Parties “recognize that the safeguarding of intangible cultural heritage is of general interest to humanity” (Article 19(2)) a need to cooperate at the bilateral, subregional, regional and international levels is undertaken. This co-operation “includes, *inter alia*, the exchange of information and experience, joint initiatives, and the establishment of a mechanism of assistance to States Parties in their efforts to safeguard the intangible cultural heritage” (Article 19(1)).

The international assistance is accorded not only for the intangible heritage or the Representative List, but for all intangible cultural heritage. Moreover, international assistance is to be granted for the preparation of inventories, which are important in particular in the ultimate construction of the intangible cultural heritage Lists. International assistance may be granted to sustain programmes, projects and activities carried out at the national, subregional and regional levels aimed at the safeguarding of the intangible cultural heritage.

Chapter VI establishes the Intangible Cultural Heritage Fund, replicating the World Heritage Fund. Article 26 establishes the compulsory payment of a contribution by States Parties every two years. The amount is to be determined by the General Assembly of States Parties but is to be a uniform percentage of not more than one per cent of its contribution on the regular budget of UNESCO.

After nine years from the adoption of the Intangible Cultural Heritage Convention, its configuration has been explained by the work of its organs, the General Assembly of States Parties and the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, in particular with the adoption of the Operational Directives for the Implementation of the Convention for the Safeguarding of the

¹¹⁸ T. SCOVAZZI, *The Definition of Intangible Cultural Heritage*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 198

Intangible Cultural Heritage and the creation of the Representative List and the Urgent Safeguarding List.

“The Convention on intangible heritage has the merit of attracting international attention to the impact of globalization over the variety of world cultures. This has stimulated the negotiation in a very short time span of a new UNESCO Convention on cultural diversity, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which was adopted in Paris on 20 October 2005. One of the most important tasks of this Convention is to integrate the safeguarding of cultural diversity of nations in the system of the World Trade Organization.”¹¹⁹

2.3 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression

The protection of cultural diversity is a fundamental aspect of the human degree of cultural heritage. At the international level, the unity of the concept of protection of cultural diversity and the respect for human dignity,¹²⁰ on the one hand, and the strong correlation between the protection of fundamental freedoms and the defense of cultural heritage and cultural diversity, on the other, are generally recognized. “Thus, while effective protection of the cultural heritage is essential for the respect of the manifold cultural expressions of various groups and individuals and their cultural identity it is only by means of the effective protection of cultural diversity that the preservation of cultural heritage can be achieved in its entirety and in its broadest meaning.”¹²¹

2.3.1 Cultural Diversity and Cultural Rights

Cultural diversity has been the center of scientific research in the last decades, developing in a number of important international instruments for its protection at the universal and regional levels. Already in November 1966, the General Conference of UNESCO adopted the Declaration of Principles of International Cultural Cooperation, which in the Preamble affirmed the idea that ignorance of the life, customs and culture of communities was considered to be an obstacle to friendship among nations and to peaceful cooperation. International cultural cooperation could contribute to a better

¹¹⁹ F. FRANCONI, *The Evolving Framework for the Protection of Cultural Heritage in International Law*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 24

¹²⁰ Article 4 of the UNESCO Universal Declaration on Cultural Diversity, 2 November 2001

¹²¹ L. PINESCHI, *Cultural Diversity as a Human Right? General Comment No. 21 of the Committee on Economic, Social and Cultural Rights*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 29-30

understanding and, consequently, to the building and maintenance of peace. In November 1976, the General Conference adopted the Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It. It underlined the broad meaning of culture, involving the way of life of communities and individuals, and including issues of education and communication. It was meant to give communities and individuals the chance to have access to culture and also to actively participate in cultural life. The Recommendation states that States should “guarantee the recognition of the equality of cultures, including the cultures of national minorities (...) as forming part of the common heritage of all mankind, and ensure that they are promoted at all levels without discrimination.” (Article II-4(f)). States are also recommended to “protect, safeguard and enhance all forms of cultural expression such as national or regional languages, dialects, folk arts and traditions both past and present, and rural cultures as well as cultures of other social groups.” (Article II-4(g)).¹²² In the same year, the International Covenant on Economic, Social and Cultural Rights entered into force, including in article 15 (1)(a) the right to everyone to take part in cultural life. UNESCO contributed to the research through the adoption of the Universal Declaration on Cultural Diversity of 2 November 2001, the Convention for the Safeguarding of the Intangible Cultural Heritage, and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression of 20 October 2005.

The 2001 Declaration states that “respect for the diversity of cultures, tolerance, dialogue and cooperation [...] are among the best guarantees of international peace and security”. The Declaration presents sections on identity, diversity and pluralism; cultural diversity and human rights; cultural diversity and creativity; and cultural diversity and international solidarity. It is important to notice that the United States was not a Member of UNESCO at that time. The USA withdrew from UNESCO in 1984, arguing that the organization was politicized, and asserting concerns about corruption

¹²² “Some Member States, including the United States and Italy, expressed doubts that access to and participation in culture could be regulated by an international instrument at all. [...] The Recommendation was not unanimously adopted. Before the vote on the Recommendation, several delegations [Belgium, Canada, the federal Republic of Germany, France, Guatemala, Italy, the United Kingdom and the United States] expressed their objection to the terminology and meanings of the Recommendation as well as to its possible implication of State control over creativity.” In: Y. DONDERS, *The History of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression*. In: edited by H. SCHNEIDER and P. VAN DEN BOSSCHE, *Protection of cultural diversity from a European and international perspective*. Antwerpen: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 8

and bureaucratic mismanagement. It took part in the Declaration as an observer, but was not involved in the elaboration of the text.

States continued for a long time to resist the idea of drafting international rules regarding subjects such as the promotion and protection of cultural rights, “despite unprecedented migratory movements and the world-wide acknowledgements that pluralism – understood not only as the acceptance of different opinions and convictions, but also as the respect of different cultural traditions – is an essential value of a democratic society.”¹²³ The Convention of 2005 has been the latest of a series of various documents and instruments adopted by the UNESCO about cultural diversity and its manifestations.¹²⁴

The first legal instrument mentioning cultural rights has been the 1966 International Covenant on Economic, Social and Cultural Rights, which contains only one condition openly referring to culture, in Article 15. The right to everyone to take part in cultural life, Article 15(1)(a) is generally and vaguely asserted.¹²⁵

¹²³ L. PINESCHI, *Cultural Diversity as a Human Right? General Comment No. 21 of the Committee on Economic, Social and Cultural Rights*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 30

¹²⁴ “Instruments include, for example: the Agreement on the Importance of Educational, Scientific and Cultural Materials (Florence Agreement, 1950); the Universal Copyright Convention (1952 and revised in 1971); the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention) and its Protocol (1954); the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970); the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972); UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995); the Convention on the Exchange of Official Publications (1958); the Recommendation on the Status of Scientific Researchers (1974); the Convention on the Protection of the World Cultural and Natural Heritage (1972); the Recommendation on the Status of the Artist (1980); the Recommendation on the Safeguarding of the Traditional Culture and Folklore (1989); Convention on the Protection of the Underwater Cultural Heritage (2001) and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003).” In: Y. DONDEERS, *The History of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. In: edited by H. SCHNEIDER and P. VAN DEN BOSSCHE, *Protection of cultural diversity from a European and international perspective*. Antwerpen: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 2

¹²⁵ “Article 27 of the Universal Declaration of Human Rights already envisaged the right of everyone “to participate in the cultural life of the community”. Article 15 is a step forward with respect to Article 27 of the Universal Declaration of Human Rights, because it abandons its unsatisfactory wording (“the cultural life of the community”). Nevertheless, it adds nothing to Article 27 of the Universal Declaration of Human Rights as far as the assertion of a human right to cultural identity is concerned.” In: L. PINESCHI, *Cultural Diversity as a Human Right? General Comment No. 21 of the Committee on Economic, Social and Cultural Rights*. In: edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 31

2.3.2 The Convention on the Protection and Promotion of Cultural Expressions

On 20 October 2005, the Member States of UNESCO adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, with 148 votes in favor, 2 votes against (the United States and Israel), and 4 States abstained (Australia, Honduras, Liberia and Nicaragua). The Convention entered into force on 18 March 2007 and currently has 134 States Parties.

Essentially, the text of the Convention recognizes the “distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning” (Article 1(g)), underlines the sovereign right of States “to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory” (Article 1(h)) and offers a program of action meant “to protect and promote the diversity of cultural expressions” and “to create the conditions for cultures to flourish and freely interact in a mutually beneficial manner”. (Article 1(a) and (b)).

The purpose of the Convention is to protect and promote the diversity of cultural expression and “to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expression on their territory.” (Article 1 (h)). The ninth paragraph of the Preamble recognizes the need “to take measures to protect the diversity of cultural expressions, including their content, especially in situations where cultural expressions may be threatened by the possibility of extinction or serious impairment.” The nineteenth paragraph notes “that while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, they also represent a challenge for cultural diversity, namely in view of risks of imbalances between rich and poor countries.” The purpose of the Convention, then, was not the protection of cultural diversity in the wide sense of the term, but the protection of a particular aspect of cultural diversity: the diversity of cultural substance and artistic expressions.

A definition of cultural diversity is given in Article 4(1), as “the many ways in which the cultures of groups and societies find expression”. The Convention then allows States to take measures to promote and protect the diversity of cultural diversity “on their territory”. Article 4(3) defines the term “cultural expressions”, referring to those

expressions “that result from the creativity of individuals, groups and societies and that have cultural content”.

“The fact is that cultural expression meets an essential need for every community. It is a key element in the adaptation of different cultures to the transformations imposed by globalization. The creators of culture and cultural stakeholders play a primary role in this regard in that they create a forum for critical confrontation between national and foreign values and between the values and behavior of the past and perspectives for the future. In this sense, we can say that the preservation of cultural diversity can only occur through the preservation of cultural expressions. Furthermore, since the diversity of cultural expressions is “an important factor that allows individuals and peoples to express and to share with others their ideas and their values,” (preamble) it contributes by this very fact to public debate and constitutes a significant element of the democratic process. Thus, the protection and promotion of the diversity of cultural expressions, far from being a minor issue, is proving to be one of the major challenges of our time.”¹²⁶

“The question is which cultural diversity the Convention tries to promote and protect. Is it merely the diversity *among* States, searching for a balance in the exchange of goods and services between States? Or would it also imply the diversity *within* States, which would include the promotion and protection of the cultures of different groups and communities within a society?”¹²⁷ Article 4(1) defines cultural diversity as “the many ways in which the cultures of groups and societies find expression.” It can be argued that the Conventions leave it open for both interpretations.¹²⁸ References can be found to national cultures as well as to cultures of minorities and indigenous peoples. The Preamble recognizes the importance of traditional knowledge systems, naming indigenous peoples as a source of wealth. It adds that the vitality of culture is taken into

¹²⁶In: I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 100. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2012

¹²⁷ In: I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 100. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2012

¹²⁸ Y. DONDERS, *The History of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. In: edited by H. SCHNEIDER and P. VAN DEN BOSSCHE, *Protection of cultural diversity from a European and international perspective*. Antwerpen: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 23

account “including for persons belonging to minorities and indigenous peoples, manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit from them for their own development”. Principle 3 underlines the equal dignity of and respect for all cultures, including that of minorities and indigenous peoples. On the other hand, the value of the sovereignty of States and their right to take measures to promote and protect the diversity of cultural expressions is stated, giving the idea that national cultures are the one promoted and protected by the Convention.

The Convention is not a human rights instrument, and does not create rights of individuals or communities, but rights of States. Nonetheless, article 2(1) includes an indication on the 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.

During the preparation of the draft of the Convention, many States were concerned that the Convention could be misread to disregard basic human rights. In particular the United States underlined the importance of human rights, in particular freedom of expression. “The importance of the Convention lies in the fact that it confirms the value of cultural diversity and incorporates it in international law. Consequently, the Convention has to be taken into account in case new commitments are made in the cultural sector at bilateral or multilateral level. It may not force many concrete commitments of States, but it is clearly an incentive for States to develop internal and international cultural policies. It should also be borne in mind that, generally speaking, UNESCO’s main area of work is not preparing legally binding instruments, but developing concept and gearing policies to one another.”¹²⁹

¹²⁹ Y. DONDEERS, *The History of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. In: edited by H. SCHNEIDER and P. VAN DEN BOSSCHE, *Protection of cultural diversity from a European and international perspective*. Antwerpen: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 26

The term “protection” was defined in Article 4(7) as “the adoption of measures aimed at the preservation, safeguarding and enhancement of the diversity of cultural expressions”.

Article 2(5) states that “since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy.” Article 13 deals with the incorporation of culture in sustainable development, “Parties should endeavor to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions”.

The Convention touches as well the issue of the integration of culture in sustainable development. The principle of the complementarity of economic and cultural aspects of development (Article 2(5))¹³⁰ and with the principle of sustainable development (Article 2(6)). Four articles in the Convention on the Diversity of Cultural Expressions deal in particular with cooperation for development. Article 14 identifies different measures that State Parties might employ to encourage the appearance of an active cultural sector in developing countries. Measures are divided in four categories, namely: (a) the strengthening of the cultural industries in developing countries; (b) capacity-building; (c) technology transfer; and (d) financial support. Different types of actions are proposed, including the establishment of an International Fund for Cultural Diversity (d)(i).¹³¹ Article 15 encourages “the development of partnerships, between and within the public and private sectors and non-profit organizations, in order to cooperate with developing countries in the enhancement of their capacities in the protection and promotion of the diversity of cultural expressions.” Developing countries are granted a preferential treatment according to Article 16. In particular, a preferential treatment is to be granted to “artists and other cultural professionals and practitioners, as well as to

¹³⁰ “International cooperation and solidarity should be aimed at enabling countries, especially developing countries, to create and strengthen their means of cultural their means of cultural expressions, including their cultural industries, whether nascent or established, at the local, national and international levels.”

¹³¹ “The list of means enumerated in Article 14 is characterized by a pragmatic approach to cultural development, closely reflecting the orientation suggested by the principle of international cooperation and solidarity in Article 1 of the Convention on the Diversity of Cultural Expressions.” In: I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 113. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2012

cultural goods and services from developing countries.”¹³² The third measure planned by the Convention is the International Fund for Cultural Diversity, created as a means of assistance for cultural policies and measures developed by States. Article 18 recalls Article 25 of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage. A major difference is the fact that States Parties are not obliged to contribute to the Fund, but contributions are voluntary. This can present disadvantages, such as the ambiguity regarding the regular contributions to the Fund, and the consequent difficulties of developing an organized system to assist developing countries. Article 18(6) states that contributions from political, economic or other conditions incompatible with the objective of the Convention will not be accepted. Article 18(4) specifies that “the use of resources of the Fund shall be decided by the Intergovernmental Committees on the basis of guidelines determined by the Conference of Parties”.

Linguistic diversity is mentioned in the fourteenth paragraph in the preamble, which reminds that “linguistic diversity is a fundamental element of cultural diversity” and in article 6(2)(b), among the measures that the Parties can take national level. “But the Convention on the Diversity of Cultural Expressions is not concerned with linguistic rights in areas of life others than those that relate to cultural expression, such as education, advertising or consumer protection.”¹³³

State Parties are expected to build the conditions for the development of cultural expression and for a mutual interaction. This is regarded as the actual objective of the Convention, and its achievements in the future will be estimated according to the success of this objective. Article 7, regarding the “measures to promote cultural expressions” touches issues such as the creation, production, dissemination and distribution of the cultural expressions of the States, giving particular attention to

¹³² “ In the case of cultural goods and services, various options would be open but they would have to be considered at the light of the rights and obligations of the Parties under other agreements, particularly trade agreements. The negotiators of Article 16 were rather circumspect from that point of view, qualifying the good faith commitment to grant preferential treatment with the words “through appropriate and legal frameworks”. However the granting of preferential treatment to developing countries is not uncommon, particularly in the context of the WTO”. In: I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 114. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2012

¹³³ In: I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 101. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services,

groups such as women, minorities and indigenous peoples. It also underlines the access to cultural expressions from other countries and the importance of the contribution of artists involved in the creative process. Article 8 deals with “special situations”, or situations of urgency. When a State Party acknowledges that there is a condition within its territory endangering the cultural expression or putting it at a state of risk, it “may take all appropriate measures to protect and preserve that cultural expression”, reporting to the Intergovernmental Committee the measures taken.¹³⁴ The aim of the Article is clearly to provide an assistance to those states that, by their estimate, are facing situations as described by Article 8. Article 12 asks that State Parties, when undertaking bilateral, regional and international agreements, in order to create conditions apt at the promotion of the diversity of cultural expressions, should give “particular account of the situations referred to in Article 8 and 17”. Moreover, Article 12 presents a list of specific objectives to be aimed at, including the facilitation of dialogue among Parties on cultural policy, professional and international cultural exchanges and sharing of best practices, the reinforcement of partnerships with and among elements of civil society, non-governmental organizations and the private sector, the promotion of the use of new technologies to enhance information sharing and the conclusion of co-production and co-distribution agreements.¹³⁵ Article 17 then, provides that “States shall cooperate in providing assistance to each other, and, in particular to developing countries, in situations referred to under Article 8.” In Article 10, States are invited to “encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions” and to foster creativity and production capacities by the means of setting up educational, training and exchange programs in the area of cultural industries.

¹³⁴ “The original version was the subject of substantial modifications and in the final text it was made clear that Article 8 was not compulsory and that the intervention of the Committee would be limited to making recommendations.” In: I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 107. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2012

¹³⁵ “There are already a number of multilateral and regional organizations that pursue more or less similar objectives regarding the facilitation of dialogue on cultural policy and international cultural exchanges, such as UNESCO, the International Network on Cultural Policy, the International Organization of the Francophonie, the Council of Europe, the Convenio Andres Bello in Latin America and the Parties are impliedly to work with those networks to stimulate dialogue on issue that relate specifically to the protection and preservation of the diversity of cultural expressions.” In: I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 110-111. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2012

Article 9 and 19 deal with the issue of information gathering and sharing. Article 9 states that Parties “shall (a) provide appropriate information in their reports to UNESCO every four years on measures taken to protect and promote the diversity of cultural expressions within their territory and at the international level; (b) designate a point of contact responsible for information sharing in relation to this Convention; (c) share and exchange information relating to the protection and promotion of the diversity of cultural expressions”¹³⁶. The collection of information might be a problematic issue, in particular in regard of those developing country lacking in the measures of cultural statistics. Article 19 in part provides for this issue, stating that “UNESCO shall facilitate, through the use of existing mechanism within the Secretariat, the collection, analysis and dissemination of all relevant information, statistics and best practices” (Paragraph 2) and, in order to facilitate the collection of data, it “shall pay particular attention to capacity-building and the strengthening of expertise for Parties that submit a request for such assistance” (Paragraph 4).

The most debated issue was the relationship between this Convention and other international agreements, in particular the WTO Agreements. Article 20 was and still is one of the most controversial of the Convention. The last draft before the adoption contained a controversial second paragraph: “Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.” “For those who saw the Convention on the Diversity of Cultural Expressions as a disguised attempt to remove culture from the WTO, it had to be clearly stated that the Convention on the Diversity of Cultural Expressions would in no circumstances prevail over trade agreements. For the vast majority, however, cultural concerns had to find their place among other legitimate concerns and for that, it was necessary that the Convention on the Diversity of Cultural Expressions clearly assert the non-subordination of the instrument to other international agreements.”¹³⁷ In the Article,

¹³⁶ “The reports mentioned in Paragraph (a) are to be sent to the Intergovernmental Committee, which is responsible to transmit them to the Conference of Parties together with comments and a summary of their content. According to Article 22(4)(b) the Conference itself is to receive and examine the reports in question.” In: I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 111. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2012

¹³⁷ I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 117. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK];

the Convention states that it does not prevail over other treaties nor do other treaties themselves prevail over the Convention. They stay on an equal base. The Article proceeds providing positive methods of directing the interface between different treaties. Paragraph (1)(a) requires that the Parties “foster mutual supportiveness between the Convention and other treaties to which they are parties.” Paragraph (2)(b) confirm that Parties “take into account the relevant provisions of the Convention” “when interpreting and applying the other treaties to which they are parties or when entering into other international obligations.” According to Article 21, Parties endeavor to promote the objectives and principles of the Convention in other international forums, and, moreover, they “shall consult each other, as appropriate, bearing in mind these objectives and principles.”¹³⁸

The importance of the Convention is the acknowledgement of the value of cultural diversity and the inclusion of the concept in international law. In this way, the Convention on the Diversity of Cultural Expressions has to be considered when States develop new involvements in the cultural and other sectors at the bilateral and multilateral levels. Moreover, it becomes an impulse for States to develop internal and international cultural policies.

“Ever since it was launched in 2003, the project of a new international convention on the protection of the diversity of cultural content and artistic expressions has received remarkable support from the Members of UNESCO and has been driven by an obvious desire to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning, to protect and promote as a consequence the diversity of cultural expressions and to create the conditions for cultures to flourish and freely interact in a mutually beneficial manner.”¹³⁹

2.3.3 The US position

A group of 15 independent experts was created to prepare the preliminary draft of the Convention between 2003 and 2004. They had to define the objectives of the

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¹³⁸ Article 23(6)(e) states that one of the function of the Intergovernmental Committee is “to establish procedures and other mechanisms for consultation aimed at promoting the objectives and principles of this Convention in other international forums.”

¹³⁹ I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 121. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2012

Convention and how to deal with the issue of cultural goods and services with economic and cultural value. They also had to find a balance between the idea of “promotion” and that of “protection”. Some States, directed by the USA, expressed the fear that the Convention would be a protectionist instrument, instead of an instrument which would maintain the dynamics and character of culture. In general, the USA formally objected various provisions, as the preambular paragraph that cultural goods have cultural as well as economic value and the definitions of Article 4. The USA opposed the adoption of the Convention from the beginning. They did not agree with the idea of the dual nature, cultural and economic, of cultural goods and services, and objected to the acknowledgment of the distinctive nature of cultural goods and services as vehicles of identity and values, disagreeing with the definitions of “cultural activities”, “cultural industries” and “cultural goods and services”. The USA’s preoccupation was that all kinds of products could be caught under the vague term “cultural expression”. The definition of the word “protection” posed the preoccupation that the Convention could become a protectionist instrument, and an impediment for the free exchange of goods and services.¹⁴⁰ The USA took the right of States to take measures and create policies to promote and protect cultural diversity as an invitation to break other agreements and obligations, in particular those regarding human rights and trade instruments. In September 2005, Secretary of State Condoleezza Rice sent a letter to all Member States of UNESCO to convey her deep concern with the draft Convention. “She denounced its unclear language which could have a “chilling effect” on negotiations at the WTO and could be abused by “enemies of democracy and free trade” to restrict the free flow of information and “impose protectionist measures in the guise of protecting culture”. She urged the other States to postpone the adoption and warned that rushing the Convention would “only hurt UNESCO’s image” and that “this Convention threatens the support in the United States for UNESCO”.¹⁴¹ During the General Conference, the USA

¹⁴⁰ “It was demonstrated during the debates on the use of these words that this usage conformed to prior UNESCO practices. The word “protection” is to be found in the title of three other UNESCO conventions, namely the Convention on the Protection of the Underwater Cultural Heritage of 2001, the Convention on the Protection of the World Cultural and Natural Heritage of 1972 and the Convention on the Protection of Cultural Property in the Event of Armed Conflict of 1954.” In: I. BERNIER, *The Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*. Page 99. In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2012

¹⁴¹ Y. DONDEERS, *The History of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. In: edited by H. SCHNEIDER and P. VAN DEN BOSSCHE, *Protection of cultural diversity from a European and international perspective*. Antwerpen: Intersentia;

pressured various delegations in trade agreements with the USA, especially from Latin America, not to accept the Convention. In Commission IV, it proposed 20 amendments to the final draft, asking for a formal vote on each of them. Each of the proposed amendments was rejected by majorities. It can be said that the US position obtained the opposite effect, that is the support for the Convention by many States. After the adoption of the Convention, the USA delegation presented a statement expressing its concerns about the fact that the Convention has been too quickly drafted and open to misinterpretation and misuse in three points: “1. The potential misuse of the Convention to limit the free flow of goods and services; 2. The potential abuse of power to control the cultural lives of citizens; 3. The ambiguity of the relationship between the Convention and the WTO agreements.”¹⁴²

It should be said that the statements of the United States were not completely wrong. In particular, Article 20 of the Convention, dealing with the relationship of the Convention and other international agreements, is not clearly stated. Moreover, the concern about human rights find its justification in the likely friction between the purpose of the Convention and the promotion of the human right to freedom of expression and the free flow of information. It is probable that the USA’s attitude was the main reasons leading other States to unite against them.

2.4 Human rights

2.4.1 Cultural Rights

Cultural rights are a category of human rights less developed than civil, political, economic and social rights. The ambiguity of the term “culture” makes it hard for the development and the conceptualization of the important concept of cultural rights. Culture can refer to different things, from cultural products, such as arts and literature, to the cultural process or culture as a way of life. In between are the cultural institutions established to transfer culture, such as museums, educational institutions and the media. Accordingly, cultural rights can refer to various human rights and freedoms. Cultural rights might be the rights related to creativity, such as those of freedom of expression and artistic and intellectual freedom, as well as the rights related to the protection of

Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 20

¹⁴² Y. DONDEERS, *The History of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. In: edited by H. SCHNEIDER and P. VAN DEN BOSSCHE, *Protection of cultural diversity from a European and international perspective*. Antwerpen: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 21

producers of cultural products, including copyright. Cultural rights might also include the protection of cultural products and cultural expressions, such as cultural heritage. In association with cultural development they might include the rights to self-determination, the rights of freedom of thought, religion and assembly and the right to education. Analyzing universal human rights instrument¹⁴³, some terms specifically referring to culture might be found, such as the right to participate in cultural life, (Covenant on Economic, Social and Cultural Rights, Article 15(1)(a)¹⁴⁴; Convention on the Elimination of All Forms of Discrimination Against Women, Article 13(c)¹⁴⁵; Convention on the Right of the Child, Article 31¹⁴⁶; Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, Article 43¹⁴⁷); the right to equal participation in cultural activities (Convention on the Elimination of All Forms of Racial Discrimination, Article 5¹⁴⁸), the right to enjoy culture for members of minorities (International Covenant on Civil and Political Rights, Article 27¹⁴⁹), the right to education for children with due respect for their cultural identity (Convention on the

¹⁴³ The core UN human rights are (in chronological order of adoption): Universal Declaration of human Rights, 1948; International Convention on the Elimination of All Forms of Racial Discrimination, 1965; International Covenant on Civil and Political Rights, 1966; International 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; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. IN: Y. DONDEERS, *Cultural Rights and the Convention on the Diversity of Cultural Expressions. Included or Ignored?* Page 167 In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, 2012

¹⁴⁴ Article 15 (1) The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life

¹⁴⁵ Article 13: States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: [...] (c) The right to participate in recreational activities, sports and all aspects of cultural life.

¹⁴⁶ Article 31: (1) States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and arts. (2) States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activities.

¹⁴⁷ Article 43: (1) Migrant workers shall enjoy equality of treatment with nationals of the States of employment in relation to: [...] (g) Access to and participation in cultural life.

¹⁴⁸ Article 5. [...] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (e) Economic, social and cultural rights, in particular: [...] (v) The right to education and training; (vi) The right to equal participation in cultural activities.

¹⁴⁹ Article 27. 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 practice their own religion, or to use their own language.

Right of the Child, Article 29¹⁵⁰), and the right of migrant workers to respect for their cultural identity and their right to maintain cultural links with their country of origin (Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, Article 31¹⁵¹). Cultural rights might also apply to the cultural “dimension” of human rights. The Committee on Economic, Social and Cultural Rights recognized the cultural elements of the rights to food, health and housing.¹⁵²

Some international judicial structures, including the European Court of Human Rights and the Inter-American Court on Human Rights, have recognized the cultural dimension of some human rights terms. For example, the European Court of Human Rights stated that the right to freedom of association (Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) can be extended to the protection of cultural organizations. Moreover, the European Court of Human Rights discussed the cultural dimension of the right to private life (Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), identifying that living in caravans is part of the traditional lifestyle of gypsies, and has to be protected under that right. The Inter-American Commission has issued various judgments on indigenous people and the protection of their culture under the right to life and the right to health.

In November 1976, the General Conference of UNESCO adopted the “Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It”. The Recommendation is directed to States and does not imply rights directly referred to individuals or communities. Nevertheless, participation in cultural

¹⁵⁰ Article 29. (1) States Parties agree that the education of the child shall be directed to: [...] (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which h or she may originate, and for civilizations different from his or her own;

¹⁵¹ Article 31. (1) States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin. (2) States Parties may take appropriate measures to assist and encourage efforts in this respect.

¹⁵² “For instance, it has determined that the right to adequate housing implies that the construction of houses, the building materials and the supporting policies “...must appropriately enable the expression of cultural identity and diversity of housing.” With regard to the right to health, the Committee has determined that “...all health facilities, goods and services must be...culturally appropriate, *i.e.*, respectful of the culture of individuals, minorities, peoples and communities...” With regard to the right to adequate food, the Committee has stated that the guarantees provided should be culturally appropriate and acceptable.” In: Y. DONDEERS, *Cultural Rights and the Convention on the Diversity of Cultural Expressions. Included or Ignored?* Page 169 In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, 2012

life is established in a human rights structure. It incites States to sanction legislation and regulations to guarantee free access to national and world cultures without any form of discrimination, and to foster free participation by all in the process of creating cultural values. The States should also acknowledge the balance of cultures, especially those of minorities, and “ensure that national minorities and foreign minorities have full opportunities for gaining access to and participating in the cultural life of the countries in which they find themselves in order to enrich it with their specific contributions, while safeguarding their right to preserve their cultural identity.” The Recommendation underlines in Article 4 the importance of the access to education, freedom of expression and communication, freedom of creation, the protection of cultural heritage and the role of the mass media in fostering mutual understanding.¹⁵³ The Recommendation stresses the importance of an ample meaning of culture, which is related not only to cultural products and art, but even to a way of life, both of communities and individuals, along with, for example, education and communication. It was created to allow communities and even individuals to have complete entry to culture with an active participation. Although individuals cannot appeal to the Recommendation directly, because it is addressed to States, the instrument is a clear sign of the recognition of the importance of advancing cultural rights in the broad sense.

In 1978, the General Conference of UNESCO adopted the “Declaration on Race and Racial Prejudice”, which highlights the value of differences. The Declaration embraces the right of individuals to be different, which, as is stated in the Preamble, regards the right not to be excluded, humiliated, exploited or forcibly assimilated. The Declaration on Race includes as well a right for human beings to preserve cultural identity, and the right of groups to their own cultural identity and the development of their peculiar cultural life. “With the Declaration on Race, States wished to recognize the diversity of cultures and to reaffirm that different communities should be able to decide on the development and expression of their cultures, thereby denouncing policies of forced assimilation of cultural communities. The Declaration on Race contains several cultural rights in both the narrow and broad senses and reaffirms their significance. These rights

¹⁵³ Y. DONDEERS, *Cultural Rights and the Convention on the Diversity of Cultural Expressions. Included or Ignored?* Page 172 In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, 2012

cannot, however, be directly invoked by individuals and communities and the Declaration on Race is not legally-binding upon States.”¹⁵⁴

In 2001 the General Conference of UNESCO adopted the Cultural Diversity Declaration, in order to promote cultural diversity in the context of respect for human rights. It touches issue on identity, diversity and pluralism, cultural diversity and human rights, cultural diversity and creativity, and cultural diversity and international solidarity. Article 5, entitled “cultural rights as an enabling environment for cultural diversity” states:

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 entitle 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.

This Article shows the importance of cultural rights for the promotion and protection of cultural diversity, which can only flourish when cultural rights are respected and carried out.

Some allusions to human rights can be found in the Convention on the Diversity of Cultural Expressions. The Preamble remarks that cultural diversity is important for the full realization of human rights as proclaimed in the Cultural Diversity Declaration and other universally recognized instruments. Article 2 of the Convention contains guiding principles, among which the first one refers to respect for human rights and fundamental freedoms:

Cultural diversity can be protected only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of

¹⁵⁴ Y. DONDEERS, *Cultural Rights and the Convention on the Diversity of Cultural Expressions. Included or Ignored?* Page 173 In: edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, 2012

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.

This term underlines the importance of respect for human rights for the promotion and protection of cultural diversity. The Convention on the Protection and Promotion of the Diversity of Cultural Expressions focuses mainly on freedom of expression, including the right to information.

2.4.2 The International Convention on the Elimination of All Forms of Racial Discrimination

Article 1(1) of the Convention defines racial discrimination as:

Any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The definition recognizes four different actions, distinction, exclusion, restriction, and preference, as discriminatory, when they hinder the equal recognition, enjoyment, and exercise of human rights and fundamental freedoms. The criteria recognized are those of race, colour, descent, or national or ethnic origin. These criteria includes subjective and social elements as long as physical elements. “This approach gives space to address and combat racism or racial discrimination without assuming the existence of a race or accepting horizontal narratives of separation, or vertical narratives of hierarchy which are related to this concept.”¹⁵⁵

Moreover, Article 1 restricts the application of the Convention, excluding

Distinctions, exclusions, restrictions or preferences [...] between citizens and non-citizens, and does not affect legal provisions [...] concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

Article 1(4) underlines the necessity for “special measures”:

¹⁵⁵ L. J. KRUCKENBERG. *The UNreal world of human rights. An ethnography of the UN Committee on the Elimination of Racial Discrimination*. Baden-Baden: Nomos, 2012. Page 36

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

The Convention forbids discrimination, but at the same time acknowledges the necessity of distinctions when appropriate.

Articles 2(1) identifies responsibilities of the States parties to the Convention in order to fight and eliminate racial discrimination within their jurisdictions: States parties are obliged (a) “to engage in no act or practice of racial discrimination against persons, groups of persons or institutions” and have to “ensure that all public authorities and public institutions [...] act in conformity with this obligation”; they must not (b) “sponsor, defend or support racial discrimination”; they (c) “shall take effective measures to review governmental, national and local policies, and to amend rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination”; and to (d) “prohibit and bring to an end [...] racial discrimination by any persons, group or organization”; moreover, they have a mission to (e) “encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races”.

Article 3 condemns apartheid and segregation, requiring the obligation for states to “prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

Article 4 obliges States parties to prevent hate speech and racist groups. It requires States to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such against any race or group of persons of another color or ethnic origin, and also the provisions of any assistance to racist activities.” States must also “declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination.”

Article 5 requires States parties to “prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law”. The Article presents a list of peculiar civil and political rights as well as economic, social and cultural rights.

Article 6 requires States parties to assure “everyone within their jurisdiction effective protection and remedies [...] against any acts of racial discrimination”.

Article 7 presents the issue of prevention:

State Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

The Article requires “immediate” and “effective” measures, rather than projecting long-term objectives.

Article 8(1) establishes the tools for the implementation of the Convention:

There shall be established a Committee on the Elimination of Racial Discrimination [...] consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilizations as well as of the principal legal systems.

The members are elected by secret ballot from a list of experts proposed by states, and they serve for a term of four years.

Article 14 states an optional procedure for treating with “communications from individuals or group of individuals [...] claiming to be victims of a violation by a State Party of any of the rights set forth in the Convention and who have exhausted other available local remedies.” The Committee is required to examine communications “in the light of all information made available to it by the State Party concerned and by the

petitioner”, to advance suggestions and recommendations, if necessary, to the State Party and to the petitioner.¹⁵⁶

The Convention determines an extensive list of racial discrimination acts, and develops a series of obligations for the states parties, comprehensive of dynamic policies. Nevertheless, the Convention stays open for interpretation. For instance, the requirements of Article 5 is not considered to be exhaustive, and the rights enlisted are not defined any further. “Ultimately, the actual meaning if its provisions can only be constructed in a case-by-case manner. A process of exegesis and interpretation is required in the course of which the provisions are applied to specific cases and situations. Against this background, the establishment of supervisory mechanisms in order to monitor the implementation of the Convention became a most important priority.”¹⁵⁷

The International Convention on the Elimination of All Forms of Racial Discrimination has been the first UN human rights treaty clearly stating the establishment of such a treaty body. It created a compulsory State Reporting procedure, and one for Inter-state Complaints.

The International Convention on the Elimination of All Forms of Racial Discrimination soon became one of the most widely accepted international human rights treaties ever created. The major part of the governments perceived the ratification of the Convention as a response against the apartheid, and took it as a symbol of foreign policy rather than of domestic issue.

¹⁵⁶ The Commission “first engaged in a (still ongoing) process of defining and adopting guidelines for the State Reporting mechanism. As early as 1970 it asked states parties an itemized report on the measures undertaken with respect to Articles 2 – 7, and to present information on domestic judicial dealing with cases of racial discrimination. [...] In 1972, for instance, after it had received a number of reports in which states parties denied the existence of any form of racial discrimination within their territory, [the Commission] issued a recommendation reminding all states parties to the Convention of their obligation to report measures undertaken “whether or not racial discrimination exists in their respective territories” (General Recommendation II). [...] Four years later, it emphasized the obligation to report “preventive measures” (Article 7), like the promotion of tolerance (General Recommendation V of 1977) after having received a number of reports totally lacking such information.” In: L. J. KRUCKENBERG. *The UNreal world of human rights. An ethnography of the UN Committee on the Elimination of Racial Discrimination*. Baden-Baden: Nomos, 2012. Page 46-47

¹⁵⁷ L. J. KRUCKENBERG. *The UNreal world of human rights. An ethnography of the UN Committee on the Elimination of Racial Discrimination*. Baden-Baden: Nomos, 2012. Page 39

2.4.3 The Inter-American Court and the issue of discrimination

The duty to protect life cannot be parted from the general obligations arising from the principle of non-discrimination, in special case when disparities can influence a vulnerable group. “It is pertinent to recall that there is an unbreakable tie between the *erga omnes* obligations to respect and guarantee human rights and the principle of equality and non-discrimination, which has the nature of *jus cogens* and is crucial to safeguard human rights both under international law and under domestic venue, and which impregnates all actions by State power, in all its expressions.”¹⁵⁸

Arguments implying that the application of the death penalty as the result of discriminatory treatment is illegal has often been presented in cases against the United States which does not accept the jurisdiction of the Inter-American Court. In some occasions, the Commission of the Inter-American Court has given its opinion of the issue, particularly following the figures showing that far more African-Americans are sentenced to death than white people. *Celestine v. The United States* (Inter-American Commission, September 18, 1989, Resolution No. 23/89, Case No. 10.031)¹⁵⁹ was the first case where the issue of the death penalty being applied in a racially discriminatory fashion was invoked. The applicant had been considered guilty of cruelly raping and murdering an 81-year-old white woman but his verdict was not considered as contrary to the principle of non-discrimination as the act was a “heinous” one and the applicant had not given adequate evidence. Even declining the petition, the Commission showed the way to sanctioning debates establishing a presumption of racial discrimination and partiality in the application of the death penalty. In a second case, *Andrews v. The United States* (Inter-American Commission, December 6, 1996, Report on Merits No. 57/96, Case No. 11.139)¹⁶⁰ the petitioner’s arguments before the Commission found more success. In fact, it was established that racist insults had been made by some members of the jury and the proofs of the asserted racist incidents was used to condemn the United States, among other things, for violation of Articles I and II of the American

¹⁵⁸ A. Ú. DE TORRES, *Extrajudicial executions*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 345

¹⁵⁹ A. Ú. DE TORRES, *The right to life and the death penalty*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 284

¹⁶⁰ A. Ú. DE TORRES, *The right to life and the death penalty*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 284

Declaration of the Rights and Duties of Man on the right to life, liberty and personal security, and the right to equality before the law.

The right to freedom of thought and expression (Article 13 of the American Convention) has been the center of a number of developing case law of the Court, which as provided a positive obligation for the States in order to make sure that members of indigenous communities are not marginalized as a result of using their mother tongue. “The States must take into consideration the information that differentiates the members of the Indian populations from that of the population in general, and that make up their cultural identity. Language one of the most important elements of identity of any people, precisely because it guarantees the expression, diffusion, and transmission of their culture.”¹⁶¹

In the case *López Álvarez*, the Court stated that “one of the mainstays of the freedom of expression is precisely the right to speak”. Regarding the specific case, the Court hold that the right to speak “necessarily implies the right of people to use the language of their choice when expressing their thoughts” imposing a positive obligation on States. In this specific case, the Court connects the right to speak to the freedom of expression.¹⁶²

Judge Abreu Burelli, in his opinion to the *Yakye Axa* judgment, underlined that “the right to cultural identity, while not explicitly set forth, is protected in the treaty based on an evolutionary interpretation of the content of the right embodied in its [the American Convention’s] Articles 1(1), 5, 11, 12, 13, 15, 16, 17, 18, 21, 23 and 24¹⁶³, depending on

¹⁶¹ Inter-American Commission on Human Rights, February 1, 2006, Merits, Reparations and Costs, *López Álvarez v. Honduras*, Series C No. 141, para. 171. In: L. Burgorgue-Larsen, *The Rights of Indigenous People*. In : A. Ú. DE TORRES, *The right to life and the death penalty*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 515

¹⁶² “This was another step towards recognition that other – essentially indigenous – groups with their different cultures and languages should enjoy the same rights, and is all the more remarkable that the victim was a detainee and, as such, had exactly the same right to express himself as anyone else. The prison director had refused to allow the applicant, who was a member of an ethnic minority, to express himself in his native tongue, Garifuna. This was discriminatory and in this way “the prohibition affected his personal dignity as a member of that community.” In: L. BURGORGUE-LARSEN, *The right to the freedom of thought and expression*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 539

¹⁶³ The subject of the articles is as follows: 1(1) (Obligation to Respect Rights), 5 (Right to Humane Treatment), 11 (Right to Privacy), 12 (Freedom of Conscience and Religion), 13 (Freedom of Thought and Expression), 15 (Right of Assembly), 16 (Freedom of Association), 17 (Rights of the Family), 18 (Right to a Name), 21 (Right to Property), 23 (Rights to Participate in Government), and 24 (Right to Equal Protection)

the facts of the specific case. In other words, the right to cultural identity is not abridged every time said article is breached.”¹⁶⁴ The political development of Inter-American case law advanced with this innovative right, which has not been discussed in the American Convention, the European Convention, or the UN International Covenants. As the judge underlined, under Article XIII of the American Declaration of the Rights and Duties of Man, “Every person has the right to take part in the cultural life of the community”. The same right is mentioned under Article 14 of the Additional Protocol to the American Convention (known as the “Protocol of San Salvador”).

To avail of the principle of equal treatment and non-discrimination, it not needed to be a legal immigrant. The State has to guarantee the respect of this right. The definition of a migrant worker in regular situation, according to Article 5 of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (December 18, 1990), adopted under the aegis of the ILO, is someone “who is authorized to enter, stay and engage in a remunerated activity in the State of employment, pursuant to the law of the State and international agreements to which that State is a party”. The Inter-American Court highlighted the idea that, although migrant workers are in a regular situation, they still are “in a vulnerable situation as subjects of human rights; they are in an individual situation of absence or difference of power with regard to non-migrants (nationals or residents). This situation of vulnerability has an ideological dimension and occurs in a historical context that is distinct for each State and is maintained by *de jure* (inequalities between nationals and aliens in the laws) and *de facto* (structural inequalities) situations. This leads to the establishment of difference in their access to the public resources administered by the State.”¹⁶⁵ At the time of the Programme of Action of the International Conference on Population and Development (Cairo, 1994), the international community considered migrants as “victims” of “international economic imbalances” and provided the need to undertake special measures to guarantee the protection of their human rights.

¹⁶⁴ Inter-American Commission on Human Rights, June 17, 2005, Merits, Reparations and Costs, *Yakye Axa v. Paraguay*, Partly Dissenting Opinion, Series C No. 125, para 24. In: A. Ú. DE TORRES, *Political rights*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 607

¹⁶⁵ Inter-American Commission on Human Rights, Advisory Opinion No. 18, para. 112. In: A. Ú. DE TORRES, *Workers' rights*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 463

The “undocumented worker” is described as the opposite of a “migrant worker in a regular situation”. The Inter-American Court stressed the fact that the undocumented worker is not authorized to work, and it thus in violation of domestic law and applicable international law (Article 5 of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families). “In this way, the Court wished to show that the declarations of the United States Supreme Court in *Hoffman Plastics* have no place in the Inter-American system. On the contrary, the Court followed the position of the ILO Committee on Freedom of Association, which had drafted a critical report after the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Confederation of Mexican Workers, which together represent more than 18 million migrant workers in the United States, had lodge an application. These organizations considered that the Supreme Court had wiped out the rights of undocumented workers, since the prohibition of illegal work had prevailed over the protection deriving from trade union rights and the freedom of assembly. In its defense, the United States argued that it had not ratified ILO Conventions Nos. 87 and 98. The Committee refused such arguments and pointed out that its jurisdiction did not come from any convention in particular but from the Charter founding the ILO. It added that with the US Supreme Court decision the workers were denied any effective recourse simply because they were undocumented. For the Committee, this was discriminatory since it almost exclusively affected Mexican migrants.¹⁶⁶

The Inter-American Commission on Human Rights asserted “that the advisory jurisdiction of the Court can be exercised, in general, with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have the right to become parties thereto”¹⁶⁷. The Court interpreted in this way Article 64, creating the possibility of innovation of workers’ rights and benefit from the different applicable legal instruments available.

¹⁶⁶ A. Ú. DE TORRES, *Workers’ rights*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 464

¹⁶⁷ Inter-American Commission on Human Rights, September 24, 1982, ‘*Other Treaties’ Subject to the Consultative Jurisdiction of the Court (Art. 64 American Convention on Human Rights)*, Series A No. 1/82, Point 1 of the operative part. In: A. Ú. DE TORRES, *Workers’ rights*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 464

The principle of equal treatment and non-discrimination is mentioned in Articles 3(1) and 17 of the OAS Charter, Article 24 of the American Convention on Human Rights, Article II of the American Declaration of the Rights and Duties of Man, Article 26 of the International Covenant on Civil and Political Rights, and Article 2(1) of the Universal Declaration of Human Rights, and all of them are mentioned in interrogations suggested to the Inter-American Commission on Human Rights. As set by the Inter-American Institute of Human Rights, the principle has two aspects, negative and positive. The negative feature is that individuals should not be discriminated by the State, while the positive is that the States must assure equality, both *de jure* and *de facto*, between people. Therefore, the principle sets precise and concrete obligations that the State must meet. Moreover, Article 2 of the Inter-American Convention on Human Rights implies “on the one hand, the suppression of rules and practices of any kind that entail the violation of the guarantees set forth in the Convention. On the other hand, the issuance of rules and the development of practices leading to the effective observation of the said guarantees.”

The Inter-American Court confers to the principle of non-discrimination the special status of a norm *jus cogens*. In the Advisory Opinion No. 18, the Inter-American Commission on Human Rights stated that “the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws”. According to this affirmation, States must hinder the adoption of any laws, provisions or practices that are contrary to this principle, but at the same time they are “obliged to take affirmative action to reverse or change discriminatory situations that exist in their societies to the detriment of a specific group of persons”. This “implies the special obligation to protect that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations.”

“The principle of equality before the law, equal protection before the law and non-discrimination belong to *jus cogens*.” Affirmed the Court in *Juridical Condition and Rights of the Undocumented Migrants*¹⁶⁸, defining a fundamental principle of protection

¹⁶⁸ Inter-American Commission on Human Rights, September 17, 2003, *Juridical Condition and rights of the Undocumented Migrants*, Series A No. 18, para. 101. In: L- BURGORGUE-LARSEN, *The Rights of Indigenous Peoples*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The*

that has to be applied specially to those persons or groups belonging to a more vulnerable category. “States are obliged not to introduce discriminatory regulations into their laws, to eliminate regulations of a discriminatory nature, to combat practices of this nature, and to establish norms and other measures that recognize and ensure the effective equality before the law of each individual.”¹⁶⁹ The most important fact is that the two regional human rights courts (the American and the European) have both neglected the formal idea of equality, with the Inter-American Court guiding the change.¹⁷⁰ It used the theory of positive obligations to make the States enforce regulations which would assure concrete equality. In this way the Court mature its system of positive discrimination and to apply it to protect rights, both collective and individual.

One of the biggest limitations of the Inter-American human rights system lies in the financial, political and moral support of the OAS member States. “States action or inaction influences the effectiveness of the Inter-American system, and, in particular, the Inter-American Court. The Court today confronts limitations that include the lack of universality, the necessity for domestic implementation, the failure of the political organs of the OAS to carry out the role assigned to them by the American Convention, inadequate funding, and the absence of a control mechanism to review the qualifications of nominees to the Court.”¹⁷¹ For a suitable functioning of the Inter-American human rights system, there should be universality of State ratification or attainment to the American Convention and recognition of the Court. Among the Member State of the

Inter-American Court of Human Rights. Case law and commentary. Oxford; New York: Oxford University Press, 2011. Page 513

¹⁶⁹ Inter-American Commission on Human Rights, Series A No. 17, para 44; Inter-American Commission on Human Rights, June 23, 2005, Merits, Reparations and Costs, *Yatama v. Nicaragua*, Series C No. 127, para 185. In: L- BURGORGUE-LARSEN, *The Rights of Indigenous Peoples*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary.* Oxford; New York: Oxford University Press, 2011. Page 513

¹⁷⁰ “On April 6, 2000, the European Court in Strasbourg declared that “The right not to be discriminate against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different”. From then on the Court observed “that there may be said to be an emerging international consensus amongst the Contracting States of the Council of Europe only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community”. [...] The two notions of vulnerability and positive obligation were to lead to the requirement that States introduce measures of positive discrimination for vulnerable groups, with the result that more and more case of alleged racism were brought before the European Court of Human Rights.” In: L- BURGORGUE-LARSEN, *The Rights of Indigenous Peoples*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary.* Oxford; New York: Oxford University Press, 2011. Page 513-514

¹⁷¹ J. M. PASQUALUCCI, *The practice and procedure of the Inter-American Court of Human Rights.* Cambridge, U.K.; New York: Cambridge University Press, 2003. Page 340

OAS, currently only twenty-four are part of the American Convention, and twenty one have accepted the compulsory jurisdiction of the Inter-American Court. The United States are one of the States that failed to ratify the Convention.

The performance of the Inter-American Commission is complicated by the lack of universality, resulting in a differentiated application according on whether a State is part of the American Convention or not.¹⁷² The United States has a federal system in which criminal law is ruled by individual states. It is probable that if US were to ratify the American Convention, they would impose a number of reservations and understandings to determined provisions, particularly regarding death penalty or, for example, the right to life provision, which in the American Convention is specified that life begins, in general, at conception, in the US lies under the jurisdiction of the Supreme Court and would need a reservation. Moreover, when the United States ratified the Genocide Convention and the Torture Convention, it imposes some reservations and understandings that would probably not be compatible with the object and purpose of the American Convention.

“It can be argued that, by ratifying the American Convention, even with multiple reservations, the United States [...] would strengthen human rights protections in the Americas. According to this reasoning, until ratification of the American Convention is universal and all States Parties have accepted the jurisdiction of the Court, the system will continue to operate in a complicated piecemeal fashion. Conversely, it has been asserted that multiple reservation to the American Convention violate the integrity of the treaty and weaken the Inter-American human rights system. Under this view, the lack of integrity of the American Convention caused by multiple reservations may be considered a greater problem than the lack of universality.”¹⁷³

¹⁷² “Under [OAS Charter], the Commission must apply the human rights provisions of the American Declaration of the Rights and Duties of Man – and not the Convention – to those OAS Member States that are not parties to the Convention. To further complicate matters, not all States Parties to the Convention have accepted the compulsory jurisdiction of the Court. The Commission may automatically refer cases to the Court only where the State concerned has accepted jurisdiction. Finally, States may make reservations to rights protected by the Convention, thereby altering the system of protection in that State.” J. M. PASQUALUCCI, *The practice and procedure of the Inter-American Court of Human Rights*. Cambridge, U.K.; New York: Cambridge University Press, 2003. Page 340-341

¹⁷³ J. M. PASQUALUCCI, *The practice and procedure of the Inter-American Court of Human Rights*. Cambridge, U.K.; New York: Cambridge University Press, 2003. Page 342

CHAPTER III

3.1 Introduction

In recent years, issues and problems related to immigration have been delegated from the federal level to states and municipalities. In the state of North Carolina as well, politicians and public officials have had, and still have, to deal with various issues including unfunded mandates, law enforcements, and social services. The results of this changing in policy can create confusion and excessive and inefficient laws, with some cases of xenophobic initiatives due to the fact that local law makers most of the time are influenced by local public opinion and general sentiments towards newcomers. “Newcomer Latinos are confronted with novel challenges to their senses of identity, status, and community. Instead of arriving in settings, like the Southwest, where Latinos have lived for centuries, those in the New Latino Diaspora arrive in unfamiliar places where long-term residents have little experience with Latinos. In the New Diaspora, then, Latinos face more insistent questions about who they are, who they seek to be, and what accommodations they merit.”¹⁷⁴

According to the politics of national security, North Carolina became one of those states which restricted the emanation of driver licenses to immigrants, that is to say, those who can't show their Social Security Number. The law was initially directed at undocumented foreign nationals, but it then affected a broader portion of the population. Because of the law, many lawful non-immigrant workers and their families became unable to secure a legal and secure way of transportation, particularly in those areas where public transportation do not exist. Critics of the law affirm that interdicting undocumented foreign nationals from the possibility to have a driving license will not prevent them to hit the roads to reach their jobs, doctors, groceries shops, and so on. The law will have the consequences of leading irregular motorists unconscious of the rules of the road and unable to secure liability insurance.

The abolishment of the Immigration and Naturalization Services (INS) and the movement of most of its responsibilities to the United States Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP), and

¹⁷⁴ E.T. HAMANN, S. WORTHAM, and E. G. MURILLO JR., *Education and Policy in the New Latino Diaspora*. In: edited by S. WORTHAM, E. G. MURILLO, Jr., AND E. T. HAMANN, *Education in the new Latino diaspora : policy and the politics of identity*. Westport, Conn.: Ablex Pub., 2002. Page 1

Immigration and Customs Enforcement (ICE) did not help to solve the inefficiencies of the previous service, nor to create a better collaboration with state and local law agents. USCIS promised to reduce processing accumulation, but the promise remained unsolved because of the persistent need of Congressional intervention. What happened as a consequence, is that fundamental liberties have been suspended in the name of national security.

After the terrorist attacks of September 11, 2001, immigration restriction started being used as the way to prevent any kind of criminal conduct of the terrorists, leading to a reinvigoration of a dishonorable xenophobic agenda. “Immigration attorneys know better than most that attacks on the due process rights of the least protected in our society are attacks on the due process rights of everyone in our society.”¹⁷⁵ American public opinion will always choose government and military and civilian law enforcement in order to safeguard their own personal security instead of a real understanding of the situation of the newcomers, but this can be the detriment of other innocents and of the general constitutional freedoms, which is fundamental in a democratic society. The anti-immigrant lobby which is leading most of the public opinion is harming the normal living conditions of many innocents, and its ideal is contrary to the promises of the American dream.

The passionate national discussion over immigration reform in Congress has strengthen the popular awareness over immigration and hastened the polarization of perspectives towards Latino immigrants, particularly in the Southeastern states, where immigrants presence have increased in the last years. In the early twenty-first century, the national media’s attention to unauthorized immigration reached a peak, to the point that in early 2008 the National Council of La Raza, the biggest civil rights organization for Latinos in the United States, asked CNN, MSNBC, and Fox News to stop providing a forum for hate speech.¹⁷⁶

The immigration bar is devoted to both border security and real visa reform, while maintaining civil liberties and due process. “It supports immigration measures that balance the need to enhance our security with both our history and tradition as a nation

¹⁷⁵ J. L. PINNIX, *Foreword and Commentary on the Impact of Immigration on the Legal Community in North Carolina*. Campbell Law Review. 29 no 2, Winter 2007. Page VIII

¹⁷⁶ E. LACY and M. E. ODEM, *Popular Attitudes and Public Policies. Southern Responses to Latino Immigration*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 145

of immigrants and the need to ensure our continued economic viability in a global economy.”¹⁷⁷ It supports the restoration of the discretion of immigration judges to allow support against deportation.

3.2 Legislation

Mostly as a reaction to political and public demands, state and local leaders have ratified laws and policies varying from the exclusion to the accommodation of the new immigrations. During the first times of immigration to the South, authorities ignored the new flow of foreign population, most probably supposing that it was just a transitory event and they would soon return to their country or move to another region, a situation that actually happened for example regarding the Mexican immigration.

Since the terrorists’ attacks of September 11, 2001, southerners’ attitudes towards immigrants in general have been molded by national security concerns. In particular, one of the issues that bother the American population the most is the one regarding Latino immigrants’ legal residency status. Public opinion is more and more used to condemn the Hispanics in public meetings, radio talk shows, Internet blogs and so on. “The list of charges against them usually includes the following: they are here without authorization and therefore are criminals: they are a drain on the economy due to the additional burdens they place on education and health care providers, law enforcement, and social services; they don’t pay taxes; they increase crime rates; they take jobs that should go to U.S. citizens; they depress wages; and they pose a threat to U.S. or regional culture and values. While those who harbor such sentiments generally say their real objection is to “illegal aliens,” many of their charges are aimed at *all* Latino immigrants.”¹⁷⁸

Even if public opinion is invaded by those kind of assertions, there are scarce evidences to support them. Since 1996, welfare reform laws have prevented unauthorized immigrants to receive federal social benefits in the United States. A study powered by the University of South Carolina found no proofs of onerous health or educational costs to the state as result of Latino immigration, and asserted that wage depression might be

¹⁷⁷ J. L. PINNIX, *Foreword and Commentary on the Impact of Immigration on the Legal Community in North Carolina*. Campbell Law Review. 29 no 2, Winter 2007. Page VIII

¹⁷⁸ E. LACY and M. E. ODEM, *Popular Attitudes and Public Policies. Southern Responses to Latino Immigration*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 146

considered as the only negative economic effect of increased immigration.¹⁷⁹ Regarding the problem of taxation, most of the public opinion ignores that immigrants do pay taxes, including sales tax and property tax; those who are employed keep FICA, federal income taxes, and sometimes even state taxes from paychecks. Even undocumented immigrants pay they part of income taxes through an ITIN number (Individual Taxpayer Identification Number).

In the spring months of 2006, millions of Latinos and their supporters across the country took part in peaceful marches in order to protest the U.S. House of Representatives passage of HR 4437, also known as “The Border Protection, Anti-terrorism, and Illegal Immigration Control Act”, a bill that included enforcement-only provisions and criminalized assistance to undocumented immigrants.¹⁸⁰ Protestors marched as well in the main cities of the southern states, showing placards with messages such as: “We clean your hotels,” “Civil rights for immigrants,” and “Destroy the border: No one is illegal”. In North Carolina, organizers encouraged immigrants to engage in an economic boycott. In general, protestors criticized the proposed federal legislation, which among the other things would prevent unauthorized immigrants access to employment and public benefits and would allow state and local police to enforce federal immigration laws.

In 2006 and 2007, the U.S. Congress failed to act out immigration legislation reform, and this pressured states and local official of the Southern states to pass laws and ordinances in order to limit undocumented immigrants’ access to jobs, social services, housing, and education.

Nowadays, legal issues regarding immigration have complicated and broadened beyond traditional topics comprehending obtaining lawful status through family reunification; business sponsorship and asylees/refugee programs; naturalization and employment authorization; and defense in the context of removal/deportation proceedings, which

¹⁷⁹ E. LACY and M. E. ODEM, *Popular Attitudes and Public Policies. Southern Responses to Latino Immigration*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 147

¹⁸⁰ The bill was passed by the House of Representatives on December 16, 2005, but it did not pass the Senate. It contained the provisions regarding the building of the fence along the U.S.-Mexican border; the requirement by the federal government to take custody of illegal aliens arrested by local authorities; the necessity of employers to verify the legal status of their employees.

were the traditional issues dealt by the American Immigration Lawyers Association (AILA)¹⁸¹.

In recent years, official rhetoric and policy in the Southeast have been devoted to exclusionary measures and have tried to limit especially undocumented immigrants the access to employment, transportation, housing, health care, higher education, and public benefits. Nonetheless, some policies, as for instance the “English-only” laws, affect both authorized and unauthorized immigrants.

After the April 2006 rallies, counties and cities throughout the nation introduced an increasing number of “English-only” ordinances, and removed Spanish signs and bilingual automated phone answering systems. In North Carolina, English-only ordinances were passed in Beaufort and Davidson Counties and in towns in Rowan and Mecklenburg Counties.¹⁸²

New legislation regarding immigrants and immigration in general is not exclusive of the Southern states. By late 2007, legislators all over the United States had introduced a total of 1,562 bills related to immigration, three times those of 2005. 244 of them were passed as laws by lawmakers in 46 states, most of them regarding immigration and health, employment, identification, driver’s and other licenses, public benefits, and human trafficking.¹⁸³

In North Carolina, legislators have passed various laws aimed at restraining illegal immigration and limiting the privileges of those already in the state. For instance, N.C. HR 2692, signed into law in 2006, consented the establishment of an immigration court in North Carolina to hasten the deportation process of unauthorized immigrants, pressured the U.S. Congress to make impaired driving, both by legal and illegal immigrants, a deportable offence, and sustained the Department of Homeland Security (DHS)’s program that allows local law enforcement personnel to identify unauthorized

¹⁸¹ The American Immigration Lawyers Association (AILA) is a national bar association composed by over 10,000 attorneys involved in practicing immigration law. It is a nonpartisan and nonprofit organization offering legal education, information, professional services and expertise.

¹⁸² H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 148

¹⁸³ Edited by M. M. NGAI, and J. GJERDE, *Major Problems in American Immigration History*. Boston, MA: Wadsworth, Cengage Learning, 2013. Page 151

immigrants who have been previously deported or who are sought for felony offenses.¹⁸⁴

Some counties and local governments have ratified their own local ordinances in order to avoid states and federal delays in signing restrictive laws. Most of those local legislations involve restrictions on employment and housing for undocumented immigrants, English-only provisions, and cooperation with federal agents to deport those in the area illegally. Emphasizing concerns over cultural differences and immigrant assimilation, some local legislation in Georgia and the Carolinas entail the use of English language in official documents and, in some cases, in public signage. Over 29 U.S. states have officialised English language as their first language, most of them influenced by the political organization U.S. English Inc., a national organization founded in 1983 with the aim of “preserving the unifying role of the English language in the United States.”¹⁸⁵

At the same time, various local churches and outreach organizations have taken on advocacy roles to protect immigrants’ rights. In North Carolina, in particular, religious institutions have a long history of receiving immigrants. Religious schools and faith communities have been assisting the integration of newcomers. Lutheran Immigration and Refugee Services (LIRS), Church World Service (CWS), Catholic Charities, World Relief, and Hebrew Immigrant Aid Society (HIAS) established their resettlement offices all along the state.¹⁸⁶ Most of the refugee and immigrant communities instituted their own places of worship to conserve their culture and religious traditions. Support can also come from culturally appropriate services. Catholic Social Ministries of the Diocese of Raleigh promoted the first immigrant service project in Alamance County with a program called “Centro la Comunidad”, which opened in 1999 in Burlington. In Durham, an ecumenical group including Catholic Social Ministries funded “Centro Hispano” in 1994, a program that has grown into a flourishing and independent Hispanic community-based organization.¹⁸⁷ These community-based ethnic

¹⁸⁴ E. MEYERS, *International immigration policy. A theoretical and comparative analysis*. New York: Palgrave Macmillan, 2004. Page 153

¹⁸⁵ E. MARTIN, *Down Mexico Way*. Business North Carolina, May 2006. Page 155

¹⁸⁶ R. BAILEY, *New Immigrant Communities in the North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 78

¹⁸⁷ edited by A. LOWREY BLAIR with Student Action with Farmworkers and the Center for Documentary Studies. *Nuestras historias, nuestros sueños: inmigrantes latinos en las carolinas*. Durham, N.C.: Center for Documentary Studies at Duke University in association with Student Action with Farmworkers, c2008. Page 79

organizations offer culturally appropriate services, promote ethnic leadership development, and become a bridge to mainstream organizations. “Centro de Accion Latino” was created in 1997 as a nondenominational, nonprofit organization. Initially staffed by AmeriCorps members, the group slowly expanded its mission and began exploring collaborative relationship with the Catholic Social Services in Guilford County.¹⁸⁸

3.2.1 Crime

Comparably minor criminal charges could have severe consequences when taken in the context of immigration law. Between the most problematic areas are the charges involving firearms, domestic violence, domestic fraud, or narcotics.¹⁸⁹

In 2007 a North Carolina County, Council passed an ordinance including the charges that Latino undocumented immigrants increased crime rates and that their “lack of social and personal health care standards” negatively affected the community as a whole.¹⁹⁰

North Carolina requires that all new hires in state government can show their legal residency, and put in place regulations against human trafficking. Sometimes employers are also blamed as the real felons of the immigration problem. In 2006 a newspaper in North Carolina stated: “Business are the biggest beneficiary of illegal immigration and are the reason unauthorized foreigners are here in the first place.”¹⁹¹ The Immigration Reform and Control Act (IRCA) of 1986 prohibits the hiring of undocumented workers and creates penalties for those who hire them, but in reality the federal government has never enforced the legislation. Since the IRCA does not allow state and local government to establish sanctions to enforce the federal law, some southern state, counties, and municipalities, where the immigration flow have increased drastically, have created other measures to prevent the employment of undocumented workers.

¹⁸⁸ R. BAILEY, *New Immigrant Communities in the North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 80

¹⁸⁹ J. L. PINNIX, *Foreword and Commentary on the Impact of Immigration on the Legal Community in North Carolina*. *Campbell Law Review*. 29 no 2, Winter 2007. Page II

¹⁹⁰ edited by D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York : Routledge, 1994. Page 148

¹⁹¹ K. RIVES, “Illegal Immigration: Who Profits, Who Pays,” *News and Observer*, 26 Feb. 2006. In E. LACY and M. E. ODEM, *Popular Attitudes and Public Policies. Southern Responses to Latino Immigration*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 153

One of the first pieces of legislation directed towards restriction and exclusion regarded anticongregating ordinances directed at day laborers. Particularly in the Southeast, local residents and merchants have been denouncing that day laborers, which are for the most part Latinos, use to congregate in urban areas waiting to be hired for hourly wages, intimidating the regular costumers and menacing the peace and security of the neighborhood where they gather. Those kind of regulations indicate not only local residents' thoughts that immigrants engage in criminal activities, but even their fears that immigrants workers lower wages and take jobs from native-born Americans. Some communities in North Carolina are considering the possibility to introduce anti-day labor site ordinances. In the meanwhile, the issue is managed by local police, who typically push workers to congregate in other places.

By 2008, 105 localities in the United States considered legislation in order to restrict housing options for undocumented immigrants. Generally according to those legislations, landlords have to attest the legal residency status of their tenants and they will be fined if knowingly allowed undocumented tenants to stay in their housing units.

3.2.2 287(g)Program

In September 1996, Congress allowed the executive branch to let state and local government agencies to deal with immigration enforcement authorities. The Illegal Immigration Reform and Immigration Responsibility Act (IRCA) of 1996 improved the Immigration and Nationality Act (INA) with the addition of section 287(g). With the powers given by this section, the Secretary of Homeland Security can be authorized to stipulate written agreements with state and local law enforcement function to create law enforcement agencies (LEA) to allow the delegation of immigration enforcement functions to select law enforcement officers. The agreements determined terms and conditions of the participation of LEA personnel as immigration officers. Those officers who receive determined training and perform under the supervision of ICE officers are allowed to accomplish immigration law enforcement duties. The section “authorizes the secretary of the U.S. Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies, permitting designed officers to perform immigration law enforcement functions.”¹⁹² Thanks to the program, local officers can enforce immigration laws outside their normal duties. Moreover, local police is allowed

¹⁹² H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 39

to take into custody any immigrant they have detained and infer of being undocumented to be screened for deportation.

The first agreements started in 2002, and from 2002 to 2006 DHS appointed enforcement authorities to six jurisdictions. After 2006, the 287(g) program broaden, as concerns in interior immigration enforcement at the state and local level augmented, increasing specific funding for 287(g) program efforts.

“In July 2009, ICE released a new template for 287(g) agreements to replace existing agreements. According to DHS officials, new 287(g) agreements will:

- Promote consistency by ensuring that all state and local law enforcement partners use the same standards in implementing the 287(g) program;
- Align 287(g) local operations with major ICE enforcement priorities – specifically, the identification and removal of criminal aliens;
- Address concerns that individuals may be arrested for minor offenses as a guise to initiate removal proceedings by requiring participating local law enforcement agencies to pursue all criminal charges that originally caused the offender to be taken into custody;
- Define the objectives of the 287(g) program, outline the immigration enforcements authorities granted by the agreement, and provide guidelines for ICE supervision of local agency officer operations, information reporting and tracking, complaint procedures and implementation measures; and
- Strengthen ICE oversight to the program to allow ICE to better utilize the resources and capabilities of its law enforcement partners across the nation.”¹⁹³

Historically, the initiatives taken in the local implementations of immigration policies are not new. In a November 1994 referendum, supported by fifty-nine percent of those voting, California passed Proposition 187. “If fully implemented, Proposition 187 would deny publicly-funded non-emergency medical care, welfare services, and education to illegal immigrants and also would require school officials, welfare agencies, and law enforcement officials to report suspected illegal immigrants to the Immigration and Naturalization Service.”¹⁹⁴ Those in favor retained that the measure would have prevented future illegal immigration flows and will persuade undocumented immigrants already residing in the United States to return to their country of origin.

¹⁹³ United States. Department of Homeland Security. Office of Inspector General. *The performance of 287(g) agreements*. 2010. Page 3

¹⁹⁴ D. L. DELAET, *U.S. immigration policy in an age of rights*. Westport, Conn.: Praeger, 2000. Page 106

In November 1995, Judge Mariana R. Pfaelzer, asserted that the ordinance of immigration is authority of the federal government and that parts of the legislation did not provide due process. She decreed that most sections of Proposition 187 were unconstitutional, with the exclusion of the provisions on false documents and the section that prevent illegal immigrants from public, postsecondary educational institutions. On the other hand, Judge Pfaelzer decreed in November 1996 that California could legally deny prenatal care to illegal immigrants. However, in a March 1998 ruling, Judge Pfaelzer stated the remaining provisions of Proposition 187 as unconstitutional.

The resistance to Proposition was led mainly by ethnic groups, churches, and civil rights organizations, which plead that the measure would result in discrimination against ethnic minorities. Yet the Proposition brought to growing cases of discrimination against ethnic minorities. “Reportedly, a school security guard in Atherton, California, told American-born children of Latin American ethnicity, “We don’t have to let Mexicans in here anymore.” Other reports of discrimination include pharmacies refusing to fill prescriptions for ethnic minorities and restaurants refusing to serve customers who did not have documentation to prove their legal status. In this way, the political struggle over Proposition 187 in California reflects the same themes that have dominated the debate over illegal immigration in the United States since at least the 1970s. Though nativist and anti-immigration forces may be growing in strength, civil rights considerations and liberal ideas remain central to the debate over U.S. immigration policy.”¹⁹⁵

In recent years, some southeastern localities have been participating in a federal program to increase the deportation of unauthorized immigrants. U.S. Immigration and Customs Enforcement (ICE) has been incentivizing state and local law enforcement personnel to help with federal immigration enforcement in a program that was added to the Immigration and Nationality Act (INA) by Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, section 287(g). The section allows the Attorney General, now the Secretary of Homeland Security, through Immigration and Costume Enforcement to designate State and local authorities to act as Federal Immigration officers, in order to provide immigration enforcement. Through Memoranda of Agreement (MOA), specially trained State and local law enforcement

¹⁹⁵ D. L. DELAET, *U.S. immigration policy in an age of rights*. Westport, Conn.: Praeger, 2000. Page 107

officers perform immigration enforcement duties only under the supervision of ICE agents and officers.¹⁹⁶ The objective is to fight criminal activities committed by removable aliens.

Congress authorized 287(g) in 1996, but state and local authorities started participating only in 2002. In early 2008, 34 states and local agencies in 15 states were participating in 287(g). In North Carolina, several counties were the first in the nation to take part in 287(g). Sixteen sheriff's offices and two police agencies in four North Carolina counties are currently cooperating with ICE.¹⁹⁷

Policy makers began noticing the growth of the Latino population with the increase of Latino child enrollments in schools in the 1990s. In 1995, Alamance County commissioners, one of the fiercest counties in North Carolina, approved the establishment of an "Illegal Alien Task Force" to examine what the county could do to restrain immigration. In September 1997, commissioners approved a resolution to recommend a moratorium on immigration to the county. In 2002, Terry Johnson, a retired agent with the State of Bureau of Investigation, was elected as Alamance sheriff, with aim of reducing crime and illegal immigration. One of his first acts was to detain more than 100 Latinos at the state Division of Motor Vehicles office, accusing them of using fake documents to obtain driver's licenses. In the fall of 2004, public opinion was voicing about undocumented immigrants who had registered for a driver's license were intentioned to vote. The Sheriff proposed that law enforcement officers go door to door to identify voters with Hispanic last names and submit the results to the Department of Homeland Security (DHS).¹⁹⁸ His decision was noticed by national and local immigrant advocates, criticizing his actions for intimidating voters and encouraging racial profiling.

At this point, it is important to understand the issue of illegal immigration. The problem is that often visas are not accessible to people who look for work in the United States. Also, most of the times bureaucratic delays and accumulations in the federal

¹⁹⁶UNITED STATES. CONGRESS. HOUSE. COMMITTEE ON HOMELAND SECURITY. *Examining 287(G). The role of state and local law enforcement in immigration law. Hearing before the Committee on Homeland Security, House of Representatives, One Hundred Eleventh Congress, first session, March 4, 2009.* Washington: U.S. G.P.O.: For sale by the Supt. of Docs., U.S. G.P.O., 2010. Page 9

¹⁹⁷ E. LACY and M. E. ODEM, *Popular Attitudes and Public Policies. Southern Responses to Latino Immigration.* In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South.* Athens: University of Georgia Press, 2009. Page 155

¹⁹⁸ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State.* Chapel Hill, NC, UNC Press, 2010. Page 36-38

immigration system holdup the legalization process for years and even decades, and makes it impossible to join children, spouses and other family members in the United States. Moreover, not all the undocumented immigrants must be considered as “illegal”. There can be a number of different situations causing an immigrant to be in the status. For example, overstaying a tourist or work visa is not considered a “crime” as crossing an international port of entry without documents.¹⁹⁹ Sometimes, too, immigrants can lose legal status not for their fault. For example they can be eligible for a visa but not having the possibility, such as economic resources, to access it. This happens frequently in cases of refugees and domestic violence victims. It might be argued that most of the causes of the undocumented status can be due to the dysfunction of the U.S. immigration system and the enormous poverty that leads so many people to the United States.

Under the benefits of 287(g) program, in April 2003, the Alamance County approved the resolution to construct a new jail according to federal standards to detain illegal immigrants under the Criminal Alien Program (CAP), a way to obtain federal funds to help in the construction. The Criminal Alien Program focuses on unauthorized immigrants who are detained in federal, state, and local structures and makes sure that they are deported before being released. In the summer of 2007 the jail, which contained more than 500 unities, was already filled, and the Mexican consulate related that Alamance County was deporting forty Mexican nationals each week.²⁰⁰

According to Immigration and Customs Enforcement (ICE), the aim of the program is to increase the safety and security of the community by detaining and deporting undocumented criminal aliens involved in serious crimes. According to ICE, the local sheriff and police officers would work with ICE to recognize, locate and detain these dangerous people.

“The 287(g) program, as intended, would achieve two parallel goals. No. 1, participating jurisdictions would have dangerous people removed from their

¹⁹⁹ United States. Department of Homeland Security. Office of Inspector General. *The performance of 287(g) agreements*. 2010. Page 37

²⁰⁰ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 42

communities. No. 2, the Federal Government would have a force multiplier to enhance efforts to remove dangerous aliens from the country.”²⁰¹

It is a very strict program, and may locales have not accepted to adopt it in the fear that it would augment crimes and destroy trust between law officials and immigrants population, crucial in crime intelligence. Notwithstanding, participation has grown from 29 programs in 2006 in 13 States to 67 programs in 23 States in 2009. Forty-two State and local law jurisdictions are on a waiting list. The funding for the program has grown too, increasing of \$5 million to nearly 460 million from 2006 to 2009. Benefits for the jurisdictions taking part in the program go from the access to immigration status information, to a direct link to ICE in order to identify and remove aliens, to a deterrent for aliens to commit crimes and engage in fang activity in the community, to the possibility of removing aliens from jail, saving space and money.²⁰²

Thanks to the program, officers undertake federally sponsored training, and get a specific equipment. The access to information regarding the detained alien are particularly important in order to check the immigration status of the aliens they capture.

The main problem was that the program resulted in a massive racial discrimination detention, being the vast majority of those arrested taken in custody not as human smugglers, sex offenders, gang members, or even felons, but Latinos arrested for traffic infractions, such as driving without a valid license. Police set roadblocks to check licenses, and this soon became the first way for the 287 (g). One of these roadblocks was placed each Sunday at the Buckhorn market, highly frequented by Latin immigrants. Sometimes, a car was pulled over only because the driver’s looked Hispanic.

Statistics showed that the program was mostly tracking down Latinos for minor crimes and traffic offenses. And after the arrest, even if for those kind of claims, undocumented migrants could be placed into removal proceedings. Between February 2007 and April

²⁰¹ UNITED STATES. CONGRESS. HOUSE. COMMITTEE ON HOMELAND SECURITY. *Examining 287(G). The role of state and local law enforcement in immigration law. Hearing before the Committee on Homeland Security, House of Representatives, One Hundred Eleventh Congress, first session, March 4, 2009.* Washington: U.S. G.P.O.: For sale by the Supt. of Docs., U.S. G.P.O., 2010. Page 1

²⁰² UNITED STATES. CONGRESS. HOUSE. COMMITTEE ON HOMELAND SECURITY. *Examining 287(G). The role of state and local law enforcement in immigration law. Hearing before the Committee on Homeland Security, House of Representatives, One Hundred Eleventh Congress, first session, March 4, 2009.* Washington: U.S. G.P.O.: For sale by the Supt. of Docs., U.S. G.P.O., 2010. Page 2

2009, 1,014 people were processed for deportation in Alamance County; 40.7 percent of them were initially charged for traffic violations. In the same period, in Gaston County 56.5 percent of 287(g) arrests were for traffic infractions; in Mecklenburg County it was the 29.6 percent.²⁰³ Anyway, the Honorable Bennie G. Thompson, Representative in Congress from the State of Mississippi and Chairman of the Committee on Homeland Security House of Representatives, affirmed that the Committee, in 2009, was not acknowledged of objective data regarding the “effectiveness of the program or whether the people removed were dangerous aliens.”²⁰⁴ On the other hand, Honorable Emanuel Cleaver, a Representative in Congress from the State of Missouri, reported to the same Committee his concerns about recent findings of the Government Accountability Office’s (GAO) report “Immigration Enforcement: Controls over Program Authorizing State and Local Enforcement of Federal Immigration Laws Should Be Strengthened.” The report showed that ICE officials have not properly documented their program objectives in memorandums of agreements with local law enforcement agencies, which has resulted in agencies removing aliens for minor offences, such as speeding, carrying an open container, and urinating in public. He also mentioned a case in Nashville, where a woman was arrested on a minor traffic violation while 9 months pregnant, and forced to give birth while in custody. William Riley, active director for the ICE Office of State and Local Coordination, stated that the same office is “working to create system enhancements to ENFORCE, which is the DHS’s primary administrative arrest booking vase management system, that will allow ICE to classify the types of aliens 287(g)-trained officers are encountering and the severity of their crimes. This data will be used by ICE to evaluate whether or not our 287(g) partnerships function in accord using resources with ICE priorities and to ensure that the continuation of an agreement is in the best interest of ICE.”²⁰⁵

Unfortunately, the arrests did not limit to traffic violation. Later on, Latinos started being arrested at schools, libraries, and public events. For example, at Southern

²⁰³ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 43

²⁰⁴ UNITED STATES. CONGRESS. HOUSE. COMMITTEE ON HOMELAND SECURITY. *Examining 287(G). The role of state and local law enforcement in immigration law. Hearing before the Committee on Homeland Security, House of Representatives, One Hundred Eleventh Congress, first session, March 4, 2009*. Washington: U.S. G.P.O.: For sale by the Supt. of Docs., U.S. G.P.O., 2010. Page 2

²⁰⁵ UNITED STATES. CONGRESS. HOUSE. COMMITTEE ON HOMELAND SECURITY. *Examining 287(G). The role of state and local law enforcement in immigration law. Hearing before the Committee on Homeland Security, House of Representatives, One Hundred Eleventh Congress, first session, March 4, 2009*. Washington: U.S. G.P.O.: For sale by the Supt. of Docs., U.S. G.P.O., 2010. Page 8

Alamance High School in February 2008, two Latino students were arrested and put into deportation proceedings for setting fire to paper in the bathroom. In June 2008, three children were left alone in the I-85 in the middle of the night for eight hours because their mother, Maria Chavira Ventura, was arrested by an Alamance County sheriff's deputy and taken to jail on a traffic violation. In August 2008, five men from El Salvador and Mexico were arrested and later deported for fishing without a license on the Haw River.²⁰⁶

Later on, more jurisdictions in the state adopted Alamance County's approach of aggressive deportation. Seven more counties signed 287(g) agreements with ICE. Wake County procedure for deportation more than 2,000 convicted in its jail in the first six months of 2009 through its 287(g) program. Mecklenburg County processed for deportation more than 7,000 immigrants brought to jail since adopting the program in 2006. Police in Gaston County arrested and interviewed 599 people about their immigration status, and processed 488 for deportation between 2007 and 2008. More than 57 percent of the charges were traffic-related infractions and misdemeanors.²⁰⁷ North Carolina was distinguished by the Department of Homeland Security (DHS) for its leading role in local immigration enforcement laws. Nevertheless, from the point of view of immigrants, human rights organizations, and some citizen groups, this achievement came with a high cost. With the exception of Durham County, the other counties that adopted the 287(g) program used it outside its original intent of identifying dangerous criminals.

The consequences of the program have been very harsh on the Latino community. Many families are composed by people of different immigrant status. Usually, at least one of the parents is undocumented, while other members, most often the children, are U.S.-born citizens, green card holders, or work visa holders. In the fear of being deported, Latino immigrants remained in their houses, and in the summer of 2007 some neighborhood shut down. Undocumented immigrants reduced time spent in cars and public spaces, went less frequently to groceries, missed appointments and became more and more marginalized from society. Some Hispanic has been fired from his job for arriving constantly late because stopped at checkpoints. Children were afraid of not

²⁰⁶ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 43

²⁰⁷ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 55

finding their parents when going back from school, with hard repercussion on their learning process too. Some Latinos considered leaving the region to escape the new persecution. In 2008, the local Spanish newspaper “Que Pasa” noticed that immigrants were leaving Alamance County. Local business owners started losing costumers. The Mexican consulate stated an increase in the application for Mexican passport for children, preparing for the event of potential deportation.

“A representative from the National Day Labor Organizing Network rated Alamance County’s human rights abuses under the 287(g) program as some of the worst in the county, comparing it to Davidson County, Tennessee, and Maricopa County, Arizona, where Sheriff Joe Arpaio faces multiple lawsuits and a U.S. Department of Justice investigation for racial profiling.”²⁰⁸

North Carolina law enforcement authorities taking part in the program declare that it has made a great difference in the safety of the seven counties of the state.

In 2012, the ICE suspended enforcement of 287(g) in North Carolina. The main reason was the accusations against the sheriff’s office, who was cited by the Justice Department for discriminatory practices against Latinos. The decision was made after two years of investigation of the resolutions of Alamance County Sheriff Terry S. Johnson and his office, which showed to have arrested an excessive number of arrests in the local Hispanic community aiming to deport the most undocumented immigrants as possible. “ICE will continue to enforce federal immigration laws in Alamance County in smart, effective ways that focus our resources on criminal aliens, recent border crossers, repeat and egregious immigration law violators and employers who knowingly hire illegal labor,”²⁰⁹ affirmed the ICE spokeswoman Barbara Gonzalez.

This was not the first time in which ICE suspended the measures of 287(g) program. In June 2012 the seam treatment was given to all state and local police agencies in Arizona, which were canceled. Accusations from immigration advocacy, human rights and civil rights groups mention “damages to community trust in police, increased racial profiling, and wasted precious law enforcement resources at all levels of

²⁰⁸ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 55

²⁰⁹ICE *Suspends Enforcement of 287(g) in North Carolina County*. September 19, 2012. <http://latino.foxnews.com/latino/news/2012/09/19/ice-suspends-enforcement-287g-in-north-carolina-county/>

government”²¹⁰. It has been argued that those agreements taken under the 287(g) program impact in particular those communities with growing number of Latino population, as for example the Alamance County in North Carolina, which Latino population growth rates higher than the national average.

3.2.3 Education

The state’s community college system mandated in late 2007 that undocumented immigrants could be admitted to any of the state’s fifty-eight community colleges (rather than allowing each campus to make that decision on its own). Governor Mike Easley supported the decision, affirming it was the best for the students and for the future of the state.²¹¹ Unfortunately, in 2008, the state’s community college system ceased to admit undocumented students.

With increasing number of enrollments of Hispanic children, schools recognized a growing need for English as a Second Language (ESL) programs, and a growing need for founding too. Some teacher learned Spanish to communicate with students’ parents.

In December 2007, UNC (University of North Carolina) system president Erskine Bowles funded the UNC Tomorrow Commission, a group of business, education, government, and nonprofit leaders from all over the state. The commission launched a report indicating the education needs of state residents. The major issue was that North Carolina needs to improve the access to higher education, “particularly for undeserved regions, underrepresented populations, and nontraditional students.”²¹² The report underlined that there will be an “increasing reliance on Hispanics and minorities to fuel future economic growth in the state. Given the increasing importance of higher education to economic competitiveness in today’s knowledge-based global economy, limiting access to affordable higher education for our state’s growing Hispanic population raises serious concerns about our state’s ability to remain competitive in the years ahead.”²¹³

²¹⁰ *End the 287(g) Immigration Enforcement Program.* (December 2012). https://www.aclu.org/files/assets/dec_2012_terminate_287g_sign-on_final_sent.pdf

²¹¹ E. LACY and M. E. ODEM, *Popular Attitudes and Public Policies. Southern Responses to Latino Immigration.* In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South.* Athens: University of Georgia Press, 2009. Page 157

²¹² H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State.* Chapel Hill, NC, UNC Press, 2010. Page 164

²¹³ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State.* Chapel Hill, NC, UNC Press, 2010. Page 164 (UNC Tomorrow Commission Final Report)

Constitutional law guarantees a public school education from kindergarten to 12th grade to all, but it does not guarantee a right to higher education for all students. The state of North Carolina has a liberal and relatively inexpensive education system, but only legal residents can be admitted to the state's colleges and universities. Federal and state laws consent to undocumented youth to attend public elementary and high schools, but exclude them from access to higher education except as international students at prohibitive tuition rates. In order to overcome the problem, states have made individual interventions about their enrollment policies. Until 2004, the sixteen public universities and fifty-eight community colleges in North Carolina were allowed to dictate their own admission policies regarding immigration status. In most of the cases, students who could not show proof of North Carolina residency, included undocumented immigrants, were asked to pay an out-of-state tuition. The problem is that out-of-state tuition vary between \$10,000 to \$20,000 per semester, becoming restrictive for most of the undocumented students, which are also ineligible for public assistance or educational loans. In May 2008, only twenty-seven undocumented students attended public universities in the state.²¹⁴ In 2005, North Carolina legislators, backed by the former governor Jim Hunt and El Pueblo, introduced House Bill 1183, which would have granted undocumented immigrants to pay in-state tuition at public universities with certain requirements (such as an application for legal immigrant status). The bill also recognizes that Latino youth are an essential part of North Carolina communities and that most of the time they do not have an option for education, even in their parents' home countries. Unfortunately the bill was dismissed, followed by a turmoil of public complaints about the right of noncitizens to obtain a support in education while not paying taxes as the rest of the U.S. citizens.

Even without the passage of the bill, undocumented immigrants could attend public colleges or universities in North Carolina thanks to the policies created by the same UNC community colleges on the subject. In 2007, this opportunity was threatened by the decision of officials to reexamine their policies on admission. After revisiting a 1997 statement made by Governor Mike Easley that community colleges must judge applicants on academic criteria only, college system president Martin Lancaster stated in a November 2007 memo that schools must not reject undocumented immigrants. In May 2008, the attorney general suggested that public colleges should not admit

²¹⁴ K. COLLINS, AG: *Close Colleges to Illegal Immigrants: The Advice Derails a Movement to Grant In-state Tuition to Graduates of N.C. High Schools*. Raleigh News and Observer, May 8, 2008

undocumented immigrants because of potential violations of federal immigration law. In July 2008, the federal Department of Homeland Security (DHS) denied this version, asserting that it does not consider admission of undocumented aliens to public post-secondary educational institutions to be prohibited by federal law. Notwithstanding, the community college system still does not accept undocumented immigrants. On September 19, 2009, the State Board of Community Colleges deliberated to accept undocumented students. On the contrary, the university system kept admitting students without regard of their immigration status.

The Dream Act was a bill introduced by Senator Orrin Hatch of Utah, which would allow undocumented students in possess of a “de facto” residency in a state of the United States to enroll in public universities at in-state tuition rates. A parallel, state-level bill was under consideration in North Carolina. Immigrants advocacy organizations in North Carolina are lobbying for passage of these bills, which would provide educated leaders for the second generation of Latinos.²¹⁵

3.2.4 Drugs

Case of Alamance county. In the 1980s and 1990s, local law enforcement official started seeking a connection between the county’s proximity to the major East Coast thoroughfares of I-40 and I-85 and the increase of drug trafficking. The raising of central North Carolina as a drug trafficking route to the north started in the 1980s, when a crack cocaine epidemic was sweeping the county and U. S . Drug Enforcement Authority (DEA) focused their drug interdiction efforts in south Florida and the Caribbean.²¹⁶ As a result of these crackdowns, traffic routes moved, also as a consequence of a partnership between Colombian drug cartels and Mexican traffickers to transport cocaine overland through Mexico into the United States. New overland paths followed I-10 through Texas and Louisiana, connecting to I-85 in North Carolina to the markets in the Northeast.

Following these international changes in drug trafficking routes, Alamance police started effectuating more and more drug arrests and underlined an increase in drug-related robbery and assault. By the 1990s, police understood that the area had become a distribution center, discovering larger and larger stashes of drugs. By the early 2000s,

²¹⁵R. BAILEY, *New Immigrant Communities in the North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 74

²¹⁶ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 27

police related findings thousands of pounds of marijuana and multiple kilos of cocaine in stash houses all over the county.

Since 2006, Alamance county law enforcement agencies have partnered with the DEA and other state agencies to coordinate a regional attack against drug trafficking. According to Chief Williams, “The department has made progress because amounts seized are less and less, and the violence associated with the drug trade is slowing down, too, in the last two years”.²¹⁷

Soon stereotypes affected this campaign. Latinos became involved, even though those actually involved in the illicit drug industry came from race and ethnic groups of all sectors of society. The sheriff’s department connected the crime to Latinos, independently from their actual occupation. In 2006, a sheriff’s official stated that Latinos were responsible for the majority of trafficking in the county. Mass medias publicized drug busts with photos of seized cash and drugs and mug shots of people labeled as “Hispanic”, contributing to the image of Latinos as criminals. Latinos became the scapegoats for a larger societal problem.

On the other hand, court crime statistics and testimonials of police officers and community members show a different vision and do not confirm the connection between immigrants and crime rates in the county, and, more in general, in the nation.²¹⁸ Nonetheless, the wrong opinion regarding the involvement of new Latino immigrants in the county social problem would have deep consequences in later policies.

3.2.5 Health Care System

Hospitals keen to reduce emergency room costs have looked for ways to treat nonemergency outside of the hospital system. A local foundation supported the Center for New North Carolinians at the University of North Carolina at Greensboro (UNCG) to provide Lay Health Advisers (LHAs) to different immigrant communities in the county. Building on the immigrants network developed in Guilford County by the AmeriCorps ACCESS Project, the Immigrant Health ACCESS Project (IHAP) hired

²¹⁷ H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 28

²¹⁸ “Statistics from the Administrative Office of the Courts between the years 2002 and 2006 show that Latinos made up only 12 percent of the county’s criminal cases.” In: H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010. Page 29

and trained bilingual and bicultural Lay Health Advisers from targeted communities. The advisers were charged with channeling immigrants into the health care system, providing interpretation and transportation as necessary, conducting health education activities, and advising providers on immigrant health and cultural traditions.

A inadequate access to services is just one of the difficulties faced by North Carolina's health care system. "Many immigrants may be unfamiliar with Western concepts such as germ theory, contagious diseases, and drug therapies. Instead of preventive medicine, many prefer to use traditional healers, herbal medicines, and religious rituals and prayer, avoiding established health care systems except in emergencies. North Carolina law enforcement officials and health care providers report concern about medicines sold over the counter at small "tiendas". Those stores sell medications available in Mexico over the counter that would require a doctor's prescription in the United States. Many Latinos self-medicate but keep their health providers unaware of these practices."²¹⁹

The importance of traditional values finds one of its elements in the popularity of natural medicines. Most of the immigrant group, especially those coming from a peculiar place of origin well involved with the traditional culture, as for example, the Guatemalan community in Morganton, NC, still rely on natural cures for minor ills. "A Mexican-owned store in Morganton sold homeopathic herbs, and some residents grew a few herbs, like cilantro, for both cooking and healing purposes. Making use of folk wisdom accumulated across generations of family practice was at least one *curandera* (traditional healer) who was regularly sought out by her Q'anjob'al neighbor as an alternative medical adviser. That such contacts were cloaked in secrecy – for fear of prosecution for practicing medicine without a licence – to be sure, set a different one for traditional treatments that was the case "back home".²²⁰

Sometimes language differences create insuperable obstacles. Some health care providers rely on ethnic community members for interpretation. Unfortunately, many interpreters in North Carolina lack of a professional training and basic medical vocabulary. Some of this unprofessional interpreters also charge fees to families for a service that should be free according to the Title VI of the Civil Rights Act of 1964. The

²¹⁹ R. BAILEY, *New Immigrant Communities in the North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 76

²²⁰ L. FINK, *The Maya of Morganton: work and community in the nuevo new south*. Chapel Hill : University of North Carolina Press, c2003. Page 148

Federal Office of Civil Rights threatens investigations and has challenged at least one local health department for being out of compliance.²²¹

The health care system has faced problems to hire sufficient bilingual staff. Personnel policies in many states and counties demand college degrees, but there are not sufficient bilingual candidates. An initiative by the State Office of Minority Health in cooperation with the Area Health Education Center (AHEC) has provided continuing education Spanish-language training to health professionals. The Center for New North Carolinians offers a certificate in health and human services interpretation for bilingual persons who successfully complete the center's training program, but its resources are not sufficient to train enough health interpreters.

3.3 Culture

“Nuestro Himno” (“Our Anthem”) was the Spanish-language version of the United States national anthem “The Star-Spangled Banner”. The recorded version featured artists such as Haitian American Wyclef Jean, hip-hop star Pitbull, and Puerto Rican singers Carlos Ponce and Olga Tanon and the group Aventura. It was published at the end of April 2006 and played by many of the U.S. Hispanic radio station across the nation in the period of the mass protests against congressional efforts to restrict illegal immigration.²²² The intent was to create an anthem of solidarity for the movement that had conveyed thousands of people to march peacefully for immigrants rights in Washington and other cities across the countries. The variation of some words, the mocking chords, and the use of Spanish language, all contributed to provoke polemical debates. The new version of the first stanza is relatively faithful to the original, except the idea of evoking a nonviolent struggle for freedom, not a war as the original version; while the second stanza is almost a redraft, expressing messages of equality and brotherhood. Anyway, the real problem generating objections in public opinion is not the lyrics but the language.

Conservative commentators called for outrage and defined it “The Illegal Alien Anthem”. Also some movement supporters has been questioning the use of Spanish as a way to express the patriotism. “Even our Spanish media are saying, ‘Why are we doing

²²¹ R. BAILEY, *New Immigrant Communities in the North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 76

²²² edited by E. ASHBEE, H. B. CLAUSEN, AND C. PEDERSEN. *The politics, economics, and culture of Mexican-U.S. migration : both sides of the border*. New York : Palgrave Macmillan, 2007. Page 1

this, what are you trying to do?” said Pedro Biaggi, the morning host with El Zol (99.1 FM), the most popular Hispanic radio station in the Washington area. “It's not for us to be going around singing the national anthem in Spanish. [...] We don't want to impose, we don't own the place.[...] We want to be accepted.”²²³ Surprisingly enough, President Bush too expressed his opinion about “Nuestro Himno”: “I think the national anthem ought to be sung in English.”²²⁴

Other voices, supporting the idea of the translated anthem, affirm that it presents no contradictions. Juan Carlos Ruiz, general coordinator of the National Capital Immigration Coalition, said that putting the anthem in Spanish is a way to relay the meaning to people who haven't learned English yet. Immigrant rights advocates generally agree that the process of learning English is necessary and inevitable. “What this song represents at this moment is a communal shout, that the dream of America, which is represented by the song, is their dream, too.”²²⁵ says Leo Chavez, director of Chicano/Latino Studies at the University of California at Irvine.

Addressing the symbol of American national identity is a way in which new movements compete for space within that identity. For instance, during the rally on the Mall in Washington D.C. the immigrants and their supporters also waved American flag and recited the Pledge of Allegiance, this time all in English.

“Nuestro Himno” efficiently accentuate the connection between a political phenomenon and a cultural one. “The largely Latino crowds at immigrants' rights marches across the country had roots throughout the Americas; the marches have been, among other things, an expression of pan-Latin solidarity.”²²⁶

Singer Pitbull said this country was built by immigrants, and “the meaning of the American dream is in that record: struggle, freedom, opportunity, everything they are trying to shut down on us.”²²⁷

²²³ D. MONTGOMERY, *An Anthem's Discordant Notes*. The Washington Post. Friday, April 28, 2006. At <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/27/AR2006042702505.html>

²²⁴ K. SANNEH, *A Protest Song of Sorts, to a Very Familiar Tune*. The New York Times, May 1, 2006. At http://www.nytimes.com/2006/05/01/arts/music/01note.html?_r=0

²²⁵ D. MONTGOMERY, *An Anthem's Discordant Notes*. The Washington Post. Friday, April 28, 2006. At <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/27/AR2006042702505.html>

²²⁶ K. SANNEH, *A Protest Song of Sorts, to a Very Familiar Tune*. The New York Times, May 1, 2006. http://www.nytimes.com/2006/05/01/arts/music/01note.html?_r=0

²²⁷ <http://www.foxnews.com/story/2006/04/28/spanish-version-star-spangled-banner-draws-protests/>

The irreverent song was in the news for a brief period. The main significance of the event was its connection to a more supported debate about the economic and political consequences of migration and the mutating character of both U.S. and Latin identity. It is a debate that brings on about the future of the North American economy, the border region, and national identity. For some of the critics, new mass migration to the United States will cause a weakening of the established identity of the nation, and a decreasing of the assimilative mechanism.

On April 21, 2001, President Bush launched a Summit of the Americas in Quebec City, Canada, with the desire of creating “a fully democratic hemisphere bound together by goodwill and trade”²²⁸. Five years later a series of protests signed what could be seen as a new American identity. Starting in February, with a small rally in Philadelphia and climaxing in the massive gathers of May 1 in various cities across the United States, pro-immigrant demonstration asked for an appreciation of the enrichment brought by the immigrants to American society. The message brought was the one displayed in some of the signs of the manifestation: “We are America”, showing a message of comprehension in diversity. The last mass demonstration, called The Great American Boycott and attracting over one million of people, was “A Day Without an Immigrant”, which aim was to show American society how indispensable immigrant labor has become in their life.

A part from the concerns over the economic costs of the new Latino immigration, most of the public opinion is worried by the cultural differences between the Americans and the new immigrants. Anxiety over the diversification of the local cultural, agricultural, and linguistic identities is a rhetoric often followed by action, as official tries to adopt aggressive deportation programs.

Particularly in the South of the United States, immigrants represent a threat to individual or group culture and identity. While some hostility to Latinos can be pinned as racism, much of the opposition is based on fear: the new immigrants’ Otherness represents a threat to those who do not like to have local or regional culture and society modified by outsiders. Most of the population living in small southern communities, where the bulk of the new Latino immigrants settled, have a strong sense of identity

²²⁸ C. PEDERSEN, *Somos Americanos: Mexican Immigration and U.S. National Identity in the Twenty-first Century*. In: edited by E. ASHBEE, H. B. CLAUSEN, AND C. PEDERSEN. *The politics, economics, and culture of Mexican-U.S. migration : both sides of the border*. New York : Palgrave Macmillan, 2007. Page 1

with their own community and its culture, and see Latino newcomers as a threat to this identity, with their language, culture and practices so different from the one of those originally belonging to the region. One of the central points of the cultural change fear is the use of the English language. Studies have demonstrated that the English language is identified as a symbol, a “salient component of American identity,”²²⁹ and those newcomers who do not understand the language or do not speak it well, are often perceived as a threat to the nation’s cultural identity, values and beliefs. Other studies have shown how new-language acquisition is a challenge for the immigrants as well. “Economic migrants”, as to say those who left their country to improve their economic situation, are more helped to learn the new language than other types of migrants, such as political refugees or those who come to join relatives, but adults in general find it more difficult to learn it than young people. On the other hand, third-generation Americans use to be fluent in English and often do not speak their grandparents’ language.

Help in the integration progress comes also from the local churches. In many parts of Georgia and the Carolinas, church leaders have seen in the new Latinos a source for new membership, sometimes encouraging the coming of new ones.

All along the nation, some states have made attempts to integrate Latino immigrants. Some of them have created in-state tuition and health care to undocumented immigrants students, and driver’s licenses to unauthorized adult immigrants. Even in some localities that have shown equivocal or hostile to immigrants, some public institutions, most of all schools, have demonstrate comprehension regarding the rapidly growing population of foreign-born students. In the 1990s the number of school-aged children enrolled in limited English proficient (LEP) programs in the Southeast increased dramatically: between the 1994-1995 school year and that of 2004-2005, their number increased by 714 percent in South Carolina, 372 percent in North Carolina, and 292 percent in Georgia, while in the United States as a whole, they grew by only 61 percent.²³⁰ Schools were among the first public institutions to develop programs and policies of accommodation and incorporation of immigrant newcomers. Nonetheless, legislators and education officials have refused to provide bilingual education and encouraged

²²⁹ M. T. GARCÍA, *The Latino generation: voices of the new America*. Chapel Hill : The University of North Carolina Press, 2014. Page 21

²³⁰ E. LACY and M. E. ODEM, *Popular Attitudes and Public Policies. Southern Responses to Latino Immigration*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 156

programs that place primary emphasis on learning English as quickly as possible. English for Speakers of Other languages (ESOL) and English as a second language (ESL) programs provide English-language instruction combined with content classes in math, sciences, social studies, and language arts for English-language learners (ELL). Other types of welcoming programs in the Carolinas provide extracurricular English and cultural-content classes to the children of Latino immigrants.

Education, especially basic English-language skills, is an important standard of successful integration for immigrants, especially for adults. In the state of North Carolina, different approaches have been used to offer English-language training to adults. Free ESOL (English for Speakers of Other Languages) are provided through the community college system, which is closely aligned with the state's economic planning and job training strategies. Undocumented immigrants can attend ESOL classes, though they cannot register for academic credit or certification course in the community college system.²³¹

Some churches and libraries also provide English tutoring programs. The Glenwood Library in Greensboro answered to the area's new ethnic diversity supporting an array of English language, literacy, and citizenship programs for immigrants, including computer-based ESOL program, a family literacy program that comprises parents and children in cooperative English-language programs, and a women's literacy program. The library also offers training for tutors and publishes a quarterly ESOL newsletter. These programs are housed in the Multicultural Resource Center, which hosts other citywide projects including the Hispanic Outreach and the Foreign Language Collection.²³²

A testimony is reported, showing the importance of these kind of services for the Latin community. "These past two years at PUENTE (People United to Enrich the Neighborhood Through Education), a school for adult, have also been wonderful in terms of learning about Hispanic culture. It's the simple things that I treasure, such as learning to appreciate the importance of touching and to be able to hear the beauty of the Spanish language. [...] Being at PUENTE has put me in touch with the more typical

²³¹ R. BAILEY, *New Immigrant Communities in the North Carolina Piedmont Triad: Integration Issues and Challenges*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway: immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page. 74

²³² E.M. GOZDZIAK and M.J. MELIA, *Promising Practices for Immigrant Integration*. In: edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway : immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005. Page 245

immigrant experiences. In the first place, many people at the Center are undocumented. The first thing I tell them is that the *migra* (as the immigration authority are popularly known) won't come here; they cannot walk into this classroom because the school is a sanctuary. We never ask anyone if they're here legally or not. That's not our place. We're here to provide services to anyone who walks in off the street. [...] That brings me to the reason that we have many of our programs during the day, especially the English classes. On a rotating schedule we offer parenting skill, reading and math readiness for preschoolers, computer literacy, teacher certification, literacy classes, ESL, and job placement. Many of the women, if they don't know English, they are not going to leave the house, right? Well, some of the husbands want just that because they do not want their wives to learn English and get a job. I had to call the police the other day because a husband was beating his wife because she wanted to come to English class. He's in jail now, but *she* feels bad about it. The classes offer a great support system for mothers; they bring their children and we have child care. It is also a social event, an opportunity to get out of the house and to meet people."²³³

There are cases of employers offering onsite ESOL classes to improve worker safety and increment production goals. But there is a portion of low-income immigrants who work long hours, who do not have the time or energy to avail from ESOL classes.

Still, as we have seen, public pressure of those who desire to get rid of all the unauthorized immigration or the limit the number of the newcomers, have led lawmakers throughout the South to address immigration as a legal issue.

Recent studies have found that Latinos identify themselves as southerners much less frequently than other minorities settled in the Southern states. One reason is that Latinos "may feel themselves unwelcomed by those purporting to be 'authentic' southerners – those whites and Protestants so freely affirming their identification with the region - and hence reject an identity that, in their minds, has rejected them."²³⁴ Other studies have demonstrated that immigrants who are marginalized and face discrimination are less likely to acculturate than those who are more accepted. Finally, southerners' practice of

²³³ E. AVALOS, *Interview*. In: : D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York: Routledge, 1994. Page 378-379

²³⁴ E. LACY and M. E. ODEM, *Popular Attitudes and Public Policies. Southern Responses to Latino Immigration*. In edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009. Page 158

demonizing immigrants because they do not fit in and “refuse to assimilate” impedes the process of assimilation or incorporation.

The media too can have an important role in the integration process, as shown in this testimony: “Part of the responsibility of those of us in the media is to encourage the people to register and vote, to get their citizenship, and so on. This year we have had mass voter registration and education campaigns. Some people are cynical. They don’t think their vote counts because that’s the way it was in their country. These attitudes don’t change overnight, but what we are doing is using the media as a responsible agent for generating change. [...] I’ve heard it said that Spanish-language television will prolong the ghettoization of the Latino population, but those who say that are ignorant of the facts. If you live in the heart of the Hispanic community, you realize immediately that it would create devastating problems if there were no Spanish language media to inform, to permit Hispanics to feel proud of their heritage. We do not promote total assimilation, the melting pot, because we believe that it reduces the individual to being just another number, and because we believe that contributions from other cultures enrich this country. Therefore, we think in terms of “culturization”, not assimilation.”²³⁵

In some counties, the Latino community grew and became vital in the cities, opening stores where typical southern American products can be found, as well as other Hispanic staples. For example, music companies started to rent out sound system equipment and instruments for traditional festivities like “quinceaneras”.

Christian Latinos attend local churches and help in the organization of sacred celebration for the community as a whole. For example, Davis Street United Methodist Church began to organize an annual All Saints Day festival in November 2005, known as “Day of the Dead,” or “Dia de los Muertos”. Mexican immigrants celebrated their typical celebration by creating altars to exhibit pictures of their beloved deceased and baking special pastries and foods. Other Latino groups organized other celebrations, such as Las Posadas (The Innkeepers), a nine-day Catholic celebration from December 16 to December 24 that remembers the journey of Mary and Joseph before the birth of Jesus. Those cultural festivals aim to unite the immigrants and native residents and mix two traditions together.

²³⁵ J.F. BLAYA, *Interview*. In: D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York: Routledge, 1994. Page 427

Hispanic spirituality has a great appreciation for community. The religious experience of Hispanics is often shocked in the religious culture of North American society. “The symbiotic relationship with its cultural milieu – shot through with its collective/communal religious ethos – in Latin America is often shredded here, producing a spiritual void and often loss of faith.”²³⁶ This can be particularly said for those Catholics whose sense of identity was linked to a specific “pueblo” that historically created a community. The “plaza” was the core of community life, and the church was the main building on the “plaza”. Public worship and demonstrations and “fiestas” abounded, reinforcing the sense of community and their sense of being “muy católico”.

“A common problem [...] is that the presence of Latino newcomers was constructed as a problem. Once policies are articulated, they start to delimit understandings of how the problem can be solved. Conceptualizing newcomers as problems in particular ways (e.g., they need to be Americanized, they have deficits which need to be remedied, they should be given little support because they are stealing our jobs, they need to learn English), host communities articulate views of who the Latinos are and what types of treatment they deserve.”²³⁷

“The agencies saw Latino families as too large, Latina mothers as not fully competent, Latino men as not participating in child rearing and as ‘macho’. The service agencies saw Latino families as focusing on ‘respect for elders’ and using corporal punishment to teach this. In the service providers’ view, corporal punishment was associated with child abuse. Finally, service providers viewed negatively the role of Latinas (women) as servants of the men, and they judged the use of older siblings to supervise younger siblings as irresponsible. These views disabled Latino families in their relationships with professionals by publicly questioning their cultural integrity and by dismissing them as good and competent educators for their children.”²³⁸

²³⁶ E. VILLAFANE, *from The Liberating Spirit: Toward a Hispanic American Pentecostal Social Ethic*. In: D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York: Routledge, 1994. Page 155

²³⁷ E.T. HAMANN, S. WORTHAM, and E. G. MURILLO JR., *Education and Policy in the New Latino Diaspora*. In: edited by S. WORTHAM, E. G. MURILLO, Jr., AND E. T. HAMANN, *Education in the new Latino diaspora : policy and the politics of identity*. Westport, Conn.: Ablex Pub., 2002. Page 4

²³⁸ S. VILLENAS, *Reinventing Educación in New Latino Communities: Pedagogies of Change and Continuity in North Carolina*. In: edited by S. WORTHAM, E. G. MURILLO, Jr., AND E. T. HAMANN, *Education in the new Latino diaspora : policy and the politics of identity*. Westport, Conn.: Ablex Pub., 2002. Page 31

An example of positive and respectful integration is quoted, to show how the local community can help the newcomers to adapt to the new place, at the same conserving its traditions and embracing the new ones.

“A small band of citizens, whether from professional training, moral conviction, or ethnic affinity, helped to mediate the migrants’ passage. The latter group is exemplified by Daniel Gutiérrez. Gutiérrez, an English teacher in Mexico City who came to Morganton on a work permit to teach Spanish in 1990, experience the Guatemalan arrival at several levels. As early as 1993, he and other elementary school foreign-language teachers were transferred into ESL classrooms to meet the needs of a new school-age population. But even earlier his first contact with the Guatemalans occurred in home visits as a teacher. [...] Gutiérrez, himself a lay evangelical minister, watched the First Assembly, the town’s first Spanish-speaking church, grown from twenty-five members in 1991 to two hundred members within five years.

Besides the few resident Hispanics, there were other local citizens with the interest and initiative to respond to a new community need. Veterinary surgeon Don Hemstreet and his wife Joy, for instance, became close friends with a Guatemalan family after their own daughter, Molly, volunteered in an ESL class. Others acted from more formal positions. As early as 1992, national Red Cross agencies hired former ESL teacher Gisela Bourg-Williams to direct Project Amigo, an outreach program to provide the new Guatemalan community with health care and other survival skills. Basically, Bourg-Williams sought to give new, young families survival skills in making the culture transition. “I tried to get them to understand health care issues, like shots and going to the doctor [...] In their old community, everybody watched one another’s children. [...] Here, we had to teach them that you can’t leave your children alone in your home; you need to put your children in a car seat if you’re going to drive; you need to insurance if you’re going to drive; drinking and driving is illegal; abusing your wife is illegal”.²³⁹

3.4 Conclusion

As we have seen in previous chapters, UNESCO and the United Nations created and promoted different instruments with the aim of safeguarding and developing the cultural richness and cultural rights of the world population. Some of these concentrate on the technical aspects of the promotion on the culture, such as the World Heritage

²³⁹ L. FINK, *The Maya of Morganton: work and community in the nuevo new south*. Chapel Hill : University of North Carolina Press, c2003. Page 26-27

Convention, and some of them focus on the human aspects involved in the promotion of this issue, such as those problems related to the protection of minorities and indigenous people protection. Moreover, a focus on the issue of cultural rights has developed in recent years, comprehending the respect for the cultural dimension of the immigrant society.

Clearly, the position of the United States regarding the UNESCO has not helped the involvement in the promotion of this cause, and we have seen that even when it rejoined the association, it imposed a long list of assumptions and limits, trying to stop the creation of the convention, and at the end it refused to sign.

As we mentioned, the United States withdrew from UNESCO in 1984, arguing that the organization was politicized, and asserting concerns about corruption and bureaucratic mismanagement. In October 2003 they rejoined the organization, accompanied by the words of President George W. Bush: “As a symbol of our commitment to human dignity, the United States will return to UNESCO. This organization has been reformed and America will participate fully in its mission to advance human rights and tolerance and learning.”²⁴⁰ In November 2013, the United States lost their right to vote at UNESCO, due to their decision to cut financial contribution to the organization after the admission of Palestinian as full member in 2011. This was a consequence of the American Congress decision that the nation should not provide funding to any United Nations agency which accepts Palestinians as a full member. UNESCO’s constitution specifies that any member failing to pay its contribution for two years loses its vote in the UNESCO general assembly, namely what happened at the United States.

For what concerns the safeguarding of cultural heritage, in particular the intangible heritage as the focus of this work, first of all we have to state that the United State did not sign any of the agreements involving culture. As we showed, conventions about culture do not impose onerous obligations on the States Parties, so this can not be one of the reasons the United States did not decide to ratify them. Political and institutional issues intervened in the decision of not being part of the conventions. We explained the decisions related to the Convention on the Protection and Promotion of the Diversity of Cultural Expression.

²⁴⁰ U.S. Department of State, *About the U.S. and UNESCO*. At <http://www.state.gov/p/io/unesco/usunesco/>

These conventions put at the first place the protection of the rights of the ethnic, religious and linguistic minorities, of which the United States present a great variety. It should be safeguarded by an international convention rather than internal policies, being an issue that involves as well the relationship between states, as we have seen in the case of the Mexican immigrants. Most of the activities promoted by the private centers or organizations rely on the support or connections with the countries of origin, a relation that should be regarded by some international instrument.

In the 2001 Convention on the Safeguarding of the Intangible Cultural Heritage, the role of the international community is affirmed, even in its vague and sometimes ambiguous terms for the international jurisdiction. The Preamble of the Convention underline the importance of the cooperation and mutual assistance.

At the same time, the role of the State and local community is important, in particular regarding the fact that the safeguarding of the intangible cultural heritage is closely related to the actions undertaken in the field of education and awareness raising. This can be particularly true in a society such the American one, where the diversity of the newcomers can rise issue of discrimination due to the ignorance of diversity, or a negation of the origin to become part of the integrated society.

“Even if the Convention is formally a traditional instrument of consensual creation of inter-State law, from a substantive point of view it creates a system of international obligations that contracting parties undertake with regard to human groups or traditional communities, established in their territories or abroad, in order to safeguard their traditions and living cultures. In this sense, the idea of safeguarding intangible cultural heritage is closer to the idea of protecting human rights. As in the case of human rights, the object of safeguarding is not a State interest, or a purely material item, but rather the human value of creative autonomy, of the freedom of manifestation of one’s own beliefs and convictions, either individually or in community, in public or in private, of peoples, groups or minorities.”²⁴¹

Regarding the protection of diversity of culture within the United States, as we have seen, it can be said that their policy is more one of assimilation than of protection,

²⁴¹ F. FRANCONI, *The Evolving Framework for the Protection of Cultural Heritage in International Law*. In: edited by S. BORELLI and F. LENZERINI, *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*. Leiden; Boston: Martinus Nijhoff Publisher, 2012. Page 23

leaving the issue of the protection and promotion of traditions and languages of the immigrant community, in the hand of the NGOs, and the voluntary groups with an interest in this issue.

As we know, the opposition of the United States to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions was particularly harsh. It started with concerns about the idea of the economic value of the cultural goods and services and the idea of protectionism under the word “protection”. They disagreed with the idea of the dual nature, cultural and economic, of cultural goods and services, and with the definitions of “cultural activities”, “cultural industries” and “cultural goods and services”. They understood the right of States to take measures to promote and protect cultural diversity as an invitation to drop other agreements and obligations.

In the Preamble of the Convention, a special recognition is given to “minorities and indigenous peoples, manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit from them for their own development”. But the importance of the freedom of cultural expression has not been understood by the United States as something to protect or promote, probably due to the idea that the freedom underlined in the American constitution will not impede a cultural development. This is certainly true, but it’s the stress of the Convention on the concepts of promotion and minorities that the United States failed to recognize.

“The endorsement of culture in its broadest meaning combined with a dynamic notion of participation to cultural life has some important consequences. First, the right to take part in cultural life cannot be interpreted as the right to have access to and take part in the cultural life of the dominant group only, as it is also the right of any group to maintain and develop its specific culture (or, in other words, its cultural identity). Second, the evolutionary notion of culture and the interaction of cultures exclude the superiority of one culture over another and plainly condemn the imposition of one culture on other cultures. Third, the dynamic approach makes it clear that multiculturalism is an element of integration and strengthening of a society as a whole, and not a ground for its fragmentation and disruption.”²⁴²

²⁴² L. PINESCHI, *Cultural Diversity as a Human Right? General Comment No. 21 of the Committee on Economic, Social and Cultural Rights*. In: edited by S. BORELLI and F. LENZERINI, *Cultural Heritage*,

Important to our argument is also Article 2(1) of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, recognizing that “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 expression, are guaranteed.” That is one of the reasons why we decided to analyze also some convention related to human and cultural rights, to better understand the role of international instruments in the field.

“The freedom of individuals to choose and to change their cultural identity remains an illusionary right if States fail to protect a number of fundamental civil and political rights, including the right to education and information and the freedom of expression of all individuals both within the State and within their community.”²⁴³

Other articles of the Convention underline the importance of the respect of human rights and fundamental freedoms, such as Article 5 of the Convention, which asserts that “All persons have [...] 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.”

The importance of the connection between human rights and cultural rights is evident in cases where the discriminated community cease to attend public places where they risk to be arrested for minor reasons, as we have seen in cases regarding the 287(g) program. Moreover, damages are caused in young people, which can refuse their origin culture not to be discriminated, with important consequences at the personal level and at the national level, resulting in a nullification of cultural diversity.

“These public difficulties – renamed as labor exploitation, housing discrimination, linguicism (language racism), public health neglect, educational marginalization, and so forth – cannot be ignored. Policymakers in the areas of education, health, and social

Cultural Rights, Cultural Diversity: New Development in International Law. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 36

²⁴³ L. PINESCHI, *Cultural Diversity as a Human Right? General Comment No. 21 of the Committee on Economic, Social and Cultural Rights*. In: edited by S. BORELLI and F. LENZERINI, *Cultural Heritage, Cultural Rights, Cultural Diversity: New Development in International Law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012. Page 37

services are challenged to address the symptoms (and sometimes the root) of structural inequality by understanding and learning from the cultural and social processes of Latino families. Massey, Zambrana, and Bell argue this point: “Policy that seeks to strengthen Latino families rather than debilitate them must be guided by a long-term preventive orientation that places families at the center of the intervention and within the context of their neighborhoods and communities.”²⁴⁴

As for the protection of the rights of the minorities, first we have to bring on the question if the United States actually consider the immigrant population as a minority. It seems, on the contrary, that as soon as a regular immigrant show a desire for American citizenship, it becomes part of the nation and has to forget his native culture, meaning language etc, except the freedom of religion.

The “Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It” adopted by the General Conference of UNESCO in 1976, states that States should acknowledge the balance of cultures, especially those of minorities, and “ensure that national minorities and foreign minorities have full opportunities for gaining access to and participating in the cultural life of the countries in which they find themselves in order to enrich it with their specific contributions, while safeguarding their right to preserve their cultural identity.”

The “Declaration on Race and Racial Prejudice”, was adopted by the General Conference of UNESCO in 1978, with the aim of valuing the differences between races and ethnicities. The Declaration regarded the right not be excluded, humiliated, exploited or forcibly assimilated. It includes as well the right for individuals to preserve cultural identity, and the right of groups to their own cultural identity and the development of their peculiar cultural life.

We have seen how this role has been brought on by the various local churches and non-profit organizations instead of the local authorities. These groups helped integration in the new milieu while fostering the preservation of original cultures and traditions through the mean of schools, language courses and community moments. Many of these centers offered culturally appropriate services, promoted ethnic leadership development,

²⁴⁴ S. VILLENAS, *Reinventing Educación in New Latino Communities: Pedagogies of Change and Continuity in North Carolina*. In: edited by S. WORTHAM, E. G. MURILLO, Jr., and E. T. HAMANN, *Education in the new Latino diaspora: policy and the politics of identity*. Westport, Conn.: Ablex Pub., 2002. Page 30.

and became a guide for the newcomers. Following this path, many refugee and immigrant communities created their own places of worship to gather and preserve their cultural and religious traditions.

Article 1(1) of the Convention on the Elimination of All forms of Racial Discrimination defines racial discrimination as: “Any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Most important for our case, Article 1 restricts the application of the Convention, excluding “Distinctions, exclusions, restrictions or preferences [...] between citizens and non-citizens, and does not affect legal provisions [...] concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.”

On the other hand, as we have seen for example with bill HR 4437, widely opposed throughout the nation, the goal in the United States has been to create enforcement-only provisions and to criminalize assistance to undocumented immigrants. But as we have seen, there is a long list of motifs why an undocumented immigrant should not be considered as a criminal, and these kind of provisions, that fortunately did not take place, did not take into consideration positive action that should be undertaken in order to protect and promote their rights, in particular regarding employment and public benefits.

Not only at national level, but also at local level this has been evident, in particular in the Southeast, has we have seen, where official rhetoric and policy has been charged with exclusionary measures, trying to prevent undocumented immigrant from the access to employment, transportation, housing, health care, higher education, and public benefits. These policies were probably aimed at affecting the undocumented portion of the immigrant population, but, as we have seen, some measure such as the “English-only” laws, concerns both kinds of immigrants. To remove Spanish signs from the public spaces highly frequented by Latin immigrants, as well as entailing the use of English language in official documents, is not a sign of modernity and integration. Moreover, we have seen how local ordinances increased xenophobic sentiments asserting that immigrant are the cause of the augment of crimes rates, mostly due to their “lack of social and health care standards”, and became a threat to the whole community.

Article 2(1) of the Convention on the Elimination of All forms of Racial Discrimination clarifies the responsibilities of the States Parties to combat and eliminate racial discrimination: they have to “engage in no act or practice of racial discrimination against persons, groups of persons or institutions” and to “ensure that all public authorities and public institutions [...] act in conformity with this obligation” and they “shall take effective measures to review governmental, national and local policies, and to amend rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination”.

In range of human rights, it has been interesting to mention the International Convention on the Protection of the Rights of the Migrant Workers and the opinion of the Inter-American Commission on Human Rights, which underlined the “vulnerable situation” in which the migrant workers are. “This situation of vulnerability has an ideological dimension and occurs in a historical context that is distinct for each State and is maintained by *de jure* (inequalities between nationals and aliens in the laws) and *de facto* (structural inequalities) situations.”²⁴⁵ Moreover, the Inter-American Court affirmed that “the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*.”²⁴⁶

These opinions contradict most of the laws and bills we have analyzed in chapter III, as for example bill HR 2692 in North Carolina, establishing an immigrant court in the state aimed at hastening the deportation process of unauthorized immigrants caught for minor infractions, such as impaired driving. As we have seen, the Inter-American Court affirmed that “States are obliged not to introduce discriminatory regulation into their laws, to eliminate regulations of a discriminatory nature, to combat practices of this nature, and to establish norms and other measures that recognize and ensure the effective equality before the law of each individual.” It is easy to understand how, for example, those anticongregating ordinances that we analyzed directed against the day laborers, can be recognized as discriminatory measures. Or, moreover, public opinion

²⁴⁵ Inter-American Commission on Human Rights, Advisory Opinion No. 18, para. 112. In: A. Ú. DE TORRES, *Workers' rights*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 463

²⁴⁶ Inter-American Commission on Human Rights, September 17, 2003, *Juridical Condition and rights of the Undocumented Migrants*, Series A No. 18, para. 101. In: L. BURGORGUE-LARSEN, *The Rights of Indigenous Peoples*. In: Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011. Page 513

accusations and rumors about immigrants using fake documents to obtain driver's license and to register to vote lead to discriminatory and unjustified actions against a community in general. The worst action of all, as we have seen, were the massive arrests and detentions following the 287(g) implementations, resulting in a racial discrimination action of the state authorities which arrested Latinos without valid justifications. We have mentioned how these people were arrested even when attending public institutions such as library, schools or other congregational places, with a clear damage to their cultural development. In fact most of them stopped attending those places in fear of being caught. Civil rights and liberal ideas must stay at the centre of the debate on U.S. immigration, especially at local level, if a comprehensive policy has to take place.

The idea is that institutions will rather promote assimilation than integration, asserting the importance of the concept of America, a land where they all arrived as immigrant and they all became part of a bigger and unique nation.

What seemed more important was the protection of national security, with the risk of suspending fundamental liberties of citizens and non-citizens. In particular after the terrorist attacks of September 11, 2001, the main mean to prevent any kind of criminal terrorist action was to restrict immigration policies, which lead to a renewed xenophobic movement, both in the private and the public sphere. The most hit group was initially the Muslim and Arabic one, soon followed by an enmity in the relation with the growing Hispanic group. It has to be said that in this environment, the role of many advocacy has been important in underlining the need for a secure border and a real visa reform, but keeping an eye on the first role of civil liberties and due process. It must not be forgotten that the history and tradition of the United States shows the importance of the immigration in its creation and the need to maintain this process going to bring new ideas and development to the nation as a whole.

3.4.1 European situation

It is interesting to make a comparison with some States that face similar issues. For example, Europe presents very peculiar cases. The importance of cultural diversity was included in the instruments of the European Union time before the adoption of the UNESCO Convention. In the 1992 Treaty of Maastricht, the idea was clearly formulated and sanctioned, but it has been generally suggested in the first European integration process since the 1950s, where the implied aim for the Member States what

to achieve economic and political cooperation, while maintaining their cultural individuality. With the time, the importance of cultural diversity was expressed as a fundamental value in the European integration process. It is mentioned in the European Treaties, in the EU Charter of Rights and Freedoms, and in policy documents of the Commission, the Council and the European Parliament. Article 149 EC Treaty underlines that the Community's competence in education has to respect the Member States' "cultural and linguistic diversity", and Article 151 states that the "Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity". The appreciation of the value of cultural diversity evolved with the time and growth of the European Union, appearing in the Charter of Rights of 2000 and the Constitutional Treaty of 2004. Sensibility grew among politicians and also citizens, about the recognition that the economic integration and political unification process in the continent have an inevitable influence in the cultural ambit. There might seem to be a contradiction between the need to find common values in the European context and the recognition of the value of cultural diversity. "[...] rather than a contradiction, there is a fruitful tension here between the aspiration to universal values and the acknowledgment of enduring ethical and social diversity. This tension implies that any search for a communality of values must leave space for value differentiation along national and regional lines."²⁴⁷ As we mentioned, Article 151 EC underlines the respect for "national and regional diversity". "It is less clear whether the commitment to respect cultural diversity extends beyond the national and regional dimensions and also to cultural diversity on a non-territorial basis – in other words, whether the European Union is committed to supporting multiculturalism inside its Member States."²⁴⁸

It is important to notice that, even if the protection of cultural diversity is meant as a common European value, the ultimate responsibility is an issue of the single Member States. In the community, many states recognize among their fundamental norms some provisions regarding the cultural difference. Due to historical, sociological or political factors, many European States introduced some form of recognition of cultural or ethnic

²⁴⁷ B. DE WITTE, *The Value of Cultural Diversity in European Union Law*. In: edited by H. SCHNEIDER and P. VAN DEN BOSSCHE, *Protection of cultural diversity from a European and international perspective*. Antwerpen: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 223

²⁴⁸ B. DE WITTE, *The Value of Cultural Diversity in European Union Law*. In: edited by H. SCHNEIDER and P. VAN DEN BOSSCHE, *Protection of cultural diversity from a European and international perspective*. Antwerpen: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 224

difference in their constitutions. The recognition has been given in three peculiar ways: either giving a linguistic group a special status and a territorial autonomy, such as in Belgium²⁴⁹ or Spain²⁵⁰; guaranteeing general rights to national or ethnic minorities, such those included in Central and Eastern European states' constitutions²⁵¹; or supplying a specific ethnic group with special protection²⁵². What appears is that in European states' constitutions, a constitutional recognition of diversity is not always intended to match minority rights protection, as meant in international instruments. The reason of this distinction can be found in the different historical and socio-political developments of each State regarding linguistic, cultural and ethnic diversity within its territory.

²⁴⁹ “The Belgian Constitution only implicitly recognizes linguistic communities, through the creation of an institutional framework based on linguistic divisions. Belgium is described in the Constitution as a federal state composed of three “Regions” and three “Communities” (Article 1), the latter being defined by reference to a language group: the three Communities are the “French Community”, the “Flemish Community” and the “German-speaking Community” (Article 2).” J. RINGELHEIM, *Minority Protection and Constitutional Recognition of Difference. Reflection on the Diversity of European Approaches*. In: editors, A. VERSTICHEL, A. ALEN, B. DE WITTE, and P. LEMMENS, *The Framework Convention for the Protection of National Minorities: a useful Pan-European instrument?* Antwerp; Portland, OR.: Intersentia; Portland: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 35-36

²⁵⁰ “The Spanish Constitution expressly acknowledges the presence of various cultural groups, stating in its preamble that the “Spanish Nation [...] protects all Spaniards and peoples of Spain in the exercise of human rights, their cultures and traditions, languages, and institutions.” Moreover, it guarantees the “right to autonomy” of nationalities and regions: “provinces with common historical, cultural and economic characteristics” are entitled to constitute themselves into “autonomous communities” which assume competences in a range of domains listed in the Constitution. By application of this provision, seventeen autonomous communities with varying degree of autonomy have been constituted.” J. RINGELHEIM, *Minority Protection and Constitutional Recognition of Difference. Reflection on the Diversity of European Approaches*. In: editors, A. VERSTICHEL, A. ALEN, B. DE WITTE, and P. LEMMENS, *The Framework Convention for the Protection of National Minorities: a useful Pan-European instrument?* Antwerp; Portland, OR.: Intersentia; Portland: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 36

²⁵¹ “[...] international minority protection emerged precisely with respect to this region, most notably with the post-World War I “minority treaties” system established under the League of Nations. More recently, in the context of European Union enlargement, Central and Eastern European countries were required by the EU to provide adequate protection for minorities in their legal system, minority rights being on the Copenhagen criteria for accession.” J. RINGELHEIM, *Minority Protection and Constitutional Recognition of Difference. Reflection on the Diversity of European Approaches*. In: editors, A. VERSTICHEL, A. ALEN, B. DE WITTE, and P. LEMMENS, *The Framework Convention for the Protection of National Minorities: a useful Pan-European instrument?* Antwerp; Portland, OR.: Intersentia; Portland: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 37

²⁵² “[...] the Slovenian Constitution recognizes the Italian and Hungarian “autochthonous national communities” as well as the “Romany community”, and affords them special rights. The Finnish Constitution guarantees the right of “the *Sami*, as an indigenous people, as well as the *Roma* and *other groups* [...] to maintain and develop their own language and culture.”” J. RINGELHEIM, *Minority Protection and Constitutional Recognition of Difference. Reflection on the Diversity of European Approaches*. In: editors, A. VERSTICHEL, A. ALEN, B. DE WITTE, and P. LEMMENS, *The Framework Convention for the Protection of National Minorities: a useful Pan-European instrument?* Antwerp; Portland, OR.: Intersentia; Portland: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 36

The Framework Convention on the Value of Cultural Heritage, the so called Faro Convention of 2006²⁵³, has raised different critics. One of the main opposition trends deals with the question of whether carrying into effect the Convention would affect the existing balance established between the different ethnic communities present within a State. One of the opponents in this sense is Belgium, which “fear that the principle of territoriality, which constitutes the organic principle of Belgium’s federal structure, would be incompatible with the Framework Convention”²⁵⁴. One of the main problem in the European context is in fact this connection with territoriality and the tendency to promote homogeneous linguistic zones and assimilation of regional minorities. Instead, the concept of minority as protected by international instruments, is intended to guarantee basic rights to individuals belonging to minority independently from their place of living. “[...] these two approaches are not necessarily incompatible: mirroring the relation between minority rights and the nation-state model, international minority norms can be seen as a corrective against the excesses of the territoriality principle. They do not preclude states from establishing far-reaching language-based territorial autonomies, but endeavor to achieve a better balance between majority and minority groups, and protect the ability of those who find themselves in the minority to also preserve their culture or language.”²⁵⁵ Even the reference to a specific community to safeguard in a national Constitution can result in a subtle discrimination, or at least disadvantage, of other minorities present in the state. This distinction was criticized by the Advisory Committee of the Framework Convention, especially concerning some specific cases such as the Slovenian Constitution²⁵⁶.

²⁵³ The Convention entered into force in June 2011. The principle of the Convention is the idea that knowledge and understanding of heritage are an important element of a person’s right to take part in cultural life, as mentioned in the Universal Declaration of Human Rights. The Convention shows how heritage is important for human development, the promotion of cultural diversity, and the fostering of intercultural comprehension.

²⁵⁴ J. RINGELHEIM, *Minority Protection and Constitutional Recognition of Difference. Reflection on the Diversity of European Approaches*. In: editors, A. VERSTICHEL, A. ALEN, B. DE WITTE, and P. LEMMENS, *The Framework Convention for the Protection of National Minorities: a useful Pan-European instrument?* Antwerp; Portland, OR.: Intersentia; Portland: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 40

²⁵⁵ J. RINGELHEIM, *Minority Protection and Constitutional Recognition of Difference. Reflection on the Diversity of European Approaches*. In: editors, A. VERSTICHEL, A. ALEN, B. DE WITTE, and P. LEMMENS, *The Framework Convention for the Protection of National Minorities: a useful Pan-European instrument?* Antwerp; Portland, OR.: Intersentia; Portland: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 41

²⁵⁶ “The Slovenian state claims that only the groups mentioned in its Constitution, namely the Hungarian, Italian and Roma communities, constitute “minorities” in its legal system. It argues, therefore, that the personal scope of the Framework Convention in Slovenia is confined to persons belonging to these three groups [...] It refuses in particular to consider ethnic communities of persons originating from other parts

What the European Union can do to support cultural protective measures desired by the States, is to perform incentive measures in form of “multi-annual funding programmes through which the European Union supports projects proposed either by the Member States authorities or by private actors and organizations within the framework of policy objectives set at the European level.

of the former Yugoslavia as minorities. In practice, these so-called “new-minorities” – ethnic Serbs, Croats, Bosnians, Kosovo Albanians and Roma from Kosovo and Albania – greatly outnumber the traditional Italian and Hungarian national communities, and have reported some governmental and social discrimination.” In: J. RINGELHEIM, *Minority Protection and Constitutional Recognition of Difference. Reflection on the Diversity of European Approaches*. In: editors, A. VERSTICHEL, A. ALEN, B. DE WITTE, and P. LEMMENS, *The Framework Convention for the Protection of National Minorities: a useful Pan-European instrument?* Antwerp; Portland, OR.: Intersentia; Portland: Distribution for the USA and Canada, International Specialized Book Services, c2008. Page 42

Conclusion

As we presented in this work, the United States as a nation were firstly created by seventeenth and eighteenth century white, British, Protestant settlers. United States of America, as a nation and an ideal, have been shaped by their values, institutions and culture. In the late nineteenth century, however, new ethnic components arrived as immigrants to widen the nation's identity, until in the last sixty years the importance of ethnicity disappeared in order to become an element of national identity. After the accomplishment of the civil rights movement and the Immigration and Nationality Act of 1965, Americans identify their nation as multiethnic and multiracial. "Key elements of that culture include the English language; Christianity; religious commitment; English concepts of the rule of law, including the responsibility of rulers and the right of individuals; and dissenting Protestant values of individualism, the work ethic, and the belief that humans have the ability and the duty to try to create a heaven on earth, a "city on a hill". Historically, millions of immigrants were attracted to the United States because of this culture and the economic opportunities and political liberties it made possible."²⁵⁷

In the last decades of the twentieth century, ideas of multiculturalism and diversity have become a challenge for the national integrity, stressing the peculiarity of race, ethnicity, and gender over nationality. One of the main challenges for American society is the massive immigration flow from Latin America, in particular from Mexico. The degree and nature of this flow is completely different from previous immigrations. At the beginning of the nation's history, in the mid-nineteenth century, the main stream of immigrants came from English speaking British Isles. The first half of the twentieth century was characterized by an highly diversified linguistic immigration, with people coming from different European countries. Now, for the first the time in American history, most of the immigrants arriving in the nation are concentrated in a single, non-English language. The growing communities of immigrants allow Spanish speakers in most of the states and bigger cities to live without knowing English.

"Massive Hispanic immigration affects the United States in two significant ways: important portions of the country become predominantly Hispanic in language and

²⁵⁷ S. P. HUNTINGTON, *The Hispanic Challenge*. Foreign Policy, No. 141 (Mar. – Apr., 2004). page 31-32

culture, and the nation as a whole becomes bilingual and bicultural.”²⁵⁸ This growth of Hispanic presence in the United States does not create an impulse for cultural assimilation. As the number of Latin immigrants grows they no longer perceive themselves as a minority, but become stronger in their ethnic identity and culture.

As we have seen in the first chapter, this major flow is creating problems in some specific states, particularly in the southeast of the country, where immigrants constitute a novelty and represent a threat for the traditional southern culture. Newcomers are said to steal jobs from the native Americans, to bring criminality and tensions, and to stop the regular development of the area.

In the second chapter, we presented and analyzed few international conventions and instruments related to the safeguard of culture and intangible cultural heritage. In particular, we considered the 2003 Convention on the Safeguarding of the Intangible Cultural Heritage, the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and, for what concerns the protection of human rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the jurisprudence of the Inter-American Court in matters of discrimination. As we saw, difficulties to define the concept of culture underline all those instruments, and bind together the conventions in order to find the best way to protect and promote this valuable concept, keeping in mind the important connection with human rights and minorities protection. What emerges is a new developing trend which stresses for the recognition on cultural rights and intangible cultural heritage as something to treasure, foster and encourage, especially in the so called developing country and regarding issues of national minorities. It is such an awareness that can help disguise the advancement of globalization and preserve the peculiarity of all the population of our world.

In the third chapter we returned to the United States and in particular our study case, North Carolina. We separated issue regarding legislation and culture, in order to find out strengths and deficiencies of the promotion and protection of a minority’s culture. What we learned is a spread of discriminatory feeling, that reflects on legislations, institutions, and everyday life. Generally speaking, it is clear that public opinion has accepted restrictions of fundamental liberties in the name of national security, in

²⁵⁸ S. P. HUNTINGTON, *The Hispanic Challenge*. Foreign Policy, No. 141 (Mar. – Apr., 2004). Page 40

particular after the terrorist attack of September 11, 2001. Enforcement-only provisions have been taken in order to stop immigration flow and impede a normal life style. More than policies addressed at cultural inclusion and protection, we found exclusionary and xenophobic measures, mainly addressed at solving the problem of illegal immigrants. Sometimes these measures are clearly discriminatory, such as the 187 Provision, and the analyzed 287(g) Program, that induced many local authorities to search for illegal immigrants through discriminatory means.

We therefore established how integration and comprehensive measures are mostly undertaken by local and non-profit organizations and groups, working on the territory and dealing with everyday problems and concerns of newcomers in the region. Those institutions are the one driving a new understanding and development of measures intended at the integration in the new country, and at the same time, protection of the original culture. They help immigrants in education, health, and institutional issues, as well as integration and the remembrance of culture and language, becoming a bridge between tradition and the new land.

We mentioned how the difficult relationship of the United States with the UNESCO impedes an implementation and comprehension of the measures regarding culture promotion and protection, and a brief comparison with the European situation showed how the two different approaches create different consequences and understanding of the immigration process.

Considering all these issues, and keeping in mind the new developments undertaken by president Obama to “fix the immigration system”²⁵⁹, we can conclude that the new flow of immigration is consistently changing the American identity idea, and that measures providing for a cultural understanding should be taken in order not to be overwhelmed by the newcomers, or, as S.P. Huntington puts it: “Continuation of this large immigration (without improved assimilation) could divide the United States into a country of two languages and two cultures. [...] The transformation of the United States into a country like these would not necessarily be the end of the world; it would, however, be the end of the America we have known for more than three centuries. Americans should not let that change happen unless they are convinced that this nation

²⁵⁹Remarks by the President in Address to the Nation on Immigration. Available at <http://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>

would be a better one.”²⁶⁰ In particular the role of UNESCO and other international instruments should help the United States to embrace a broader view on the issue of cultural and minority protection.

²⁶⁰ S. P. HUNTINGTON, *The Hispanic Challenge*. Foreign Policy, No. 141 (Mar. – Apr., 2004). Page 45

Bibliography

edited by E. ASHBEE, H. B. CLAUSEN, AND C. PEDERSEN. *The politics, economics, and culture of Mexican-U.S. migration: both sides of the border*. New York: Palgrave Macmillan, 2007

edited by K. ATSUSHI, *Migration and Globalization. Comparing Immigration Policy in Developed Countries*. Tōkyō: Akashishoten, 2008

J. BLAKE, *Commentary on the UNESCO 2003 Convention on the Safeguarding of the Intangible Cultural Heritage*. Leicester: Institute of Art and Law, 2006

edited by S. BORELLI and F. LENZERINI, *Cultural heritage, cultural rights, cultural diversity: new developments in international law*. Leiden; Boston: Martinus Nijhoff Publishers, 2012.

Edited by L. BURGORGUE-LARSEN AND A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights. Case law and commentary*. Oxford; New York: Oxford University Press, 2011.

E. W. CALDWELL JR, *The North Carolina Sheriffs' Association's Perspective on the 287(g) Jail Enforcement Model*. Popular Government.

Edited by J. CIMENT, AND J. RADZILOWKI, *American Immigration: an Encyclopedia of Political, Social, and Cultural Change*. Armonk, New York: M.E. Sharpe, 2013

D. M. CUTLER, E.L. GLAESER, J.L. VIGDOR, *Is the Melting Pot Still Hot? Explaining the Resurgence of Immigrant Segregation*. *Review of Economics and Statistics* 90.3 (August, 2008).

G. DE LA DEHESA, *What Do We Know About Globalization? Issues of Poverty and Income Distribution*, Malden, MA, Blackwell, 2007

D. L. DELAET, *U.S. immigration policy in an age of rights*. Westport, Conn.: Praeger, 2000

S. R. DENNING, *The Impact of North Carolina Driver's License Requirements and the REAL ID Act of 2005 on Unauthorized Immigrants*. *Popular Government*, vol. 74, no. 3. Online Supplement. Spring/Summer 2009.

Document UN, *Teaching, education, culture and information as means of eliminating racial discrimination. Implementation of the International Convention on Elimination of All Forms of Racial Discrimination, Article 7*. New York: United Nations, 1985

Department of Homeland Security, *The Performance of 287(g). Report Update*. September 2010

L. FINK, *The Maya of Morganton: work and community in the nuevo new south*. Chapel Hill : University of North Carolina Press, c2003

C. FORREST, *International Law and the Protection of Cultural Heritage*. London; New York: Routledge, 2010

M. T. GARCÍA, *The Latino generation: voices of the new America*. Chapel Hill : The University of North Carolina Press, 2014

H. GILL, *Going to Carolina del Norte: Narrating Mexican Migrant Experiences*, Chapel Hill, NC, UNC Press, 2006

H. GILL, *Latinos in North Carolina, a growing part of the State economic and social landscape*. Chapel Hill, NC: UNC Press, 2012

H. GILL, *The Latino Migration Experience in North Carolina. New Roots in the Old North State*. Chapel Hill, NC, UNC Press, 2010

edited by E. M. GOZDZIAK and S. F. MARTIN, *Beyond the gateway: immigrants in a changing America*. Lanham, Md. : Lexington Books, c2005

J. HAMPSHIRE, *The Politics of Immigration. Contradictions of the Liberal State*. Cambridge, UK: Polity, 2013.

edited by D. L. D. HEYCK, *Barrios and Borderland: cultures of Latinos and Latinas in the United States*. New York : Routledge, 1994.

S. P. HUNTINGTON, *The Hispanic Challenge*. Foreign Policy, No. 141 (Mar. – Apr., 2004).

W. KYMLICKA, *Multicultural Citizenship*, Oxford Political Theory, 1996

edited by T. KONO, *The impact of uniform laws on the protection of cultural heritage and the preservation of cultural heritage in the 21st century*. Leiden; Boston: Martinus Nijhoff Publishers, 2010

edited by T. KONO, S. VAN UYTSEL, *The UNESCO Convention on the Diversity of Cultural Expressions: a tale of fragmentation in international law*. Cambridge [UK]; Portland [OR]: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2012

L. J. KRUCKENBERG. *The UNreal world of human rights. An ethnography of the UN Committee on the Elimination of Racial Discrimination*. Baden-Baden: Nomos, 2012

edited by A. LOWREY BLAIR with Student Action with Farmworkers and the Center for Documentary Studies. *Nuestras historias, nuestros sueños: inmigrantes latinos en las carolinas*. Durham, N.C.: Center for Documentary Studies at Duke University in association with Student Action with Farmworkers, c2008

E. MARTIN, *Down Mexico Way*. Business North Carolina, May 2006.

P.D. MCCLAIN AND J. STEWART, JR., "*Can We All Get Along?*" *Racial and Ethnic Minorities in American Politics 6th edition*. Boulder, Westview Press, 2014

P.D. MCCLAIN, G.F. LACKEY, E. O. PERÉZ, N. M. CARTER, J. J. CAREW, E. WALTON, JR., C. S. WATTS, MONIQUE L. LYLE, S. C. NUNNALLY, "*Intergroup Relations in Three Southern Cities*." *Just Neighbors? Research on African American and Latino Relations in the United States*.. Ed. Edward Telles, Gaspar Rivera-Salgado and Sylvia Zamora, editors. Russell Sage Foundation, 2011

C. MEDINA, *The American Convention on Human Rights. Crucial Rights and their Theory and Practice*. Cambridge, United Kingdom; Antwerp: Intersentia, [2014] Portland, OR: International Specialized Book Services

E. MEYERS, *International immigration policy. A theoretical and comparative analysis*. New York: Palgrave Macmillan, 2004.

D. MONTGOMERY, *An Anthem's Discordant Notes*. The Washington Post, Friday, April 28, 2006. Available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/27/AR2006042702505.html>

Edited by M. M. NGAI, and J. GJERDE, *Major Problems in American Immigration History*. Boston, MA: Wadsworth, Cengage Learning, 2013.

edited by N. OBULJEN and J. SMIERS, *UNESCO's Convention on the Protection and the Promotion of the Diversity of Cultural Expressions: making it work*. Zagreb: Institute for International Relations, 2006

edited by M. E. ODEM and E. LACY, *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009

K. O' NEIL, M. TIENDA, *A Tale of Two Counties: Natives' Opinions Toward Immigration in North Carolina*. *International Migration Review*, Volume 44 Number 3 (Fall 2010): 728-761

K. M. PARKER, *The Constitution, Citizenship, and Immigration in American History, 1790-2000*. Washington, D.C.: American Historical Association, 2013.

J. M. PASQUALUCCI, *The practice and procedure of the Inter-American Court of Human Rights*. Cambridge, U.K.; New York: Cambridge University Press, 2003

A. PIN, *Where the Streets Have No Name: Immigrants, National Identities, and the Consequences of a Narrow Universalism*, October 2012

J. L. PINNIX, *Foreword and Commentary on the Impact of Immigration on the Legal Community in North Carolina*. *Campbell Law Review*. 29 no 2, Winter 2007

edited by L. RICHIERI HANANIA, *Cultural diversity in international law : the effectiveness of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. Milton Park, Abingdon, Oxon; New York, NY: Routledge, 2014

G. RITZER, *Globalization: a basic text*, Singapore, Wiley-Blackwell 2011

R. RUBIN and J. MELNICK, *Immigration and American popular culture: an introduction*. New York : New York University Press, c2007

K. SANNEH, *A Protest Song of Sorts, to a Very Familiar Tune*. *The New York Times*, May 1, 2006. Available at: http://www.nytimes.com/2006/05/01/arts/music/01note.html?_r=2&

T. SCOVAZZI, B. UBERTAZZI, L. ZAGATO, *Il patrimonio culturale intangibile nelle sue diverse dimensioni*. Milano, Giuffrè, 2012

edited by L. SMITH, P. A. SHACKEL AND G. CAMPBELL, *Heritage, labour and the working classes*. London; New York: Routledge, 2011

edited by H. SCHNEIDER and P. VAN DEN BOSSCHE, *Protection of cultural diversity from a European and international perspective*. Antwerpen: Intersentia; Portland, OR: Distribution for the USA and Canada, International Specialized Book Services, c2008

edited by M. L. STEFANO, P. DAVIS, and G. CORSANE, *Safeguarding Intangible Cultural Heritage*. Boydell Pr, 2012

edited by M. L. STIG SORENSEN AND J. CARMAN, *Heritage Studies. Methods and Approaches*. London; New York: Routledge, 2009

Edited by E. TELLES, M. Q. SAWYER and G. RIVERA-SALGADO, *Just neighbors? Research on African American and Latino relations in the United States*. New York: Russell Sage Foundation, c2011.

UNITED STATES. CONGRESS. HOUSE. COMMITTEE ON HOMELAND SECURITY. *Examining 287(G). The role of state and local law enforcement in immigration law. Hearing before the Committee on Homeland Security, House of Representatives, One Hundred Eleventh Congress, first session, March 4, 2009*. Washington: U.S. G.P.O.: For sale by the Supt. of Docs., U.S. G.P.O., 2010

UNITED STATES. DEPARTMENT OF HOMELAND SECURITY. OFFICE OF INSPECTOR GENERAL. *The performance of 287(g) agreements*. 2010

editors, A. VERSTICHEL, A. ALEN, B. DE WITTE, and P. LEMMENS, *The Framework Convention for the Protection of National Minorities: a useful Pan-European instrument?* Antwerp; Portland, OR.: Intersentia; Portland: Distribution for the USA and Canada, International Specialized Book Services, c2008

J.L. VIGDOR, *From Immigrants to Americans: The Rise and Fall of Fitting In*. December, 2009

J.L. VIGDOR, *Locations, Outcomes, and Selective Migration*. Review of Economics and Statistics 84.4 (November, 2002): 751-755.

H. WINANT, *The New Politics of Race: Globalism, Difference, Justice*. Minneapolis, University of Minnesota Press, 2004

edited by S. WORTHAM, E. G. MURILLO, Jr., AND E. T. HAMANN, *Education in the new Latino diaspora : policy and the politics of identity*. Westport, Conn.: Ablex Pub., 2002

L. ZAGATO, a cura di, *Le identità culturali nei recenti strumenti UNESCO. Un approccio nuovo alla costruzione della pace?* Padova, Cedam, 2008

Websites

UNESCO: www.unesco.org/culture

www.immigrationpolicy.org

www.immigrationimpact.org

www.archives.gov/exhibits/charters/bill_of_rights_transcript.html

http://people.sunyulster.edu/voughth/quota_laws.htm

<http://immigrationinamerica.org/577-illegal-immigration-reform-and-immigrant-responsibility-act-of-1996.html>

www.businessnc.com/archives/2006/05/mexico_way.html

<http://www.immigrantsolidarity.org/news.shtml>

<http://www.ncsl.org/research/immigration/state-laws-related-to-immigration-and-immigrants.aspx>

http://www.huffingtonpost.com/warren-j-blumenfeld/english-only-laws-divide-_b_2141330.html

ICE Suspends Enforcement of 287(g) in North Carolina County. September 19, 2012. Available at: <http://latino.foxnews.com/latino/news/2012/09/19/ice-suspends-enforcement-287g-in-north-carolina-county/>

End the 287(g) Immigration Enforcement Program. (December 2012). Available at: https://www.aclu.org/files/assets/dec_2012_terminate_287g_sign-on_final_sent.pdf

U.S. Department of State, *About the U.S. and UNESCO*. Available at <http://www.state.gov/p/io/unesco/usunesco/>