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Abstract

The right to food is a complex right. It is a human right, closely connected to the right to life, but it is also an economic and a cultural right. This complex nature influences its legal protection, even at a constitutional level, especially with reference to the cultural aspect involving not only the quantity (a sufficient level of nutrition) but also the qualitative perspective (an adequate level of nutrition). The protection of the right to food, even under the cultural profile, refers to two different concepts, that some consider complementary, but others consider alternatives: RtAF (the Human Right to Adequate Food) and Food Sovereignty. The first one dates to the Universal Declaration of human rights that declares in Article 25 that it is a fundamental human right, instrumental to a dignified life. It implies the possibility for every person to have access to healthy nutrition, safe and adequate in terms of both quality and quantity. The second one can be synthesised as the right of people, communities and countries to define and to determine their own (national) food and agricultural system, as well as to carry out policies that include agricultural production for the local market. This is clearly stated in certain constitutions or national legislative provisions (Venezuela-2008, Senegal-2004, Mali-2006, Nicaragua-2009, Ecuador-2009, Nepal-2009, Bolivia-2009). In the light of both these concepts, the right to food—even in terms of quality and hence culture—appears to be a human right (and, therefore, indefeasible) more than an economic right.

1 Introduction. The Complex Nature of the Right to Food and Its Relationship with Food Diversity

The relationship between the right to food, understood as alleged legally relevant and food diversity, observed from the cultural point of view and in its connections with the right to health and with the personal freedom of the individual, is not immediately perceptible and requires a reflection from a semantic point of view.

Food is a natural/material element/ but is also *res non naturales* because it is the outcome and the representation of “cultural processes that involve the domestication, transformation, the reinterpretation of what is present in nature”.¹ Food is also “culture” because it is produced, prepared and consumed: people do not restrict themselves to use what is available but create their own food, selecting plant varieties that they intend cultivating and rotate, replace or favour the production of crops instead of predation. Firstly, they choose what to eat based on economical, nature-nutritional and symbolic criteria²: in fact the socio-cultural context about food implies that not everything that is edible and nutritious is also socially, culturally and psychologically acceptable. Then the base-products are processed through the more simple or sophisticated culinary techniques, even those closely related to cultural and/or religious traditions.³ All these considerations can be summarised in the concept of the omnivore’s dilemma, that dates to the writings of Rousseau and Brillat-Savarin, but it was officially singled out and identified as such by Paul Rozin. In his article entitled “The selection of Foods by Rats, Humans, and Other Animals”,⁴ he compared the existential condition of omnivores, such as rats and man, with that of animals with selective eating habits. Not omnivores animals have no doubt about what to eat since their preferences are genetically-determined and the natural and instinctive mechanisms function perfectly because their digestive systems are able to extract every thing the body needs from a small

range of foods. Omnivores (such as man), on the other hand, must dedicate time and thought to try to understand which of the innumerable foods offered by nature can be eaten without risk. The “feelings” of neophobia (the fear of eating an unknown substance) and neophilia (the desire to try a new taste) are totally unknown in animals with a specific diet. The fact of being omnivorous and, therefore, generalist, is both an advantage and a challenge because the “flexibility” has allowed human beings to colonise all the habitats of the globe and adapt to all the different types of food offered but on the other hand, omnivores must spend time and energy understanding what to eat based on “what is good”, and “what is bad”. Individuals base themselves on culture and traditions that preserve the accumulated knowledge and experience of innumerable “tasters” who have gone before them. Culture codifies the rules of a prudent diet with a complex series of taboos, rituals, recipes, rules and traditions so it permits human beings to solve the omnivore’s dilemma. It was emphasised that “Eating is a daily reaffirmation of [one’s] cultural identity”, to address the influence of food habits on an individual’s self-identity.⁵ Therefore, it is clear that from the origin the cultural/immaterial element in food is indissolubly tied in with the material one. The interlacement between matter and culture complicates the relationship between food and person also in the perspective of a legal framework that can be configured in terms of legitimate claim. Following the classification more accredited by philosophers of law,⁶ the right to food can be classified between those of the fourth or fifth generation: which generates additional complexity, because it could condemn it to replace others, instead of integrating or specifying them.⁷ It is obvious that it is not a “new” right but rather a growing awareness about a claim linked to an inviolable and consolidated right, such as the right to life and to personal integrity, as will become clearer when the explicit or implicit constitutional recognition of the right to food is discussed. The difficulty of pigeon-holing it within a “generation” of rights adds the problem of its physiologically composite structure: on the one hand, a fundamental human right that is instrumental to the enjoyment of other fundamental rights; on the other, a cultural right (closely related to food choice—qualitative aspect); finally an economic right in the dual sense of performance (with reference to the right to receive the minimum nutrition at subsistence level- quantitative aspect) and economic freedom, linked to trade in food stuffs, intended as an exchange commodity.

Under the latter profile, some have seen yet again that the right to food should be the most fundamental and concrete of economic rights⁸ since most of the food consumed has a market value, also the food would be worth double to producers in connection to use (self-supply) and the value of the exchange. According to Spitz, “this dual nature is reflected in pairs of opposing elements at different levels of reality and analysis: commodity and basic needs, forces of extraction and forces of retention, market and self-provisioning, extortion performed by some social groups (landlords v tenants ... omissis) and redistribution within certain social configurations ... omissis, exploitation and solidarity, economic realism and moral outrage, economic laws and human rights”.⁹ There is no doubt that the complexity of the relationship between human beings and nutrition has gradually been recognised by law: in fact, a conception of the right to food because of the guarantee of its fundamental components (see infra chapter “The Right to Food and Food Diversity in the Italian Constitution”): sufficiency and adequacy is deeply-rooted at international level. The first has a quantitative nature, even if articulated, being correlated to time coordinates—how many times a day you must eat—and physiological—the amount depends on constitution, age, sex and the type of activity carried out by an individual. It evokes the act of feeding (versus eating), closely connected with the right to survival (more than to life n.d.r.).¹⁰ The second allows into the discussion on the right to food both the socio-cultural elements mentioned above (socio-cultural adequacy) and the qualitative elements (adequacy of diet) that presuppose the recognition of food diversity as a necessary condition for the development of adequate food. In fact, the impoverishment of food diversity results in an impoverishment of the right to food under the qualitative profile because it reduces the possibility of choice and therefore the possibility of identifying a varied diet, but it even stifles the cultural dimension.

This basic consideration constitutes a fundamental connection between the issue of the right to food and the protection of the environment and, in particular, of biodiversity, which represents the necessary presupposition to food diversity, an environmental frame functional to the elaboration of a varied diet and corresponding to the complex needs of individuals. On the one hand, in fact, food diversity responds to the need of “adequacy” under the qualitative profile of food (leading therefore to the principle of food health), whereas on the other hand it refers to a cultural requirement in the broader sense (and therefore even a religious one) that induces the development of food choices of a certain type. Some authors¹¹ coined the term “food habits” (also known as food culture or foodways) to describe the way humans use food, including everything from how it is chosen, acquired, and distributed to who prepares, serves, and eats it. They stated that the significance of the food habits process is that it is unique to human beings. They pondered why people spend so much time, energy, money, and creativity on eating. In this sense the theme is intertwined with that of agro-biodiversity i.e. diversity of cultivated species in agriculture, to which the cultural factor contributes heavily and the need to protect the agro/cultural heritage of certain communities who traditionally cultivate and consume certain products deemed appropriate to their socio-cultural roots. But it is also the connecting link with the issue of protection of agrobiodiversity because the decrease of plant varieties interweaves perversely with spontaneous or forced abandonment of local agricultural techniques, often heritage of minority territorial communities, inevitably results in the impoverishment of food diversity, with an important impact on human health.¹² In this essay the dangers deriving from the impoverishment of biodiversity and their effects on supply can only be mentioned, this danger has been underlined several times and in numerous documents from FAO.¹³ Modern agriculture has the tendency to standardise species of plants or animals with great efficiency, which results in a huge loss of genetic variety: in the last century three quarters of the genetic diversity of agricultural crops and out of 6300 animal varieties 1350 are in danger of extinction or are already extinct. The same Agency observes how the abandonment of the production of local traditional foods often translates into a reduction of the variety of food. Partially, but only partially, the trend can be justified by invoking the objective of “nourish the planet,” which is one of the Millennium objectives,¹⁴ because biodiversity in relation to food and agriculture is essential to eradicate hunger in a permanent manner, to improve the quality of life and to ensure sustainability in food while increasing the production of food.

2 What Protection for a Complex Right? The Debate at International Level Between RtAF (the Human Right to Adequate Food), Food Sovereignty and the Incorporeal (Intangible) Cultural Heritage of Humanity

The instruments for the protection of food diversity that single countries have adopted remain differentiated, probably because of the physiological complexity, and will remain so until the concept of a holistic right to food is definitively consolidated, including both quantity and quality and, finally, the cultural aspect.

However, the choices at national level coincide with the international debate on concepts such as the human right to adequate food, food sovereignty or once again with the protection of food as incorporeal heritage of humanity.¹⁵

2.1 The RtAF

To fully understand the meaning of the RtAF (the Human Right to Adequate Food) it is necessary to only briefly recall that the first international recognition of the right to food dates to the Universal Declaration of Human Rights that in Art. 25 declares that it is a fundamental human right, instrumental to a dignified life. It implies the possibility of every person to have access to healthy, nutritious, safe and adequate food both from a quantitative and qualitative point of view. In fact, the right to food is composed of two complementary elements: that of food availability and that of the accessibility of the same.¹⁶ The availability, according to the definition that offers the Committee for economic, social and cultural rights, must be understood as the possibility to draw its food

supply directly from the ground or from other natural resources, or to have available distribution, processing and market systems operating and capable of transporting food products from the place of production to the one in which they are needed in the light of the question. Regarding the profile of accessibility, the same committee has stated that it is the physical and economic possibility of every individual to procure food in sufficient quantity. The sufficiency is not simply and reductively the quantitative dimension (minimum ration of calories) but qualitative, with reference to the adequacy of food compared to their own needs and their own culture, to the need to ensure a combination of elements that guarantee physical and mental growth, development and sustenance, physical activity. Everything in accordance with the physiological needs of human beings at all stages of life, according to sex and occupation. In this perspective food safety becomes fundamental, not only in the sense of certainty of access to food, enduring in time but also of the necessity of every individual to have access to healthy and secure food. In the International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly on 16 December 1966, which came into force 10 years later, the Member States made the commitment to take every measure aimed at improving the methods of production, conservation and distribution of foodstuffs by the full application of scientific and technical knowledge, the spread of ideas relating to the principles of nutrition and the development or the reform of the agrarian regimes to achieve growth and use natural resources more efficiently. Subsequently, during the World Food Summit of the United Nations, the Rome Declaration on food safety was signed and a plan of action set out that reiterated the need for a commitment of member countries to implement policies aimed at ensuring a nutritionally adequate supply of food. The Committee for Economic, social and cultural rights in Observation générale n. 12 of May 1999 interpreted Article 11 of the International Covenant on Economic, social and cultural rights by attributing a cultural connotation to the expression “adequate supply”: “availability of food in sufficient quantities and quality to meet physiological needs, free of harmful substances and acceptable within each culture” (§6).

The cultural element, referred to the right to food, is further strengthened in the debate within the United Nations Commission on Human Rights, in the years following the resolution 2000/10 of April 2000, with which the right to food obtains its definitive consecration as the “right to have regular, permanent and free access, both directly and through monetary purchase, to an adequate and sufficient supply, qualitatively and quantitatively, corresponding to the cultural traditions of the people of whom the consumer is part and is capable of ensuring a physical and mental life, both individual and collective, which is free from anguish, satisfactory and worthy of living”.

On the other hand, the implementation of the right to food involves the implementation of policies to promote the ability of the state communities to “autonomously provide for their food needs”, improving the methods of production, preservation and distribution but also by improving employment prospects through agricultural reforms for the benefit of those who do not possess land. The connection between the international recognition of the right to food and the protection of agro-biodiversity is well shown in the Declaration of Cordoba, submitted on 10 December 2008, during the 60th anniversary of the Universal Declaration of Human Rights, which refers explicitly to the results of the evaluation on international science, knowledge and agricultural technology for development adopted by the World Bank and the FAO and signed by 60 countries in April 2008. To fight the food crisis in the world and for its sustainability, the need for a complementary approach and diversified agriculture is recognised in this document, and it stresses that agricultural models based on small plantations may represent the right alternative to a food security based on human rights. Among the factors the declaration indicates as more worthy of attention there is: the lack of protection of small community landowners and indigenous peoples against the agro-industrial plantations; the agricultural reforms are insufficient to guarantee the lands in favour of poor rural communities, of indigenous peoples, agricultural workers, especially women; the lack of support for small scale production of foodstuffs in relation to access and control of seeds, water, infrastructure, information, credit and marketing; the excessive emphasis on international trade in agricultural products, to the detriment of local markets for local crops, which respond to the local needs and

eating habits; the lack of safeguards to prevent abuse and the negative consequences of the excess of intellectual property rights on seeds; the excessive emphasis on the forms of agricultural production based on a high level of external inputs to the detriment of local crops; the lack of recognition and valorisation of food cultures and of traditional cultivations, which determine the marginalisation and the underutilisation of the same; the lack of adequate protection against the loss of bio-diversity caused by the expansion of monoculture in the production of food; the lack of recognition of the need for interventions/individual solutions for the distinct agro-ecological conditions, the distinct local cultural traditions and different levels and types of national development.

These last considerations justify the tendency to recontextualise international policies about the right to food and thus the fight against hunger, which is one of the eight Millennium Goals: the real problem is not food scarcity but the un fair distribution of the same, besides its inadequate quality, which, associated with the phenomenon of malnutrition, cannot be contrasted simply by introducing massive cultivations to the detriment of indigenous agricultural systems.

2.2 Food Sovereignty

The concept of RtAF has recently been compared and contrasted to that of Food Sovereignty¹⁷ which is to be found in some constitutions or national legislation (Venezuela-2008, Senegal-2004, Mali-2006, Nicaragua-2009, Ecuador-2009, Nepal-2009, Bolivia-2009). The principle of food sovereignty draws its origins from the document “Food Sovereignty: A future without hunger” drawn up in 1996 by the international movement of farmers, called “Via Campesina” and even if it has undergone various adjustments and modifications,¹⁸ it still can be summarised as the right of persons, communities and Member States to define and determine their own (national) food and agricultural system, as well as that of implementing policies that favour their domestic agricultural produce in both local and national markets. The concept was then assimilated by social organisations and civil and non-governmental organisations that believe that it is instrumental in fighting the problems that lead to the abandonment of small-scale farming and to hunger and poverty in rural areas. Paradoxically it is the small food producers who suffer hunger: the majority of the population in food deficit lives in developing countries especially in rural areas and is directly or indirectly connected to agriculture.¹⁹ According to the supporters of food sovereignty this paradox is explained by structural adjustments imposed by the World Bank and the International Monetary Fund, as well as the international agreement on agriculture specified in April 1994 within GATT, as the outcome of the so-called Uruguay Round, launched in Punta del Este in 1984 and concluded in 1994, with the creation of the World Trade Organization. Structural adjustment measures laid down there in have led to the privatisation and the reduction of state support for the agricultural sector in developing countries while leaving the small farmers in a vulnerable situation. The liberalisation of the agricultural sector in developing countries has, in fact, resulted in national markets being flooded with very cheap agricultural produce imported from industrialised countries. The conviction that global food security could be achieved through the control of the private sector only in agriculture²⁰ has led to the concentration of power in the agricultural process and in trade, the creation of international oligopolies and finally to market failure.²¹ The structural adjustment policies combined with economic liberalisation have led to a worsening of the conditions of production for farmers in developing countries. Often it has become impossible for farmers to compete with the low prices of subsidised imports of agricultural products and has pushed the peasants to poverty or the abandonment of their farms.²² The concept of food sovereignty aims instead at ensuring the survival and prosperity of small food producers and farmers who have been largely neglected or excluded from wider development processes.

The Via Campesina argues that small farmers should play a more dominant role in agricultural policies: this objective can be achieved only if local communities have a better access to, and control over, productive resources and a greater political and social influence.²³ The concept of food sovereignty raises the elementary question of which type of food production, agriculture and rural

development should be pursued to ensure food security at national and global level. By way of exemplification, there are two contrasting models of agriculture: the first is that suggested by the concept of food sovereignty while the second is the neo-liberal free trade model. Food sovereignty maintains a model of small farmers who operate on a local basis, environmentally friendly and dedicated to sustainable agriculture. This is in contrast with the neo-liberal tendency to free exchange within an industrialised agriculture, based on intensive imports of chemical products and exports of agricultural produce, involving large farms and dominated by international corporations. The basic principles of the concept of food sovereignty are generally understood in the same way by different groups who predominantly invoke and define it. This consistency is intentional between supporters of food sovereignty to obtain a stronger political say. Yet beyond the declaration of principles, there are many definitions of food sovereignty in circulation since associations and organisations integrate the concept in their work and provide their definition of food sovereignty.²⁴ The definition given in the declaration of Nye'le'ni (2007) can be considered as the most representative, since more than 500 representatives of organisations of farmers/families of farmers and artisan fishermen, indigenous peoples, landless people, rural workers, migrants, shepherds and forest communities, women, young people, consumers and people from an urban environment and movements from more than 80 countries have agreed on this definition (NGO/CSO Forum for Food Sovereignty 2007). The Nye'le'ni definition enjoys strong support in civil society: the food sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods and their right to define their own food and agricultural systems. It makes those who produce, distribute and consume the food at the heart of food systems and policies rather than the needs of the markets and business. It defends the interests and the inclusion of the next generation. It offers a strategy to resist and dismantle the trends of commercial enterprise and diet and food regimes, and sees that the directions for food, agriculture, countryside and systems of fishing are determined by local producers. Food sovereignty gives priority to local and national economies and markets and allows farmers, farmer families' agriculture, artisan fishing, shepherds, pastures, food production and distribution and consumption based on environmental, social and economic sustainability. Food sovereignty promotes transparent exchanges that ensure income for all and the rights of consumers to control their food and nutrition. It ensures that the rights to use and manage our lands, territories, waters, seeds, livestock and biodiversity are in the hands of those of us who produce food. Food sovereignty implies new social relations free of oppression and inequality between men and women, peoples, racial groups, social classes and generations”²⁵

2.3 Intangible (Incorporeal) Cultural Heritage (Only a Few References)²⁶

Finally, as further proof of the cultural significance of food, there is the insertion of some culinary preparations in the incorporeal cultural heritage of humanity. It is necessary to briefly mention the latter concept that came into being with the Convention for Safeguarding Intangible Cultural Heritage approved unanimously in the 32 session of the General Conference in Paris on 17 October 2003. The International Convention for the Safeguarding of Intangible Cultural Assets considers the interdependence between intangible cultural heritage and tangible cultural heritage essential, as defined in the Declaration of Yamato. Safeguarding Intangible Cultural Heritage is defined as “protection”. The term safeguarding contemplates those measures designed to promote the transmission of Intangible Cultural Heritage through generations, which are: identification, documentation, preservation, protection, promotion and valorisation. These are processes that involve research aimed at the identification of an intangible heritage, written, photographic, audio and visual documentation, which will guarantee the transmission of historical and cultural heritage. The protection aims at preserving the places, the natural environment and landscape, i.e. the historical, cultural and social context that has produced and produces—a living entity—the cultural asset in question. Promoting and enhancing intangible cultural assets is attained through knowledge and preservation of heritage, using formal and informal types of education.²⁷

The International Convention for the Safeguarding of Intangible Cultural Heritage provides broad categories of assets where individual cultural assets related to any cultural heritage can be identified. These can be either traditional or existing or both: oral traditions, languages, performing arts, social practices and rituals, knowledge and practices that relate to nature and the universe, the knowledge and skills of craftsmen and the spaces associated with them, everything that communities, groups and even individuals recognise as part of their cultural heritage. According to this document an intangible cultural heritage to be safeguarded is characterised by: its being transmitted from generation to generation; that it be constantly recreated by communities and groups in close correlation with the surrounding environment and with its history; that it endows communities, groups and individuals with a social and cultural sense of belonging; that it promotes respect for cultural diversity and human creativity; that it promotes the respect of human rights and the sustainability of development of each country.

As mentioned before, in the list of “assets” to be considered intangible cultural heritage there are also some culinary practices: in 2010 the Intergovernmental Committee established by Art. 5 of the same Convention of 2003 has decided unanimously to enroll in the Special Representative List of the Intangible Cultural Heritage of Humanity the Mediterranean diet, together with the traditional Cuisine of the Mexican state of Michoacan and French Repas gastronomical, thus recognising officially for the first time the cultural value of coking customs.²⁸ Moreover these gastronomic heritages also include some material instruments such as the utensils used for the preparation and consumption of food, in the awareness of what is necessary to protect the traditional crafts and the work of the craftsmen to sustain the economy of a territory.

The Mediterranean diet combines the eating habits of the peoples of the basin of the Mediterranean Sea (Italy, Spain, Greece, Morocco, Portugal, Croatia and Cyprus), consolidated during the centuries and remained unchanged until the nineteen-fifties, and goes well beyond a simple list of food but also relates to the culture of life and traditional, social and agricultural customs. The motivation for this insertion is extremely significant for its references to the cultural element inherent in food but also the link with the territory and the conservation of agrobiodiversity: The Mediterranean Diet is much more than simple food. It promotes social interaction, since the common meal is the basis of social customs and festivities shared by a given community, and has given rise to a considerable body of knowledge, songs, aphorisms, tales and legends.

The Diet is founded on respect for the territory and biodiversity, and ensures the preservation and development of traditional activities and crafts linked to fishing and agriculture in the communities of the Mediterranean.²⁹ It is important to emphasise that the insertion of gastronomic heritage in the UNESCO list is symptomatic of the symbolic value of food, and hence its close link with the history and culture of a territory and a people, but also of belonging to Humanity, as a “common good” of all, of which it is necessary to ensure conservation.

3 Constitutional Protection: The Interweaving Between the Protection of the Right to Food, the Protection of Biodiversity, of Agrobiodiversity and of Food Sovereignty

If the debate on the right to food at international level focuses on the concept of RtAF and on the demarcation of the principle of food sovereignty, in close relation with the exploitation of the cultural dimension of food as witnessed by the insertion of some gastronomic procedures in the list of the Intangible Heritage of Humanity, at national level the protection of the right to food is varied. At constitutional level, as can be seen from a survey carried out by the FAO in 2011³⁰ and reported in doctrine,³¹ sometimes recognition is explicit, direct and guaranteed to all (for example in the constitutions of Bolivia and Ecuador); other times it is recognised for particular groups of the population (as in Mexico and South Africa); yet in others the right is included in other human rights (as in Brazil); in some cases the recognition is implicit in human rights in the broad sense (Armenia); in other cases it is a goal or a governing principle (Ethiopia); in others it is the result of the processing of case law (Ireland); finally sometimes the protection arises from the direct

applicability of treaties on human rights that recognise the right to food (as for example in Argentina). There is no denying the fact that there is a tendency, established above all in more recent Constitutions and in those countries in which the problem of poverty and of the fight against hunger is particularly felt, to recognise an explicit protection of the right to food. But the next step is to understand if this recognition also extends to food diversity and if so, the extent and through which means.

Meanwhile you can observe that some constitutions that explicitly defend the right to food as a human right, also recognise the principle of food sovereignty: this is true of the constitutions of Bolivia (ratified in 2009), Ecuador (adopted in 2007) and Nepal (ratified in 2015). The Bolivian Constitution, in Art. 16, within the title devoted to fundamental rights, says “Every person has the right to water and food.

The State has the obligation to guarantee food security for all through healthy, adequate and sufficient food”, while Art. 405 stipulates that “comprehensive, sustainable rural development is a fundamental part of the economic policies of the State, which shall prioritise its actions to encourage to communitarian economic undertakings and those of the group of rural actors, placing emphasis on food security and sovereignty...”.

Art. 13 of the constitution of Ecuador reads “Persons and community groups have the right to safe and permanent access to healthy sufficient and nutritional food, preferably produced locally and in keeping with their various identities and cultural traditions. The Ecuadorian State shall promote food sovereignty”.

The same article recognises the right to food both quantitatively and qualitatively and connects it to the “favor” for local production and the principle of food sovereignty.

The link between the fundamental human right (food), territorial component (protection of biodiversity-food sovereignty) and cultural component (protection of agro-biodiversity and cultural heritage culinary) is consolidated in these Constitutions by a series of provisions that concern both the protection of the environment, of sustainable development and of the minority population allocated on the national territory who preserve indigenous knowledge related to crops and culinary preparations steeped in cultural and religious elements.³² In fact indigenous peoples’ right to food is inseparable from their rights to land, territories, resources, culture and self-determination³³ A series of articles are contained in the Bolivian Constitution that promote the conservation of biodiversity and of agrobiodiversity (Art. 354), the sustainable use of natural resources (Art. 380) and support the principle of sovereignty also on agrobiodiversity, as emerges from a combined reading of Articles 381, 382 and 383.

On the other hand, the same Constitution enshrines the recognition of indigenous peoples (Art. 171). They recognise, respect and protect on the mark of the Law, the social, economic and cultural rights of indigenous peoples that inhabit the national territory, especially those relating to their original communal lands, guaranteeing the use and improvement of sustainable natural resources, their identity, values, languages, customs and institutions their link with the territory and their use and improvement of natural resources is encouraged and finally their heritage of values, habits and customs, especially those related to the rapport with nature, are acknowledged.³⁴ The Ecuadorian constitution declares that the conservation of biodiversity and of agrobiodiversity are a priority for the State and constitute a limit to productive activities (see Articles 57 and 72) and explicitly recognises the concept of sovereignty of biodiversity (Art. 400) too. Also, in this case the theme of food and agro/biodiversity proceeds in parallel with the recognition of the rights of indigenous peoples: Art. 56 reads “The indigenous peoples, who are automatically defined as nationals of ancestral races, and the black peoples or Afroecuadorians, form part of the Ecuadorian state, unique and indivisible”.

Finally, Art. 36 of the Constitution of Nepal, promulgated in 2015 after a troubled constituent phase, in part III, entitled “The Fundamental Rights and Duties” stipulates that “right relating to food: (1) Every citizen shall have the right relating to food. (2) Every citizen shall have the right to be safe from the state of being in danger of life from the scarcity of food. (3) Every citizen shall

have the right to food sovereignty in accordance with law”³⁵ Subsequently the constitutional text in Art. 51, which relates to state interventions, provides policies (let.g) “relating to protection, promotion and use of natural resources: (1) to protect, promote, and make environmental friendly and sustainable use of natural resources available in the country, in consonance with national interest and adopting the concept of intergenerational equity, and make equitable distribution of fruits, according priority and preferential right to the local communities, ... (5) to preserves, promote, and make sustainable use of forests, wildlife, birds, vegetation and bio-diversity, by mitigating possible risks to environment from industrial and physical development, while raising awareness of the general public about environment cleanliness ... (7) to adopt appropriate measures to abolish or mitigated existing or possible adverse environmental impacts on the nature, environment or biological diversity. Finally, the constitution recognises the minorities and their peculiarities, in terms of the right to retain their own culture (Art. 32). Right to language and culture:...(2) Every person and community shall have the right to participate in the cultural life of their communities. (3) Every Nepalese community residing in Nepal shall have the right to preserve and promote its language, scripts, cultures, cultural civilisation and heritage, or protect and develop languages, scripts, cultures, literature, arts, motion pictures and heritages of various castes, tribes, and communities based on equality and co-existence, while maintaining the cultural diversity of the country”.

Despite this network of rules relating to the right to food, the conservation of biodiversity and the protection of cultural minorities situated in the territory, there is no noticeable connection between these different instances in the constitution of Nepal. Conversely, it does not appear that these safeguards are the result of an overall vision aware of the importance of the link between minority populations, territory, culture and food, as instead happens in the constitutions of Bolivia and Ecuador. Therefore, the text promulgated in 2015, although very recent and apparently attentive to the theme of the preservation of the environment, biodiversity and ³⁶ constitutionalism that particularly sees the Andean countries protagonists of a real reversal of the cultural perspective regarding the relationship of man with nature.

Probably the different approach is to be attributed to the different matrix of the minorities that have influenced the drafting of the constitutional texts: in the case of the Andean countries it is indigenous minorities, permeated with an autochthonous culture linked to the land and to its “care” by an ancestral ratio. In the second case the religious minorities, especially attentive to the recognition of their dignity within the state.³⁷

4 Conclusions

On the right to food differentiated and multilevel safeguards converge because they are linked to either national or international warranty. The dialectic between RtA Fand Food Sovereignty is emblematic, in an inclusive or alternative interpretation, to assess their potential with respect to the need to develop international policies for solving the problem of hunger at global level and to reduce poverty. According to Via Campesina (Forum of the World Food Summit of 1996), the right to food can only take place within a system that ensures food sovereignty and indeed, the proponents of the concept of food sovereignty believe that the latter, together with access to agro-cultural resources, constitutes the fundamental precondition for achieving the right to adequate food. In reality, the two concepts have common aspects but also differences: while the RtAF is a legal concept, that of Food Sovereignty is a political concept,³⁸ useful in the orientation of the initiatives of policy makers with respect to agro-cultural policy, with a particular focus on the protection of small food producers and farmers who operate at rural and local level. Moreover, one operates at international level while the other can intervene at national level. For our purposes, the two concepts seem to be able to combine in a virtuous way ensuring both the right to food in terms of quantity and quality, so that the latter attribute includes also the cultural profile of foods, becoming both fundamental and in-transferable. In fact, both direct attention toward the qualitative element of food, which connects to the biodiversity and to agrobiodiversity. The first, as we have

seen, has become enriched with meanings, definitively including the cultural element in the forming of human right; the second aims to protect local production at national level, so-called “niche”, often the prerogative of minorities, which is the last stronghold of resistance of traditional agricultural technique applied to biodiversity. The considerations arising from the analysis of the concepts described above are useful in defining in more detail the right to food and to rationalise its complexity. What has been said so far shows that: (1) the right to food as a “human” right attracts in its orbit a surplus of protection that does not affect quantity but quality.

Food diversity (and even before that agrobiodiversity) becomes functional to the enjoyment of the right to food; (2) Consequently the cultural aspect of the right to food tends to be absorbed within human rights to the detriment of the component of an economic nature, in the first place the freedom of free trade. If we think back to one of the expressions used at the beginning: “the right to food is an economic law, indeed the most fundamental of economic rights” and the pairs of opposites identified by Spitz, it is clear that the affirmation of principles such as that of the RtAF and even more that of Food Sovereignty affect the balance between the opposing factors causing the nature of traded commodities to become recessive with respect to that of an in-transferable fundamental human right. These considerations call for a reflection on not only the immaterial but even the unavailable nature of cultural heritage food, both with reference to the production and to the consumption, by reason of the intimate relationship the right to food has when intended as a fundamental human right. This is an in-transferability to build, not only in theoretical terms, perhaps through linking up to the reflections on the “commons” but in legal terms, as has been seen to develop in the countries that have adopted the principle of foodsovereignty.³⁹

NOTES

¹ Di Giacinto (2012), p. 179.

² Montanari (2004), pp. VII–VIII; Almerico (2014), p. 4.

³ Anderson (2005).

⁴ Rozin (1976).

⁵ Kittler et al. (2012), p. 4.

⁶ Bobbio (1990).

⁷ Rodotà (2012), p. 199.

⁸ Spitz (1985), p. 306.

⁹ Spitz (1985), p. 307.

¹⁰ Almerico (2014), p. 3.

¹¹ Kittler et al. (2012), p. 3.

¹² Monteduro (2015), p. 111 ss.

¹³ See, inter alia: FAO (2004) and FAO (2015), p. 1 ss.

¹⁴ Resolution adopted by the General Assembly in September 2000, available at <http://www.un.org/millennium/declaration/ares552e.pdf>.

¹⁵ Beuchelt and Virchow (2012).

¹⁶ Mechlem (2004), p. 631 ss; Pierri (2015), p. 455 ss.

¹⁷ See Wittman et al. (2010), p. 1 ss. Many of the reflections that follow in the essay, arise from the reading of the papers of the international conference entitled “Food Sovereignty: A Critical Dialogue”, in Yale University, on September 14–15, 2013. Some of the papers discussed at the Yale food sovereignty conference have been published in the *Journal of Peasant Studies* (JPS) in May and June 2014. A selection of these have been formally published in advance and are now available online—for free. These include papers by Henry Bernstein, Jack Kloppenburg, Jennifer Clapp, and Madeleine Fairbairn. Access is free of charge from the *Journal of Peasant Studies* website.

¹⁸ Patel (2009), p. 666.

¹⁹ Patel (2009), p. 667.

- ²⁰Murphy (2008), p. 3.
- ²¹IAASTD (2009), p. 466 ss.
- ²²Altieri and Nicholls (2008), p. 472 ss.
- ²³Desmarais (2008), p. 138 ss.
- ²⁴Patel (2009), p. 663.
- ²⁵NGO/CSO Forum for Food Sovereignty (2007).
- ²⁶For an exhaustive treatment of the subject see the essay of Di Benedetto, in this book.
- ²⁷And ratified by Italy on 27 September 2007.
- ²⁸See Brulotte and Di Giovine (2014), p. 10.
- ²⁹Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage (2010).
- ³⁰Knuth and Vidar (2011).
- ³¹Bottiglieri Longhi (2014).
- ³²For the concept of “indigenous peoples” see Martinez Cobo (1986/7). Indigenous peoples’ right to food is recognised in United Nations Declaration on the Rights of Indigenous Peoples, Annex to Human Rights Council Resolution (2007).
- ³³Food and Agriculture Organization of the United Nations. Centre for Indigenous Peoples’ Nutrition and Environment (2013), p. X.
- ³⁴Aguilar et al. (2010).
- ³⁵Nepal’s Constitution of 2015 is available at https://www.constituteproject.org/constitution/Nepal_2015.pdf?lang=4en. sustainability in intergenerational terms, can fall into the mainstream of “ecologist”
- ³⁶Dating back to Stone (1972) essay and its development: see Bosselmann (1992), Boyd (2012), May and Daly (2014), Jasanoff (2013), Kim and Bosselmann (2013), Kotzé (2012), Grear and Kotzé (2015) and Hudson (2015).
- ³⁷See Parajulee (2000), p. 106.
- ³⁸Haugen (2009), pp. 291–282.
- ³⁹Ostrom (1991) and Mattei (2011)

References

- Aguilar G, Lafosse S, Rojas H, Steward Tje R (2010) Constitutional recognition of indigenous peoples in Latin America. *Int Law Rev* 2(2):44–96
- Almerico GM (2014) Food and identity: food studies, cultural, and personal identity. *J Int Bus Cult Stud* 8:1–7
- Altieri MA, Nicholls CI (2008) Scaling up agroecological approaches for food sovereignty in Latin America. *Development* 51(4):472–480
- Anderson E (2005) *Everyone eats. Understanding food and culture*. New York University Press, New York
- Beuchelt TD, Virchow D (2012) Food sovereignty or the human right to adequate food: which concept serves better as international development policy for global hunger and poverty reduction? *Agric Hum Values* 29:259–273
- Bobbio N (1990) *L’età dei diritti*. Einaudi editore, Torino

Bosselmann K (1992) *Im Namen der Natur: Der Weg zum ökologischen Rechtsstaat*. Scherz, Bern

Bottiglieri Longhi M (2014) Il diritto ad un cibo adeguato. Profili comparati di tutela costituzionale e questioni di giustiziabilità In: Macchia P (ed) *La persona e l'alimentazione. Profili clinici, culturali ed etico-religiosi*. Atti del Convegno (Asti, 30 novembre 2012). Aracne, Roma, pp 217–260

Boyd D (2012) *The environmental rights revolution: a global study of constitutionalism, human rights and the environment*. UBC Press, Vancouver-Toronto

Brulotte RL, Di Giovine MA (2014) *Edible identities: food as cultural heritage*. Ashgate, Farnham

Desmarais AA (2008) The power of peasants: reflections on the meanings of la via Campesina. *J Rural Stud* 24(2):138–149

Di Giacinto M (2012) Per una storia del rapporti tra alimentazione e diversità culturali. *Studi sulla formazione* 2:177–181

FAO (2004) *Biodiversità: la nostra alimentazione ne dipende*. Roma. Available at <ftp://ftp.fao.org/docrep/fao/006/y5418i/y5418i00.pdf>

FAO (2015) *Coping with climate change. The roles of genetic resources for food and agriculture*, Rome. Available at <http://www.fao.org/3/a-i3866e.pdf>

Food and Agriculture Organization of the United Nations Centre for Indigenous Peoples' Nutrition and Environment (2013) *Indigenous Peoples' food systems& well-being interventions & policies for healthy communities*. In: Kuhnlein HV, Erasmus B, Spigelski D, Burlingame B (eds) Rome. Available at <http://www.fao.org/docrep/018/i3144e/i3144e.pdf>

Gear A, Kotzé LJ (eds) (2015) *Research handbook on human rights and the environment*. Edward Elgar

Haugen HM (2009) Food sovereignty—an appropriate approach to ensure the right to food? *Nordic J Int Law* 78(3):263–292

HRC (2007) *Declaration on the Rights of Indigenous Peoples, Annex to Human Rights Council Resolution, 61/295*. Available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.Pdf

Hudson B (2015) *Structural environmental constitutionalism*. *LSU Law Digit Commons* 21:201–216

IAASTD (2009) *Agriculture at a crossroads. Synthesis report of the international assessment of agricultural knowledge, science and technology for development*. Island Press, Washington DC
Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage (2010) *Nomination file for inscription in 2010 on the representative list of Intangible Cultural Heritage of Humanity*. Available at <https://ich.unesco.org/en/Decisions/5.COM/6.41>

Jasanoff S (2013) *A world of experts: science and global environmental constitutionalism*. *Boston Coll Environ Aff Law Rev* 40(4):439–452

- Kim RE, Bosselmann K (2013) International environmental law in the Anthropocene: towards a purposive system of multilateral environmental agreements. *Transnl Environ Law* 2(2):285–309
- Kittler PG, Sucher KP, Nelms MN (2012) *Food and culture*. Wadsworth, Belmont
- Knuth L, Vidar M (eds) (2011) *Constitutional and legal protection of the right to food around the world*. FAO, Roma. Available at <http://www.fao.org/docrep/016/ap554e/ap554e.pdf>
- Kotzé LJ (2012) Arguing global environmental constitutionalism. *Transnl Environ Law* 1 (1):199–233
- Martinez Cobo J (1986/7) Study of the Problems of Discrimination against Indigenous Populations. UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1–4. paras 379–38. Available at <https://www.un.org/development/desa/indigenouspeoples/publications/2014/09/martinez-cobo-study/>
- Mattei U (2011) *Beni comuni. Un manifesto*. Editori Laterza, Roma-Bari
- May J, Daly E (2014) *Global environmental constitutionalism*. Cambridge University Press, Cambridge
- Mechlem K (2004) Food security and the right to food in the Discourse of the United Nations. *Eur Law J* 10(5):631–648
- Michael A (2014) *Edible identities: food as cultural heritage*. Ashgate, Farnham England
- Montanari M (2004) *Il cibo come cultura*. Editori Laterza, Roma-Bari
- Monteduro M (2015) Diritto dell’ambiente e diversità alimentare. *Rivista quadrimestrale di diritto dell’ambiente* 1:88–131
- Murphy S (2008) Globalization and corporate concentration in the food and agriculture sector. *Development* 51(4):527–533
- NGO/CSO Forum for Food Sovereignty (2007) Declaration of Nye’le’ni. Nye’le’ni Village, Se’lingue (Mali). Available at <http://www.nyeleni.org/IMG/pdf/DeclNyeleni-en.pdf>
- Ostrom E (1991) *Governing the commons: the evolution of institutions for collective action*. Cambridge University Press, Cambridge
- Parajulee RP (2000) *The democratic transition in Nepal*. Rowman & Littlefield, Lanham
- Patel R (2009) What does food sovereignty look like? *J Peasant Stud* 36(3):663–773
- Pierri M (2015) Agrobiodiversity, intellectual property rights and right to food: the case of Andean Countries. In: Monteduro M, Buongiorno P, Di Benedetto S (eds) *Law and agroecology. A transdisciplinary dialogue*. Springer, Berlin, pp 451–470
- Rodotà S (2012) *Il diritto di avere diritti*. Editori Laterza, Roma-Bari
- Rozin P (1976) The selection of foods by rats, humans, and other animals chapter. *Adv Study Behav* 6:21–76
- Spitz P (1985) The right to food in historical perspective. *Food Policy* (November): 306–316

Stone CD (1972) Should trees have standing? Toward legal rights for natural objects. *South Calif Law Rev* 45:2–54

Wittman H, Desmarais AA, Wiebe N (2010) The origins and potential of food sovereignty. In: Wittman H, Desmarais AA, Wiebe N (eds) *Food sovereignty. Reconnecting food, nature and community*. Food First, Oakland, pp 1–14