

Interest Group on International Law of Culture

Presentation

The IG on International Law of Culture was created at the 2018 ESIL Conference (Manchester). It aims to gather the many researchers working in this highly developed but fast-changing field, and seeks to contribute to its systematisation as well as to the identification of complex issues which need further clarification.

In fact, the relations between the international legal field and culture are old and varied. Typically, scholarship and legal practice in this area have focused on the Eurocentric origin or “cultural” bias of International Law more generally and International Cultural Heritage Law as a specialised subfield. However, it can be said that with the arrival of the 21st century, important developments concerning culture took place in International Law, with the consequent development of new areas of concern within the discipline. Equally important is the fact that such developments use a different, “contemporary” conception of culture, which understands it as fluid, transformed and dynamic, enabling the creation of manifestations among diverse cultural expressions beyond static or fixed monuments and sites, the traditional foci of international legal work. A dynamic understanding of culture also assumes that it is not isolated but rather closely intertwined with other factors such as power – including economic power. The “old” conception of culture saw it as static, and is clearly being abandoned by more recent developments, even if some of its effects still linger. Understanding the difficult work of accommodating new and old visions of “culture” and its role is one of the biggest challenges facing the field today. Even if the “old” conception of culture was not explicitly or rigidly enshrined in legal instruments, it was very easily assumed and reinforced by many legal operators. The fact that there were no international legal documents challenging the dominant view did not help. This challenge was only clearly met by two United Nations (UN) instruments in 2009: The General Comment on the Right to Take Part in Cultural Life by the Committee on Economic, Social and Cultural Rights; and the appointment of an Independent Expert (now Special Rapporteur) on Cultural Rights.

However, the UN was not the only organization where this new take on culture gained traction in the 21st century: UNESCO, as a specialised UN agency, has seen the conclusion of relevant international treaties dealing with intangible heritage (2003) and cultural diversity (2005). Both instruments are crucial in changing the conception of culture from static to dynamic, and putting communities and individuals front and centre in the definitions of cultural practices within the scope of the treaties. These two instruments therefore are decisive moves away from a limited, elitist and Eurocentric conception of culture. Further, the 2005 convention enters directly into the regulation of international trade dealing with cultural products, establishing clearly that these are not “like products” for the purposes of allowing for cultural exceptions to free trade rules.

These shifts have received limited attention from learned societies, however, and scholars are therefore missing important opportunities to engage with culture as a regulatory object, and with the soft power that derives from culture in international law and relations.

The field of International Law of Culture is connected with other areas of International Law. In this sense, this new IG would like to interact with other IGs. Such a cooperation would contribute to further exchange among ESIL members and more systemic, less fragmented work on international law.

Convenors:

Beatriz Barreiro

Ph.D in Human Rights (Carlos III University, Madrid), Master in Law of the European Union (Free University of Brussels), Lecturer of International Law (Rey Juan Carlos University, Madrid). Beatriz has conducted research on cultural diversity and cultural rights, cultural heritage, culture and development, biodiversity and cultural life. Beatriz is currently highly interested in the links between International Law and other Social Sciences and Humanities, as well as in applied research with a particular focus on human rights – especially cultural rights–. She was guest researcher of the Department of Law & Anthropology (Max Planck Institute for Social Anthropology, Halle) visiting researcher at the Institute of Public International and European Law (University of Göttingen), the Centre of Ethics of the University of Toronto and the CSLE (Oxford University). Recent publications of Beatriz include *How Can China Influence the Transatlantic Governance of Cultural Products in the Digital Age?* *The Journal of World Investment & Trade*, Vol 19, 2018, *Conversations About Indigenous Peoples and Adjudication Interviews with G. Bennet, and S. Corry* *Erasmus Law Review*, Vol. 11, No.01, 2018, and a contribution to *The Wroclaw Commentaries: Culture and Human Rights* (De Gruyter, 2016).

Andrzej Jakubowski

Assistant Professor at the Institute of Law Studies of the Polish Academy in Sciences in Warsaw, Poland. Ph.D. in International Law, European University Institute. He is Chair of the Committee on Participation in Global Cultural Heritage Governance of the International Law Association and mediator at the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation. He authored *State Succession in Cultural Property* (Oxford University Press 2015), edited *Cultural Rights as Collective Rights – An International Law Perspective* (Brill 2016), and co-edited *Cultural Heritage, Cultural Rights and the European Union – A Critical Inquiry* (Brill 2019 (forthcoming)). Andrzej is the Vice Editor-in-Chief of the *Santander Art and Culture Law Review*, and member of the editorial board of the *Polish Yearbook of International Law*. In 2015-2018, he has led an international collaborative, EU-funded research project: ‘HEURIGHT – The Right to Cultural Heritage Its Protection and Enforcement through Cooperation in the European’; <http://heuright.eu>.

Lucas Lixinski

Associate Professor, Faculty of Law, UNSW Sydney. PhD in International Law, European University Institute. Lucas researches and teaches in the areas of international law, particularly international cultural heritage law and international human rights law. He is also the Rapporteur of the ILA Committee on Community Participation on Global Cultural Heritage Governance. His major research projects at the moment include a commentary to the 2003 Intangible Cultural Heritage Convention (co-edited with Janet Blake); a monograph on community participation in international cultural heritage law (manuscript completed, currently under review); and a project on the relations between cultural heritage law and transitional justice. Among his key publications in the field are

Intangible Cultural Heritage in International Law (Oxford University Press 2013), and *Heritage, Culture and Rights – Challenging Legal Discourses* (Hart Publishing 2017) (editor, with Andrea Durbach).