**REPORT TO THE BOARD OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW INTEREST GROUP ON INTERNATIONAL LAW OF CULTURE**

**(October 2019-October 2020)**

1. **ACTIVITIES**

**Online Workshop: ‘15 years of the Convention for the Protection and Promotion of the Diversity of Cultural Expressions and Lessons for New Ways of International Law-Making: Actors, Processes, Impact’ 9 September 2020.**

On 9 September 2020, the Interest Group on International Law of Culture (IG ILC) of ESIL held an International Online Workshop through the zoom application on ‘15 years of the Convention for the Protection and Promotion of the Diversity of Cultural Expressions and Lessons for New Ways of International Law-Making: Actors, Processes, Impact’. The topic of the workshop was designed in line with the general theme of the 16th Annual ESIL Conference: Changes in International Lawmaking: Actors, Processes, Impact. The conference scheduled for September 2020, was postponed until next year because of the COVID-19 crisis. The IG ILC’s decision to hold the workshop, in online format, on the date originally chosen was driven by the actual 15th Anniversary of the 2005 UNESCO Convention and by the wide response to the Call for Papers. The workshop gathered a number of ESIL members and many experts on culture and international law from international organisations and bodies . Their active participation during the workshop and the wide interest in the event shown by international civil society working on issues on cultural diversity confirms the relevance of this ESIL Interest Group not only for academics but also for other actors of international law.

See Annex 1:Programme of the Online Workshop on 15 years of the Convention for the Protection and Promotion of the Diversity of Cultural Expressions and Lessons for New Ways of International Law-Making: Actors, Processes, Impact.’

1. **GOVERNANCE**

**Elections** for the conveners of the IG ILC were held. Four IG members presented candidacies for four slots, meaning no elections were held. All previous members of the Coordinating Committee will continue in their positions: Beatriz Barreiro and Andrzej Jakubowski will continue in the Coordinating Committee for four years; Lucas Lixinski will continue for the next 2 years. A new candidature for 2 years was presented by Giovanni Carlo Bruno, who is now also a member of the Coordinating Committee. Under this structure, the Coordinating Committee will assure both continuity in its infancy, and open the door to new insights. Thank you to members for your faith in our leadership.

1. **FUTURE ACTIVITIES**

A) The ESIL IG ILC is planning the **publication** of the papers of the online workshop ‘15 years of the Convention for the Protection and Promotion of the Diversity of Cultural Expressions and Lessons for New Ways of International Law-Making: Actors, Processes, Impact.’ The IG is working on the revision of papers to that purpose.

B) In the Contest of the 2021 ESIL Research Forum **‘Solidarity: The Quest for Founding Utopias of International Law’** to be held in Catania on **April 15th and 16th, 2021** the IG ILC is one of the seven IGs which has confirmed their presence at the event around the topic ‘Searching Solidarity for Fighting against Cultural Exclusion towards Migrants and Refugees in Europe in Times of Populism’ (the programme for this event, is Annex 2).

**Annex 1**

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***On-line Workshop***

***15 years of the Convention for the Protection and Promotion of the Diversity of Cultural Expressions and Lessons for New Ways of International Law-Making: Actors, Processes, Impact***

**9 September 2020**

**Time Zone: Central European Time (CET)**

**Convenors:** *Beatriz Barreiro Carril (King* *Juan Carlos University, Madrid), Lucas Lixinski (University of New South Wales, Sydney), Andrzej Jakubowski (University of Opole,* [*Santander Art & Culture Law Review*](https://www.scopus.com/sourceid/21100967508)*)*

The Convention for the Protection and the Promotion of the Diversity of Cultural Expressions (the Convention) was adopted by the UNESCO General Conference in 2005. Its main objective is to reaffirm States’ “sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve [its purposes]” (Art. 5), while recognising “the distinctive nature of cultural... goods and services as vehicles of identity, values and meaning” (Art. 1.g). Today, the Convention has 149 Parties, including 148 States and one regional organisation (the European Union (EU)). The practice of this treaty over the last 15 years offers several valuable insights as to the present-day ways of international law-making. Their examination will thus bring an important input to the overall theme of the 16th *ESIL* Annual *Conference.*

In fact, the Convention may be credited as a paradigmatic case of “new ways” of creation and implementation of international law. First, it must be noted that the origin of this instrument goes back in part to the work of actors other than States, such as the *Coalitions* for *Cultural Diversity.* Furthermore, the way the Committee of Cultural Diversity, the Convention’s treaty body, examines the consistency of States Parties’ actions with the Convention is closer to a “best practice” approach than to a rigid scrutiny of States’ compliance with their international obligations. The idea behind this approach appears to be that the area of culture should not be one of confrontation but one of dialogue and collaboration, applied as well to the ways of overseeing States’ actions in light of the Convention, giving preference to an operative learning approach instead of sanction mechanisms. If this kind of approach is typical of treaties dealing with culture, a paradox emerges when applied to the Convention, being that its main scope of application is in the field of international commerce (of cultural products), an area of international law where robust mechanisms of enforcement exist. By passing from the Word Trade Organisation and other economic fora to UNESCO, the norms on the commercialisation of cultural products, even with the proper intention of giving them “cultural” legitimacy and specification, would have been deprived of efficacy. Moreover, the position of civil society in this process of “periodic reporting” is closely related to this general approach. In fact, contrary to what happens in other control mechanisms in international law, such as the United Nations international human rights monitoring mechanisms – where civil society entities prepare, for instance, shadow reports independent from those presented by States – civil society organisations working in the sphere of the Convention realm are asked to contribute to States’ periodic reports. Another idiosyncrasy of the Convention is the particular challenge that it implies for the classical approach of State sovereignty in international law. The initial main goal in connection with the approval of the Convention was the protection of the cultural sovereignty of States from the possible threats made by other States; mainly through pressure actions to sign free trade agreements. However, the Convention is increasingly invoked as a legal basis by regional and local communities to claim or implement policies in favour of cultural diversity within the State. Thus there has been a noticeable shift in the ways in which international lawyers relate to this treaty. In the first years after the approval of the Convention – and during its negotiation – the Convention was the object of research of many International Law scholars, who addressed classical issues of International Law such as that of conflict of norms. Today however the Convention is increasingly the object of research of other social sciences disciplines, and international lawyers who continue to pay attention to the Convention do so most often in the frame of highly interdisciplinary projects. A significant shift can also be observed in relation to the Secretariat of the Convention – which supports its implementation – as well as the Committee. In their implementation work these bodies have given relevance to topics like rights of artists, which were not a priority at the time the Convention’s entered into force. This shift is also an indicator of the need to rethink the role of international lawyers in relation to the Convention and the pertinence of a research agenda for the Convention in light of the new trends pointed out by this ESIL Conference which, as is reflected in this call, have changed the approaches to the Convention as well.

The Covid-19 crisis has underscored the need for States to take measures in order to ensure that the Convention’s objectives – already difficult enough to achieve in non-pandemic times due to concentration of cultural expressions in some transnational companies – can be promoted in the post-crisis period. Different civil society actors, such as the International Federation of Coalitions of Cultural Diversity, have already expressed concerns in this regard. Moreover, an on-line meeting of Ministers of Culture, which took place in April under the auspices of UNESCO, discussed novel policies for responding to the Covid-19 crisis in the context of the Convention. The digital aspects of cultural products, which have already been the object of the Operational Guidelines adopted by the Conference of the Parties of the Convention, seem to be a key issue of this health crisis and is spurring original debates and policies. In Spain, for instance, the VAT on digital books has been equated to that of the physical book. In France, as editor Antoine Gallimard recently observed, a debate is ongoing about the need to reopen small bookshops – which assure cultural diversity – as soon as possible, respecting of course the necessary public health measures.

All these characteristics pose relevant questions in terms of the “changes in international law-making: actors, processes, impact” that we seek to address in this workshop.

We are inviting you to a scheduled Zoom meeting.

Join from PC, Mac, Linux, iOS or Android: <https://unsw.zoom.us/j/92572243749>

Or iPhone one-tap:  13462487799,92572243749# or 16465588656,92572243749#

Or Telephone:

    Dial: +1 346 248 7799 (US Toll) or +1 646 558 8656 (US Toll)

    Meeting ID: 925 7224 3749

    International numbers available: <https://unsw.zoom.us/u/aboTTNh5w>

Or a H.323/SIP room system:

[92572243749@zoom.aarnet.edu.au](mailto:92572243749@zoom.aarnet.edu.au)

    or SIP:92572243749@zmau.us

    or 103.122.166.55 (Australia)

    Meeting ID: 92572243749

**Programme**

**11:00-11:15** – **Introduction**

**11:15-12:20 – Session 1: The 2005 UNESCO Convention: Mapping Alternative Actors and Forums**

– Commentator: *Aliki Gkana (National and Kapodistrian University of Athens)*

* Civil Society Participation in the UNESCO Convention on the Diversity of Cultural Expressions: Reflections on Legitimacy Issues

*Enzamaria Tramontana (University of Palermo)*

* Moving Online: How Communities Have Invested Cultural Spaces in the Domain Name System

*Lily Martinet (Max Planck Institute for Procedural Law, Luxembourg)*

* Internet Governance and Cultural Diversity: An Intimate but Conflictual Relationship

*Giacomo Mazzone (Eurovisioni Rome) member of the Internet Governance Forum (IGF) Strategy group*

**12:20-13:05 – Session 2: The Impact of Cultural Diversity on International Cultural Rights**

– Commentator: *Moshe Hirsch (Hebrew University, Jerusalem)*

* The Contribution of the 2005 UNESCO Convention to the Emergence of Artistic Freedom as a Cultural Right

*Laurence Cuny (University Laval, Québec City)*

* Protecting and Promoting Cultural Diversity through the Monitoring of ESC Rights: Status Quo and Possible Ways Forward

*Laura-Maria Crăciunean-Tatu (Lucian Blaga University of Sibiu)*

**13:05-14:10** – **Session 1: New Insights on the Trade and Culture Debate: Electronic Commerce, the Internet, and Vulnerable Expressions**

– Commentator: *Nick Pozek (Columbia University, New York City)*

* Protecting and Promoting the Diversity of Cultural Expressions in Context of Electronic Commerce: Make the Cultural Exception Great Again

*Véronique Guèvremont* and *Ivana Otasevic (University Laval, Québec City)*

* Vulnerable Cultural Expressions in the Trade and Culture Debate: A Precautionary Approach to Culture in Times of Crisis

*Lilian Richieri Hanania (Sciences Po Paris)*

* The Crucial Role Played by Other International Forums for the Implementation of the 2005 Convention in the Digital Environment

*Clémence Varin (University Laval, Québec City & Université de Rennes 1, France)*

**14:10-14:25 – Final Discussion**

**Annex 2)**

***Searching Solidarity for Fighting against Cultural Exclusion towards Migrants and Refugees in Europe in Times of Populism***

**ESIL IG on International Law**

15 April 2021

2020 ESIL Research Forum, University of Catania.

**15-16 April 2021, Catania, Italy**

Law School venue of [Villa Cerami](https://www.google.it/maps/place/Villa+Cerami/@37.5065646,15.0826061,17z/data=!3m1!4b1!4m5!3m4!1s0x1313e3ff0a8e7ad9:0xe1d14bb37c9ca976!8m2!3d37.5065646!4d15.0847948?hl=it) (Crociferi str, 91),

**Panel 1: Social Cohesion and the Protection of Migrants and Refugees’ Identities**

**Chair: Giovanni Carlo Bruno**

Italian National Research Council | CNR · Institute for Research on Innovation and Services for Development IRISS

**The Danger of Arbitrary Classifications: The Exclusion of Minority-Refugees**

**from Cultural Rights under International Human Rights Law**

Stephanie E. Berry, Senior Lecturer in International Human Rights Law, University of Sussex and Isilay Taban, PhD candidate, University of Sussex

**A close up on Portuguese case law concerning religious diversity,** Inês Granja, Assistant  Inclusive Courts, JusGov - Centro de Investigação em Justiça e Governação, Research Centre for Justice and Governance

**State Policies Adopted under the UNESCO Convention on Cultural Diversity for the Promotion of Migrants’ Cultures: Special Reference to the Digital Sphere (*provisional title)***: Ivana Otasevic, UNESCO Chair Cultural Diversity Quebec

**Panel 2: The Contribution of Migrants to *Inclusive* Cultural Heritage**

**Chair: Hanna Schreiber**, Assistant Professor, University of Warsaw

**Current Challenges of the Migrants’ Cultural Heritage,** Alina Gentimir**,** Assistant Professor, PhD**,** “Alexandru Ioan Cuza” University**,** Faculty of Law**,** Iasi, Romania

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**The ‘*invisible’* intangible cultural heritage of migrants and refugees in Greece,** Tonia Korka, [National & Kapodistrian University of Athens](https://uoa.academia.edu/).