

REPORT ON THE ACTIVITIES AND PLANS OF THE ESIL INTEREST GROUP ON INTERNATIONAL LAW OF CULTURE 2022-2023



International Law of Culture Interest Group



Presentation

The ESIL Interest Group on International Law of Culture (Group) was established on 15 September 2018 at the ESIL 14th Annual Conference in Manchester. Since then the activities of the IG have greatly developed focusing on a wide range of themes relating to this growing area of international law. Indeed, the main objective of the Group is not only to study the legal regulation of the spheres of culture and heritage but also to provide a platform for deep reflection on the cultural conditions and foundations of international law, its making and operationalisation.

Coordinating Committee

Beatriz Barreiro Carril (Rey Juan Carlos University, Madrid) * Giovanni Carlo Bruno (National Research Council of Italy, Naples) * Andrzej Jakubowski (Polish Academy of Sciences, Warsaw) * Lucas Lixinski (UNSW, Sydney).

Group's activities (October 2022 – October 2023)

Workshops

- **Is International Law of Culture Fair? Is International Law Fair in Cultural Terms? / Le droit international de la culture est-il juste ? Le droit international est-il juste en termes culturels**
31 August 2023 (hybrid mode)

The aim of this workshop, organised in the occasion of the 18th ESIL Annual Conference in Aix-en-Provence (2023), was to debate the interaction between fairness and international law of culture.

Culture is one of the areas where the question of international law fairness can be reasonably posed. First, international law has been historically constructed for the promotion of the interests of states, which belonged to a specific culture. The most striking examples of this state-centred nature of international law is the law-making process affecting the rights of Indigenous peoples. Whilst they are the custodians the majority of the cultural diversity of the planet, the legal regime for the protection and realisation of their rights has been established by states. Hence Indigenous epistemologies have long been excluded from international law. Even if the 2007 Declaration of Rights of Indigenous Peoples (UNDRIP) is an important step towards cultural fairness of international law in comparison to the Salty Water thesis for decolonisation of peoples, the limit of state sovereignty included in UNDRIP is telling of the cultural imbalance of international law. However, and through actions in the field of international law of culture driven in UNESCO Conventions steps are being taken in the direction of better including Indigenous peoples' views and experiences. This is the case with the inclusion in the Operational Guidelines to the World Heritage Convention of the obligation of states to demonstrate that the free, prior and informed consent of Indigenous peoples has been obtained, while preparing nominations to the UNESCO List.

Besides, the basic principles of international law are seldom adequately designed to respond to the current concerns for a fair international society in cultural terms. International law remains in this sense still mainly based on highly tangible interests linked to physical territoriality. This is the case, by instance, of the principle of non-intervention: Despite the Declaration of Principles of International Law (1970) recognising cultural sovereignty, this principle is not effective for states who see their cultural sovereignty under

threat by international pressures to sign economic agreements that could compromise their ability to develop their own cultural policies. Further, cultural sovereignty is mainly dealt with by international law from a state-centric perspective that assumes states and single units of analysis (and older paradigm of sovereignty). Only recently has cultural diversity within states started to be addressed. In this sense, rights of cultural communities have started being recognised through international human rights treaties and UNESCO Conventions. This has not happened to the extent of the changes produced in other areas of international law – e.g. international environmental law instruments and the Aarhus Convention (1998) – which have been involved in normative advancement toward inclusiveness of non-state subjects when dealing with wider participation of communities to decisional processes, and for their better access to justice in environmental matters. On the contrary, recent exercises of drafting of treaty provisions in cultural matters do not provide for a meaningful change with regard to participation and access to justice.

The three-sessions workshop was up on a Call for Paper circulated among ESIL Members that offered some reflections and questions on the issue that culture is one of the areas where the question of international law fairness can be reasonably posed.

While recalling such broader considerations, this workshop sought to offer some space for discussion on:

- How can International Law open itself to diverse culture-grounded epistemologies to enhance fairness?
- What are the challenges of International Law norms for being fair in cultural terms? How to overcome them?
- What are the challenges cultural communities face in the claim of their rights? What are the norms and processes that starts recognising them?
- How can cultural fairness be implemented? What are the procedural modalities and avenues?

The six papers presented in the workshop and a lively discussion (that continued after the workshop too) showed the interest of participants for the topic.

See Annex: Is International Law of Culture Fair? Is International Law Fair in Cultural Terms? / Le droit international de la culture est-il juste ? Le droit international est-il juste en termes culturels

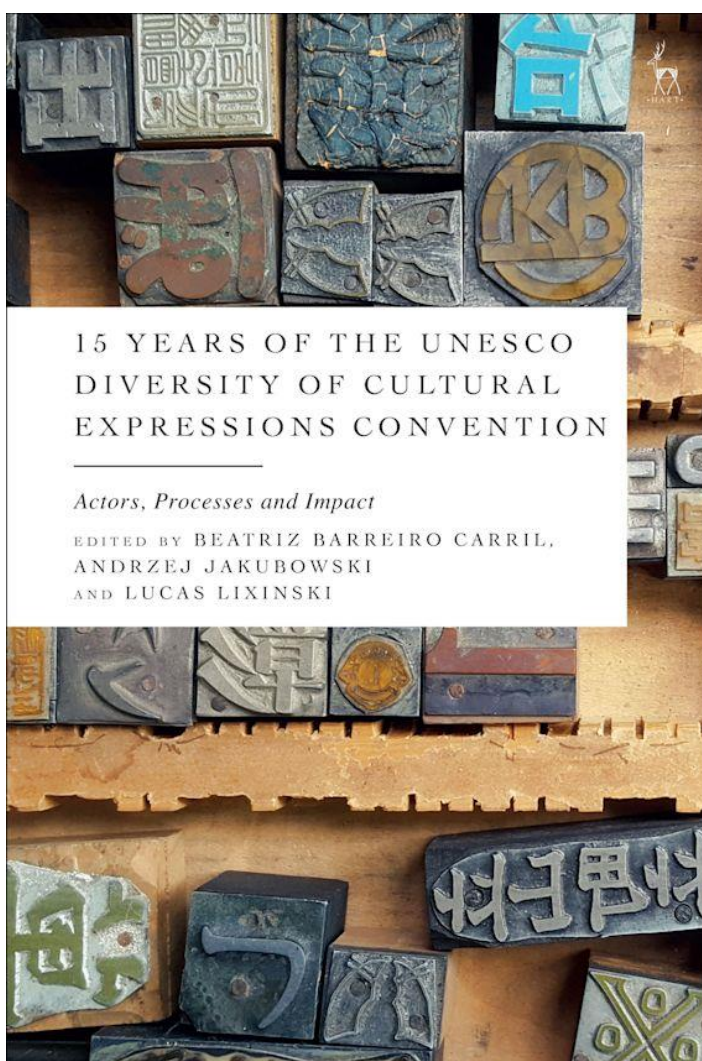


(photos/courtesy of ESIL Secretariat- Maria Grazia Drusina)

Other activities

- Edited volume: **15 years of the UNESCO Diversity of Cultural Expressions Convention: Actors, Processes and Impact**

Beatriz Barreiro Carril, Andrzej Jakubowski and Lucas Lixinski co-edited a collection of essays titled '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 volume was published by Hart Publishing – Bloomsbury Academic on 23 February 2023 (see: <https://www.bloomsbury.com/us/15-years-of-the-unesco-diversity-of-cultural-expressions-convention-9781509961450/>).



This book queries, through the prism of the Convention for the Protection and the Promotion of the Diversity of Cultural Expressions (the Convention), the ways in which the processes and substance of international law-making have shifted in response to new technologies and new actors.

The essays, written by recognised experts in the field, engage deeply with the practice under the Convention.

Some of these contributions were presented and discussed during the online workshop organised by the Group on 9 September 2020.

Group's future activities

The Group's agenda for the forthcoming months comprises the following activities:

- **Support for initiatives by the Group's members**

The Group's Convenors regularly invite all IG members to submit their proposals for scholarly meetings and seminars, and encourage them to consider promoting their academic activities within the Group and among the wider ESIL community.

In addition, Twitter account has been created – (ESIL IG on International Law of Culture @ESILIGCulture) to offer a space for informing on relevant issues on heritage and culture, and on initiatives of IG Members and of the Group.

- **The multilingual scholarship bibliography on International Law of Culture**

During the Group's meetings, the idea of sharing and establishing a bibliography on International Law of Culture was endorsed by the Group. While preparing a first version of the bibliography, with a specific attention to linguistic, cultural and geographical diversity, all Members are invited to submit ideas and entries.

- **2023-2024 ESIL events**

IG members have been invited to share ideas and subjects to be developed in workshops, roundtable, seminars for the next ESIL events, in the forms (online, hybrid and in presence) envisaged by the ESIL Board and local Organizers.



Is International Law of Culture Fair?
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**2023 ESIL – Interest Group on International Law of Culture
Pre-Conference Workshop**

**18th Annual Conference in Aix-en-Provence
Aix-en-Provence, 31 August 2023, 9 :30-12 :30**

Organizing Committee :

*Beatriz Barreiro Carril, Giovanni Carlo Bruno, Andrzej Jakubowski, Lucas
Lixinski*

Hybrid: in person, Aix-Marseille University, Aix-Marseille Université - Campus
Aix-en-Provence (room TBD) and zoom/teams

[Registration](#)

*SEDI 2023 – Groupe de Réflexion sur le droit
international de la culture*

Atelier pré-conférence, La 18e conférence annuelle

Aix-en-Provence, 31 août 2023 9 :30-12 :30

Comité organisateur:

*Beatriz Barreiro Carril, Giovanni Carlo Bruno, Andrzej Jakubowski, Lucas
Lixinski*

Hybride: en personne, Aix-Marseille Université, Aix-Marseille Université -
Campus Aix-en-Provence (salle à déterminer) et zoom/teams

[Inscription](#)

Welcome/Bienvenue: 9:30 - 9:35 : Giovanni Carlo Bruno ((Institute for Research
on Innovation and Services for Development in Naples) and Beatriz Barreiro Carril
(Rey Juan Carlos University, Madrid)

1. Cultural Fairness in International Human Rights Law/ L'équité culturelle dans le droit international des droits de l'homme. Chair :Giovanni Carlo Bruno 9 :35 - 10 :10

- □ A Tale of Neglect and Struggle: The Protection of Religious Minorities under International Law (Paolo Vargiu, University of Leicester)
- □ Développer les dimensions culturelles des droits humains pour en donner une interprétation plus juste (Laurence Cuny, Université Laval, Québec et Université Sorbonne Université Sorbonne Paris I)

2. Cultural Fairness in Other Areas of International Law/ L'équité culturelle dans d'autres domaines du droit international Chair : Sophie Starrenburg (University Tilburg University) 10 :10 -10-45

Indigenous Peoples' Rights / Droits des peuples autochtones

- □ International Protection of Indigenous Cultures: Beyond the Anglosphere in the Pursuit of (Cultural) Fairness (Ayla do Vale Alves, University of New South Wales)

Private International Law / Droit international privé

- □ Testing International Law fairness against cultural diversity and human rights: early marriage as a case-study (Angelica Bonfanti, University of Milan)

Break/Pause 10:45 – 11:00

3. Fairness of International Law of Culture / Équité du droit international de la culture Chair : Beatriz Barreiro Carril 11:00 -11:55

Fairness using TWAIL in Cultural Heritage (Ankit Malhotra, University of London)

Au-delà de la Convention de l'UNESCO de 2005 : faire de l'équité le (méta)principe de la protection de la diversité des expressions culturelles (Véronique Guévremont, Université de Laval)

International Law and the Art Market – Fair is Fair? (Claudia S. Quiñones Vilá, Canvas Art Law (London)

Wrap-up: 11:45-12:00

Giovanni Carlo Bruno and Beatriz Barreiro Carril