

REPORT ON THE ACTIVITIES AND PLANS OF THE ESIL INTEREST GROUP ON INTERNATIONAL LAW OF CULTURE 2021-2022



**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/University of Opole) * Lucas Lixinski (UNSW Sydney).

Group's activities (October 2021 – October 2022)

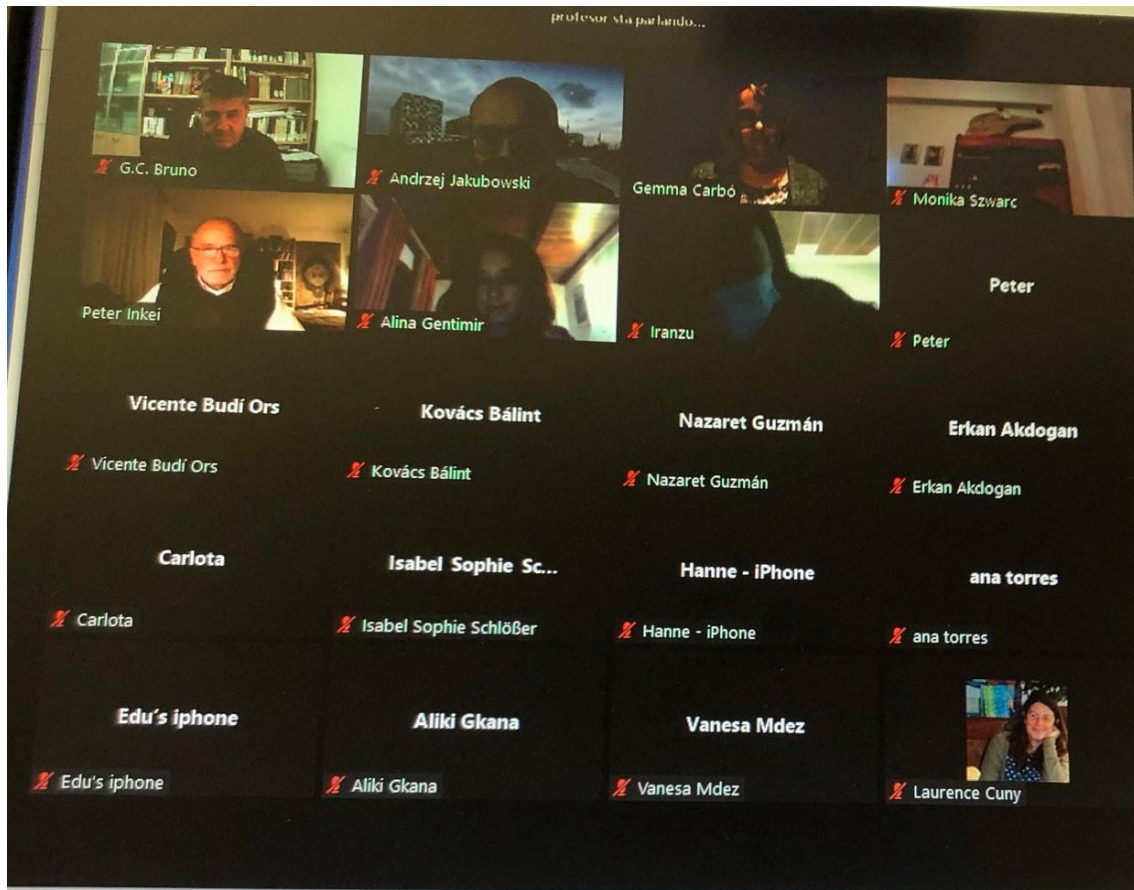
Workshops

- **Freedom of Art and Culture and Rule of Law as Values of the EU Identity: some views from recent events in Visegrad States**
Webinar: 9 December 2021

On 15 April 2021, the Group held an international online workshop on the 'Freedom of Art and Culture and Rule of Law as Values of the EU Identity: Some Views from Recent Events in Visegrad States'.

The event pointed out that the construction of the EU project demonstrated that the identity of the European Union (EU) found in the values of this supranational international organisation a privilege source for its definition. The Preamble to the Treaty indicates the 'cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law' as a source of inspiration for Member States creating the EU. It must be emphasised that the basis of the EU identity, in line with Habermas proposal, is not to be found in a close idea of European cultural identity. On the contrary, the identity of the EU should be found in its values. These values are established in Article 2 of the Treaty, which in fact refers to tolerance as a core value of the EU. It also concerns the aforementioned values of Freedom and Rule of Law. This webinar addressed precisely these two values. Firstly, the participants had the opportunity to discuss the situation of freedom in Hungary, particularly in relation to the more specific issue of Freedom of Art and Culture. Secondly, the webinar focused on the value of the Rule of Law, in relation to the recent decision of the Polish Constitutional Tribunal: Both values are at risk, and with them, the identity of the EU.

The event was jointly organised with ConArte International and Universidad Rey Juan Carlos.



See Annex 1: Programme of the Webinar: Freedom of Art and Culture and Rule of Law as Values of the EU Identity: Some Views from Recent Events in Visegrad States.

- **International Law of Culture in Armed Conflict**
Pre-conference (hybrid) workshop, 01 September 2022

The aim of this workshop, organised in the occasion of the 2022 ESIL Annual Conference in Utrecht, was to debate current challenges faced by communities and their heritage in armed conflicts.

Indeed, recent years have tragically demonstrated that armed conflicts, both international and non-international, pose an ever-increasing threat to the health and lives of millions of people and their cultural lives. The events of early 2022 - the aggression of the Russian Federation against the Republic of Ukraine - have evidenced the scale of these threats and the suffering of the civilian population.

Cultural heritage is under threat, with the goal of rewriting the history of the region to create imagined historical continuities that would cement attempts at occupation and incorporation of Ukraine into the Russian national foundational myth, at the expense of the distinctiveness of Ukrainian cultural identity. At the same time, important archives in the Ukraine that shed light on Soviet history are under threat because of the damning information contained in those archives. Further, online and media disinformation are rife, as means to create, reshape, and destroy past and present identities. In addition, an (unprecedented) campaign concerning artists and all cultural actors - including academics - from Russia has been discussed in public debates and online, aiming at boycotting supporters (and alleged ones) of the ongoing aggression. Uncertainties in the present situation induce wide-ranging discussion.

The workshop, while offering novel perspectives on the protection of cultural life and cultural heritage in present-day armed conflicts, addressed series of questions:

- Is international humanitarian law unable to provide adequate protection to culture in current armed conflicts?
- Can the law stop or prevent crimes against individuals, communities, groups and their culture and heritage in conflict-ridden territories?
- Are there effective tools today to stop such crimes and bring those responsible to justice?
- What are the possibilities of cultural cooperation as a means for peace, a promise in the UNESCO Constitution, for before, during, and after conflict?
- How can the international community promote artistic freedom for those individuals affected by the conflict, for instance through initiatives like ICORN – international cities of refuge network? What are the legalities involved in this type of initiative?



See Annex 2: Programme of the Workshop: International Law of Culture in Armed Conflict

17th ESIL Annual Conference – Agora 3

- **In/Ex-Clusiveness of Diversity in International Law**
IG Agora, 01 September 2022

The IG hold a roundtable (Agora 3), entitled 'Interest Group on International Law of Culture' within the framework of the 17th ESIL Annual Conference in Utrecht. It investigated the ways in which diversity is articulated in international law as both an inclusionary and exclusionary mechanism. It observed that international law-making's forays into diversity were originally designed as means of inclusion, creating avenues (all-too-familiar in the human rights arena) through which individuals, communities, and groups could seek legal recognition and validation when states failed them. Because of this potential, diversity soon became a contested battleground where states attempted to constrain the exercise of identities, the display of culture, and calls for special treatment by defining, curating, authorizing, and selecting diversity. It has also become an arena for states to try to advance economic interests under the protective guise of cultural identity, which heightened the political stakes of diversity in at times unproductive ways.

Against this background, the panellists focused on the four general questions:

- What work does diversity do in international law-making and implementation?
- How do you see diversity's intersection with international law, through the dual prism of inclusion and exclusion? Is diversity a 'first tool' of legal recognition/protection/rule for new subjects/groups/domains?
- Is some selective inclusion (which also entails exclusion) the necessary price for change in international law and access to rights? If not, what can international law do to combat it?
- How can we reimagine international law for greater and more inclusive diversity? Is doing so a precondition for us to become the cosmopolitan humanity international law often aspires to create?



See Annex 3: Description and Programme of the Agora: In/Ex-Clusiveness of Diversity in International Law

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 have co-edited a collection of essays stemming from 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' (9 September 2020). The book is under contract with Hart Publishing – Bloomsbury Academic, and will be published by the end of 2022.

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. For instance, the Call for Papers for a successful hybrid conference, entitled 'The Intentional Destruction of the Cultural Heritage of Mankind (IDCHM): what are the Remedies under International Law', held at the University La Sapienza in Rome on 2-3 December 2021, was circulated among the Group's members in July 2021.

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 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.

Annex 1



Webinar: Freedom of Art and Culture and Rule of Law as Values of the EU Identity: some views from recent events in Visegrad States

9 December 2021

17:00-18:30 CET

Organized by the Coordinating Committee of the ESIL IG on IL of Culture

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

The construction of the EU project has shown that EU identity finds in the values of this supranational international organization a privilege source for its definition. The Preamble to the Treaty points to the “cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law” as a source of inspiration for Member States creating the EU. It must be emphasized that the basis of the EU identity, in line with Habermas proposal, is not to be found in a close idea of European cultural identity. On the contrary, the identity of the EU should be found in its values. These values are established in Article 2 of the Treaty, which in fact refers to tolerance as a core value of the EU. It also refers to the aforementioned values of Freedom and Rule of Law. This webinar addresses precisely these two values: Firstly, we would have the opportunity to discuss the situation of freedom in Hungary, particularly in relation to the more specific issue of Freedom of Art and Culture. Secondly, we will focus on the value of the Rule of Law, in relation to the recent decision of the Polish Constitutional Tribunal: Both values are at risk, and with them, the identity of the EU.

Introduction: *Gemma Carbó*, President of ConArte Internacional and *Beatriz Barreiro*, Associate Professor of International Law (URJC) and member of the Coordinating Committee of the IG on International Law of Culture (ESIL)

Problems for Cultural and Artistic Freedom in Hungary Peter Inkei, Founder and Director of the Budapest Observatory: Regional Observatory on Culture in East-Central Europe.

Rule of Law in Poland: Reflections about the Recent Decision of the Polish Constitutional Court and the Relation between European and Polish Law. Monika Szwarc, Dr hab. Monika Szwarc, Professor at the Institute of Law Studies, Polish Academy of Sciences

Anyone interested in attending the online event is invited to register by sending an e-mail to beatriz.barreiro@urjc.es providing your name, last name and institution, by 8 December 2021.

Annex 2



ESIL Annual Conference 2021
'In/Ex-clusiveness of International Law'
1-3 September 2022, Utrecht, The Netherlands

ESIL IG on International Law of Culture

International Law of Culture in Armed Conflict
IG workshop, Thursday, 01 September 2022
Hybrid, Room 017

Draft programme:

09:00-09:10 – Introduction

09:10-10:10 – First session

Moderator: Giovanni Carlo Bruno (Institute for Research on Innovation and Services for Development in Naples)

- *From the Ashes: Guarantees of Non-Repitition for Destruction of Cultural Heritage*
Pádraig McAuliffe (University of Liverpool)
- *Accountability for Crimes Against Cultural Heritage: the Strengths and Weaknesses of Criminal Jurisdictions*
Alice Lopes Fabris (ENS Paris-Saclay)
- *Interdisciplinary Training of Specialists as a Response to the Need for Adequate Protection of Cultural Heritage in the Event of Crisis and War*
Katarzyna Góralczyk (Pontifical University of John Paul II in Krakow) & Marta Szuniewicz-Stepień (Polish Naval Academy in Gdynia)
- Discussion

10:10-10:25 – Break

10:25-11:25 – Second Session

Moderator: Andrzej Jakubowski (University of Opole)

- *The War on Memory and Its Laws*
Ekaterina Markovich (University of Turku) & Olga Zabalueva (Linköping University)
- *Safeguarding Intangible Cultural Heritage in the Context of Armed Conflict*
Sophie Starrenburg (University of Leiden)
- *Intangible Cultural Heritage in Armed Conflict: Examining the Interplay between International Legal Regimes of Culture and Conflict*
Ashrutha Rai (University of Cambridge)
- Discussion

11:25-12:00 – Final discussion and IG's future initiatives

Annex 3



International Law of Culture Interest Group



Title: In/Ex-Clusiveness of Diversity in International Law

Format: Roundtable

Abstract:

Overall theme description: This Agora investigates the ways in which diversity is articulated in international law as both an inclusionary and exclusionary mechanism. International law-making's forays into diversity have been originally designed as means of inclusion, creating avenues (all-too-familiar in the human rights arena) through which individuals, communities, and groups could seek legal recognition and validation when states failed them. Because of this potential, diversity soon became a contested battleground where states have attempted to constrain the exercise of identities, the display of culture, and calls for special treatment by defining, curating, authorizing, and selecting diversity. It has also become an arena for states to try to advance economic interests under the protective guise of cultural identity, which has heightened the political stakes of diversity in at times unproductive ways.

International law allows, and even requires, diversity to be selected. International cultural heritage lists allow the state to dictate what culture is worth safeguarding and can constitute a global public good; threshold definitions of minorities and Indigenous peoples serve as preconditions for access to rights; stringent origin rules are needed for media products to be excluded from free trade requirements; languages are selected for the operation of international institutions, privileging native speakers of those languages;

Indigenous intellectual property is recognised by many international documents but the reality of this protection is highly limited due to the predominance of Western understandings of intellectual property; LGBTIQ+ identities are curated to privilege Western, white, middle class gay men or feminine-presenting trans* women, portraying those interests as if they spoke on behalf of the entire LGBTIQ+ spectrum; reparations for colonial harm prompt an embrace of diversity as an anti-racist measure, but generally only include those international legal entities created by these very colonial structures, thus limiting their potential to undo this harm. In other words, as a practical matter, the inclusion of diversity is necessarily limited and, therefore, exclusionary of “fringe” diversity, which is where the more radical potential for the transformation of international law lies. While accepting diversity, international law also preserves a non-diverse core.

International law thus operates in a dual movement: as a mainstreamer or flattener of diversity; and, to use Claude Lévi-Strauss’s metaphor, a place of respite and shade where the fragile flowers of difference can thrive. This Agora will seek to query and investigate the potentials and limits of diversity as a category in international law.

This Agora pushes thinking forward in significant ways: it queries the ways in which, once those initial hurdles *for its being placed on the normative agenda* have been cleared, diversity can come into play to shape the way the law applies to rights-holders in beneficial or detrimental ways, affecting the application of substantive law, possible remedies that can be sought and given, and the enforcement of international legal obligations. Its aim is thus different from the Agora on rights-holders and protected persons, that seems to focus on the threshold question of who gets to hold rights, and the subject/object distinction. Our proposal goes further, and queries what happens once the threshold has been met, and the rights-holder has been acknowledged as a subject.

Insights to be sought from the Agora: speakers in this roundtable discussion will be asked to reflect on the dual work of diversity in international law, and to query whether our current legal frameworks that embrace, promote, and even enforce diversity can be fully inclusionary, or if instead the exclusion of some is the inevitable price to be paid for access to rights. This latter line of thinking suggests international law is a zero-sum game, and is a proposition that would fly in the face of our promise of international law as a language of emancipation and lasting peace. In reflecting on this double-movement, the roundtable will offer pathways to reimagining what international law can be for not only those who

are most vulnerable, but also for the diversity we as humanity select in narrating our own stories, successes, and failures.

Speakers:

1. Ayla Alves (University of New South Wales)
2. Yvonne Donders, University of Amsterdam and Commissioner at the Netherlands Human Rights Institute
3. Eleni Polymenopoulou, Hamad Bin Khalifa University, Qatar
4. Chair: Andrzej Jakubowski, University of Opole and IG Co-Convenor

Contact person: Lucas Lixinski, IG Co-Convenor

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