

# The International Law of Culture: Prospects and Challenges

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The international law of culture is a broad field, which certainly goes beyond the United Nations Educational, Social and Cultural Organization (UNESCO), as the international organization entrusted with, among other things, cultural affairs. Indeed, if one considers the far-reaching definition of culture, then a vast number of institutions, rules of hard and soft law, and initiatives of different scope and shape exist, and new ones come into being. This institutional complexity and the ensuing rule fragmentation are indicative of multiple scenes of contestation, denoted by different actors, politics, dynamics, and often strong path dependencies, which make meaningful communication between them and a solution-oriented forward thinking difficult. In scholarship, too, there appears to be increasing specialization, which carves out topics and subtopics, such as the UNESCO versus the World Trade Organization (WTO) clash, cultural heritage preservation, or indigenous peoples' rights. This may, despite the deeper knowledge won, hinder pinpointing appropriate regulatory responses at the international level, which could address cultural rights comprehensively.

The daunting task of tackling some of the challenges of this state of affairs has been taken up by an interdisciplinary project based at the University of Göttingen called "The Constitution of Cultural Property: Actors, Discourses, Contexts, Rules." It is a multiyear research effort, which, now in its second phase (2011–2014), focuses in particular on six topics: (1) new challenges for the international law on culture; (2) the ethics of/in negotiating and regulating cultural property; (3) valorization and commoditization of heritage: a comparative study of choice and modalities on the state level; (4) cultural heritage between sovereignty of indigenous groups, the state and international organizations in Indonesia; (5) contested collections: diverging claims of property in debates and negotiations 40 years

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after the adoption of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and (6) geographic indications: culinary heritage as cultural property.

Accounting for the broader research goals of the interdisciplinary endeavor, the Göttingen conference of late May 2012 focused on the first research strand only. Led by legal scholar Peter-Tobias Stoll, it posed two critical questions: whom are claims or rights to culture entrusted to, and what functions are thereby fulfilled? The questions were raised against the backdrop of international cultural law's own development, which originally assumed a model of nationally sovereign disposal of culture, but increasingly incorporates other dimensions, such as cooperative forms of international communitization ("world heritage"), as well as new addressees at the substate level, such as indigenous groups and individuals. Mapping the complex governance regimes, the project seeks clarifications and distinctions in this context, and also makes the normative claim that certain standards must become leading, such as (1) the enrichment and conservation of culture, (2) its usage in the sense of access to culture, and (3) the principle of equity.

The Göttingen conference brought together an interdisciplinary group of scholars to reflect on these questions and attempt to map the key issues and unresolved questions. The discussions were structured in five panels. The first, with Federico Lenzerini of the University of Siena and Brigitta Hauser-Schäublin of the University of Göttingen, engaged a legal scholar and an anthropologist to debate on the issues of culture and indigenous peoples. The second panel, on culture and human rights, built on the debate between a renowned and a younger scholar, Francesco Francioni of the European Institute in Florence and Oliver Ückert of the host institution. The day was closed with a panel on culture and trade, with presentations by Héléne Ruiz-Fabri of the University of Paris I–Panthéon Sorbonne and Mira Burri of the University of Bern. The second conference day started with the panel "Culture: Right? Property? Heritage? Resource?—or All?" with a wonderful presentation by Lyndel V. Prott of the University of Queensland on the return of cultural objects, commented on by Tatiana Flessas of the London School of Economics. The final panel had the overarching title "Culture, UNESCO and International Relations" and looked at culture and politics in the United Nations (Peter-Tobias Stoll, Göttingen), at cultural rights and states' cultural policies (Sven Missling, Göttingen), as well as at culture as the fourth pillar of sustainability (Véronique Guèvremont of the Laval University in Québec).

Observable throughout all presentations and the heated debates was the incredible complexity of the issues involved and the fragmentation of discourses, to which I alluded to at the outset. It is not only in the law, which is inundated with multiple acts of hard and soft law nature, documents of old and recent times, and initiatives in diverse venues, and not only in the forceful politics behind these, but also when looking at the actual effects on the ground. As, for instance, Prof. Hauser-Schäublin argued in the first panel with regard to the UNESCO cultural heritage listings and their ambiguous, if not negative, effects on the management of the

Angkor Park, on the Cambodian–Thai relations and on exacerbating existing inequalities in the local communities.

Against this backdrop, and despite the rich discussions and expert faculty, it was difficult to discern a bright line that could potentially guide the discussions toward appropriate legal design capable of addressing cultural rights at the international level. But yet again, the conference has only been a starting point for the broader research effort, and in this sense, it has been a valuable and truly successful exercise. More thinking outside the box may be welcome, especially as one cannot isolate cultural heritage issues from other developments, in particular the shifts in global governance, which redefine the role of the state and the swift technological advances, especially in digital media, which may present certain challenges but also a palette of opportunities for “lighter” regulatory toolboxes.

The planned publication with selected contributions of the conference will certainly reflect on these issues in more detail and add value to the current state of debate in international cultural law and policy.

A highlight of the Göttingen workshop was the launch of the book *The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions: A Commentary*, co-edited by the project leader and host, Peter-Tobias Stoll and Sabine von Schorlemer, the Saxon State Minister for Higher Education, Research and the Arts.