

EVENTS AND CONFERENCES

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Intersessional Meeting of the International Law Association Committee on Participation in Global Cultural Heritage Governance Oxford, 2-3 July 2019

Established in November 2017, the Committee on Participation in Global Cultural Heritage Governance (“the Committee”) of the International Law Association (ILA) is chaired by Andrzej Jakubowski (Polish Branch). Lucas Lixinski (Brazilian Branch) serves as the Committee’s Rapporteur.

The purpose of the Intersessional Meeting, hosted by Wolfson College, University of Oxford (“the Meeting”) was to follow up on the Committee’s first gathering in Sydney to further articulate what participation entails in the ambitious attempt at systematizing the management of cultural heritage on a global level. Each member of the Committee had been assigned a particular organization, regional or universal “in and beyond heritage”, and was tasked with reporting in the Meeting their responses to the main question: “[How] does the organization frame the concept of participation?”. Three sub-questions flow from the general prompt:

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1. "Does the organization define who gets to participate? If so, in what terms?"
2. "What is the nature of participation (consultation/consent/observation/other)?"
3. "In what contexts does participation take place?"

During the Introductory Session, James Nafziger (US Branch) reminded the Committee members of the inescapability of clearly delineating participation in cultural heritage management. In reviewing the past work conducted by the Committee on Cultural Heritage Law, he additionally noted participation as a loose end that is in urgent need of tying up, especially when it comes to the rights of indigenous peoples. There was a clear admission that the role of non-expert, non-state "communities" in the governance of cultural heritage has been under-reported, is generally desired, and should be further articulated.

Following the Introductory Session, the discussions in the two-day Meeting were divided in accordance with the following themes:

1. The specificity of cultural heritage governance;
2. UNESCO and its particular bodies;
3. Participation, heritage, and regional organizations;
4. Specialized organizations and international NGOs;
5. Human rights, heritage, and participation.

The structure of this report, however, does not follow this thematic distribution. Instead, two summaries are presented: first on the extent to which the members contextualized their reports in the governance of cultural heritage; and second on the various ways in which the notion of participation was discussed. The findings presented in this report are based on the oral deliberations during the Meeting, as well as on the written reports submitted by the members prior to the Meeting and distributed to all participants.

Cultural Heritage

The reports on the various agencies of the United Nations (UN) refer to cultural heritage as a well-established notion in international legal vernacular. Outside the UN, the term also finds usage in a number of regional organizations, namely the Arctic Council, the European Union (EU), the Caribbean Community (CARICOM), the Organization of Islamic Cooperation (OIC), the Organization for Security and Cooperation in Europe (OSCE), and the Southern Common Market (MERCOSUR).

Also, the work of certain organizations touches upon specific forms of cultural heritage without referring to it directly, such as the Internet Corporation for Assigned Names and Numbers (ICANN), the International Criminal Police Organization (INTERPOL), the African Regional Intellectual Property Organization (ARIPO), the UN Economic and Social Council (ECOSOC), the International Labour Organization (ILO), the Human Rights Committee (HRC), the Committee for Economic,

Social, and Cultural Rights (CESCR), and the Committee for the Rights of People with Disabilities (CRPD). In the latter five cases cultural heritage is implied to be within the scope of the rights of the indigenous peoples to take part in cultural life.

One report demonstrates that there are some organizational frameworks that only engage with cultural heritage on a rhetorical level. Namely, the Joint Declaration of the Group of Seven (G7) Ministers of Culture of 31 March 2017 explicitly acknowledges the importance of cultural heritage and condemns its destruction. Yet no further explanation was offered.

It is perhaps the initial commitment to go beyond UNESCO parlance that led to the generalist tone of a number of the reports describing the work of two organizations pertaining to cultural heritage governance. These were the World Health Organization (WHO) and the UN's Food and Agriculture Organization (FAO).

Participation

Still in its gestation phase, the Committee's priority was understandably to flesh out the meaning of "participation" itself. In this respect it succeeded, as all the members reported on the various manners and methods through which participation manifests itself in multiple instruments and organizations on both the regional and international levels.

Not all the reports contextualize participation in cultural heritage governance specifically. This is due to the fact that either some of the organizations have little to do with cultural heritage *per se*, or that there is no sufficient information linking participation in these organizations with cultural heritage governance. Reports on ECOSOC, the UN World Tourism Organization (UNWTO), FAO, and the G7 ended up explaining how non-state actors may participate in the proceedings of the agencies. Meanwhile, the reports on the EU, ILO, the Organization of the American States (OAS), and OSCE exemplify organizations where there is little information linking participation to cultural heritage.

Several reports demonstrate that there are organizations which do not precisely define participation, but acknowledge the need for States to accommodate it in cultural heritage governance, such as the Human Rights Committee, the UN Environment Program, and the CRPD. Conversely, participation is more clearly defined in the framework of some other instruments and organizations, such as the Arctic Council, Andean Community, INTERPOL, UNESCO's 1999 International Code of Ethics for Dealers in Cultural Property, ARIPO, MERCOSUR, the International Organization for Migration (IOM), and the UN High Commissioner for Refugees (UNHCR).

Finally, participation was also scrutinized in terms of the committees tasked with the implementation of the two primary UNESCO treaties on cultural heritage: the 1972 World Heritage Convention (WHC) and the 2003 Intangible Cultural Heritage Convention (ICHC).

Follow-up for Kyoto

With all questions having been addressed by the members present, the Meeting successfully amassed an abundance of information to substantiate the elusive notion of participation. Having dealt with the variety of meanings this notion carries on a general level, the Committee can now focus specifically on contextualizing “participation” in terms of cultural heritage governance. How the Committee approaches this diversity of meanings and methods through which participation manifests will be crucial in its attempt to articulate “governance” on a global level. On the one hand, leaving the particularities of participation for each State to define does not seem to be the “status quo” the Meeting agreed to revert to. On the other hand, is it more strategic than setting certain standards on a global level? Furthermore, the Committee has the task of continuing to specifically articulate the participation of indigenous peoples, whose rights continue to be a fraught subject-matter in international law. Since the cultural specificities with which indigeneity is defined are often expressed in tangible and intangible forms of cultural heritage, the participation of indigenous peoples in cultural heritage processes would be essential to their livelihoods. The work of the Committee has truly just begun.