EVENTS AND CONFERENCES

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Committee on Participation in Global Heritage Governance, Working Session and Roundtable
Sydney, 22 August 2018

On 22 August 2018, the International Law Association's (ILA) Committee on Participation in Global Heritage Governance conducted a roundtable and working session as part of the Association's 78th Biennial Conference, held in Sydney, Australia.

The conference was the first for the newly formed Committee, created following the disbandment of the ILA Committee on Cultural Heritage Law in 2014. The Committee Chair, Dr. Andrzej Jakubowski, and Rapporteur, Associate Prof. Lucas Lixinski, will guide the Committee under its new mandate, which has three primary objectives:

1. To provide a better understanding of participatory rights in heritage governance, working with a variety of bodies, regulatory frameworks, and stakeholders;
2. To analyse how the aforementioned rights can be recognized in practical terms in international cultural heritage instruments, focusing on issues of access, standing, and equality;

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3. To use the information gained from the working session and roundtable to develop policy-oriented and *de lege ferenda* recommendations aimed at improving efficient involvement and participation in global international heritage governance.

Working session

The working session began with an address by the former Chair of the Committee on Cultural Heritage Law, Prof. James Nafziger, who spoke about the transition from the old to the new committee, which he gave his blessing and support.

Dr. Jakubowski then presented a report on the Committee's future endeavours. An immediate goal is to expand membership to include members from new regions, such as Latin America, Africa, and Asia. He discussed the Committee's mandate and its commitment to both the human rights dimension of cultural heritage as well as enhancing the discourse relating to issues such as development, security, peace, and the peaceful and participatory governance of heritage issues between different groups.

Prof. Lixinski outlined three themes highlighted in the closed session and roundtable:

The first common issue was whether the subjects of cultural heritage law or its substance should take precedence when discussing heritage governance. Both sessions debated the competing benefits of focusing on the actors participating in cultural heritage governance and/or on the process of participation itself.

The second issue was the potential limitations created by the pairing of human rights with other international legal discourses, community claims, and normative frameworks. Prof. Lixinski stressed this is particularly important for collective categories of rights holders.

The final issue was intersectionality. Many international actors in cultural heritage law have concerns other than heritage, such as indigeneity, gender, sexuality, disability, age, etc. These should be considered when analysing their participation in global heritage governance.

Prof. Lixinski then opened the floor for discussion of the issues outlined above, as well as of the work of the Committee and whether the Committee should focus on international or domestic examples of community engagement when creating their final report. A combined national and international approach to community engagement was agreed upon.

The need to ensure that research results are given due weight and that the opinions gathered are appropriately incorporated into the Committee's work was highlighted. Using national approaches to understand the experiences of communities was recommended as necessary, to ensure a more effective international approach. The importance of ensuring effective participation of those assisting with research, especially those from minorities, was also highlighted.

The variety of approaches to global governance was next discussed. It was agreed that the Committee should create its own definition of governance for the Committee mandate. The fact that conceptions of governance tend to focus on the processes of governance and the actors involved, rather than on the relevant law, was also discussed.

The definition of cultural heritage law was also considered, and it was agreed that the mandate should include a clear definition of the Committee's perception of cultural heritage law. Prof. Lixinski cautioned against viewing cultural heritage law in a strictly international law-based framework, arguing instead that there is a need to recognize both the importance of utilizing the definitions of heritage provided by UNESCO treaties as well as how these are reflected in domestic law. Dr. Jakubowski confirmed that a definition will be included in the interim report.

There was also a discussion about intersectionality and the difficulties and risks associated with finding common ground among those with different identities. While acknowledgment of diversity in the work of the Committee is of central importance, an overly strong focus on diversity in research and policy can weaken the effectiveness of available instruments.

The struggle to demarcate international and regional jurisdictions when considering the practical realization of rights was also discussed. Support was expressed for consideration of both a regional recognition of rights and a country's participation in committees and international bodies that allow these rights to be realized. Dr. Jakubowski lamented the lack of research comparing mechanisms promoting the realization of rights, and the difficulties this may cause. Prof. Lixinski argued the Committee should focus on international institutions, UNESCO regimes, and regimes from other relevant organizations, such as INTERPOL.

ROUNDTABLE

A variety of experts attended the Committee's roundtable discussion, which was entitled "Reimagining community in International Legal Governance". The roundtable was split into two parts: "Intersectionality" and "Tapping into global governance processes".

Intersectionality

Five experts, each representing a different interest group, addressed a series of questions. Speaking on the topic of indigenous peoples was Associate Prof. Dalee Sambo Dorough, co-chair of the ILA Committee on the Rights of Indigenous Peoples, Prof. at the University of Alaska Anchorage, and the International Chair of the Inuit Circumpolar Council. The position of refugees was addressed by Oxford University's Prof. Guy Goodwin-Gill. The issues of feminism and gender were presented by Associate Prof. Beth Goldblatt, from the University of Technology, Sydney.

Child rights were covered by Dr. Noam Peleg, and disability rights were presented by Rosemary Kayess, both from the University of New South Wales.

In your context, how is community defined? Does this impact autonomy-seeking efforts?

Associate Prof. Dorough highlighted the lack of a formal definition of indigenous people in international law, with the definitions adopted by international bodies often failing to adequately reflect the real-life context of indigenous communities. Prof. Goodwin-Gill referred to refugees as a "community without mobility", typically defined by others and treated in a paternalistic manner. According to Associate Prof. Goldblatt, the importance of knowing who is a member of a community and who may speak on its behalf is of vital importance when considering the question of gender. Dr. Peleg conceded that although children are rarely seen as a distinct community, there is some recognition of their rights through the UN Convention on the Rights of the Child. Ms. Kayess described community as a contested concept in the disability space, and highlighted that attempts to accommodate the scope of disability in conventions and international instruments continue to be inadequate.

Who gets to speak on behalf of your community?

Ms. Kayess discussed tensions in the disability community with respect to the autonomy and voice of disabled people, and the extent to which parents and care-takers should be allowed to speak on their behalf. Children were described by Dr. Peleg as able to express their views in limited ways on matters of societal importance, with self-nominated adults commonly speaking on their behalf. Associate Prof. Goldblatt argued that the voice of women can often be suppressed or limited, with notions such as class and race also playing a role in who may speak. Prof. Goodwin-Gill acknowledged that given the sheer number and varied experiences of refugees, it is hard for any one refugee, or even a group of refugees, to speak on behalf of all refugees. Associate Prof. Dorough contended that indigenous voices are often stifled if they are not easily accommodated within the intellectual or political space, or if a person's membership in an indigenous community is questioned.

How is internal dissent addressed/portrayed to outsiders, particularly in the context of decision-making within the community?

Associate Prof. Dorough described internal dissent among indigenous people as the result of external pressures and the belief that indigenous communities constitute a homogenous group. Prof. Goodwin-Gill described this question as difficult to answer in the context of refugees, as people become refugees for a variety of reasons and often do not have a strong sense of community. Associate Prof. Goldblatt ar-

gued that issues such as class and religion create different views among women on controversial topics, hindering progress and debate and allowing outsiders to use these differences to justify avoiding controversial policies. According to Dr. Peleg, children have varying levels and degrees of access to information about issues relevant to them, meaning true dissent cannot exist in that community. Ms. Kayess pinpointed policy applications, especially relating to integration, as the major source of dissent within the disability community, helping authorities to justify resistance toward integration.

How are culture and cultural markers important in articulating a sense of shared identity? How does intersectionality affect cohesiveness within the community?

Although Ms. Kayess views disability as a community rather than a culture, she identified a general sense of culture in the wider international disability sphere, and specific sub-cultures and sub-groups within the disability community. International human rights standard-setting was characterized by Associate Prof. Dorough as an effort to safeguard the culture, identity, and integrity of indigenous peoples, with the UN Declaration on the Rights of Indigenous Peoples effectively including aspects such as age, gender, refugees, and disability. Prof. Goodwin-Gill highlighted the fact that cultural ties can be destroyed when becoming a refugee, especially for those who have had to flee following persecution because of their culture. Associate Prof. Goldblatt cited the importance of accommodating both claims of culture as well as challenges to those claims within communities, an approach which would facilitate cohesiveness and discussion between different groups. Dr. Peleg argued that although a loose common culture of childhood exists, the role of children within this culture is unclear, given the variety of intersectional considerations influencing the experiences of childhood.

Tapping into the global governance process

Addressing the questions for this roundtable were Dr. Emma Palmer, an ex-banker involved in community legal centres and member of the board of the Women's Legal Service NSW from Griffith University; Dr. Kirsten Davies, an expert in environmental law from Macquarie University; and Annamari Laaksonun, a member of the cultural sector with rich experience in international cultural policy and civil society, from the University of Technology, Sydney.

In your context, how is community defined?

Community is defined as groups of people sharing common spatial, temporal, and agentic characteristics, making connections, based on elements such as shared

space, place, or belief. It is a phenomenon which can provide a sense of belonging to individuals, and can create a space in which individuals can feel included.

Who gets to speak on behalf of the community?

Groups such as community legal centres, elected governments, and other state-run bodies were given as examples of those who can speak on behalf of a community. It was conceded that these groups can only speak on behalf of the community when they have sought adequate community engagement, especially from marginalized or "quieter" voices.

How are culture and cultural markers important to articulating a sense of shared identity?

Culture and cultural markers were pinpointed as central to the identity and values driving one's behaviour. In a community setting, they are instrumental to restoring group identity and resolving problems by encouraging engagement and the development of social bonds.

How do communities work in/with/against/around the state and international bodies in your field? What are the challenges to ensuring community participation in global governance in your field?

Communities are more likely to work with the state and international bodies if such bodies are sympathetic towards the variety of community structures and governance mechanisms they encounter. The most successful examples of community participation in governance are those which ensure a widespread and varied participation, as well as respect for participants, methodological soundness, and giving the participants the opportunity to engage with the final data/conclusions. Ensuring that all these aspects are addressed in participation is a key challenge for state and international bodies.