



SUMMARY OF THE INTERNATIONAL RESEARCH SEMINAR OF COMPARATIVE LAW

## INTANGIBLE CULTURAL HERITAGE IN NATURE: SPACES, RESOURCES AND PRACTICES

September 7, 2017

*Research project private working group session*

Salacgrīva, North Vidzeme Biosphere Reserve

*/Site of the UNESCO World Network of Biosphere Reserves/*

September 8, 2017

*Presentations and round-table discussions*

Rīga, Latvian Academy of Culture

*/UNESCO Chair on Intangible Cultural Heritage Policy and Law/*

Organized by: Latvian Academy of Culture (UNESCO Chair on Intangible Cultural Heritage Policy and Law), Institute for Political Social Sciences (*Institut des Sciences Sociales du Politique, ISP, Paris*)

Sponsored by: International Society for Research on Art and Cultural Heritage Law, International Society for Ethnology and Folklore (SIEF) Working Group 'Cultural Heritage and Property'

### Concept Note

Intangible cultural heritage can be created by communities as a response to their environment and their interaction with nature<sup>1</sup>. Farming, fishing, hunting, pastoral or food gathering practices are, for instance, associated to natural resources and spaces. Safeguarding these elements of intangible cultural heritage requires, not only recognition of a community's rights to access ecosystems, such as forests or seas, but also the right to use its resources. States may grant to communities hunting, fishing or harvesting rights, to preserve their traditional lifestyle and the intangible cultural heritage it sustains. These rights must however be exercised in an ecologically sustainable manner to mitigate the impact these practices can have on the environment<sup>2</sup>. In contrast, some knowledge and practices concerning nature and the universe

<sup>1</sup> Art. 2.1 of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

<sup>2</sup> The Convention for the Safeguarding of the Intangible Cultural Heritage and the Operational Directives for its implementation both enshrine the concept of sustainable development.

can be considered as land management systems or as traditional ecological knowledge. In this case, safeguarding intangible cultural heritage contributes directly to the preservation of the environment and to the conservation of biodiversity.

The relationship between nature and intangible cultural heritage is therefore dual: it can necessitate regulation to control the effects of intangible cultural heritage safeguarding activities on the environment or it can be mutually beneficial. In both cases, law has a significant role to play in finding how to balance the need to safeguard intangible cultural heritage with the obligation of preserving the environment. Environmental law's different protection methods already take into consideration the issues of respecting community knowledge and traditional practices of management of natural resources.

This seminar aimed at discussing the legal aspects of various interactions between safeguarding intangible cultural heritage and environmental protection including management of natural resources. To that effect, it took a closer look at regulations within environmental law that are highly relevant to the safeguarding of intangible cultural heritage, even if they do not make an explicit reference to this legal concept. The discussion was intended to foster both comparative and interdisciplinary views, bringing together legal scholars and ethnologists from different countries as well as representatives of communities, to present a variety of lessons learned through case studies, theoretical and historical analyses tackling interactions between the national and the regional levels.



Examples of elements of the intangible cultural heritage with a strong link to nature inscribed on the Convention for the Safeguarding of the Intangible Cultural Heritage's International Lists:

- fishing: *Culture of Jeju Haenyeo (women divers)*;
- hunting: *Falconry, a living human heritage*;
- water management system: *Irrigators' tribunals of the Spanish Mediterranean coast: the Council of Wise Men of the plain of Murcia and the Water Tribunal of the plain of Valencia*;
- forest management system: *Traditions and practices associated with the Kayas in the sacred forests of the Mijikenda*; and
- traditional agriculture: *Traditional agricultural practice of cultivating the 'vite ad alberello' (head-trained bush vines) of the community of Pantelleria*.

## Programme

### Introduction

**Alda Ozola**, Deputy State Secretary in charge of Environmental Protection, Ministry of Environmental Protection and Regional Development, Latvia

**Gilles Bonneville**, Director, French Institute in Latvia, Counselor for Cooperation and Cultural Action, French Embassy in Latvia

## I / Spaces

### *Presentations:*

#### **Heritage protection in Lahemaa National Park: values, rights and communities**

**Ave Paulus**, Specialist in Cultural Heritage Issues, Environmental Board of Estonia; PhD Candidate, University of Tartu; Member of the ICOMOS Estonia

#### **Resource management systems: customary rights and practices**

**Jérôme Fromageau**, PhD, President, International Society for Research on Art and Cultural Heritage Law, France

### *Round Table:*

**Gunta Gabrāne**, Deputy Director General in charge of Nature Conservation, Latvian Nature Conservation Agency

**Aušra Feser**, Director of the Curonian Spit National Park, Lithuania

**Jolanta Uktverytė**, Head of the Department of Nature at the Direction of the Curonian Spit National Park, Lithuania

**Hanna Schreiber**, PhD, Assistant Professor in Legal Sciences, Section of Law and International Institutions, Institute of International Relations, Faculty of Political Science and International Studies, University of Warsaw, Poland

**Vincent Négri**, PhD, Researcher in Legal Sciences, ISP, France

### *Moderator:*

**Noé Wagener**, PhD, Lecturer in Public Law, *Université Paris-Est Créteil*, France

## II / Resources

### *Presentations:*

#### **Conflicts between nature conservation and an indigenous community: the example of the Kihnu Island**

**Mare Mätas**, Chairperson of the Board, Kihnu Cultural Space Foundation, Estonia

#### **Seal hunting: a case study in intangible cultural heritage regulation**

**Lily Martinet**, PhD, Research Fellow in Legal Sciences, ISP, France

### *Round Table:*

**Andris Širovs**, Director of Pierīga Regional Administration, Latvian Nature Conservation Agency

**Kristin Kuutma**, PhD, Professor of Cultural Research, University of Tartu, Chairperson of the Board, Estonian National Commission for UNESCO

**Ramūnas Lydis**, Director of Zemaitija National Park, Lithuania

**Vilhelmína Jónsdóttir**, lawyer and ethnologist; *alumnus* of graduate studies at the University of Iceland

**Cléa Hance**, PhD Student in Legal Sciences, *Université de Versailles Saint-Quentin-en-Yvelines, École normale supérieure de Cachan*, France

*Moderator:* **Anita Vaivade**, PhD, Assistant Professor in Cultural Theory, Researcher, Latvian Academy of Culture

## Summary of Presentations and Discussions

**Keywords:** intangible cultural heritage / traditional knowledge / law / environmental law / nature protection and management / indigenous peoples

## Introduction

The seminar was introduced by **Alda Ozola** (*Deputy State Secretary in charge of Environmental Protection and Regional Development, Latvia*), who stressed the importance of collaboration between actors involved in preserving nature and in safeguarding culture and ICH. Scarcity of resources and intensity of their usage require regulations to preserve nature. In Latvia, for instance, coastal fishing has an important impact on marine resources; the same can be said about traditional use of forest resources, such as hunting. Alda Ozola added that a public debate on climate change (not present yet in Latvia) is also desirable to create new mindsets, as climate change demands alterations in a society's way of life, including its traditional practices and knowledge.

**Gilles Bonneville** (*Director, French Institute in Latvia, Counselor for Cooperation and Cultural Action, French Embassy in Latvia*) pointed out the importance of international cooperation fostered by the adoption in 2003 of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, and its expression through the Franco-Latvian project 'Osmose' bringing together researchers from the Latvian Academy of Culture and French scientists of the Institute for Political Social Sciences (*Institut des Sciences Sociales du Politique, ISP, Paris*). Gilles Bonneville expressed the French institute's and the French Embassy's support for continuous cooperation between both States.

## I / Spaces / Presentations

Natural spaces and the conceptual links between ICH and environmental law were examined in the first part of the seminar. The presentations described challenges and possible solutions to regulate interactions between ICH and nature. The presentations also stressed the crucial role of local communities and their participation in safeguarding ICH.

## Heritage Protection in Lahemaa National Park: Values, Rights and Communities

### Ave Paulus

Specialist of Cultural Heritage, Environmental Board of Estonia, PhD Candidate, University of Tartu, Member of the ICOMOS Estonia

Ave Paulus presented the common international legal framework and standards of practice for human rights, community rights, and indigenous peoples rights enshrined in the Universal Declaration of Human Rights (1948) and the UN Declaration on the Rights of Indigenous Peoples (2007). She also mentioned in connection with tangible and intangible cultural heritage law the Convention on the Value of Cultural Heritage for the Society (the 2005 Faro Convention) and the IUCN Green List standard (2014).

There are five national parks in Estonia that preserve tangible and intangible cultural heritage. Since 1971, cultural heritage at the Lahemaa National Park has been preserved by the State in accordance with environmental law. The Rules of the Lahemaa National Park (2015) and the Management Plan are tools used to implement and to promote community rights by developing participation. The Council of the Lahemaa National Park is the decision maker for the park's management. The Council consists of representatives from the government and local communities, as well as experts.

Effective management and dialogue with local communities is crucial, as there are 72 villages in the Park raising various issues in relation with private ownership and landscape protection. One of the central issues has been the reconciliation of house construction with local traditions. In this regard, purposeful interaction with a wider public has proven to be a success story through the campaign "Living Landscapes" initiated by locals in 2015 consisting in cultural heritage workshops for local communities.

The union of local practices and expert knowledge has been the best guarantee to maintain and sustain the development of cultural heritage in the Park. It is essential for the local communities to participate in defining, preserving and enhancing their cultural heritage. Expert analysis has allowed, for instance, the locals to restore all previous agricultural landscapes as semi natural landscapes.

## Resource Management Systems: Customary Rights and Uses

### Jérôme Fromageau

President, International Society for Research on Art and Cultural Heritage Law, France

Jérôme Fromageau examined the place for customary rights and practices in resource management systems. A great number of traditions and practices create an ethical and management framework regulating access to natural resources and to nature in general. Safeguarding of intangible cultural heritage created by communities in relation to their environment and in interaction with nature, contributes to preserving the natural spaces they live in.

Various agricultural, pastoral, fishery, hunting and picking practices are in fact associated with specific natural resources and spaces. Safeguarding these elements of the intangible cultural heritage presumes not only the recognition of the right of a particular community to access these ecosystems, but also the right to use these resources.

There has to be an integrated management system, to avoid any radical transformation of these spaces. Traditional knowledge is used to manage forest spaces, alluvial plains, ponds, swamps or fish resources as commons. Custom is a true rule of law even if it does not originate from the State. It is built by habit, the community being convinced of its binding character. Customs are founded on the legitimacy of precedent and the ancestral character of the commons' management practices. It is particularly adapted to specific environmental conditions. Human communities traditionally get their means of subsistence from nature, their way of life is therefore closely linked to it and this is where the importance of its preservation comes from.

Consideration for such traditional systems of use and management of natural resources is a preliminary step to clarify political choices. An unavoidable part of these communal practices need safeguarding, excluding one is to take deliberate part in their disappearance.

## **II / Resources / Presentations**

ICH can contribute to the preservation of the environment, but it can also deplete natural resources. The second part of the seminar questioned how to frame regulations to ensure that safeguarding ICH and conservation of natural resources are mutually beneficial. Both presentations focused on communities. The first presentation showed how conservation rules are implemented in the cultural space of Kihnu. The second presentation described how provisions enacted to safeguard indigenous peoples' ICH need to take into account trade law.

### **Conflicts Between Nature Conservation and an Indigenous Community: The Example of the Kihnu Island**

#### **Mare Mätas**

Chairperson of the Board, Kihnu Cultural Space Foundation, Estonia

Mare Mätas presented seal hunting, which is an important issue for the inhabitants of the Island of Kihnu. Although there are general restrictions, islanders have succeeded to negotiate certain exceptions in order to continue their cultural tradition of seal hunting. Also, the development of hunting tourism has become an important problem for the islanders, as hunting tourism is legal, it is managed by private owners of lands, however foreign hunting practices do not take into account the fragile ecological and social balance of the island. And this provokes some sentiments of regret for the community. As a Natura 2000 site, the Kihnu Island is under special environmental protection. Some plants are for instance protected. But, this protection does not encompass intangible cultural heritage. The protection of rare plants may prohibit for instance the construction of houses for the community. Islanders do not always respect environmental regulations. For instance, although the islets are protected and closed-off, islanders still continue to collect seabirds' eggs there in the spring time.

## Seal Hunting: A Case Study in Intangible Cultural Heritage Regulation

### Lily Martinet

Research Fellow in Legal Sciences, ISP, France

Most instruments regulating hunts carve out exceptions for communities when taking an animal is a significant part of their way of life. To illustrate how hunting practices can be regulated, Lily Martinet used, as a case study, seal hunting. In the 1880s pelagic sealing developed in the Bering Sea. This hunting method rapidly diminished the number of seals in the Bering Sea. The first measure regulating this hunt was an arbitral award handed down in 1893. The award established a preservation system, which comprised an exemption for indigenous people. A form of recognition of hunting rights. This type of exception for indigenous people allows the safeguarding of hunting practices and of all intangible cultural heritage relating to the hunt. This exemption for indigenous peoples influenced further instruments protecting endangered species.

In 2009 the European Union adopted regulations banning the placement of seal products on its market. The ban was decided on public moral concerns relating to animal welfare. The placing on the market of seal products was prohibited unless the products resulted from hunts traditionally conducted by indigenous communities. Canada and Norway challenged the European Union Seal Regime arguing that it was inconsistent with the law of the World trade organization (WTO Law). A panel was established, and its report was appealed by Canada. The Appellate Body found that the regulation violated the most favored nation obligation set out by article I.1 of the GATT 1994. The regulation did not “immediately and unconditionally” extend the same market access advantage to Canadian and Norwegian seal products, that it accorded to seal products from Greenland. The European Union was forced to modify its seal regime.

Lily Martinet concluded that recognition of special rights can strike a balance between animal welfare and traditional hunting practices, but when these exceptions have an impact on trade, they must be carefully worded to respect WTO law.

## Spaces and Resources / Round Tables

The round table discussions were rich with examples and broached complex subjects within the context of ICH and environmental law. The following part reveals some opinions and experiences shared during both round table discussions of the seminar.

**Gunta Gabrāne** (*Deputy Director General in charge of Nature conservation, Latvian Nature Conservation Agency, Latvia*) introduced a case study of Rāzna National Park, where traditional pottery and ale brewing are practiced, and workshops are set up as tools for communicating with society, as well as for educational purposes. For example, in Rāzna National Park, cranberry picking is forbidden, but a special exemption was provided for local inhabitants. Education of communities explaining the reasons for protecting a space and its resources is essential for successful implementation of restrictions.

**Hanna Schreiber** (*Assistant Professor, Section of Law and International Institutions, Institute of International Relations, Faculty of political Science and International Studies, University of Warsaw, Poland*) regretted that connections between the 1972 World Heritage Convention and the 2003 Convention remain theoretical. Management of a site comprising tangible, intangible and natural heritage is complicated. The task of linking tangible and intangible heritage is in general left to site managers. The fragmentation of law into different fields and experts can be regarded as hindering sustainable development. Hanna Schreiber shared an example of a specific cultural landscape, the Bernardine monastery and other monuments of the 17<sup>th</sup> century near Krakow, Poland, to illustrate the interactions between ICH, community rights and environmental law. This cultural landscape was listed as a World Heritage site because of its religious value. However, the local communities regard the listing as a burden restricting their way of life, contemporary needs and development.

**Aušra Feser** (*Director of Curonian Spit National Park, Lithuania*) and **Jolanta Uktverytė** (*Head of Department of Nature at the Direction of the Curonian Spit National Park, Lithuania*) described the situation in the Curonian Spit National Park. The Park experiences similar problems as in the Polish example. The local community is more interested in increasing its standard of living, than safeguarding the Curonian Spit. Historically, the territory was a military strategic location during the Soviet period, and it was not protected. In the Lithuanian case the very concept of a local community has been rather unclear, as the status of the site changed according to political situation.

**Cléa Hance** (*PhD Student, Université de Versailles Saint-Quentin-en-Yvelines, Ecole normale supérieure de Cachan, France*) noted that preserving a tradition is just as important as ensuring its transition from generation to generation in a sustainable manner. Otherwise a community is restrained from evolving. Thus, there is no need to conserve something that is no longer in use by a community and that they no longer want to preserve. Forcing upon a community a certain heritage that is not relevant for today's world is just doing harm not helping. Education is important for a community to make an informed decision as to the value of its heritage and its involvement in a practice.

**Kristin Kuutma** (*Professor, University of Tartu, Chairperson of the Board, Estonian National Commission for UNESCO*) reminded the participants of the importance of history to understand the present situation and how safeguarding policies are shaped. For example, the Lahemaa National park was founded under the Soviet system and the regulations that were present at the time of the Soviet State. It was framed as natural protection to preserve the Estonian heritage within the Soviet ideological environment. Thus, the Lahemaa National Park must be put in its historical context, as heritage is all about history, and how we perceive history today and what we think is important from the past to carry on in the future.

**Jérôme Fromageau** (*President, International Society for Research on Art and Cultural Heritage Law, France*) highlighted that there are various examples of use of natural resources regulated by the transfer of traditional knowledge and practices for safeguarding biodiversity specific to such spaces. Practices of local communities are rooted in their interaction with nature, which is why these traditional practices and knowledge should be considered in a wider strategy of safeguarding.



However, the rapid urbanization and extension of agricultural lands have a significant effect on the natural environment of a community and on its traditional knowledge. Deforestation can provoke the disappearance of a sacred forest or the necessity to find other sources of construction wood. Climate change, continuous deforestation and permanent desert expansion threaten inevitably various spaces in danger and lead to decline of traditional craftsmanship, of plant medicine, and to the disappearance of raw materials and vegetal spaces.

**Noé Wagener** (*Lecturer in public Law, University of Paris-Est Creteil, France*) underlined that it is essential to look at environmental law, which is full of legal tools highly useful for safeguarding ICH and that we must also understand how to build bridges between the different fields of law.

## In Conclusion

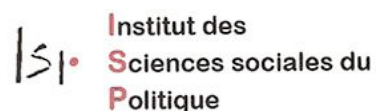
Law is central in finding a balance between safeguarding the intangible cultural heritage (ICH) and the obligation to preserve the environment. Some provisions in environmental law already take into consideration the issues of respecting community knowledge and traditional practices for the management of natural resources. The theme of the seminar revolved around the relationship between ICH and nature protection and use of natural resources. Community rights and the wider historical frame of ICH were also discussed throughout the seminar. Examples and case studies from France, Iceland, Poland, Estonia, Lithuania and Latvia illustrated during the seminar the interactions between environmental law and intangible cultural heritage law.

Summary of presentations and discussions prepared by Līga Ābele, Lily Martinet, Sanita Pretkalniņa and Anita Vaivade. Regarding presentations, the abstracts prepared by authors have been used as a source for summary purposes.

## Research Project 'Osmose' and the Seminar

- Research project: Research Project 'Osmose' is co-directed by Marie Cornu (France) and Anita Vaivade (Latvia)
- In cooperation with: Latvian National Centre for Culture, Latvian National Commission for UNESCO, Archives of Latvian Folklore (Institute of Literature, Folklore and Art of the University of Latvia), French Institute in Latvia, Latvian Nature Conservation Agency
- Seminar funded by: Latvia-France Research Cooperation Program 'Osmose', Latvian National Research Program 'Habitus', Latvian State Culture Capital Foundation, Basic budget sub-programme 05.04.00 'Krišjānis Barons' Cabinet of Folksongs' of the Ministry of Education and Science of the Republic of Latvia, and Ministry of Culture and Communication of the Republic of France
- Information partners: 'Droit, patrimoine, culture' [dpc.hypotheses.org](http://dpc.hypotheses.org), [Artlaw.online](http://Artlaw.online), Journal 'Jurista Vārds'

The seminar was part of the research project 'Osmose' initiated in 2014 by the Latvian Academy of Culture and the Institute for Political Social Sciences (*Institut des Sciences Sociales du Politique, ISP, Paris*), and one of the events hosted by the UNESCO Chair on Intangible Cultural Heritage Policy and Law, established in 2017 at the Latvian Academy of Culture.



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