

Universiteit Utrecht

# Cultural Heritage in International Law

presentation  
Lucky Belder  
WIPO meeting  
Sofia 3 June 2010



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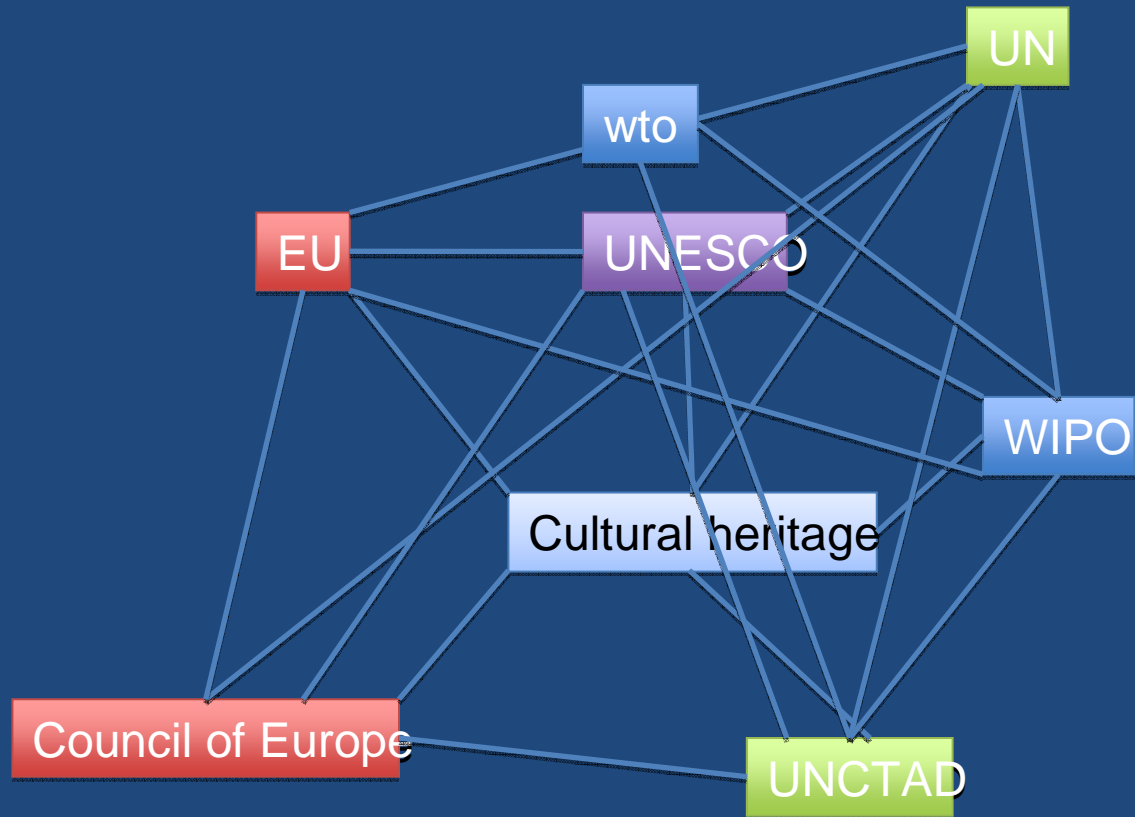


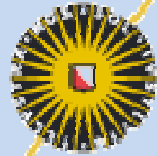
Tomas Saraceno  
Spiders Web  
Venice Biennale  
2009

**CIEK**

Centrum voor Intellectueel Eigendomsrecht

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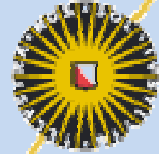




Council of Europe 2005

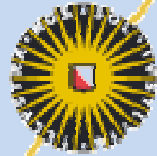
Framework Convention on the Value of Cultural Heritage for Society

*“(...) a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions.(...)” (article 2(a))*



## UNESCO Culture Conventions

- Convention on the Protection of Natural and Cultural Heritage 1972
  - Convention for the Safeguarding of Intangible Cultural Heritage 2003
  - Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005
- developments:
- nationalism/ internationalism
  - globalisation/ NGO's/ local communities and stakeholders
  - protection of objects/ the safeguarding of all cultural manifestations
  - CH of the World and mankind/ ICH of humanity
  - indigenous CH/ site not specific
  - top down approach/ bottom up approach



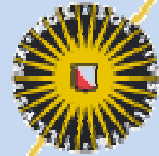
## The 1972 Convention on the Protection of Natural and Cultural Heritage 186 States Parties

Cultural heritage:

art.1: monuments; groups of buildings and sites  
+ 'mixed' heritage

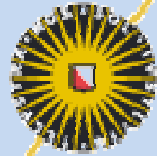
*...., the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate. (art. 6)*





## The 1972 Convention on the Protection of Natural and Cultural Heritage

- Inventories (national)
- Tentative Lists (national)
  
- World Heritage List  
890 cultural properties:  
689 objects, 176 sites and 25 mixed objects in 148 States Parties
  
- List World Heritage in Danger  
  
31 properties  
(Bam and its cultural landscape; Belize Barrier Reef; Galapagos Islands)



UNESCO Convention for the Safeguarding of Intangible  
Cultural Heritage 2003  
123 States Parties (April 1, 2010)

Intangible Cultural Heritage

*(a) oral traditions and expressions, including language as a  
vehicle*

*of the intangible cultural heritage;*

*(b) performing arts;*

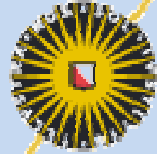
*(c) social practices, rituals and festive events;*

*(d) knowledge and practices concerning nature and the  
universe;*

*(e) traditional craftsmanship.*

*(art. 2)*





## Safeguarding Intangible Cultural Heritage

*art. 3. “Safeguarding” means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non formal education, as well as the revitalization of the various aspects of such heritage.*

*[and]*

*art, 13 (d sub. iii) establishing documentation institutions for the intangible cultural heritage and facilitating access to them.*



## Safeguarding Intangible Cultural Heritage

Inventories ( national)

Programmes (3)

List of Representative Intangible Heritage (166)

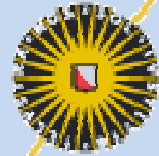
List of Heritage in need of urgent safeguarding ( 1



Tango, Argentina & Uruguay



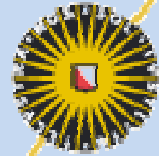
Procession of the holy blood  
Bruges, Belgium



- Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005  
110 States Parties + EU

**cultural diversity:**

*... the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. (...)*  
(art 4.1)



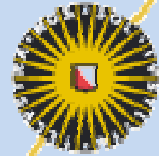
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005

National level:

(reaffirm their sovereign right)

to formulate and implement their cultural policies  
and to adopt measures

to protect and promote the diversity of cultural expressions and  
to strengthen international cooperation to achieve  
the purposes of this Convention. (art. 5)



## -Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005

### International obligations

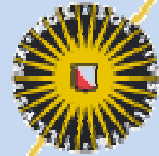
- international cooperation (art. 12)
- promotion central role culture in sustainable development (art. 13)
- recognition position less developed nations (art. 14)
- protection vulnerable artistic expressions (art. 15)



- UNESCO Culture Conventions

- Convention on the Protection of Natural and Cultural Heritage 1972
- Convention for the Safeguarding of Intangible Cultural Heritage 2003
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005

- past, present and future
- national cultural policy
- national inventories
- international co-operation and support
- international policy trade & development policies



*UN Council Declaration On the Rights of Indigenous Peoples  
September 2007  
DRIPS A/61/L.67  
Assemblee Resolution 61/295)*

DRIPS art. 3. Article 3  
Indigenous peoples have the right to self-determination.  
By virtue of that right they freely determine  
their political status and freely pursue  
their economic, social and cultural development.

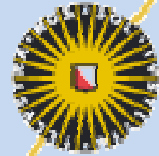




## DRIPS Article 11

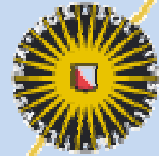
1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.





## DRIPS Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.



## DRIPS Article 31

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures,  
(...)

They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.”



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Thank you

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