Introduction

Cultural property law is a rather recent and fast evolving area of law. Its origins date back to the mid nineteenth century when the first legal instruments were drafted.[1] It has essentially developed around two main areas of interest: the protection of cultural treasures both in times of war and in times of peace. In the latter case, emphasis was placed on incidents of theft, illegal excavation and export of cultural treasures from their countries of origin. Cultural property law, however, encompasses other interests in culture, such as the protection and preservation of cultural goods in general. Although cultural property has developed as a niche area in international law, it involves national and regional laws too. It is a hybrid area of law, in the sense that it involves principles from various hard core

[1] See some examples during this period: The Lieber Code (Francis Lieber, Instructions for the Government of Armies of the United States in the Field,1863); International Convention with Respect to the Law and Customs of War by Land (Hague II), 29 July 1899; Convention Respecting the Laws and Customs of War on Land (Hague IV), 18 October 1907; Article 238 of the Treaty of Peace between the Allied & Associated Powers and Germany, Versailles, 28 June 1919 and Protocols; Inter-Allied Declaration Against Acts of Dispossession Committed in Territories under Enemy Occupation or Control, London, 5 January 1943; Judgment of the International Military Tribunal, 30 September 1946; Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention on Cultural Property), 14 May 1954; Statutes of the International Centre for the Study of the Preservation and Restoration of Cultural Property, 5 December 1956 (as revised, 24 April 1963, and 14–17 April 1969); Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970; Convention Concerning the Protection of the World Cultural and Natural Heritage, 23 November 1972; Recommendation Concerning the International Exchange of Cultural Property, adopted by the General Conference at its Nineteenth Session, Paris, 30 November 1976; Recommendation for the Protection of Movable Cultural Property, adopted by the General Conference at its Twentieth Session, Paris, 28 November 1978; European Cultural Convention, 19 July 1954; European Convention on Offences Relating to Cultural Property, 23 June 1985; Convention for the Protection of the Architectural Heritage of Europe, 3 October 1985; European Convention on the Protection of the Archaeological Heritage (Revised), 16 January 1992; Resolution 1205, Looted Cultural Property, Parliamentary Assembly of the Council of Europe, 4 November 1999.

areas of law, such as public international law, private law, private international law and so on.

This book does not intend to cover all issues pertaining to cultural property law; that would be an extremely optimistic exercise. It will limit itself to issues of restitution and return of cultural treasures, alienated from their countries of origin in times of peace. It sets out the basics, that is the notions of 'cultural property', 'return' and 'restitution'. The two theories in the area, namely that of cultural nationalism and that of cultural internationalism, are also explored (Chapter 1).

Chapter 2 of the book deals with the most important international legal instruments in this field,[2] that is the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects.[3] Primary and secondary European Union legislation is examined. This comprises the relevant provisions in the Treaty on the Functioning of the European Union (TFEU) and Regulations 116/09 on the Export of Cultural Goods and 752/93 laying down provisions for the implementation of Council Regulation 3911/92 on the Export of Cultural Goods, as well as Directive 7/93 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State (Chapter 3).

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[2] For example, the 1985 European Convention on Offences Relating to Cultural Property (Delphi, 23 July 1985) is not discussed since it never entered into force.

[3] The 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage is not discussed because it does not fall squarely within this particular field. For the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage see Camarda, G. & T. Scovazzi (eds) (2002), *The Protection of the Underwater Cultural Heritage – Legal Aspects*, Milan; O'Keefe, P. (2002), *Shipwrecked Heritage: A Commentary on the UNESCO Convention on Underwater Cultural Heritage*, Leicester; Carducci, G. (2002) 'New Developments in the Law of the Sea: The UNESCO Convention on the Protection of the Underwater Cultural Heritage, *American Journal of International Law* 419; Garabello, R. & T. Scovazzi (eds) (2003), *The Protection of the Underwater Cultural Heritage – Before and After the 2001 UNESCO Convention*, Leiden; Dromgoole, S. (ed.) (2006), *The Protection of the Underwater Cultural Heritage – National Perspectives in Light of the UNESCO Convention 2001*, Leiden. See also the Italian cases on the Melquart of Sciacca (9 January, 1963, Tribunal of Sciacca) and the victorious Athlete (two cases 12 June, 2009 and 10 February, 2010, Tribunal of Pesaro) as discussed in Scovazzi, T. (2010) 'A Second Italian Case on Cultural Properties Enmeshed in Fishing Nets' http://www.mepielan-ebulletin.gr/default.aspx?pid=18&CategoryId=4&ArticleId=17&Article=A-Second-Italian-Case-on-Cultural-Properties-Enmeshed-in-Fishing-Nets.

Cultural property law is, to a large extent, affected and shaped by soft law, since it is often expressed as a compromise between the various interests involved, and many acts take place on an ethical and voluntary basis. This is especially so because cultural property law touches on state sovereignty, meaning that, on most occasions, particularly on those falling outside the scope of international conventions and those concerning states with differing national legislation or attitudes, claims involving two or more states are processed on the basis of ethics, mutual agreement and co-operation. To this end, the most important codes of ethics are examined on a par with the role of international organisations, such as UNESCO, ICOM, ICCROM and so on. Reference is also made to registers of stolen and illegally exported cultural objects, which play an increasingly significant role in the tracking down of those objects (Chapter 4).

Dispute resolution in cultural property claims is another significant area which is developed at length. More than in any other field of law, disputes in this field do not necessarily find their way to courts but, because of the particularities and sensitivities they engender, are solved through alternative dispute resolution, such as arbitration, mediation and especially through negotiations. Cultural diplomacy and its role are also examined (Chapter 5).

Chapter 6 of this book explores the basic principles and trends in cultural property law and draws some conclusions as to where we stand today and where we are heading. This is done on the basis of discussions in preceding chapters of the book, but takes a step back from the bulk of law and ethics, in an attempt to assess them as a whole. At the end of the book conclusions are drawn. An Appendix enables the reader to refer to particular provisions of instruments discussed.