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. 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

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

This book does not intend to cover all issues pertaining to cultural prop-
erty 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 inter-
nationalism, are also explored (Chapter 1).

Chapter 2 of the book deals with the most important international
legal instruments in this field, 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. 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 particu-
lar 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
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
=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 cooperation. 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.