

NEW BOOKS

Editorial Note

CULTURAL HERITAGE LAW BOOKS PUBLISHED IN 2022

Safeguarding Cultural Property and the 1954 Hague Convention: All Possible Steps edited by Emma Cunliffe and Paul Fox

ISBN 9781783276660

Boydell Press, Woodbridge 2022, pp. 312
Published: 14 January 2022

This volume – edited by Emma Cunliffe and Paul Fox, two researchers in the UNESCO Chair in Cultural Property Protection and Peace at Newcastle University (United Kingdom) – explores the current role and operation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols (1954/1999). It explains that significant attention today focusses on heritage destruction, while the regime of the 1954 Hague Convention lays out two core strands to limit the damage: the measures of respect for armed forces; and the safeguarding measures States Parties should put in place in peacetime.

This volume incorporates wide-ranging international perspectives from those from the legal scholarship, together with practitioner insights from the armed forces and heritage professionals, to explore the safeguarding regime. Its contributors

consider such questions as whether States Parties have truly taken “all possible steps” that the 1954 Hague Convention tasks them to undertake; what can be learnt from past practice and how the Convention is implemented today; the implications of new trends in heritage law and management, such as the rise of the World Heritage Convention and the increasing focus on safe havens rather than refuges; whether new methods of heritage management such as Risk Assessment theory can be applied; and queries that while the 1954 Hague Convention is specifically focused on States Parties, what about their opponents, e.g. armed non-state actors? The topics explored range from leadership and the role of the State Party Representative through to the responsibilities of armed non-state groups in safeguarding; and past and current practice in different countries. Using a mix of case studies and theoretical explorations of new and existing methodologies, the contributions cover a broad time span – from the Second World War until today – using examples from Europe, the Middle East, and Africa. Overall, the volume’s purpose is to promote a wider understanding of the practical effectiveness of the 1954 Hague Convention in the contemporary world, by investigating the perceived opportunities and constraints the Convention offers today with respect to the protection of cultural property in armed conflict, and firmly establishes that such protection must be present in times of peace.

Repatriation of Sacred Indigenous Cultural Heritage and the Law: Lessons from the United States and Canada
Vanessa Tünsmeier

ISBN 9783030890476

Springer, Cham 2022, pp. xxi + 536
Published: 25 January 2022

This book by Vanessa Tünsmeier, member of the Maastricht Centre of Human Rights Law (The Netherlands), examines the relationship between repatriation legislation and the contemporary Indigenous rights standards set out in international law. It investigates the ways in which the law can be used to structure the return of Indigenous sacred cultural heritage to Indigenous

communities, referred to in the book as repatriation. In particular, it aims at developing legal structures that align repatriation with contemporary international human rights standards. To do so, it gathers the most valuable lessons learned from the differing repatriation laws and frameworks adopted in the United States and Canada, and analyses these in light of the standards that arise out of contemporary instruments, reports, and the case-law on Indigenous rights. The choice of jurisdictions is motivated in part by the very different ways of approaching repatriation that have been used for several decades in these two systems, highlighting the context-dependent nature of repatriation (laws).

The book is divided into four parts, looking first at international law, then at the national legal landscape in the United States, followed by that of Canada, and then evaluating the different repatriation models against the backdrop of human rights law standards. Emphasis is placed not only on repatriation-specific legislation, but also on the legal context in which it was developed and operates. In turn, the fourth part develops, on the basis of these experiences, various models that can be aligned with contemporary Indigenous and cultural rights. The book ends by considering the models' suitability for international repatriation and the lessons that can be learned from them. The primary audience includes those persons who address the legal hurdles to repatriation, be they researchers, policymakers, communities, or museums.

The Return of Cultural Heritage to Latin America: Nationalism, Policy, and Politics in Colombia, Mexico, and Peru Pierre Losson

ISBN 9781032153834

Routledge, Abingdon–New York 2022, pp. 254
Published: 11 February 2022

This book, authored by Pierre Losson – an expert who has worked in French cultural centers in Mexico City and Lima – adopts a political science perspective to the return of cultural objects. Drawing on analysis of articles published in national newspapers and archival documents, as well as interviews with

individuals involved in return claims, the book demonstrates that such claims are inherently political. Focusing on Colombia, Mexico, and Peru, the book examines how return claims contribute to the strengthening of state-sponsored discourses on the nation; the policy formation process that leads to the formulation of return claims; and who the main actors of the claims are, including civil society individuals, experts, state authorities, and Indigenous communities. The book offers explanations for why Latin American countries are interested in specific objects held in Western museums and why these claims have come to light over the past three decades. It ultimately argues that return claims ought to be the object of public debate, allowing contemporary societies to address the legacy of colonialism. The book should be essential reading for scholars and students engaged in the study of museums and heritage, political science, history, anthropology, cultural policy, and Latin America.

Research Handbook on Intellectual Property and Cultural Heritage edited by Irimi Stamatoudi

ISBN 9781800376908

Edward Elgar Publishing, Cheltenham–Northampton 2022, pp. 640
Published: 7 July 2022

This research handbook, edited by Irimi Stamatoudi, Professor at the Faculty of Law, University of Nicosia (Cyprus), offers a comprehensive analysis of the intersections between intellectual property (IP) and cultural heritage law. It explores and compares how both have evolved and sometimes converged over time, and how they have increased tremendously in both significance as well as in economic value, despite the fact that the former mainly pertains to the private sphere, whilst the latter is considered a “common good”.

Featuring an excellent combination of contributions from leading experts, this volume offers insights into relevant cutting-edge issues that still remain unsettled. Divided into three main parts, it focuses on how IP can work as a tool for cultural heritage protection, and in particular intangible cultural

heritage, and discusses the politics and policies in this area, including whether such protection is fit for such a purpose. The final section explores special issues of the intersection between the two, making it relevant to cultural heritage institutions such as museums, galleries, auction houses, libraries, and platforms, including issues of cultural heritage and IP management.

Encompassing the latest developments and debates in the area, this volume is intended to be key reading for academics, postgraduate students, and researchers in the fields of cultural heritage and art law, cultural heritage management, and intellectual property law. It will also be relevant for practitioners, policymakers, cultural heritage institutions, and content platforms.

Cultural Heritage as a Legal Hybrid: Between Public and Private Law Alicja Jagielska-Burduk

ISBN 9783031049460

Springer, Cham 2022, pp. viii + 350
Published: 19 July 2022

This book, authored by Alicja Jagielska-Burduk – editor-in-chief of “Santander Art and Culture Law Review” and UNESCO Chair holder in Cultural Property Law at the University of Opole (Poland) – examines cultural heritage law in both its public and private modalities, focusing on the search for new solutions in national legal systems. It argues that both tangible and intangible cultural heritage pose challenges for national legislation owing to the different legal frameworks of the respective countries; obligations deriving from international law; and the independence of respective national searches for a tailored protection model. Although the concept of cultural heritage transcends private law regulation and property rights, it must be considered when attempting to establish any coherent cultural heritage protection system. The book further explains that an increased interest in leveraging private law to strengthen cultural heritage protection is now observed in national legal systems worldwide.

This book looks beyond the public and private law divide in respect of cultural heritage in order to address the complex nature of heritage as a legal hybrid. In such a guise, it demonstrates how current problems in the international debate are mirrored in national legislation. Poland is used as a practical example, while also referring to other countries' regulatory solutions as well as considering EU and international law instruments. This approach enables the reader to examine the creation of national legislation at the operational level and provides a template for all national lawyers with regard to the current challenges and emerging trends. The book's target audience includes researchers and practitioners in the field of cultural heritage law, as well as public and private law experts. The topics covered can also be of interest to law students, art market actors, and all those interested in the challenges of cultural heritage protection.

*Intangible Cultural Heritage,
Sustainable Development
and Intellectual Property:
International and European Perspectives*
Benedetta Ubertazzi

ISBN 9783031081033

Springer, Cham 2022, pp. xiii + 384
Published: 4 August 2022

This book by Benedetta Ubertazzi – a UNESCO Facilitator on the global capacity building programme for the effective implementation of the 2003 Intangible Cultural Heritage Convention and Professor of European Union Law at the University of Milan-Bicocca (Italy) – critically analyses the relationships between intangible cultural heritage (ICH), sustainable development, and intellectual property rights (IPRs). The author argues that although the use of IPRs to safeguard ICH presents challenges and has impeded sustainable development in some cases, the adoption of these rights with respect to ICH also presents opportunities and is not fundamentally contrary to the spirit of the 2003 Intangible Cultural Heritage Convention.

The adoption of IPRs on ICH can form an important part of the development of sustainable safeguarding plans capable of benefitting the communities, groups, and individuals (CGIs) that create, maintain, and transmit such heritage.

The book offers a nuanced analysis of the relationship between intellectual property (IP) law and ICH, as well as examines the role of IPRs in safeguarding ICH through the lens of sustainable development. It examines the relationship between IP law and ICH from the environmental, social, and economic perspectives. These perspectives allow for a thorough evaluation of both the positive effects and potential pitfalls of using IPRs to safeguard ICH. Finally, the book addresses deeper structural matters that refer back to the safeguarding of the social and environmental processes underlying ICH.

The Preservation of Art and Culture in Times of War edited by Claire Finkelstein, Derek Gillman, and Frederik Rosén

ISBN 9780197610565

Oxford University Press, New York 2022, pp. 496
Published: 20 September 2022

This volume addresses one of the most important issues in international efforts to protect cultural heritage: armed conflicts. Indeed, it explains that conflicts over cultural heritage have increasingly become a standard part of war. Today, the systematic exploitation, manipulation, attacks, and destruction of cultural heritage by both state and non-state actors form a part of most violent conflicts across the world. Such acts are often intentional and based on well-planned strategies for inflicting harm on targeted groups of people and communities. With this increasing awareness of the role cultural heritage plays in war, scholars and practitioners have progressed from viewing conflict-related destruction of cultural heritage as a cultural tragedy to understanding it as a vital national security issue. There is also a shift from the desire to protect cultural property for its

own sake toward viewing its protection as connected to broader agendas of peace and security. Concerns about cultural heritage have thus migrated beyond the cultural sphere to include the protection of civilians, the fight against financing terrorism, societal resilience, post-conflict reconciliation, hybrid warfare, and the geopolitics of territorial conflicts.

This volume seeks to deepen the public understanding of the evolving nexus between cultural heritage and security in the 21st century. Drawing on a variety of disciplines and perspectives, the chapters in this volume examine a complex set of relationships between the deliberate destruction and misuse of cultural heritage in times of conflict on the one hand, and basic societal values, legal principles, and national security on the other. The volume is edited by three renowned experts: Claire Finkelstein, the Founder and Faculty Director of Penn's Center for Ethics and the Rule of Law (USA); Derek Gillman, Executive Director of University Collections and Exhibitions, Drexel University (USA); and Frederik Rosén, Director of the Nordic Center for Cultural Heritage and Armed Conflict (Denmark).

Transboundary Heritage and Intellectual Property Law: Safeguarding Intangible Cultural Heritage edited by Patricia Covarrubia

ISBN 9780367520779

Routledge, Abingdon–New York 2022, pp. 244
Published: 30 November 2022

This volume, edited by Patricia Covarrubia, a Reader in Law at The University of Buckingham (United Kingdom), explores the use of intellectual property protection to achieve intangible cultural heritage safeguarding outcomes. It examines diverse cultural heritage case studies – from Indigenous communities and local communities in both developing and industrialized countries – to offer an interdisciplinary examination of topics at the intersection between heritage and property law, and which present cross-border challenges. Analysing a range of case studies which provide examples of traditional

knowledge, traditional cultural expressions, and genetic resources by a mixture of practitioners and scholars from different fields, the book addresses guidelines and legislation as well as recent developments about shared heritage to identify a progressive trend that improves the understanding of intangible cultural heritage.

Considering all the forms of intellectual property, including patents, copyright, design rights, trade marks, geographical indications, and sui generis rights, the book explores problems and challenges for intangible cultural heritage in cross-border situations, as well as highlights the positive relationships and collaborations among communities across geographical boundaries. This volume is addressed to practitioners, scholars, and students engaged in studying intangible cultural heritage, intellectual property law, heritage studies, and anthropology.