EDITORIAL

Dear Reader,

We are pleased to present you with the new issue of the biannual "Santander Art and Culture Law Review" (SAACLR) (2025). This year has been marked by important developments in international cultural heritage law and policy in relation to sustainable development and the safeguarding of heritage during armed conflict.

From 29 September to 1 October 2025, Barcelona hosted UNESCO's World Conference on Cultural Policies and Sustainable Development (MONDIACULT 2025), convening more than 2,500 participants – including ministers of culture, artists, youth representatives, and civil society leaders – to advance the global cultural agenda. The conference focussed on six priority themes: cultural rights, digital transformation, education, the cultural economy, climate action, and heritage protection, with a special emphasis on artificial intelligence and culture for peace. Through its main sessions and public side events, such as MondiaYouth, the event reaffirmed culture as a global public good and called for its recognition as a standalone Sustainable Development Goal (SDG) in the post-2030 agenda – underscoring culture's central role in sustainable development, human rights, and peace worldwide.

Building on the momentum of MONDIACULT 2022 in Mexico City – UNESCO's first major global conference on cultural policies in four decades – the Barcelona edition marked the implementation and follow-up stage of the MONDIACULT 2022 Declaration.[1] Adopted by over 150 ministers of culture, this landmark declaration recognized culture

[1] Available at https://www.unesco.org/sites/default/files/medias/fichiers/2022/10/6.MONDIACULT_EN_DRAFT%20FINAL%20DECLARATION_FINAL_1.pdf [accessed: 15.11.2025].

as a universal public good and urged its inclusion in the global development framework. MONDIACULT 2025 translated these commitments into concrete policy actions, assessed progress since 2022, and addressed emerging challenges such as artificial intelligence, the digital economy, and culture's role in peacebuilding. In doing so, it continued the global process launched in Mexico – shifting the focus from commitment to coordination, and from vision to measurable impact.[2] As scheduled at MONDIACULT 2022, UNESCO's first Global Report on Cultural Policies was presented, having been developed through extensive regional consultations. In addition, the UNESCO Virtual Museum of Stolen Cultural Objects[3] was officially launched during the Barcelona summit.

Another key development was the Gunma Declaration on Heritage Ecosystems (2025),[4] marking a major step in rethinking heritage conservation for the 21st century. Adopted at an international symposium called "The Further Evolution of Authenticity through the Lens of Heritage Ecosystems" in Takasaki, Japan, it coincided with the 10th anniversary of the Tomioka Silk Mill's World Heritage inscription and the 30th anniversary of the Nara Document on Authenticity (1994). Centred on the concept of "heritage ecosystems", the declaration promotes a holistic understanding of cultural and natural heritage, communities, technologies, and environments as interconnected and evolving systems. It calls for moving beyond isolated site preservation to embrace the dynamic relationships among people, places, and ecological contexts. Emphasizing community empowerment, inclusive governance, and the integration of cultural and natural heritage, it also redefines authenticity as relational and evolving. Furthermore, it highlights the role of innovation and digital technologies in enhancing access and resilience. Ultimately, the declaration envisions heritage as a living system that contributes to sustainable development, social well-being, and planetary health through ecosystem-based and collaborative approaches.

The scope and content of the Gunma Declaration on Heritage Ecosystems is addressed in this issue, in an interview with Professor Toshiyuki Kono, former President of the International Council on Monuments and Sites (ICOMOS) and one of the convenors of the international symposium "The Further Evolution of Authenticity through the Lens of Heritage Ecosystems".

As for the safeguarding of cultural heritage during armed conflict, it should be recalled that in May 2025, UNESCO convened the first Civil–Military Alliance Forum for the Protection of Cultural Property in Paris, bringing together over 250 participants – civil and military experts from 85 Member States – to enhance oper-

[2] See Outcome Document MONDIACULT 2025, available at https://www.unesco.org/sites/default/files/medias/fichiers/2025/09/EN_MONDIACULT_Outcome_Document%20Final%2027.09.25.pdf?hub=171169 [accessed: 10.11.2025].

[3] https://museum.unesco.org/ [accessed: 16.11.2025].

[4] Available at https://www.pref.gunma.jp/uploaded/attachment/650889.pdf [accessed: 15.11.2025].

ational cooperation between heritage professionals and armed forces. In March 2025, UNESCO also held a regional civil–military workshop in Villa Ocampo, Argentina, with participants from ten South American countries. The workshop focussed on implementing the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols, and on strengthening preparedness for emergencies and conflict-related threats to heritage. Furthermore, as of early 2025, Ukraine had documented 476 damaged cultural heritage sites since Russia's full-scale invasion in 2022. The legal challenge of protecting heritage under the conditions of an occupation and with sites being used for military purposes is being directly addressed under international humanitarian law and war crimes frameworks.

When it comes to legal instruments, the 1954 Hague Convention and its Protocols remain the backbone of protection, obliging states to take preventive measures, mark protected sites (e.g. with the Blue Shield emblem), and prohibit the use of cultural property for military purposes. A recent, concrete step is that Ukraine has requested and received Temporary Enhanced Protection status for specific cultural sites under the Second Protocol mechanism, as of December 2024 and early 2025, thereby raising the legal visibility of these assets during armed conflict. Additionally, ongoing work on the Council of Europe's new compensation mechanism for losses resulting from Russia's aggression against Ukraine (the International Claims Commission for Ukraine) includes claims for destroyed and looted cultural property. It is also worth noting progress in the development of new inventories of stolen cultural property, including a new database documenting Yemen's heritage losses.

These developments indicate a broader shift from purely normative legal instruments toward practical implementation. National military training, civil–military coordination, regional legal workshops on treaty implementation, and systematic documentation for accountability – including investigations of war crimes related to the destruction of heritage – all point to a more concrete and operational framework for the legal protection of cultural heritage in 2025. Whether these developments will meaningfully improve the international response to crimes against cultural heritage during armed conflict remains to be seen.

The safeguarding of cultural heritage during armed conflict is addressed in four contributions within the "General Articles" section. In the opening article, Dorota Jurkiewicz-Eckert explores the restrictive measures adopted by the European Union (EU) against Russia, targeting three key areas related to culture: individual sanctions on Russian art collectors (oligarchs), restrictions on trade in cultural goods, and efforts to prevent the illicit export of Ukrainian heritage. Importantly, she argues that the ban on trade in Ukrainian cultural goods of unclear provenance constitutes a significant step for the Union in developing systemic solutions to safeguard Ukraine's cultural heritage. It also reinforces EU mechanisms for combating the illicit trade in cultural property. However, its effectiveness will depend on sus-

tained legal development, international cooperation, and consistent application across the Member States.

The following article adopts a historical approach to the recurring concept of "cultural genocide" and its relevance to the ongoing armed conflicts in Ukraine and Gaza. Karolina Wierczyńska critically examines the normative omission of cultural genocide from the text of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, analysing relevant treaty provisions, jurisprudence, and state practice. She argues that the eradication of cultural heritage constitutes a distinct assault on the existence and continuity of a group and thus merits recognition within the legal framework of genocide. The article concludes by advocating for the re-evaluation or amendment of the Genocide Convention to explicitly include cultural genocide, or for equivalent international legal mechanisms.

In turn, Sherine Al-Shallah examines how territorial disputes in southern Lebanon have affected cultural heritage through both destruction and contested archaeological claims. Her article explores the connections between heritage, territory, identity, and statehood, drawing on international and domestic law as well as archaeology, anthropology, and history. It highlights the role of heritage in shaping Lebanon's national and territorial identity, and it considers the potential involvement of organizations such as UNESCO in disputes over sovereignty and cultural property.

The next contribution in the "General Articles" section analyses the concept of extraterritorial refuge for cultural property, distinguishing it from the refugee status of individuals and reviewing notable cases, relevant legislation, and international instruments. Focussing on private international law, Nuray Ekşi argues that extraterritorial refuge can be treated as a contract of deposit, offering a practical framework for dispute resolution, while public international law clarifies the broader legal context. The article highlights the need for a new international convention to harmonize rules on conflicts of law and jurisdiction. It concludes that extraterritorial refuge must be undertaken in good faith, prioritizing the protection and preservation of cultural heritage.

The safeguarding of cultural heritage during armed conflict is also addressed by Żaneta Gwardzińska-Chowaniec in the "Legal Commentaries" section. Her article examines the destruction of cultural heritage in Ukraine during Russia's war of aggression, which began on 24 February 2022, through the use of open-source intelligence (OSINT). It evaluates the potential of using OSINT data as admissible evidence in international criminal proceedings and its role in documenting and safeguarding heritage. The article argues that systematic OSINT collection should form the foundation of an institutionalized cultural heritage management system. Maps and visualizations illustrate OSINT's effectiveness in capturing and protecting cultural property during armed conflict.

In the "Varia" section, the current issue of SAACLR also features other important contributions addressing the intersections between law, culture, cultural di-

versity, and cultural heritage. Wojciech Kowalski investigates the legal framework governing human remains in Poland, highlighting inconsistencies between health law and cultural heritage law. His article analyses the civil-law status of human remains, recognizing them as "things" (movable property), which allows them to be classified as monuments or archaeological monuments – except for identified remains, which must be returned to families. He also addresses scholarly interpretations and the implications of the current draft bill on cemeteries and the burial of the dead. The article concludes by assessing how current and proposed laws balance heritage protection with family rights.

The next article in this section, by Luis Germán Ortega-Ruíz, also examines the cultural and artistic implications of the human body. It investigates the legal regulation of tattooing as a form of cultural and artistic expression, analysing the limits of state and institutional measures that affect fundamental rights such as bodily autonomy, freedom of expression, and personal development. Using a comparative and doctrinal approach, the article reviews cases from Colombia, the United States, Japan, Germany, and Ecuador to highlight similarities and differences across legal systems. It aims to clarify how tattooing is legally interpreted, particularly when it intersects with constitutionally protected cultural expression.

The section concludes with a contribution by Edit Sápi, which examines the copyright protection of theatrical set and costume designs, highlighting differences between the United States – where protection remains unclear – and European countries such as Italy and Hungary, where it is well defined. The article explores the key issues of functionality, copyrightability of masking and lighting, and the limits of adaptation, replication, and licensing. Drawing on legal sources, the literature on the subject, and practice, the study analyses challenges in enforcing rights and determining when modifications infringe a designer's copyright.

As in previous years, this issue of SAACLR also includes brief commentaries on legal matters. Alongside Żaneta Gwardzińska-Chowaniec's contribution on the use of open-source intelligence, Szymon Zaręba discusses the landmark judgment of the European Court of Human Rights in *J. Paul Getty Trust and Others v. Italy*, concerning the ownership and cultural heritage status of the ancient bronze statue *Atleta di Fano* (*Victorious Youth*). The article analyses how the Court addresses cultural property, demonstrating that state ownership is secondary to broader considerations of cultural heritage, provided that national authorities have assessed them. The judgment illustrates the wide margin of appreciation granted to states in evaluating facts and legal interpretation; it also demonstrates deference to domestic findings, ultimately reinforcing the ability of states to protect and retain archaeological heritage through established legal frameworks.

The issue also features a series of notes on the most significant new books on cultural heritage law published in 2025. It concludes with a call for papers for the SAACLR 2026 volume, "Measuring Cultural Heritage: Indicators for Cultural

Heritage Law and Policy Development", as well as a note on the new book series, *Culture, Heritage, and Legal Governance: Comparative, Regional and International Perspectives*, released by Amsterdam University Press (imprint: Central European University Press).

This issue concludes with an article by Wojciech Szafrański examining the implementation of the European Union's anti–money laundering framework in Poland. The contribution sets out the rationale for its adoption and delineates the measures undertaken by Poland to fulfil its obligations under EU legislation aimed at countering money laundering and the financing of terrorism. The analysis underscores ongoing efforts to address the illicit trafficking of cultural goods in Europe, while also identifying significant regulatory and practical challenges.

We hope that you enjoy this new issue of "Santander Art and Culture Law Review" and find its content relevant to the current intersections between law, the arts, and cultural heritage. We warmly encourage you to contact us (at **saaclreditors@gmail.com**).

Andrzej Jakubowski and Alicja Jagielska-Burduk