

INTERNATIONAL PROTECTION OF CULTURAL HERITAGE

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2018-2019 - FALL TERM

Course Description

International law of the past half century has become increasingly concerned with the protection of cultural property and cultural heritage. This is shown by the proliferation of norms on the protection of monuments and artifacts in time of armed conflict, by the growing body of treaty law, national legislation and jurisprudence on the prevention and suppression of illicit traffic in antiquities and cultural objects, and by the attempts made at safeguarding also the integrity of cultural heritage beyond the territorial boundaries of the State, as in the case of underwater cultural heritage. Besides, the very notion of cultural property has undergone a significant evolution in concept and scope moving from the material idea of cultural property, as tangible objects, to the human dimension of heritage, and the consequent idea of "intangible cultural heritage" as part of the living culture of a community, comprising practices, traditions, skills, rituals, and cultural expressions that are inseparable part of the social fabric and creative spirit of every human society. These developments have a profound impact on the development of international law. Besides contributing to the formation of a distinct branch of international law, which we can call "international cultural heritage law", they affect also the functioning of other areas of international law, such as international trade law, as far as illicit trade in art is concerned, foreign investment law, environmental protection, human rights and international criminal law - in relation to assaults on cultural objects and cultural persecution of the type we have witnessed in Syria, Iraq, Mali, and the law of the sea, with respect to the protection of underwater cultural heritage.

Another important dimension of cultural heritage law to be examined in this course is the emerging interest of the international community in the protection of cultural diversity. This value is expressly recognized in European Union Law and now also in general international law after the adoption of the 2005 UNESCO Convention on the protection and promotion of the diversity of cultural expressions. This new development is closely linked to the *modus operandi* of the global economy and the revolution in information and communication technology, which has increased the opportunities for cultural interaction between peoples but, at the same time, has spurred a new wave of identity politics, the re-emergence of an intense interest in native and local culture and new nationalism as an antidote to the alienating effects of globalization.

Syllabus

Week 1: Hystorical and Theoretical Aspects. Definition of cultural property and cultural heritage in international law: universalism and nationalism; liberalism and diversity. Legal pluralism. A brief history of international cultural heritage law, from the 1907 Hague Conventions on the Laws and Customs of War to the 1954 Hague Convention. Contextual analysis: the place of cultural heritage law within the general body of international law. Global, national and local cultural heritage. Cultural heritage between universality and cultural pluralism.

Week 2 : War and Cultural Heritage. From the early attempts at regulating the conduct of hostilities in time of war in order to save monuments and historic buildings to the 1999 Second Protocol to the Hague Convention. The emergence of the international individual criminal responsibility for deliberate attacks on cultural heritage. The case law of the International Criminal Tribunal for Yugoslavia. The *El-Ahmady* case, 2016-2017 before the International Criminal Court. The work of UNESCO to prevent the deliberate destruction of cultural heritage after the demolition of the Great Buddhas of Bamiyan by the Taliban. The adoption by the General Conference of UNESCO of the 2003 Declaration on intentional destruction. Deliberate destruction in Mali, Syria and Iraq (2012-2015). The protection of cultural property during military occupation.

Week 3: International Trade in Cultural Objects. The problem of illicit excavation of antiquities, and of trade in stolen art. The scale of the problem and the inadequacies of private international law rules. Relevant international treaties: the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. Codes of ethics for art dealers and auction houses. The role of national courts in settling disputes over cultural property. The EU Directive (2014) on the return of illegally exported cultural objects. Discussion of judicial cases.

Week 4: Cultural Heritage and the Environment. The link between nature and culture. The 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage. The concept of “outstanding universal value” of cultural and natural heritage. The emergence of cultural landscapes as eminent example of combination of culture and nature. The implementation of the World Heritage Convention. Its great success, its threats and challenges. Can there be a conflict between the goal of environmental protection and respect for cultural heritage? The *Endorois* case before the African Commission of Human and Peoples Rights.

Week 5: Intangible cultural heritage (ICH). The birth of the idea. The contribution of Africa and Asia-Pacific to the development and codification of the concept of intangible heritage. The problem of its definition and its typology. The work of UNESCO. The adoption of the 2003 Convention for the Safeguarding of Intangible Cultural Heritage. The ICH List and its implementation. Problematic aspects: the role of the State, minorities and local communities. Stakeholder participation in identifying and presenting intangible cultural heritage for international recognition.

Week 6: Cultural Heritage and Human Rights. Can we speak of “cultural human rights? The role of human rights treaties in the protection of the individual and collective right to participate in cultural life. The obligations that this right implies for the State and for private actors. The possible conflict between cultural rights and other human rights and freedoms. The case law of the European court of Human Rights, the American Court, and the African system on the human rights dimension of cultural heritage. The 2007 UN Declaration on the Rights of Indigenous Peoples. Cultural heritage, traditional knowledge and intellectual property rights: mutual supportiveness or conflict?

Week 7: Underwater Cultural Heritage. Definition. Sunken ships and their cargo as cultural heritage. The relevance of the UN 1982 Law of the Sea Convention for the identification of the different maritime zones. The gaps of the UN Convention. Salvage law and historic wrecks. The UNESCO 2001 Convention on Underwater Cultural Heritage Convention.

The work of the *Institut de droit international* and its 2015 Resolution on sunken ships. The case of *Nuestra Senora de la Mercedes* (Spain v Odyssey).

Week 8: Cultural Diversity. Can international law protect cultural diversity? The role of international cooperation for the promotion of cultural diversity. International economic law and cultural diversity: the role of WTO and of competition law in safeguarding the diversity of cultural heritage and cultural expressions. The 2005 UNESCO Convention on the diversity of cultural expressions and its relation to WTO: the question of the “cultural exception”.

Week 9: No lessons (Mid-Term Exams)

Week 10: Cultural Heritage and International Investments . Connecting the two fields. Conflict of norms in the two fields: the experience of the World Heritage Convention: the *Pyramids* case (SPP v. Egypt) and the *Parkering* arbitration. Foreign investments in the field of underwater cultural heritage: the *Malaysian Hystorical Salvors* arbitration. The impact of foreign investments on the cultural heritage of indigenous peoples: case studies. Investing in culture.

Week 11: Procedural Aspects of Cultural Heritage Protection. International dispute adjudication mechanisms. The role of domestic courts and the issue of sovereign immunity from suit concerning the restitution and return of cultural property. Case studies. Alternative dispute mechanisms. Institutional aspects and the role of UNESCO.

Week 12: Final workshop. Connecting different fields of international law in the protection of cultural heritage.

Suggested textbooks:

Janet Blake, *International Cultural Heritage Law*, Oxford, OUP, 2015, pp. 336

or

F. Francioni and J. Gordley, *Enforcing International Cultural Heritage Law*, Oxford, OUP. 2013, pp. 255.

Evaluation methods: the course has a seminar character and is organized around class discussion of cases and materials. Students are assigned a weekly reading so as to allow their participation in class discussion. Students attending the course are offered the opportunity of writing a seminar paper on a topic to be agreed with the instructor before October 1, instead of the final oral exam. Those who do not regularly attend are required to take the traditional final oral exam.