

EDITORIAL

Dear Reader,

We are very pleased to be able to invite you to examine the latest issue of the biannual “Santander Art and Culture Law Review” (SAACLR) (2021). This year has again been deeply affected by the COVID-19 pandemic, which has posed a number of challenges for the cultural sector and the enjoyment of cultural rights worldwide. It has also been marked by a number of new developments concerning the global governance of cultural heritage, as widely articulated by the 41st session of the UNESCO General Conference in November. The Conference’s key focus was on supporting actions aimed at building synergies, multi-sectoral approaches, and multi-stakeholder partnerships in order to achieve the objectives set out in the 2030 Agenda for Sustainable Development. An important segment of this mainstreaming of cultural heritage concerns at the global level is the international cooperation in the fight against trafficking in cultural objects and strengthening adequate and effective accountability mechanisms. Indeed, the protection of cultural heritage against destruction, looting, and illicit trafficking has now been recognized by the United Nations Security Council (UNSC) as an issue of international peace and security.

Many developments in this regard have also occurred at the level of national and regional law and policy, particularly in the European Union (EU). Except for the set of EU regulations adopted following the UNSC resolutions to prevent illicit imports of cultural goods from Iraq and Syria, there had long been no uniform legislation on the control of imports of cultural property into the EU. While some EU Member States have introduced legislative mechanisms and due diligence measures to combat illicit trafficking in cultural goods, others have not. As stated by the European Commission, “[t]his patchwork of rules favours the development of trafficking routes through the more vulnerable and unregulated parts of the EU – a phe-

nomenon known as ‘port-shopping’”. This situation has been highly criticized at various forums. Therefore, since 2019 the EU legal system, pursuant to its Regulation (EU) 2019/880 on the introduction and the import of cultural goods (“Regulation (EU) 2019/880”), is equipped with a common licensing system. Accordingly, a broad range of cultural objects require an EU import licence to enter a Member State from outside the EU, thus ensuring that EU importers exercise diligence when purchasing cultural goods from third countries.

Viewed in such light, our prime interest has been in the protection of cultural heritage against illicit trade: import controls and due diligence, as announced in the call for papers launched early this year (<https://www.ejournals.eu/SAACLR/menu/1083>).¹ These broad questions are the primary focus of the interviews included in the issue. Given the significance of the current engagement of the EU in realm of cultural heritage, Anna Kędziorek, Policy Officer in the Cultural Policy Unit of the Directorate General for Education and Culture of the European Commission, in her interview outlines the Union’s role in combatting the illicit trade in cultural objects. She thoroughly explains the main areas of EU legislative and policy efforts in this regard. A different perspective on the current challenges for the art market in light of both the ongoing COVID-19 pandemic and new EU regime on import of cultural goods is offered by Erika Bochereau, Secretary General of the International Federation of Art and Antique Dealer Associations (CINOA). While highlighting the main preoccupations and hopes of CINOA’s members, she identifies a set of practical challenges that might negatively affect small shopkeepers or micro-businesses trading in art.

General issues surrounding the operation of Regulation (EU) 2019/880 is also addressed in Anna de Jong’s opening article “The Cultural Goods Import Regime of Regulation (EU) 2019/880: Four Potential Pitfalls”. Special attention is paid to practical problems associated with the European-wide implementation of Regulation (EU) 2019/880; the complexity caused by the use of the 1970 UNESCO Convention definitions to define cultural goods; as well as the practical ramifications of the use of the concept “country of creation or discovery”. Drawing on these findings, the article questions whether this Regulation in its current form is likely to have its intended effects. The issue of cross-border transfer of cultural objects is further explored by Claudia S. Quiñones Vilá in her article “On the Borderline – Using National and International Legal Frameworks to Address the Traffic of Pre-Columbian Antiquities between Mexico and the United States”. While addressing the problems encountered by these two jurisdictions she argues that a balanced and holistic approach will help increase the effectiveness of both national and international remedies in order to improve the legitimate art market as a whole and

¹ This call for papers was launched within the framework of the research project “Legal Forms of Cultural Heritage Governance in Europe – A Comparative Law Perspective”, No. UMO-2019/35/B/H55/02084, financed by the National Science Centre (Poland).

curb illicit trafficking. The regional perspective on the legal regulation of art trade continues in the contribution by Anauene Dias Soares and Ivette Esis Villarroel, “Brazil’s International Cultural Heritage Obligations and the Potential Use of Alternative Dispute Resolution Mechanisms for Illicit Trafficking Disputes”. In light of the general objectives of contemporary international cultural heritage law and policy, this article explores those instruments of the Brazilian national legislation that could be effectively applied to combat the illicit trafficking of cultural goods. Importantly, it advocates mediation as an alternative method of cultural heritage-related dispute settlement, particularly regarding cases of illicit trade. In turn, the fourth article in this issue, by Giuditta Giardini entitled “Art-Secured Lending: Obstacles and Proposed Solutions”, demonstrates that there is an opportunity to internationally and uniformly regulate art-financing. Her research contributes to the debate by presenting recent evolutions in the art-financing industry from both the financial and legal perspectives. This contribution provides an overview of the art-secured lending market, focusing firstly on financial issues that hinder the practice and offering proposed solutions to them; and secondly on legal issues. It also advocates the creation of an international register of collateralized art goods to encourage international secured transactions involving art works.

The next two articles in this issue focus on the topic of the current state of implementation and realization of human rights with a cultural content. Eleni Polymenopoulou, in her contribution “‘Cultural Diversity’ from the Perspective of Human Rights, Media, and Trade Law: Cross-Fertilization or Conflict?”, argues that the promotion of cultural diversity is a laudable cause in and of itself, and a first step towards achieving equality. Its omnipresence, however, taken in conjunction with its imprecise content and function in the cultural market (in accordance with the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions) runs the risk of downplaying its significance and effectiveness. In turn, the article “The Right to Cultural Heritage in International Law, with Special Reference to Indigenous Peoples’ Rights” by Karolina Sikora seeks to analyse the path that cultural heritage law has taken towards adopting a human rights dimension. It also discusses the construction of the right to heritage and maps the connections and disconnects between and within the cultural heritage law and international human rights law frameworks. In this regard, this contribution uses the example of Indigenous peoples as a referent, and postulates a human rights approach to cultural heritage, which offers not only participation but also the co-creation of heritage together with local and Indigenous communities.

As in the case of the former volumes of the SAACLR, this one also features a Legal Commentaries section, which this time offers three short notes that comment on various aspects of the EU’s engagement in combatting the illicit trade in cultural objects. Hanna Schreiber addresses the interplay between Regulation (EU) 2019/880 and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Prop-

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Andrzej Jakubowski, Alicja Jagielska-Burduk, and Piotr Stec

erty. Next, Giuditta Giardini explains the scope and content of the Commission Implementing Regulation (EU) 2021/1079 of 24 June 2021 laying down detailed rules for implementing certain provisions of Regulation (EU) 2019/880. In the third note in this section, Kristin Hausler critically comments on Conclusions on EU approach to cultural heritage in conflicts and crises, which were adopted by the Council of the European Union on 21 June 2021.

The Debuts section of this issue of the SAACLR features two contributions exploring the intersections of cultural heritage and EU law. Stella Sarapani, in her article “The Import of Cultural Goods under EU and Greek Law – A Critical Outlook” examines, while focusing on the North-Eastern Mediterranean boundaries of the EU for geopolitical reasons, the Union’s legal measures regarding the import of cultural goods from third countries from the perspective of Greece in order to investigate whether the new regulatory measures could be effective in this particular Member State. In turn, Karolina Jerzyk’s article “Balance of Rights in Directive 2019/790 on Copyright in the Digital Single Market – Is the Opt-out Clause Sufficient for the Protection of Author’s Moral Rights?” examines the problem of striking a balance between the private and public interests involved in this process while analysing the opt-out procedure to the new licencing scheme, and confronting it with the traditional protection granted to authors based on moral rights.

The issue also includes a review by Matthias Weller of the second edition of the landmark Norman Palmer’s edited collection *Museums and the Holocaust*, published by the Institute of Art and Law (United Kingdom). Finally, this issue provides information on a variety of recent events in the field of cultural heritage law and policy, and a series of notes on the most pertinent new books on art, cultural heritage, and cultural heritage law published in English in 2021.

Last but not least, this issue concludes with a call for papers for the next English issue of the SAACLR (2022, vol. 8), which will focus on the topic: “Colonial Loot and Its Restitution – Current Developments and New Prospects for Law”. The call is jointly launched by SAACLR’s Editorial Board and two Guest Editors: Dr Evelien Campfens, a Post-fellow at the University of Leiden (the Netherlands) and former general secretary of the Dutch Restitutions Committee for Nazi looted art, and Dr Surabhi Ranganathan, Co-Acting Director of the Lauterpacht Centre for International Law at the University of Cambridge (United Kingdom). We welcome submissions from, and about, all parts of the world; submissions in creative formats as well as traditional legal articles; short articles analysing particular legislation or developments, storytelling, etc.; and submissions from non-native speakers of English.

We hope that you will enjoy this new issue of the “Santander Art and Culture Law Review”. We encourage you to contact us (at: saacreditors@gmail.com) if you wish to reply to the call for papers, or just to express your opinion regarding the content of our volumes.