

ART AND CULTURAL HERITAGE

Art and Cultural Heritage provides appropriately more than a comprehensive in-depth analysis of national and international laws respecting cultural heritage. It is a bubbling caldron of law mixed with ethics, philosophy, politics, and working principles about how cultural heritage law, policy, and practice should be sculpted from the past as the present becomes the future. Art and cultural heritage are two pillars on which a society builds its identity, its values, its sense of community, and its individuals. The authors explore these demanding concerns, untangle basic values, and look critically at the conflicts and contradictions in existing art and cultural heritage law and policy in their diverse sectors. The rich and provocative contributions collectively provide a reasoned discussion of the issues from a multiplicity of views to permit the reader to understand the theoretical and philosophical underpinnings of the cultural heritage debate. Given the range of topics discussed with scholarship and clarity, the book is a resource to assist government and business policy makers, cultural resource professionals, and others whose activities impact the cultural and natural environment as well as the casual reader seeking to gain an in-depth understanding of the critical issues facing the protection of our global heritage in the twenty-first century.

Barbara T. Hoffman is a prominent New York arts lawyer who has taught and practiced in virtually every area of this specialized field for more than twenty-five years. She is a former chair of the Association of the Bar of the City of New York's Committee on Art Law and the immediate past chair of the International Bar Association Committee on Art, Cultural Institutions and Heritage Law.

Cambridge University Press
0521857643 - Art and Cultural Heritage: Law, Policy, and Practice
Edited by Barbara T. Hoffman
Frontmatter
[More information](#)

Art and Cultural Heritage

Law, Policy, and Practice

Edited by

Barbara T. Hoffman

Cambridge University Press
 0521857643 - Art and Cultural Heritage: Law, Policy, and Practice
 Edited by Barbara T. Hoffman
 Frontmatter
[More information](#)

COVER ILLUSTRATION CREDITS

Reading clockwise from the upper left:

1. *Magpie Geese and Water Lilies at the Waterhole*, by Johnny Bulun Bulun. Mr. Bulun Bulun is a well-known artist from Arnhemland. *Magpie Geese and Water Lilies at the Waterhole* is a bark painting created in 1978 by Mr. Bulun Bulun that depicts one of the most important cultural sites for the Ganabingu people. The painting was altered and copied by a textile company in 1996. © Johnny Bulun Bulun. Museum and Art Gallery of the Northern Territory Collection. Licensed by VISCOPY, Australia, 2005.
2. Māori hei-tiki, or greenstone neck pendant. Museum of New Zealand Te Papa Tongarewa.
3. Cyprus image 1 (face image, up close). One of the Kanakaria mosaics that was successfully claimed by Cyprus in the case of *Autocephalous Greek-Orthodox Church of Cyprus and The Republic of Cyprus v. Goldberg & Feldman Fine Arts, Inc.* Photo by Petros Petrides.
4. Cambodian head. This head was found at the Metropolitan Museum of Art in New York, USA, in March 1994. The museum directors checked with ICOM and immediately made contact with the Cambodian authorities who made an official request for the return of the head. The Metropolitan Museum agreed to return the object in compliance with ICOM's *Code of Ethics for Museums*. Restitution took place in Phnom Penh on March 17, 1997. © Mention obligatoire Ecole française d'Extreme-Orient (EFEO)
5. Mayavase image. Maya limestone panel of a ballplayer from Site Q, Late Classic, 600 to 800 A.D. The Museum of the American Indian, Smithsonian Institution. © Justin Kerr. The limestone panel is one of more than two dozen sculptures that have entered this country since 1960, alleged to have been sawn off monuments at a place known to archaeologists only as Site Q. The search for Site Q began in the 1970s and has been suggested to lie along the Usumacinta River, the border between Guatemala and Mexico.
6. Preah Khan, a temple within the Angkor Wat complex in Cambodia. In 1992, the UNESCO World Heritage Committee declared the whole city of Angkor a World Heritage Site. Photograph courtesy of World Monuments Fund. © World Monuments Fund.

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press
 40 West 20th Street, New York, NY 10011-4211, USA

www.cambridge.org
 Information on this title: www.cambridge.org/9780521857642

© Cambridge University Press 2006
 © Introduction and Compilation, Barbara T. Hoffman 2006

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2006

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Art and Cultural Heritage : law, policy, and practice / edited by Barbara T. Hoffman.
 p. cm.

Includes bibliographical references and index.

ISBN-13: 978-0-521-85764-2 (hardback)

ISBN-10: 0-521-85764-3 (hardback)

1. Cultural property – Protection – Law and legislation. I. Hoffman, Barbara T. II. Title.

K3791.A97 2005

344'.09 – dc22

2005012017

ISBN-13 978-0-521-85764-2 hardback

ISBN-10 0-521-85764-3 hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Contents

<i>List of Contributors</i>	<i>page xi</i>
<i>Preface and Acknowledgments</i>	xxvii
The International Bar Association <i>Francis Neate and Emilio J. Cárdenas</i>	xxxii
International Council of Museums <i>Alissandra Cummins and John Zvereff</i>	xxxv
International Council on Monuments and Sites <i>Michael Petzet and James K. Reap</i>	xxxvii
Introduction: Exploring and Establishing Links for a Balanced Art and Cultural Heritage Policy	1
<i>Barbara T. Hoffman</i>	
PART ONE. INTERNATIONAL LEGAL TOOLS AND VIEWPOINTS	19
1 The Law of Sé: Linking the Spiritual and Material	21
<i>Ramon Gil</i> <i>Alan Ereira, Translator</i>	
2 The Obligation to Prevent and Avoid Destruction of Cultural Heritage: From Bamiyan to Iraq	28
<i>Francesco Francioni and Federico Lenzerini</i>	
3 Beyond Bamiyan: Will the World Be Ready Next Time?	41
<i>James Cuno</i>	
4 The Role of the Museum in Developing Heritage Policy	47
<i>Alissandra Cummins</i>	
5 An Archaeologist's View of the Trade in Unprovenanced Antiquities	52
<i>Neil Brodie</i>	
6 Reflexions on the Causes of Illicit Traffic in Cultural Property and Some Potential Cures	64
<i>Manus Brinkman</i>	
7 The Growing Complexity of International Art Law: Conflict of Laws, Uniform Law, Mandatory Rules, UNSC Resolutions and EU Regulations	68
<i>Guido Carlucci</i>	

PART TWO. KEEPING CULTURE ALIVE: THE SOURCE NATION'S EFFORTS TO MANAGE, PROTECT, AND PRESERVE HERITAGE RESOURCES	87
8 Introduction to Parts II and III: Cultural Rights, Cultural Property, and International Trade <i>Barbara T. Hoffman</i>	89
9 Management and Conservation of Guatemala's Cultural Heritage: A Challenge to Keep History Alive <i>Juan Antonio Valdés</i>	94
10 The Protection of Cultural Patrimony in Peru <i>Jack Batievsy and Jorge Velarde</i>	100
11 Cultural Patrimony and Property Rights in Peru <i>Alberto Martorell-Carreño</i>	105
12 Putting the IFAR Cuzco Inventory to Work <i>Frederic J. Truslow</i>	109
13 Cultural Property Legislation in Mexico: Past, Present, and Future <i>Norma Rojas Delgadillo</i>	114
14 The Protection of Cultural Heritage in Colombia <i>Juan Carlos Uribe</i>	119
15 Chronological Overview of Developments in Bolivian and Latin American Cultural Heritage Legislation with a Special Emphasis on the Protection of Indigenous Culture <i>Elizabeth Torres</i>	124
16 Illicit Traffic in Cultural Heritage in the Southern Cone: A Case Study Based on the Paraguayan Experience <i>Oscar Centurion Frontanilla</i>	134
17 The Nigerian and African Experience on Looting and Trafficking in Cultural Objects <i>Folarin Shyllon</i>	137
18 The Protection of Cultural Heritage Items in New Zealand <i>Sir Ian Barker</i>	145
19 Angkor Sites, Cultural World Heritage <i>Kérya Chau Sun</i>	148
PART THREE. INTERNATIONAL MOVEMENT OF ART AND CULTURAL PROPERTY: THE "MARKET NATIONS"	157
20 International Art Transactions and the Resolution of Art and Cultural Property Disputes: A United States Perspective <i>Barbara T. Hoffman</i>	159
21 The Illicit Trade in Cultural Objects: Recent Developments in the United Kingdom <i>Adrian Parkhouse</i>	178
22 <i>Summum ius suma iniuria</i> : Stolen Jewish Cultural Assets under Legal Examination <i>Peter Raue</i>	185

Contents

vii

23	European Union Legislation Pertaining to Cultural Goods	191
	<i>Barbara T. Hoffman</i>	
24	Hypothetical on the Enforcement of Export Prohibitions and a Commentary on the Hypothetical	194
	<i>Richard Crewdson</i>	
25	Excerpts from the Memoire “Le Regime Juridique et Fiscal Francais des Importations et Exportations d’Oeuvres d’Art”	197
	<i>Pearl Gourdon</i>	
PART FOUR. PROTECTING THE WORLD’S HERITAGE: THE NATIONAL DIMENSION IN THE INTERNATIONAL CONTEXT		199
26	World Heritage – Linking Cultural and Biological Diversity	201
	<i>Mechtild Rössler</i>	
27	Judicial Interpretations of the World Heritage Convention in the Australian Courts	206
	<i>Matthew Peek and Susan Reye</i>	
28	Paris Down Under – World Heritage Impacts in Australia	210
	<i>Jane L. Lennon</i>	
29	The Cultural Landscape of the Agave and the Production of Tequila	216
	<i>Ignacio Gómez Arriola and Francisco Javier Lopez Morales</i>	
30	National Heritage Areas: Developing a New Conservation Strategy	220
	<i>Brenda Barrett, Nancy I. M. Morgan, and Laura Soullière Gates</i>	
31	The United States and the World Heritage Convention	234
	<i>James K. Reap</i>	
32	Cultural Heritage Legislation: The Historic Centre of Old Havana	239
	<i>María Margarita Suárez García</i>	
PART FIVE. A CONSIDERATION OF CULTURAL AND NATURAL HERITAGE GUIDELINES APPLICABLE TO INFRASTRUCTURE PROJECTS, MINING OPERATIONS, AND THEIR FINANCING		243
33	The World Bank’s Policy on Physical Cultural Resources	245
	<i>Charles E. Di Leva</i>	
34	BTC Pipeline Project and the Preservation of Cultural Heritage	249
	<i>Gary Paulson</i>	
35	Tale of Zeugma and the Birecik Project	255
	<i>Doğan Yağiz</i>	
36	The Impact of Cultural Resources Laws on the United States Mining Industry	260
	<i>Robert A. Bassett</i>	
37	Minimising the Environmental and Cultural Impacts of Oil Operations in Emerging Economies: Transnational Oil Companies and Voluntary International Environmental Standards	264
	<i>Alexandra S. Wawryk</i>	

PART SIX. WHO OWNS THE TITANIC'S TREASURES? PROTECTION OF THE UNDERWATER CULTURAL HERITAGE	283
38 The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage <i>Tullio Scovazzi</i>	285
39 The Collision of Property Rights and Cultural Heritage; the Salvors' and Insurers' Viewpoints <i>Forrest Booth</i>	293
40 Finders Keepers Losers Weepers – Myth or Reality? An Australian Perspective on Historic Shipwrecks <i>Derek Luxford</i>	300
41 The Shades of Harmony: Some Thoughts on the Different Contexts That Coastal States Face as Regards the 2001 Underwater Cultural Heritage Convention <i>Ariel W. Gonzáles</i>	308
42 Underwater Cultural Heritage at Risk: The Case of the <i>Dodington</i> Coins <i>John Gribble and Craig Forrest</i>	313
PART SEVEN. WHO OWNS TRADITIONAL KNOWLEDGE?	325
43 Intellectual Property and the Protection of Traditional Knowledge and Cultural Expressions <i>Wend B. Wendland</i>	327
44 Who Owns Traditional Knowledge? A Personal and Industry View <i>Bo Hammer Jensen</i>	340
45 Protecting Maori Heritage in New Zealand <i>Mau Solomon</i>	352
46 Culture, Science, and Indigenous Technology <i>Hester du Plessis</i>	363
47 Recent Developments in the Regulation of Traditional Herbal Medicines <i>Zelda Pickup and Christopher Hodges</i>	370
PART EIGHT. MUSEUMS AND CULTURAL HERITAGE	377
48 The “Universal Museum”: A Case of Special Pleading? <i>Geoffrey Lewis</i>	379
49 Africa and Its Museums: Changing of Pathways? <i>George H. Okello Abungu</i>	386
50 The National Institute of Anthropology and History <i>María del Perpetuo Socorro Villareal Escarrega</i>	394
51 How Much Provenance Is Enough? Post- <i>Schultz</i> Guidelines for Art Museum Acquisition of Archeological Materials and Ancient Art <i>Ildiko P. DeAngelis</i>	398
52 Māori Taonga – Māori Identity <i>Arapata Hakiwai</i>	409

Contents

ix

53	Unfolding Intangible Cultural Heritage Rights in Tangible Museum Collections: Developing Standards of Stewardship	413
	<i>Gerald R. Singer</i>	
54	Indigenous Cultural and Intellectual Property Rights: A Digital Library Context	416
	<i>Robert Sullivan</i>	
55	The Role of Museums Today: Tourism and Cultural Heritage	419
	<i>Yani Herreman</i>	
PART NINE. CARING AND SHARING: INNOVATIVE SOLUTIONS AND PARTNERSHIPS FOR NATURAL AND CULTURAL HERITAGE CONSERVATION		427
56	Finding Solutions for Lost Cities: Indigenous Populations and Biological and Cultural Diversity	429
	<i>Alvaro Soto</i>	
57	Cultural Heritage Preservation: A National Trust Perspective	436
	<i>Trevor A. Carmichael</i>	
58	Costa Rica's Biodiversity Law: Searching for an Integral Approach to Cultural and Biological Diversity	440
	<i>Vivienne Solís Rivera and Patricia Madrigal Cordero</i>	
59	Partnership Paradigms Combining Microbial Discovery with Preservation of Tropical Biodiversity and Sustainable Development	448
	<i>Barbara T. Hoffman</i>	
60	Costa Rica's Legal Framework for the Sponsorship and Protection of Its Cultural Heritage	452
	<i>Sara Castillo Vargas</i>	
61	Financial Regulations and Tax Incentives with the Aim to Stimulate the Protection and Preservation of Cultural Heritage in Spain	455
	<i>María Rosa Suárez-Inclán Ducassi</i>	
62	ARPAI: The Successful Intervention of Private Citizens in the Protection of Italy's Artistic and Archaeological Heritage	461
	<i>Alida Tua</i>	
PART TEN. CREATING VALUE: CONSIDERING ARBITRATION OR MEDIATION TO RESOLVE ART AND CULTURAL PROPERTY DISPUTES		463
63	Arbitration of International Cultural Property Disputes: The Experience and Initiatives of the Permanent Court of Arbitration	465
	<i>Brooks W. Daly</i>	
64	Mediation as an Option for Resolving Disputes between Indigenous/Traditional Communities and Industry Concerning Traditional Knowledge	475
	<i>J. Christian Wichard and Wend B. Wendland</i>	
65	Thoughts of an Alternative Dispute Resolution Practitioner on an International ADR Regime for Repatriation of Cultural Property and Works of Art	483
	<i>Ian Barker</i>	

APPENDIX: A GUIDE TO ART AND CULTURAL HERITAGE RESOURCES	489
Legal Documents	489
Codes of Ethics and Position Papers	490
Bibliography	490
Efforts to Protect Cultural Property	491
Restitution of World War II Era Stolen Art	492
A Selective List of Non-Profit Organizations in Cultural and Natural Heritage Conservation	493
UNIDROIT Convention on Stolen Property, June 24, 1995	493
Public Summary Request of the People's Republic of China to the Government of the United States of America Under Article 9 of the 1970 UNESCO Convention	498
The World Bank Operational Manual Bank Procedures: Physical Cultural Resources	500
The World Bank Operational Manual Bank Procedures: Indigenous Peoples	502
ICOM Code of Ethics for Museums	507
Existing Options for the Resolution of Art and Cultural Property Disputes	515
<i>Index</i>	519

Contributors

George H. Okello Abungu, Ph.D. is a Cambridge-trained archaeologist and former Director-General of the National Museums of Kenya, who is also founder Chairman of Africa 2009, ISCOTIA, and Programme for Museum Development in Africa, among others. Mr. Abungu was most recently a Guest Scholar (May 2005) at the Getty Conservation Institute LA, researching strategies for sustainable management and utilisation of intangible heritage in Africa. He is the Chairman of the Kenya Cultural Center and the CEO of Okello Abungu Heritage Consultants. Apart from his work in the conservation of African heritage, he is also widely published in the disciplines of archaeology, heritage management, museology, and the subject of culture and development. abungu@jambomail.com

Ignacio Gómez Arriola received his Bachelor of Architecture from the University of Guadalajara, where he also completed master level courses in Conservation of Monuments. He gives courses and seminars on cultural heritage conservation and is in charge of the World Heritage nomination dossier for the Agave Landscape and the old tequila factories. From 1996–2001, he was involved in the restoration and re-installation of the Renaissance altarpiece of the Great Holy Cross in the Hospital for Indians, the diagnostic and restoration project for the Degollado Theater in Guadalajara, and various restorative and rehabilitative activities in the Hospicio Cabanas in Guadalajara. From 1997–8, he completed preparatory studies for the World Heritage nomination of the Hospicio Cabanas and from 1998–2000, restored a historic building for the Museum of Popular Arts of Jalisco. Mr. Arriola has been involved with numerous restoration projects as advisor and director and has received many awards for his work, among them the Franciscano de la Maza Prize, awarded by INHA in the field of heritage research, for the work done on the Hospital of Indians of Santa Cruz el Grande and the Jalisco Award given by the Jalisco Architectural Society for research. At the present, he is the Experto Restoratio Architect for the Instituto Nacional de Antropología e Historia in Jalisco and a member of the Board of ICOMOS Mexicano and ICOMOS Coordinator for the State of Jalisco.

Sir Ian Barker, QC practices as an arbitrator and mediator, both internationally and in New Zealand. He retired as Senior Judge of the High Court of New Zealand in 1997. He is a member of several international arbitration panels and is a Domain Name Dispute Resolution panelist for the World Intellectual Property Organisation. He was Chancellor of the University of Auckland from 1991 to 1999. He is New Zealand representative on the International Chamber of Commerce Commission on Arbitration and a nominee of the New Zealand Government on the International Centre for Settlement of Investment Disputes Panel.

Brenda Barrett serves as the National Coordinator for Heritage Areas for the National Park Service in Washington D.C. She provides budget, legislative, and policy support for the twenty-three Congressionally designated areas and for proposed heritage initiatives across the nation. She was formerly the Director of the Bureau for Historic Preservation at the Pennsylvania Historical and Museum Commission, the state's

public history agency in Harrisburg. Ms. Barrett received her Bachelor of Arts degree in anthropology from the University of Colorado in 1971 and her Master of Science degree in archaeology from the University of Wisconsin in 1974. She is also a graduate of the Dickinson School of Law – Pennsylvania State University and is admitted to practice in the Commonwealth of Pennsylvania.

Brenda.Barrett@nps.gov

Robert Bassett practices natural resources and international law at the firm Holland & Hart, LLP, in Greenwood Village, Colorado. He has worked in the natural resources industry for more than 20 years, representing clients in the United States, Europe, Latin America, Africa, and Canada. His practice has included advising natural resources companies during the acquisition of companies and properties, and providing counseling and advice on laws related to public lands, transportation, processing, sales, corporate, and litigation matters. Formerly, he was an attorney for Cyprus Amax Minerals Company, and practiced law with private firms in Alaska and New Mexico. Mr Bassett is Co-Chair of the Mining Committee of the Section of Energy and Resources Law of the International Bar Association, a past Trustee of the Rocky Mountain Mineral Law Foundation, an adjunct professor of International Mining Law and Policy at the University of Denver College of Law, and a lecturer on mining agreements at the Centre for Energy, Petroleum, and Mineral Law and Policy at the University of Dundee, Scotland. bbassett@hollandhart.com

Jack Batievsky. The late Jack Batievsky was a partner in the law firm of Rodrigo, Elias & Medrano in Lima, Peru. He graduated in 1969 from the Law School of the Pontificia Universidad Católica del Perú, and taught law there from 1973. He was a member of the Colegio Abogados de Lima, the International Bar Association (where he chaired the Latin American and Caribbean Steering Group from 2000–2002), the Inter-American Bar Association, the International Fiscal Association, the American Bar Association and the Association of International Petroleum Negotiators. An obituary of Mr Batievsky may be found in the December 2002 *International Bar News*.

Forrest Booth is a *cum laude* graduate of Amherst College and the Harvard Law School. He has practiced admiralty, maritime, and insurance law for more than twenty-five years. He is a senior member of the 480-lawyer firm Cozen O'Connor. Until 2000, he headed his own nineteen-lawyer firm, which he founded in 1990. Prior to that, he was a partner in a large San Francisco law firm, where he headed the admiralty and maritime group. Mr. Booth served as a Lieutenant in the United States Navy, on sea duty between 1968 and 1972. He has taken more than a dozen cases to trial, and has handled thirty-four appeals before the U.S. Ninth Circuit Court of Appeals, the California Courts of Appeal, the California Supreme Court, and the U.S. Supreme Court in *Saratoga v. Martinac*. Most of these appeals resulted in published decisions. Forrest is the past Chair of the Pacific Admiralty Seminar, and past Chair, International Insurance Law Committee, American Bar Association Section of International Law and Practice. He specializes in casualty, salvage, marine insurance, construction, personal injury, cargo, insurance bad faith defense, oil and gas energy, and pollution matters. His legal publications include: 'Bad Faith' – *Legal Trends in Suits Against Insurers*, 4 U.S.F. Mar. L.J. 1 (1992); *Who Owns Sunken Treasure? The Supreme Court, The Abandoned Shipwreck Act and the BROTHER JONATHAN*, 11 U.S.F. Mar. L.J. 77 (1998); and *Port and Maritime Security*, 15 U.S.F. Mar. L.J. 1 (2002). Mr. Booth is a member of the California and District of Columbia bars, the Maritime Law Association of the United States, the International Bar Association, the Association of Average Adjusters (UK), the Defense Research Institute, and the Pacific Admiralty Seminar Steering Committee. He is a regular speaker at insurance, legal, and marine industry conferences.

Manus Brinkman is the former Secretary General of the International Council of Museums (ICOM). He holds a doctorate degree in international relations from the University of Amsterdam. Mr. Brinkman has served as the Director of the Dutch

Contributors

xiii

Museums Association and has edited the Association's magazine, *Museumvisie*, since 1990. He has been an active member of the Network of European Museum Organisations (NEMO) since its establishment, and served as its Chairman from 1995–8. He has also been actively involved in various international activities, including the campaign against the illicit traffic in cultural property.

Neil Brodie obtained a doctorate in archaeology from Liverpool University. Since 1998, he has been Coordinator of the Illicit Antiquities Research Centre at the McDonald Institute for Archaeological Research, Cambridge. He has published widely on the subject of illicit antiquities and carries out orthodox archaeological fieldwork in Greece.

Guido Carducci is Chief of the International Standards Section of UNESCO's Division of Cultural Heritage. He is a graduate of The Hague Academy of International Law and holds doctoral degrees in French law and Italian law. Mr. Carducci's recent publications in the field of the legal protection of cultural heritage and property include, "La Restitution Internationale des Objets d'Art et des Biens Culturels Volés ou Illicitement Exportés. Droit Commun, Directive CEE, Conventions d'Unesco et d'Unidroit" (1997 *L.G.D.J.* Paris), "L'Obligation de Restitution des Biens Culturels et des Objets d'Art en Cas de Conflit Armé: Droit Coutumier et Droit Conventionnel avant et après la Convention de La Haye de 1954. L'Importance du Facteur Temporel dans les Apports entre les Traités et la Coutume" (*Revue Générale de Droit International Public*, 2000, n. 2), "New Developments in the Law of the Sea: the Unesco Convention on the Protection of Underwater Cultural Heritage" (*American Journal of International Law*, 2002, n. 2), "The Expanding Protection of the Underwater Cultural Heritage: the New UNESCO Convention versus Existing International Law" (*The Protection of the Underwater Cultural Heritage* (T. Scovazzi, ed, Giuffrè 2002), and "Cultural Property and Works of Art in Public and Private International Law" and "Norme di Applicazione Necessaria" (*Enciclopedia Giuridica Treccani [Italian Treccani Legal Encyclopaedia]* 2000).
 gcarducci@noos.fr

Trevor A Carmichael, QC was born in Barbados and was called to the United Kingdom Bar as a member of the Middle Temple. He is a member of the Inter-American Bar Association and an associate member of the Canadian Bar Association. He is the Barbados Country Chairman of the International Bar Association's International Litigation Committee on Business Law and served as its Deputy Secretary General for three years. He was one of eight Organization of American States experts responsible for drafting a Convention on International Contracts and is a member of the Committee on Joint Ventures Model Contracts of the United Nations Conference on Trade and Development. He has published widely and is the Principal of Chancery Chambers, a Barbados law firm engaged primarily in international business law, environmental law, and the law relating to charities.
 chancery@caribsurf.com

Sara Castillo Vargas is the Executive Director of Costa Rica's National Commission for the Betterment of Justice Administration. She is an active member of ICOMOS-Costa Rica and represents the organisation on ICOMOS's International Legal and Administrative Affairs Committee. She has a degree in preservation studies from the University of Florida. Ms. Castillo Vargas took part in the drafting of Costa Rica's current legislation on the protection of cultural property. For several years, she served as the legal advisor of ICOMOS-Costa Rica.

Oscar Centurion Frontanilla is the Advisor for Cultural Affairs at the Ministry of Foreign Affairs of Paraguay. Prior to February 2004, he was at the Embassy of Paraguay in Washington, D.C. as Advisor for Cultural Affairs. He is former Chairman and CEO of the Centre for the Conservation of Cultural Heritage and ICOM-Paraguay (1995–2001), former Chairman of Asuncion's Historic Districts Office (1993–4), and former General Director of the National Office for Protecting Cultural Heritage at the Ministry of Education and Culture (1991–1993).

Kérya Chau Sun attended “Lycée Descartes,” the French high school of Cambodia, and received a masters degree in Modern Literature at the Sorbonne University in Paris and a Diploma of Superior Specialized Study in Tourism, Culture, and Development. In 1990, after 21 years of absence from Cambodia, she returned to the country for a humanitarian mission. Deeply hurt by the loss of the majority of her family’s members under the Khmers Rouges regime and distressed by the deprived situation of the country, in 1995, she returned to participate in the country’s reconstruction. Since her return, she has been participating in the creation of the Authority for the Protection of the Site and Management of the Region of Angkor (APSARA Authority). She currently holds the position of Director of Angkor Tourism Development Department and is also vice-president of the national committee of ICOMOS and general secretary of the national committee of ICOM. She teaches the marketing and economy of tourism in the Royal University of Phnom Penh.

Richard Crewdson is a retired solicitor of London, England, and founder and Chair of the International Bar Association Cultural Property Law Committee 1986–90.

Alissandra Cummins, B.A. (Hons.), M.A., F.M.A. is Director of the Barbados Museum and Historical Society. She holds a Bachelor of Arts Degree with Honours in the History of Art from the University of East Anglia at Norwich, and a Master of Arts in Museum Studies from Leicester University. A recognized authority on Caribbean museum development and art, she was elected a Fellow of the Museums Association (U.K). She serves as Chairperson of both the National Art Gallery Committee and the Barbados National Commission for UNESCO. She is also a member of the Prime Minister’s Task Force on the Cultural Industries and was recently appointed to Barbados’ Advisory Committee on Intellectual Property. She was instrumental in formation of the Museums Association of the Caribbean (MAC) and became its founder President in 1989. She currently represents Barbados on UNESCO’s Intergovernmental Committee for Promoting the Return of Cultural Property to its Country of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP), and has served as its Chairperson from 2003–5. Miss Cummins served between 1998–2004 as Chairperson of the Advisory Committee of the International Council of Museums, following which she was elected as its president in 2004.

James Cuno is President and Director of the Art Institute of Chicago, having previously served as Professor and Director of the Courtauld Institute of Art, University of London, and Professor and Director of the Harvard University Art Museums. A Fellow of the American Academy of Arts and Sciences, he has also served as a Trustee of the Museum of Fine Arts, Boston and the Association of Art Museum Directors. He was President of the latter in 2002. Mr. Cuno has published widely on a number of topics, from French graphic art of the eighteenth and nineteenth century to contemporary American art and U.S. cultural policy as pertains to the purpose and mission of art museums in a civil society. His most recent book, *Whose Muse? Art Museums and the Public Trust* was published by Princeton University Press in 2003. Mr. Cuno has lectured and written frequently on the topic of U.S. art museums and the legal and ethical questions surrounding the acquisition of antiquities.
 jcuno@artic.edu

Brooks Daly is the Senior Legal Counsel at the Permanent Court of Arbitration (PCA) in The Hague, The Netherlands. Mr. Daly counsels lawyers and arbitrators participating in international arbitration under PCA auspices on a variety of matters relating to arbitral procedure and international dispute resolution. He speaks frequently on international arbitration topics and lectures at Leiden University in the International Business Law and Public International Law LL.M. Programs. Prior to joining the PCA,

Mr. Daly acted as Counsel at the International Chamber of Commerce (ICC) International Court of Arbitration in Paris, France. He is a member of the California

Contributors

xv

Bar and practiced with the firms of Latham & Watkins (Los Angeles) and Hale & Dorr (London) before joining the ICC. He holds a Doctor of Jurisprudence from the New York University School of Law, a Master of Arts from the New York University Institute of French Studies, and a Bachelor of Arts from the University of California at Santa Barbara. He has acted as an arbitrator under the ICC Rules of Arbitration.
 bdaly@pca-cpa.org

Ildiko Pogany DeAngelis is Associate Professor and Director of the Graduate Program in Museum Studies at The George Washington University in Washington, D.C. Professor DeAngelis holds Bachelor of Arts and Master of Arts degrees in art history and she was awarded a Certificate in Museum Administration from the Smithsonian Institution in 1976. In 1980, she earned a Juris Doctor degree *magna cum laude* from American University's Washington College of Law. She practiced law for 18 years before joining the faculty at George Washington University. The first four years, she practiced as an associate with the law firm of Steptoe and Johnson in Washington D.C., and the remainder, as Assistant General Counsel at the Smithsonian Institution, where she specialized in the legal issues arising from the management of museum collections. Professor DeAngelis is now the director of the largest graduate program in Museum Studies in the United States, with more than 115 graduate students studying for Master of Arts degrees and Certificates in Museum Studies. She teaches courses on the legal and ethical challenges of managing museum collections, including a seminar on stolen and illegally exported cultural property. Professor DeAngelis is the author of "Civil Recovery for Stolen Art: Lessons for Museums" an article published in the American Law Institute/American Bar Association's *Legal Problems of Museum Administration* coursebook. She also authored *U.S. Museums and the Nonprofit Sector: A Framework for International Dialogue*, published by the American Association of Museums; and she is a contributing author to Marie C. Malero's *Legal Primer on Managing Museum Collections* (rev. 1998 ed.), published by the Smithsonian Institution.
 ildikod@gwu.edu

Norma Rojas Delgado is the Legal Director of Mexico's National Council on Culture and the Arts. Prior to this, she served as the Director of Legal Affairs at the National Institute of Arts and Literature. Ms Rojas has participated in many international meetings and conferences on the protection of cultural heritage and intellectual property. She holds a law degree from the University of Coahuila's School of Law.

Charles E. Di Leva is Chief Counsel of the Environmentally and Socially Sustainable Development and International Law Practice Group of the World Bank Legal Department. Since 1992, he has worked in all geographic regions, specializing on issues pertaining to sustainable development, such as carbon and green finance, development and implementation of multilateral environmental agreements, and national laws. From 1999 until 2001, he was Director of the Environmental Law Center of IUCN – The World Conservation Union, in Bonn, Germany. Mr. Di Leva served as trial attorney for four years with the U.S. Department of Justice, Environment and Natural Resources Division and for five years with the State of Rhode Island as Legal Counsel with the Department of Environmental Management and as Environmental Advocate in the Attorney General's office. He served for one year as Senior Program Officer with the Environmental Law Unit for the United Nations Environment Program in Nairobi, Kenya. He was also in private environmental law practice for three years in Washington D.C. Mr. Di Leva is an adjunct professor at the George Washington University School of Law, teaching International Trade and Environment, and an adjunct at the American University Washington College of Law teaching Legal Aspects of Sustainable Development. He is active with the American Bar Association, is Chair of the International Environmental Law Committee of the D.C. Bar Association, and is a graduate of Vermont Law School.
 cdileva@worldbank.org

Alan Ereira studied history at the Exhibitioner, Queens' College Cambridge, and law as a Hardwicke Scholar at Lincoln's Inn. He joined the BBC as a history producer: prizes include the Japan Prize for Radio and the Royal Television Society award for Best Documentary Series. He helped the Kogi Mamas make a feature-length TV film offering Younger Brother advice. He has run Sunstone Films for ten years and is the founder of the Tairona Heritage Trust. The Tairona Heritage Trust (Fondacion Herencia Tairona) is a UK registered charity (no. 1012018). It provides assistance to the indigenous people of the Sierra Nevada de Santa Marta in response to requests from Gonawindua Tairona, which represents the Mamas. Its primary activities have been to assist in the physical requirements of communication between them and the wider world, reacquiring traditional lands to establish a frontier meeting-point, helping with the construction of an indigenous centre in the city of Santa Marta, and assisting in the physical establishment of an administrative centre there.

Craig Forrest is a lecturer in law and Fellow of the Centre for Public, International and Comparative Law, at the TC Beirne School of Law, University of Queensland, Australia. He is a graduate of Rhodes University (B.Com 1988), the University of South Africa (LLB, 1994; LLM, 1999) and the University of Wolverhampton (Ph.D., 2000). He participated in the UNESCO Conferences to draft the Convention on the Protection of the Underwater Cultural Heritage as a member of the South African delegation.

Mr. Forrest has published in the area of cultural heritage and the Convention on the Underwater Cultural Heritage. Recent publications include: "Salvage Law and the wreck of the Titanic" (2000) 1 *Lloyd's Maritime and Commercial Law Quarterly*, 1, "A New International Regime For The Protection of Underwater Cultural Heritage" (2002) 51(3) *International and Comparative Law Quarterly*, 511; "Defining 'underwater cultural heritage'" (2002) 31(1) *International Journal of Nautical Archaeology*, 3; "An International Perspective on Sunken State Vessels as Underwater Cultural Heritage" (2003) 34(1) *Ocean Development and International Law*, 41; "Has the Application of Salvage Law to Underwater Cultural Heritage Become a Thing of the Past?" (2003) 34(2) *Journal of Maritime Law and Commerce*, 309; "Strengthening the International Regime for the Prevention of The Illicit Trade in Cultural Heritage" (2003) 4(2) *Melbourne Journal of International Law*, 592; "The illicit trade in Iraqi heritage: Considerations for the Australian art and antiquities market" (2004) 29(3) *Alternative Law Journal*, 121; and 'Australia's Protection of Foreign States' Cultural Heritage' (2004) 27(3) *University of New South Wales Law Journal*. In 2005, he was a Visiting Fellow at the Illicit Antiquities Research Centre, McDonald Institute, University of Cambridge. His current research concerns the international law obligations of occupying forces to protected cultural heritage.

cforrest@law.uq.edu.au

Francesco Francioni was born in Florence, Italy. He received Dottore in Giurisprudenza, University of Florence (1966), and LL. M., Harvard (1968). He is a member of the Italian Bar; Chair of International Law, University of Siena and Professor of International Law and Human Rights at the European University Institute, Florence since 2003. He was Provost of the University of Siena from 1994 to 2003; legal counsel for the Italian Government on matters concerning the protection of cultural heritage, and President of the World Heritage Committee 1997–1998; consultant for UNESCO on matters concerning the intentional destruction of cultural heritage, and the safeguarding of intangible cultural heritage. He is a member of the American Law Institute and visiting Professor, Texas Law School, Austin, since 1988.

francesco.francioni@iue.it

Laura (Soullière) Gates received her Bachelor of Fine Arts and Master of Arts from the University of Massachusetts (Amherst). She worked as an architectural historian in planning and cultural resource management activities for the National Park Service in parks and central offices throughout the west and southwest. After moving into

Contributors

xvii

park management, she served as superintendent at Arkansas Post National Memorial, and presently is superintendent at Cane River Creole National Historical Park and a commissioner of Cane River National Heritage Area. She has lectured and written extensively on park architecture and design, civic engagement, and federal partnerships. She is past board member and former vice president of the George Wright Society, which is dedicated to the protection, preservation, and management of cultural and natural parks and reserves through research and education. She is a life member of the George Wright Society, and a member of the National Trust for Historic Preservation.

Ramon Gil was the child of an Asario father and Kogi mother. He comes from a line of Asario Mamas, but grew up part-acculturated on the wild borderlands between indigenous and Colombian territory. He was articulate and rebellious when he was taken in hand by powerful Kogi Mamas and trained to be their translator and representative. He is now a respected and energetic senior community leader working in extremely dangerous conditions.

Ariel W. Gonzales practices law, specializing in Public International Law. He is a member of the Faculty of Law at the University of Buenos Aires, as well as a diplomat, currently working at the Legal Advisor's Office of the Argentine Ministry of Foreign Affairs, International Trade and Worship. Mr. Gonzales was a member of the Delegations of Argentina at the negotiations that led to the adoption of the 1999 Second Protocol to the 1954 Hague Convention of Protection of Cultural Property in the Event of Armed Conflict, the 2001 Convention on the Protection of Underwater Cultural Heritage, the 2003 Convention on the Safeguarding of Intangible Cultural Heritage, and the 2003 UNESCO Declaration on the Intentional Destruction of Cultural Property and is Rapporteur of the World Heritage Committee. He is the author of several publications on the legal aspects of the international protection of cultural property, and an invited speaker at several seminars and regional meetings on the same subject, under the auspices of UNESCO and/or the International Committee of the Red Cross. awc@mrecic.gov.ar

Pearl Gourdon holds a bachelors degree with honors in business law and a masters in Art Law, from the University Jean Moulin 3, Lyon, France.

John Gribble has been the Maritime Archaeologist at the South African Heritage Resources Agency since 1996, responsible for managing underwater heritage nationally. He is also Director of the National Survey of Underwater Heritage, the first underwater heritage survey in South Africa. Mr. Gribble is a graduate of the University of Cape Town (Bachelor of Arts, Honours Archaeology, 1987; Master of Arts Archaeology, 1990). Nationally, he was Chairperson of the South African Archaeological Society: Western Cape (1997–2000), a Council Member of the South African Archaeological Society (1996–2000), and Secretary of the Southern African Association of Archaeologists (2000–4). Internationally, John was an associate member of the ICOMOS International Committee for Underwater Cultural Heritage (2000–1) and has been a full member since 2002. He was a member of the National Delegation to the UNESCO Conference of Experts to draft the Convention on the Protection of the Underwater Cultural Heritage (1998–2001). His current research interests include maritime cultural resource management and the archaeology of South Africa's small traders and coasters. Mr. Gribble's most recent publication is "The Past, Present and Future of Maritime Archaeology in South Africa," in Carol V Ruppe and Janet F Barstad (eds.), *International Handbook of Underwater Archaeology* (2002).

Arapata Hakiwai has worked for the National Museum of New Zealand (now Museum of New Zealand Te Papa Tongarewa) for over twelve years. He has worked in a number of roles including exhibitions concept developer and research curator for the exhibitions for the opening of new Museum of New Zealand Te Papa Tongarewa

(Te Papa) in February 1998. Mr. Hakiwai was also the co-curator with John Terrell of a project team in partnership with Te Waka Toi (now Toi Aotearoa – Creative New Zealand) and the Field Museum of Natural History in Chicago on the restoration and renovation of the carved Māori meeting house Ruatēpupuke in 1991–93.

Arapata Hakiwai has worked for Te Papa National Services as the Community Partnerships Manager Māori responsible for working with museums, galleries, allied organisations and Māori tribes on cultural heritage initiatives. Before this he was the Bicultural Operations Manager for Te Papa. Arapata Hakiwai has been the Director, Mātauranga Māori, Te Papa since late 2003 and is responsible for the care, management and research of the Māori and Moriori collections held in Te Papa's care. His area of responsibility also includes advancing the development of mātauranga Māori or Māori knowledge into Te Papa's exhibitions and research projects. Arapata is presently a board member for Museums Aotearoa, the museum membership organization in New Zealand.

Yani Herreman, is an architect, holds masters degrees in History of Art and in Museology, with honors, and, is now studying for a doctorate in History of Art with a thesis on Museum Architecture in Mexico. She has worked in several museums where she has occupied positions such as Head of Exhibition Design, Department of the Museum of Cultures, at the National Institute of Anthropology and History and Director of the Natural History Museum of Mexico City. She was also Mexico City's Government Director of Museums, Libraries and Cultural Centers and Deputy Director for Cultural Action in the Ministry of Finance's Department of Heritage and Cultural Action. At the National University of Mexico, she was General Coordinator of the Cultural Action Department at the Iztacala Campus until she was asked to coordinate a postgraduate course on "Museum Planning and Exhibition Design" at the Center of Postgraduate Studies and Research of the School of Architecture, where she now works. She also teaches "Urban Art" at a Postgraduate level in the Arts School of the National University and "Exhibitions" at the CenCryM (Center for Conservation, Restoration and Museography of the National Institute of Anthropology). As an active architect and designer, she has designed exhibitions and has actively worked on museum planning and programming in different countries and works as a consultant. She has written on several topics related to museums, exhibitions, and architecture such as Planning, Programming, Museums and Tourism, Museums and Urban Planning, Exhibitions and Urban Environments. Active in ICOM, she was the founding Chair of its Latinamerican Region, first woman Chair of the Architecture Committee and VicePresident of the Executive Council.
 yaniherreman@prodigy.net.mx

Christopher Hodges, Ph.D. has an international reputation as a leading expert in European product regulatory and product liability law. Dr. Hodges is currently an Associate Fellow, Centre for Socio-Legal Studies, Oxford University. He was formerly a partner in the international law firm CMS Cameron McKenna, and is now a consultant to them. At Oxford, Dr. Hodges is leading a major research programme on European and Comparative Product Liability and Regulatory Law. He has extensive experience in the regulation of pharmaceuticals and consumer products and is particularly well-known in the medical device field, being Chair of the Legal Committees of the European and UK medical device manufacturers' trade associations, EUcomed, EDMA, ABHI and BIVDA. He is editor of the textbooks *Product Liability: European Laws and Practice* (Sweet & Maxwell, London, 1993) and *Multi-Party Actions* (Oxford, 2001) and co-author with Abbott, Howard and Tyler, Mark of *Product Safety* (Sweet & Maxwell, 1996). He undertook the European Commission's 1995 study on the Product Liability Directive and has assisted the Australian and Japanese governments in their liability or regulatory laws. He is the only practising lawyer on the Academic Advisory Panel on consumer law of the UK Department of Trade and Industry.

Barbara T. Hoffman, Editor and Contributor, is a prominent lawyer in private practice in New York City representing for-profit and non-profit entities in both transactions and litigation. She is highly regarded in the United States and internationally for her expertise in art and cultural heritage law. For more than twenty-five years, she has practiced globally in virtually every area related to the subject, including counseling various clients on cultural heritage issues, art restitution and provenance research, contracts for public and private art commissions including large-scale urban projects, international art transactions, and the mediation of art, cultural, and intellectual property-related disputes. She also advises artists and their foundations, museums, authors, filmmakers, and companies with respect to licensing, copyright, and other intellectual property issues. She is licensed to practice law in the states of New York, Washington and the District of Columbia, and is admitted to practice before various federal and state courts including the United States Supreme Court. She has also served as an arbitrator for the American Film Marketing Association.

Ms. Hoffman was associate professor of law at Seattle University, School of Law for nine years, teaching art law, constitutional law, copyright, land use and property. She has also been adjunct professor at the School of Architecture, University of Washington. She is a past chair of the Association of the Bar of the City of New York Committee on Art Law and immediate past chair of the International Bar Association Committee on Art, Cultural Institutions and Heritage Law. She has served as counsel to the College Art Association and was the founder of the Washington Volunteer Lawyers for the Arts. She is a frequent invited lecturer on topics of art and cultural heritage law and intellectual property law and has authored numerous articles and publications in her field, including *Exploiting Images and Image Collections in the New Media* (Kluwer Law International, 1998).

Ms. Hoffman holds a bachelor's degree with honors from Brown University in French and art history and masters degrees with honors from the Johns Hopkins School of Advanced International Studies and the London School of Economics. She received her Juris Doctor from the Columbia University School of Law, Harlan Fiske Stone Scholar. She was also a Fellow at the Centre du Recherche d'Urbanisme, Paris, France.

artlaw@mindspring.com

Bo Hammer Jensen is a European Patent Attorney with a long experience in biotechnology patenting. He has a masters degree in chemistry and physics from the University of Copenhagen, where he worked at the Institute for Physical Oceanography in the first part of his professional career. Subsequently he was trained in intellectual property law at the University of Copenhagen while getting practical training in private practice. In 1985, he joined the company Novo Industry (now Novo Nordisk), where he stayed till the demerger of Novozymes, formerly the Enzyme business unit of Novo Nordisk company in 2000. During these years, he has occupied different positions in the patent department, but today he is Director and Senior Patent Counsel to Novozymes with special responsibilities for policy issues and participation in international organisational work. He is a member of a number of organisations, including Chartered Institute of Patent Agents and Licensing Executives Society (International), and he is a member of Intellectual/Industrial Property Rights committees in various industry organisations, and presently chairing the EuropaBio IPR Working Group.

Jane L. Lennon AM (Member of Order of Australia), MA, is an adjunct professor at the Cultural Heritage Centre for Asia and the Pacific, Deakin University, Melbourne, Australia. She was a founding member of Australia ICOMOS in 1976 and a past president and spent nearly a decade managing historic places for the Department of Conservation and Natural Resources. Since 1993, she has been a consultant on a wide range of heritage issues, a member of the International Organization for Conservation and Cultural Heritage Council (1999–2003), and a 2003 Getty Conservation Institute guest scholar, and was appointed to the new Australian Heritage Council in 2004.

Federico Lenzerini was born in Poggibonsi (Italy) on 7 October 1968. *Magna cum laude*, University of Siena, 15 October 1998. He holds a doctorate and received a JD, in international law; is lecturer of European Union law and research fellow in international law, University of Siena; member of the Italian delegation in international negotiations concerning the protection of cultural heritage carried out under the auspices of UNESCO. He took part, as consultant to UNESCO, in the drafting of a preliminary report on the destruction of the Buddhas of Bamiyan in view of the adoption of the Declaration on the Intentional Destruction of Cultural Heritage. He participated, as member of the Italian delegation, in the twenty-eighth Session of the UNESCO World Heritage Committee, held in Suzhou (China) in June and July 2004. In addition to international protection of cultural heritage, his main areas of concern are international human rights, asylum law, rights of indigenous peoples, international environmental law and international trade.

lenzerini@unisi.it

Geoffrey Lewis chaired the ICOM Ethics Committee from 1996–2004. A past-President of ICOM and the Museums Association (UK) he directed the museums of Sheffield and Liverpool (now National Museums Liverpool) before becoming Director of Museum Studies at the University of Leicester. He holds a research degree in archaeology and the Diploma and Fellowship of the Museums Association. An honorary Fellow of his national professional association, he is also an honorary member of ICOM. Now retired, he continues to write and advise on museum matters.

mail@GeoffreyLewis.co.uk

Francisco Javier Lopez Morales, holds a doctorate in urbanism from the University of Grenoble, France. He has been a member of the ICOMOS Executive Committee since 1991, and is an expert consultant of UNESCO's World Heritage Committee. He has authored many books, among them *Arquitectura Vernacula en Mexico* (Vernacular Architecture in Mexico), for which he won the Juan Pablo Prize in Mexico. He has judged many national and international architecture competitions, and organized and participated in numerous international preservation conferences. He is a member of the National System of Researchers (Sistema Nacional de Investigadores – CONACyT), and professor-researcher in the Master's Program in Architecture of the School of Engineering and Architecture of the National Polytechnic Institute of Mexico. He has also consulted with the Andalusian Institute of Historic Heritage, Spain. In 2001, Dr. Lopez became Director of World Heritage at the National Institute for Anthropology and History, in Mexico City. Most recently, he participated in the committee drafting UNESCO's Convention for the Protection of Intangible Heritage.

Derek Luxford is a partner at the Sydney law firm, Hickson, and chair of the Land Transport Subcommittee of the Maritime and Transport Law Committee.

Patricia Madrigal Cordero is an attorney specializing in International Law at the University of Costa Rica and a candidate for a doctoral degree in Environmental Law at the University of Alicante, Spain. She has broad experience in interdisciplinary and institutional activities related to Legislative, Political, and Institutional Assessment, and in executing grassroots projects. She has held positions as a consultant on different projects for multilateral organizations such as the World Bank, the Interamerican Development Bank, the World Union for Nature in the Environmental Legislation Program, and the Wildlife Program for Central America in the Central American and Costa Rican Judicial School. She has been the Regional Collaborator for the International Environmental Law Year Book and was a director for the Costa Rican Bar Association. She is the President and founding member of the National Environmental Law Association in Costa Rica (ACDA). She is currently a member of the Council on Managing the Independent Professional Services Cooperative for Social Solidarity, Coopesolidar R.L. She has broad experience teaching at the university level, both nationally and internationally, and has published diverse articles and books related to

Contributors

xxi

Costa Rican and Central American environmental legislation and policy, community use of wildlife, and biodiversity conservation.

Alberto Martorell-Carreño was conferred a Bachelor in Jurisprudence degree and the professional title of Lawyer by the Santa Maria Catholic University of Arequipa (Peru, 1991). He holds a masters degree in Protected Natural Areas from the Autonomous University of Madrid, Complutense University of Madrid, University of Alcalá and Europarc (Spain) joint program. Mr. Martorell is Vice-President for International Affairs of ICOMOS Peru and member of ICOMOS Spain. In 2003 he was elected Vice-President of the International Scientific Committee on Legal, Administrative, and Financial Affairs of ICOMOS. He is Deputy Secretary General of the Iberoamerican Sub-Committee on Cultural Cities. He is also member of the ICOMOS Committee on Cultural Routes. Martorell has authored numerous books and articles in his areas of expertise. He is a candidate in the Doctoral studies Program on Political Sciences of the Autonomous University of Madrid, Spain. Martorell has evaluated the state conservation of World Heritage Sites in Peru, Argentina, and Spain.

Nancy I. M. Morgan, Ph.D. is the Executive Director for the Cane River National Heritage Area Commission in Natchitoches, Louisiana. Since 2001, she has worked at the direction of a nineteen-member federal commission to preserve and promote the natural, cultural, and historical resources of the Cane River region. Morgan's interest in cultural landscapes was first realized in anthropological fieldwork in the Kaqchikel Maya region of Guatemala. Morgan's doctoral dissertation focused on the relationship between the residents of the Kaqchikel community of Santa María de Jesús and the Volcán de Agua (known as Junajpu in Kaqchikel), the sacred volcano on which the community sits. Morgan holds a masters degree and doctorate in Anthropology from Tulane University in New Orleans, Louisiana, and a Bachelor of Arts degree in History and Sociology/Anthropology from Colgate University in Hamilton, New York. Morgan was a Fulbright Fellow to Guatemala in 1999, and a Watson Fellow to Mexico and Central America in 1993.

Adrian Parkhouse is a partner of Farrer & Co in London. He is a litigation lawyer and head of the firm's Disputes Team. He is also Chair of its Art & Heritage Group, which focuses the many areas of the firm's practice in the art and heritage arena. He acts for collectors, dealers, galleries, and museums. He is an officer of the International Bar Association's Art, Cultural Institutions and Heritage Law Committee.
acp@farrer.co.uk

Gary L. Paulson is Assistant General Counsel, Upstream, Western Hemisphere for BP America, Inc., and is officed in Houston, Texas. In that position, he works with legal teams who provide legal services and support for BP's oil and gas exploration activities in the continental United States, the Gulf of Mexico, Latin American, and the Caribbean. Mr. Paulson received his Bachelor of Arts degree (with honors) from Colorado State University in 1970 and his Juris Doctor degree from the University of Denver in 1973, where he was an editor on the *Law Review*. Prior to joining the corporate predecessor of BP America, Inc. in 1981, he was engaged in a litigation and commercial law practice in Denver, Colorado. In his twenty-three year career with BP, his responsibilities have included oversight of legal issues relating to many facets of domestic and international energy operations including the exploration, production, marketing and sale of oil and natural gas; the refining and marketing of crude oil, and the manufacture and sale of chemical products. Mr. Paulson is licensed to practice law in Texas and Colorado and is admitted to practice before various state and federal courts, including the United States Supreme Court.

Matthew Peek is a senior career officer in the Australian Foreign Service. He has had a number of overseas postings including Australian Ambassador to Chile (with nonresident accreditation to Peru and Bolivia) and Australian Ambassador to the Kingdom of Denmark (with nonresident accreditation to Norway and Iceland). At

the time of the presentation of this paper he was Australia's Ambassador and Permanent Delegate to UNESCO. Positions he has held in the Foreign Ministry include Assistant Secretary, Strategic Policy and Intelligence; Assistant Secretary, Economic Organisations; and Assistant Secretary, Staffing and Organisation. He is a graduate in Politics and History from the Australian National University.

Zelda Pickup, LL.B., MA is a partner at CMS Cameron McKenna, a major transnational law firm with its main office based in London. Zelda qualified as a solicitor in 1977 and was subsequently awarded a masters degree in Healthcare Ethics. Following time spent in private practice and an academic career, during which she was published widely on various ethical and legal issues, Zelda joined AstraZeneca where she gained extensive experience as senior in-house counsel in the pharmaceutical sector. Zelda joined CMS Cameron McKenna in 2002 and specialises in advising on commercial agreements, regulatory issues and product liability for the pharmaceutical industry.

Hester du Plessis is a Senior Research Fellow at the Faculty of Art, Design and Architecture, University of Johannesburg. Her faculty responsibility is to structure, co-ordinate, and supervise research within the field of product design – industrial design, jewelry design, ceramic design, fashion design and architecture. Her field of research lies in philosophy and political science with the focus on social epistemology (women in design and indigenous knowledge systems). She has been working in close collaboration with scientists at the National Institute of Science, Technology and Development Studies, CSIR, in New Delhi, India, for the past five years. The focus of the research in India is on artisans and their traditional technologies. This cross-cultural collaborative research uses methodologies based in the research field of Public Attitude and Understanding of Science.
 hettuple@mail.twr.ac.za

Peter Raue, Ph.D. Born in Munich in 1941, Professor Raue, a partner in Hogan and Hartson LLP, is one of the most well-known Berlin attorneys, with an excellent reputation in Germany, as well as in the international marketplace, specifically for his practice which covers all aspects of intellectual property rights (copyrights, publishers' right of publication, arts and entertainment, and unfair competition law). Among his many high-profile clients are numerous publishers, artists, actors, theaters, museums, and cultural institutions of all kinds. Professor Raue advises the Federal Government and the Berlin Government with regard to legal aspects of cultural politics. He lectures on copyrights at the Freie Universität Berlin. Professor Raue is co-founder of the Association of Friends of the National Gallery and its chairman since 1977.

James K. Reap is a Public Service Associate on the faculty of the University of Georgia College of Environment and Design and a Fellow of the Dean Rusk Center – International, Comparative and Graduate Legal Studies. He has broad experience in local and state government in the United States. His areas of specialization include heritage conservation, land use and environmental law, and local government and regional planning. He has participated in projects and conducted research in Ghana, Mali, Kazakhstan, Georgia, Ukraine, Croatia, Israel, France, Spain, and Mexico. He serves as President of the Committee on Legal, Administrative and Financial Issues of the International Council on Monuments and Sites, a nongovernmental organization affiliated with UNESCO.
 jreap@uga.edu

Susan Reye, Ph.D. is a Senior General Counsel with the Australian Government Solicitor, where she specialises in public international law and environment and heritage law. From 1996 to 2003, she was the senior legal adviser to the Australian Department of the Environment and Heritage. She has also worked as an international lawyer with the Organization for Economic Co-operation and Development, as well as in the Australian Attorney-General's Department and Department of Foreign Affairs and Trade. She has a bachelor of arts (French and German Honors) from the

Contributors

xxiii

University of Queensland, an LL.B (Honors) from the Australian National University, and a Doctorate in public international law from the Université Panthéon-Assas (Paris 2). She can be contacted at susan.reye@ags.gov.au, or Susan Reye, Office of General Counsel, Australian Government Solicitor, Locked Bag 7246 Canberra Mail Centre, ACT 2610 Australia.

Mechtild Rössler, Ph.D. has a master of arts (1984) in cultural geography from Freiburg University (Germany) and a doctorate (1988) from the Faculty for Earth Sciences, University of Hamburg. She joined the Research Centre of the “Cit  des Sciences et de L’Industrie” (Paris, France) in 1989 on a Centre National du Recherche Scientific (CNRS) post and worked in 1990–1 as visiting professor at the University of California at Berkeley (USA; Department of Geography). In 1991, Dr. R ssler, joined UNESCO Headquarters in Paris, first the Division for Ecological Sciences, and since 1992, the UNESCO World Heritage Centre as a programme specialist and responsible officer for natural heritage and cultural landscapes. In July 2001 she became Chief of Europe and North America, in charge of half of all World Heritage sites and fifty States Parties. She has published seven books, more than sixty articles, and contributes to the editorial board of three international journals.
m.rossler@unesco.org

Tullio Scovazzi, Professor of International Law at the University of Milano-Bicocca, Milan, Italy, is a legal expert of the Italian government to some negotiations relating to the international law of the sea, the environment, and cultural matters. Professor Scovazzi is the author of numerous publications, including *The Protection of the Underwater Cultural Heritage – Before and After the 2001 UNESCO Convention* (Leiden, 2003) and *La Protezione del Patrimonio Culturale Sottomarino nel Mare Mediterraneo*, (Milano, 2004).
tullio.scovazzi@unimib.it

Folarin Shyllon is Professor of Law at the University of Ibadan, Nigeria, where he was the Dean of the Faculty of Law from 1984 to 1991. He was educated at King’s College, London. His current teaching and research interests are in the fields of cultural property law and intellectual property law. He was a contributor to UNESCO’s maiden issue of World Culture Report (1998) and contributed a chapter to Halina Niec’s *Cultural Rights and Wrongs* (Paris: UNESCO, 1998), published to mark the fiftieth anniversary of the Universal Declaration of Human Rights of 1948. He is a member of the Nigerian Bar and a former President of the Nigerian Association of Law Teachers. He was sent to Barbados by UNESCO in 2000 to advise the government on its accession to international instruments on cultural property. As a result of this visit, the government of Barbados decided to accede to all UNESCO conventions on the protection of cultural property, as well as the UNIDROIT Convention.
fshyllon@yahoo.co.uk

Gerald R. Singer joined the American Museum of Natural History in June 1995 as its first General Counsel. He is responsible for legal affairs and revenue security. Prior to joining the American Museum of Natural History, Mr. Singer was a corporate/litigation partner with a Chicago law firm representing both for-profit and nonprofit entities. Mr. Singer holds a Juris Doctor degree from the University of Michigan and a bachelor of arts degree from the University of Illinois.

Vivienne Sol s Rivera graduated in biology from the University of Costa Rica (1983) and has a master’s degree in ecology from the University of Lawrence, Kansas, in the United States. She has coordinated different interdisciplinary teams during her work experience. She worked on the Regional Master’s Program for Wildlife Management at the National University in Heredia, Costa Rica. She was the coordinator for the Environmental Education Program for Fauna Management and the Environmental Education Program for the State Distance University. In addition, she participated as

the Executive Assistant in the National Conservation Strategy for Sustainable Development that the Ministry of Natural Resources and Energy of Costa Rica coordinated. She was President of the Board of Directors for the Foundation for the Development of the Central Volcanic Mountain Range in Costa Rica during the 1990–2 period. For 10 years, she was the coordinator of the Wildlife Thematic Area of the Regional Office for Mesoamerica of the World Union for Nature. She has written and edited more than twenty publications and articles linked to the issue of biodiversity and sustainable community management of natural resources. She is currently the manager of a cooperative (Coope Sol i Dar, R.L) dedicated to developing an interdisciplinary approach and encouraging actions to reduce biodiversity loss and to promote a better quality of life in local communities.
 vsolis@coopesolidar.org

Maui Solomon (Moriōri, Kai Tahu and Pakeha) is a barrister with twenty years' legal experience specialising in commercial law, resource management, intellectual property and Treaty of Waitangi/Indigenous Peoples Rights issues. Mr. Solomon has been actively involved in Maori fisheries issues for the past fifteen years and is currently a Commissioner on the Treaty of Waitangi Fisheries Commission. He represents three of the six tribes in the Wai 262 claim concerning indigenous flora and fauna and cultural/ intellectual rights of Maori, which seeks, among other things, to develop a unique system for protection and use of Maori traditional knowledge. Mr. Solomon maintains an active interest in international indigenous peoples issues and regularly attends meetings of the Convention on Biological Diversity and the World Intellectual Property Organisation. He is currently Co-Director of the Global Coalition of the International Society of Ethnobiology, an organisation committed to building closer working relationships among indigenous peoples, researchers, and scientists in the area of ethnobotanical studies. Maui has also been a key advocate and spokesperson for his own Moriōri people over the past twenty years and is currently leading negotiations with the Crown regarding settlement of their Treaty claim.

Alvaro Soto is the Director of Expedition America and an Anthropologist from Universidad de los Andes. He received his master of arts and PhD. from the University of California, and completed his post-doctoral studies in Environment and Internacional Relations at the Royal Society of Canada. He is President of Neotrypico, a center for the study of the neotropics. He is also a University professor and serves as Executive Secretary for the Commission on Developing Countries and Global Change and was in charge of the preparation and publication of the book titled *For Earth's Sake*, presented as the position paper to the Earth Summit in Brazil in 1992. He is Senior Fellow of the International Federation of Insitutes for Advanced Studies. Has been Chairman of the Department of Anthropology at the Universidad de los Andes, Director-General of the natural parks system of Colombia, and Director of the Colombian Institute of Anthropology. Mr. Soto has published several articles and books on environmental issues and on his exploration and discovery of the Lost City of the Tayronas in the Sierra Nevada de Santa Marta, Colombia. He has produced several documentaries such as "Secrets of the Choco," a film on the Pacific coast of Colombia and its future. He has worked extensively among the indigenous and black communities of Colombia, particularly those on the Pacific coast, Amazonia, the Caribbean coast, and the Sierra Nevada.
 neotropisoto@hotmail.com

María Margarita Suárez García served as an expert at the National Museum of Fine Art in 1968 and has been the Director of the Museum of Colonial Art in Havana since 1969. She is currently also the Deputy Director of Museology in the Department of Cultural Heritage of the Office of the Historian of the City of Havana. Ms Suárez holds a degree in Art History from the University of Havana's Faculty of Arts. She completed her post-graduate studies in the same faculty, as well as at the Ministry of Culture's National Centre for Conservation, Restoration and Museology. She has undertaken

Contributors

XXV

research into museum collections and Colonial Cuban furniture, and has contributed to the *Thesaurus of Decorative Arts*, published by the Ministry of Culture. In 1987, Ms. Suárez attended a training course on museum work in the former USSR. She has also attended courses on educational work in museums and the protection of historical heritage organised by the Spanish Agency for International Cooperation. Ms. Suárez has participated in various national and international gatherings related to the registration and documentation of museum collections and colonial art.

Maria Rosa Suárez-Inclán Ducassi is a lawyer specializing in law and International relations. She is also one of Spain's most highly regarded experts based on her long experience in the field of conservation and the law as it relates to the legal protection of historic heritage. She is President of both the Spanish National Committee and the International Scientific Committee on Cultural Routes of ICOMOS. Ms. Suárez-Inclán Ducassi is also a member of the Executive Committee of ICOMOS.

Robert Sullivan is a descendant of the Nga Puhi and Kai Tahu tribes of Aotearoa/New Zealand. He was a member of the first International Indigenous Librarians' Forum Organizing Committee, 1999–2000, and edited their Proceedings (Auckland: Te Ropu Whakahaau, 2001). He created and maintained the first Maori Web directory organized by subject, Nga Matatiki Rorohiko, 1995–2001, at The University of Auckland Library. In 2001, this directory was transferred to form the basis for the Maori section of the National Library of New Zealand's Te Puna Web Directory (<<http://www.auckland.ac.nz/lbr/trout/trout.htm>>). He is also a board member of the New Zealand Electronic Poetry Centre (<<http://www.nzepc.auckland.ac.nz>>).

Elizabeth Torres is an architect specialising in the restoration of monuments and historic sites. She holds a masters degree in social sciences, with a focus on anthropology, as well as a diploma in the rights of indigenous and primitive peoples. Ms. Torres is the Director of the National Museum of Bolivian Ethnography and Folklore. She was previously the Director of the National Institute of Artistic Heritage and Visual Arts of Bolivia and the Founder and Executive Director of the Rehabilitation of Sucre's Historic Areas Programme. Ms. Torres is Professor of Architectural History and the History of Latin-American Urbanism at Nuestra Señora de la Paz University and a consultant of the project to rehabilitate the historic areas of Cochabamba, organised by the University of San Simon. She is a member of the National Association of Architects of Bolivia, ICOMOS, ICOM, and SIARB.

Fred J. Truslow is the founder and chairman of the Board of the Institute for Latin American Art Documentation, a U.S. foundation for documenting and protecting Latin American cultural patrimony. As a lawyer (District of Columbia and New York), he specialised in housing and urban development (1970–80) and in corporate law, leveraged mergers and acquisitions, and financial transactions (1980–90). From 1990 to 1999, he was active in a private investment firm. During the 1980s, he represented the government of Peru in the recovery of cultural patrimony. Mr. Truslow was educated at Harvard Law School (Juris Doctor 1964 and Yale College, Bachelor of Arts, 1961).

Alida Tua is the Vice President of ARPAl. She received a doctorate in philosophy from the University of Rome and a doctorate in psychology from the University of Padova. She is a member of the Board of the Società Europea di Cultura, headquartered in Venice, and the Associazione per la Ricerca Contro il Cancro in Rome.

Juan Carlos Uribe was the Associate Director of the Intellectual Property Department of Cavelier Abogados (1990–3) and the founder, Partner and Director of the Intellectual Property Department of Vernot Abogados (1993–5). He currently lectures on Intellectual Property Law at the University Politecnico Grancolombiano. Mr. Uribe studied at the School of Law, Colegio Mayor de Nuestra Señora del Rosario (JD, 1988), the University of Kent at Canterbury (LLM in International Commercial Law, 1989), and the University of Pennsylvania (LLM in Intellectual Property and Entertainment Industries, 1990). His publications include *The Protection of Trade Secrets and Confidential Information* (1989). He is a member of the Copyright Society, the American

Intellectual Property Law Association, the Colombian Copyright Centre, an officer of the Committee on Art, Cultural Institutions and Heritage Law of the International Bar Association, and the University of Pennsylvania Alumni Association.

Juan Antonio Valdés received his Ph.D. in Archaeology from the Sorbonne University in 1983. He has published six books on Mayan civilisation and has lectured at many universities in the United States, Europe, and Latin America. He has written more than 100 articles on the results of his work at many first-class archaeological sites, including Tikal, Uaxactun, Copán, Dos Pilas, Kaminaljuyu and others. Professor Valdés has taught at San Carlos University since 1986 and served as Guatemala's Director of Cultural Heritage from 1996 to 1998.

Jorge Velarde is a senior partner of Rodrigo, Elias & Medrano Abogados. He chairs the Regulatory Group and is a member of the Finance Group in the firm's Lima office. He specializes in transportation finance, infrastructure, insurance, and mergers and acquisitions. He has participated in important international transactions, mainly representing foreign clients in the acquisition of Peruvian corporations and in the privatization of state businesses in several industries. Mr. Velarde is a graduate of the Catholic University of Peru and a member of the Lima, American, and International Bar Associations.

jvelarde@estudiorodrigo.com

Maria del Perpetuo Socorro Villareal Escarrega is the Coordinator of Legal Affairs of Mexico's National Institute of Anthropology and History. Prior to this, she worked for the Federal Electoral Institute.

Alexandra S Wawryk, Ph.D. received First Class degrees in Economics and Law, and a Ph.D. in Law, from the University of Adelaide, Australia. She is a lecturer at the University of Adelaide in Environmental Law, Minerals and Energy Law, and Contract Law. She is a barrister and solicitor of the Supreme Court of South Australia, and is a member of the South Australian Law Society's Planning, Environment and Local Government Committee, and the Environmental Defenders Office (SA). Dr. Wawryk has published articles in a number of journals, including the *Journal of Energy and Natural Resources Law*, the *University of New South Wales Law Journal*, the *Melbourne University Law Review*, the *Australasian Journal of Natural Resources Law and Policy*, and the *Environmental and Planning Law Journal*. She is the associate editor for renewable energy for OGEL, a specialist on-line database for Oil, Gas and Energy Law.
alex.wawryk@adelaide.edu.au

Wend Wendland is a lawyer, with a Masters of Law degree in intellectual property law. He practised as an intellectual property, competition law, and media law attorney, and is now Head of the Traditional Creativity and Cultural Expressions Section, Global Intellectual Property Issues Division, of the World Intellectual Property Organization in Geneva, Switzerland.
wend.wendland@wipo.int

Johannes Christian Wichard, a national of Germany, holds a masters degree from Harvard Law School and a doctorate in law from Tübingen University, Germany. Before joining WIPO in 1998, he was responsible for trademark and unfair competition law in the German Federal Ministry of Justice, and, before that, taught German and international private law at the Universities of Tübingen and Berlin.

Doğan Yağiz is head of the Legal Department of GAMA holding A.S., a leading Turkish contractor dealing internationally in large-scale industrial and infrastructure projects. He has represented the European International Contractors at the International Bar Association San Francisco Conference in 2003, where the paper formulating his chapter in this book was first presented. He is experienced in construction and energy law.

Preface and Acknowledgments

The field of art and cultural heritage law has expanded greatly since John Henry Merryman and Albert E. Elsen first published in 1979 their ground-breaking treatise based on the first course in art law at Stanford University, entitled, “Law, Ethics and the Visual Arts.” The field of art law and cultural heritage law at that time was a specialty the contours of which were amorphous and not adequately defined.

As a young practitioner in the field in the early seventies, my starting point was always some other area of the law; i.e., commercial law, copyright, or trusts and estates, to which I tried to bring a special focus as to how those particular areas mixed with the specific concerns of artists or the particular qualities of artworks and the idiosyncrasies in the art world. Stephen Weil’s decision to create the ALI-ABA Museum and the Law course was most welcome to assist practitioners and museum counsel in sharing information as the law developed. Similarly, the law of international cultural heritage and cultural heritage policy at that time was underdeveloped, causing Professor Merryman to apologize for so often quoting and citing his own articles.

Since that time, international protection of cultural heritage has become a common topic in legal literature, conferences, and international fora, with several international conventions having been negotiated and ratified. In addition, a specialized body of law is developing as it relates to artworks and cultural resources. At every level, from international conventions to national and local legislation, works of art and cultural resources are being singled out for special treatment; however, the mixture of art and law is still not entirely soluble and basic principles of general law applied to art and cultural property disputes may lead to incongruous and disparate results. It is still an ongoing debate as to how much more the law must change to accommodate the specific needs required to protect the natural and cultural heritage. Despite the growth in the fields, no comprehensive book on international art and cultural heritage law currently exists.

The occasion of the annual meeting of the International Bar Association in 2001 in Cancun, Mexico, and a generous grant from the Ford Foundation of US\$40,000 permitted the International Bar Association’s (IBA) Committee on Art, Cultural Institutions and Heritage Law, the Latin American and Caribbean Steering Group, and the International Council of Museums (ICOM), to organize an interdisciplinary conference and invite distinguished speakers from the region to discuss the various political and legal national initiatives of countries in Latin American and the Caribbean for protecting cultural heritage in the context of international law.

Referred to as “source nations” in literature and international debates, the voices of these nations had not often been heard in the legal and academic conferences in the United States and Europe. There is a tendency in this field to focus on the United States, Europe, and the Mediterranean; Africa, Latin America, and the Caribbean Basin are parts of the world that tend to be overlooked.

The success of the e-book and the interest of various communities within and outside the IBA, coupled with the growing interest in this field led to the decision to substantially revise and expand the publication beyond Latin America and, more importantly, to address other topical areas in greater depth, albeit maintaining our original vision and goals. *Art and Cultural Heritage: Law, Policy, and Practice* is the

result of this decision. In addition to our original co-sponsor, ICOM, we are also joined in this publication by the International Council on Monuments and Sites (ICOMOS). The members of both organizations have contributed significant chapters to this book and literally helped to make it possible. The outstanding contributions of these two non-governmental international organizations in the ongoing struggle to preserve, protect, and manage cultural heritage is evident throughout the discussions in this book.

Art and Cultural Heritage: Law, Policy, and Practice was written and revised with the intention of appealing to a broad, as well as a specialized, readership. I have selected critical topics in cultural heritage law whose links are not often explored and sought to provide a global and international context to issues which, if discussed at all, have a local perspective. If I have omitted specific chapters on artists' rights and other topics related to the individual artist as well as the collector and the auction house – important players and stakeholders in the development of cultural heritage policy – it is not because such topics are unimportant to art law but because there is a surfeit of articles and literature on these topics, at least in the United States.

The book is unique in its breadth and in the voice it gives to constituencies who do not usually converse. It has been my privilege to invite from around the world, authors who are outstanding and distinguished in their area of expertise – experts, practitioners, academics, and individuals from diverse disciplines and sectors, including law, politics, museums, archaeology, anthropology, architecture, art history, business, and traditional knowledge. Obviously, each of the parts of this book could be the subject of a separate volume. Even each chapter could be the subject of a separate book. We have provided practical information as well as policy questions for further discussion. Most contributors have also provided useful Web site links and extended bibliographies to permit those interested in acquiring a more in-depth understanding of the subjects and issues presented to do so.

A publication such as this, taking nearly four years from its initial conception, can only be accomplished with the guidance and assistance of numerous people. At the outset, this book would not be possible without the authors' contributions. To them, I express my deepest gratitude for their wise counsel, generosity and dedication in managing to find time in their active professional lives to share their valuable knowledge and expertise. Similarly, this book could not have been possible without the support of the co-sponsoring organization, and their officers and staff to whom I am also most grateful: Manus Brinkman, former Secretary General of ICOM; John Zvereff, Secretary General of ICOM; Alissandra Cummins, President of ICOM; Gaia Jungeblodt, Director of ICOMOS; James K. Reap, President, ICOMOS International Committee on Legal, Administrative & Financial Issues; and Michael Petzet, President of ICOMOS. I should also like to acknowledge the Ford Foundation and the International Bar Foundation, Inc. for their financial support.

Thanks also to the International Bar Association: Mark Ellis, its Executive Director, Andrew Primrose, Past President of the IBA Section on General Practice, Tom Forbes, Chair of the IBA's Public and Professional Interest Division, Paul Crick, its director of publications, the officers of the Committee on Art, Cultural Institutions and Heritage Law who have contributed their support before and during the time of my leadership as chair, particularly Judith Hill of Farrer & Co., John Heurta, General Counsel of the Smithsonian Institution, Juan Carlos Uribe of Triana Uribe and Michelsen, John Rubinstein of Rubinstein Phillips, and the chairs of the IBA committees who cooperated with us in the development of various programs from which some of these chapters are derived, notably Clive Elliott of Shortland Chambers, co-chair of the Committee on Intellectual Property and Entertainment Law; Dr. Christian Breitzke of Lebuhn & Puchta LLP, chair, Maritime and Transport Law; Michael E. Schneider of Lalive Partners, and Ange Sandberg of Skanska International Civil Engineering, co-chairs of International Construction Law; Gabrielle Williamson of Heuking Kuehn Luer Woitek, chair of the Environment, Health and Safety Law

Preface and Acknowledgments

xxix

Committee; Louis van Wyck of Spoons & Fischer, vice chair of the Products Liability and Advertising Committee; Russell Raikes of Cohen Highly LLP, and David Paterson of David Paterson Law Corp., chairs of the Indigenous Peoples Committee; Claus von Wobser of Von Wobeser y Sierra S. C. and Dominique Beserk Brown of BMG Avocats, chairs of the Dispute Resolution Section; and last but certainly not least the always inspiring and quick-witted chairs of the Committee on International Sales, James Klotz of Davis & Company and Jonathan P. Wood of Clyde & Co. I also note the contribution of Jack Batievsky, whose early support in his capacity as chair of the Latin American and Carribbean Steering Committee was critical to the initial success of the conference and e-book. His untimely death in 2002 is a significant loss to all of us. Of course, we are most grateful for the confidence of John Berger, Senior Editor, Cambridge University Press.

Finally, my acknowledgment must be made to my assistant, Abigail Martin. Without Abigail's dedicated and superbly competent support in helping to put this manuscript together and her enthusiasm for the subject, this book might not have been realized.

Barbara T. Hoffman
March 2005, New York

The International Bar Association The Global Voice of the Legal Profession

In its role as a dual membership organisation, comprising about 16,000 individual lawyers and more than 190 Bar Associations and Law Societies, the International Bar Association (IBA) influences the development of international law reform and helps shape the future of the legal profession. Its member organisations cover all continents and include the American Bar Association, the German Federal Bar, the Japan Federation of Bar Associations, the Law Society of Zimbabwe, and the Mexican Bar Association.

Grouped into two divisions – the Legal Practice Division and the Public and Professional Interest Division – the Association covers all practice areas and professional interests. It provides members with access to leading experts and up-to-date information in addition top-level professional development and network-building opportunities through high-quality publications and world-class conferences. The IBA's Human Rights Institute works across the Association, helping to promote, protect, and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

The IBA, through the committees that make up its divisions, has a long tradition of publishing, in cooperation with leading publishers, books that offer the practitioner an in-depth analysis of current legal issues with a uniquely global perspective. *Art and Cultural Heritage: Law, Policy, and Practice* admirably continues this tradition. Its genesis was in the IBA Annual Conference held in Cancun in 2001, from which grew the IBA's first e-book. The interest in this, from various committees and fora within the IBA and beyond, led directly to this current volume, which the IBA is proud and pleased to support.

With topics as diverse as illicit traffic in cultural property, developing conservation strategies for national heritage areas, protecting underwater cultural heritage, and the role of museums and their stewardship of cultural property, *Art and Cultural Heritage: Law, Policy, and Practice* will be of interest to practitioners working in many areas of law, as well as museum professionals and anyone involved in the management and protection of cultural resources; indeed it will be of great interest to anyone who cares about the world's natural and cultural resources. Lawyers can and do play an important role, working alongside conservation and cultural heritage professionals, in safeguarding the treasures of the world, especially in today's international society, where national borders are becoming increasingly open. *Art and Cultural Heritage: Law, Policy, and Practice* not only comments on current issues in this arena, it moves the debate forward by highlighting new problems and issues.

As Editor, Barbara Hoffman has undertaken a huge task in bringing together contributors from all continents and from organisations such as the World Bank, the United Nations Educational, Scientific and Cultural Organization (UNESCO)

and the World Intellectual Property Organization (WIPO or OMPI). The IBA would particularly like to note the support of the International Council of Museums and the International Council on Monuments and Sites. It is the IBA's aim to encourage exchange of information throughout the global legal community in accord with its role as the global voice of the legal profession. With this book, Barbara Hoffman has more than achieved this aim and I congratulate her and thank her for the many hours of work she has put into making it a reality.

Francis Neate
President, International Bar Association

March 2005