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The Settlement of International Cultural Heritage Disputes: Towards a Lex Culturalis?

Abstract

International practice in the past twenty years has shown the proliferation of a great variety of disputes concerning cultural heritage. However, no specialized dispute settlement mechanism is in place to deal with this type of dispute. Existing treaties do not set up any kind of special tribunal and do not provide the means for controlling the consistent application of their norms. As a result, controversies ought to be settled through traditional dispute settlement mechanisms, such as mediation, arbitration and litigation. However, this ad hoc fashion of dealing with cultural heritage disputes is not without consequences. The most serious problem is that the final settlement mostly depends on the forum selected by the litigants and on the applicable law.

This dissertation discusses whether an improvement in the manner in which disputes are dealt with may at the same time enhance the safeguarding of cultural heritage. This research analyses the substantive and procedural issues involved in the settlement of international disputes concerning tangible cultural heritage in order to define the limits of the existing legal and institutional frameworks. Subsequently, it examines two possible solutions to overcome the lack of specialized dispute settlement mechanisms. The first is the establishment of a new international court. However, it is concluded that this does not constitute a feasible option for the time being. The second option centres on existing fora and proposes to rethink how adjudicators may better take account of the values and priorities underlying the policies of States, international organizations and other stakeholders. Furthermore, the examination of this option aims to identify a number of culture-sensitive principles. This thesis argues that the growing use and dissemination of jurisprudence containing these principles on the part of adjudicators can be conducive to the development of a *lex culturalis*, namely an autonomous, composite body of law aiming to enhance the protection of cultural heritage and to exclude the mechanical application of the norms enacted for normal business transactions involving ordinary goods.