

IS THERE A LEGAL BASIS FOR CULTURAL NATIONALISM IN THE RETURN OF CULTURAL PROPERTY? MULTILATERAL INSTRUMENTS VERSUS BILATERAL AGREEMENTS

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ABSTRACT

This article traces the emerging norms of legal obligation under international law to return the looted property taken during the colonial period. Return requests are among the primary demands of decolonised states, who bring the issue to international forums. This obligation has been incrementally recognised and further developed in several multilateral instruments adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Institute for the Unification of Private Law (UNIDROIT), the United Nations (UN), and states, along with non-state actors adopting provisions to criminalise the theft of cultural property and to ensure its return as part of available remedies. In parallel with the development of this obligation under international law, the international community has increasingly engaged in bilateral agreements for the return of cultural property. India and the USA, for instance, concluded a Cultural Property Agreement in July 2024. Among several advances and efforts to address existing gaps, the Human Rights Council adopted resolutions in 2018 and 2025 which, while recognising the human rights dimension of cultural rights, further strengthened the multilateral approach to enhanced cooperation for the restoration of stolen, looted, or trafficked cultural property to its country of origin.

Key words: cultural property, UNESCO, restitution, bilateral agreements, colonial occupation, UNIDROIT

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INTRODUCTION

It is hardly surprising that was the decolonised countries that spearheaded the agenda concerning the return of cultural property as an integral part of international law on the protection of cultural property. The strategy was to redesign the legal order to ensure the return of cultural property taken during colonial occupation. The aspect of the return of cultural property taken during that period has recently received significant attention in both Indian and international discourse. It may be useful to begin with four important developments in recent times to set the contemporary scene in its proper perspective. First, Indian media characterised a few incidents involving the return of cultural property as the 'India Moment'; for instance, the return of a 12th-century bronze statue of Buddha by the UK to India in 2018, and the return of an 18th-century idol of Maa Annapurna by Canada to India in November 2021. Geoffrey Robertson, in November 2019, framed the debate under the title 'Who Owns History?', and advocated for an international legal obligation on museums to return looted antiquities.¹ The issue gained increased global attention after French President Emmanuel Macron pledged in 2017 that an obligation of permanent or temporary return of West African cultural artefacts to the region would be a priority during his term in office.² Pursuant to this pledge, he appointed a team consisting of Senegalese economist, writer and philosopher Felwine Sarr, and art historian Bénédicte Savoy to produce a report. They held a series of consultations with museum professionals, politicians, traditional authorities in Europe and Africa, artists, and art market experts. In November 2018, the team released their report, which explicitly recognised the inadequacy of existing legal rules concerning stolen colonial cultural property. Their report (Sarr-Savoy report) outlined careful legal and museological procedures by which African nations can identify materials and determine how they might be returned.³

Second, the latest session of the 46th World Heritage Committee, held in New Delhi on 24 July 2024, addressed curbing illegal trafficking and the return of unauthorised stolen cultural property. However, ambiguities in the procedures for the return of such property have paved the way for further commercial exploitation. India has called on the international community to pay urgent and immediate attention to revisiting the global issue of repatriation and restitution of cultural property. An exhibition Re(ad)address: Return of Treasures has also been organised to raise awareness about the preservation of cultural property, which embodies national pride and values, and to emphasise the need, relevance, and importance of such property repatriation and restitution. This initiative is the latest in a series

¹ G. Robertson, *Who Owns History?: Elgin's Loot and the Case for Returning Plundered Treasure*, Penguin, 2020.

² B. Katz, 'French Report Recommends the Full Restitution of Looted African Artworks', *Smithsonian Magazine*, 21 November 2018; <https://www.smithsonianmag.com/smart-news/french-report-recommends-full-restitution-looted-african-artworks-180970872/> [accessed on 12 January 2025]; H.R. Godwin, 'Legal Complications of Repatriation at the British Museum', *Washington International Law Journal*, 2020, Vol. 30, No. 1, pp. 144–170.

³ B. Katz, 'French Report...', *op. cit.*

of discussions over the past few years, including at the G20 meeting in New Delhi, where states were urged to address the nearly 55-year-old gap in international law concerning return requests.

Third, developments in the international legal obligation to return cultural property have progressed further and, in turn, encouraged experimentation with bilateral arrangements that supplement the process of return requests. In the initial years, progress was made towards the conclusion of multilateral treaties governing the protection of cultural property and finding mechanisms for the restitution of such property. However, in recent decades, with the advent of bilateral treaties, multilateral treaties in this context have become less central. In 1983, the United States enacted the Convention on Cultural Property Implementation Act⁴ to bring the 1970 UNESCO Convention⁵ into effect. The Act empowers the President of the United States to enter into bilateral cooperation treaties to prevent the illicit import of cultural property from nations that request such cooperation from the United States. Importantly, in this context, the US has recently taken an unprecedented step in executing bilateral agreements with several countries, including Algeria, Belize, Bolivia, Bulgaria, Cambodia, Chile, China, Colombia, Costa Rica, Cyprus, Ecuador, Egypt, El Salvador, Greece, Guatemala, Honduras, Italy, Jordan, Mali, Morocco, Peru, and Turkey.⁶ On 26 July 2024, the Republic of India and the Government of the United States of America entered into an unprecedented Cultural Property Agreement (CPA) aiming to prohibit the illicit trafficking of antiquities from India to the US and to repatriate antiquarian objects to their place of origin.⁷ As per the terms of the agreement, the United States of America will return to India any object or material identified in the Designated List to be promulgated by the US Government.

Fourth, during India's G20 Presidency, the Indian government identified the 'Protection and Promotion of Cultural Property' as a core concern of the culture sector and also as one of the priorities of the Global South and India. On this occasion, the Indian government reaffirmed its commitment to the cause of repatriating Indian artefacts from various parts of the world. It is worth mentioning that earlier, India's Prime Minister, Shri Narendra Modi, during his visit to the US on 22–23 June 2023, expressed his deep gratitude for the repatriation of 262 Indian antiquities from the United States of America. Importantly, the Indian government rearticulated its official position, claiming that repatriation, as an obligation, has become a part of cultural diplomacy and sustainable development and should not

⁴ Available at: <https://eca.state.gov/files/bureau/97-446.pdf> [accessed on 5 June 2025].

⁵ Available at: <https://www.unesco.org/en/node/66148> [accessed on 12 January 2025].

⁶ *U.S. and India Sign Cultural Property Agreement*; <https://in.usembassy.gov/u-s-and-india-sign-cultural-property-agreement/> [accessed on 12 January 2025].

⁷ Speaking on the occasion, the Union Minister of Culture and Tourism, Shri Gajendra Singh Shekhawat stated that the CPA is 'another step towards securing India's rich and diverse cultural heritage and invaluable artefacts of our grand history. It is the beginning of a new chapter to prevent the illegal trafficking of cultural property and retrieval of antiquarian objects to their place of origin.' Cf. S. Sinha, 'India and United States of America sign the first ever "Cultural Property Agreement"', *buddhisttimes*, 26 July 2024; <https://buddhisttimes.wordpress.com/2024/07/26/india-and-united-states-of-america-sign-the-first-ever-cultural-property-agreement/> [accessed on 6 June 2025].

remain merely a moral imperative.⁸ The Prime Minister's 'vision of "Vikas Bhi, Virasat Bhi"' and the Viksit Bharat Vision 2047 endorse the endless possibilities of the Cultural Creative Economy to foster vibrant and inclusive ecosystems, unlock new pathways of growth and sustainability and transform our economies and societies while preserving our cultural heritage.⁹

This article examines the hypothesis of whether an international obligation exists to return cultural property stolen during colonial occupation. It will address the following research questions: do the multilateral and bilateral agreements provide adequate and effective governance for the return of colonial property? Is there a legal basis for cultural nationalism? Does the human rights dimension of cultural rights advance the idea of cultural nationalism?

INTERNATIONAL LAW AND RETURN REQUESTS

Although the norm pertaining to the 'return of cultural property' has existed in international legislation and relations for a long time, its failure to encompass restitution requests arising from colonial occupation has created a gap in international law that has yet to be filled. While the international cultural protection framework addresses the return and criminalisation of illegal trafficking, it neglects the legally distinct but related explicit obligations upon countries that took such valuable cultural objects during colonial or foreign occupation. Therefore, repatriation requests for cultural goods illegally taken from the territories of former colonies remain an international obligation of states. In other words, the duty to return cultural property is still owed to formerly occupied colonies. Following advocacy from states, civil society, and legal commentators, 150 states unanimously adopted the Mondiacult Declaration in 2022 under the auspices of UNESCO's Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin

⁸ In 2022, the Government of India and the Government of the United States of America have agreed to deliberate upon the feasibility of strengthening bilateral ties in accordance to Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. In pursuance of these deliberations, the Ministry of External Affairs (MEA), India, dispatched a diplomatic note to the US counterpart. On 16 March 2023, it received a positive response from the US counterpart in its diplomatic note which suggested establishing a procedures for entering into an agreement. These steps included the determinations regarding the safeguarding of cultural property and international cooperation in the field of the preservation and protection of archaeological and ethnological materials. A Statement of Fact was prepared which included a historical, cultural, and legal context. Along with the possibilities for cooperation. Several meetings and discussions were held with the approbation of both parties. In this deliberation, an NGO 'Antiquity Coalition' has also made key contributions. In its Article I, the CPA, in fact, restricts 'the importation into the United States of certain archaeological material ranging in date from 1.7 million years ago through 1770 CE and certain ethnological material, which may include categories of civic, religious, and royal architectural material, religious material and ceremonial items, and manuscripts ranging in date from 2nd century BCE to 1947 CE'. United States of America may promulgate a list of such items restricting for import in its own territory. Cf. <https://www.state.gov/india-24-726>, [accessed 21 May 2025].

⁹ S. Sinha, 'India...', *op. cit.*

or its Restitution in Case of Illicit Appropriation (ICPRCP) established in 1978 by Resolution 20 C4/7.6/5 of the 20th session of the General Conference of UNESCO as a permanent intergovernmental body to serve as an administering authority.¹⁰

The earliest international instruments, the 1899 and 1907 Hague Conventions, set forth the idea that a state maintains sovereignty over its national heritage and wealth, and that the occupying power must refrain from acting as the owner of property, being limited instead to a mere right of usufruct.¹¹ Historically, the restitution of cultural property formed part of peace settlements among warring states,¹² though some peace treaties permitted the retention of the cultural property as a form of reward.¹³

RATIONALES FOR EXISTING LAWS

Traditionally, the legitimacy of protecting cultural property has depended on the characterisation of the cultural heritage importance to a specific civilisation, nation, and society. Advocates of the protection of cultural heritage offer two competing views, advancing either a cultural nationalism or a cultural internationalism perspective.¹⁴ Cultural nationalists argue that the obligation to return looted cultural property arises from the belief that such property contributes to the fabric of national heritage and ‘emphasises national interests, values, and pride’. Therefore, these heritage objects should remain within its countries of origin; this concept is gaining ground in the international obligation to return. Comparatively, cultural internationalists stress the critical importance of preservation and integrity, arguing that such artefacts should belong to the world – put differently, cultural property should be placed in institutions with the greatest resources. According to Merryman, the internationalist approach is based on three principles: preservation, integrity, and access.¹⁵ Van Beurden, on the other hand, suggests three ways in which the internationalist approach is usually defended: universalism-based, preservation-based, and legal arguments, all of which are used as ‘arguments against restitution’.¹⁶ To begin with, emphasis is laid on global access to universal heritage, which is seen to trump and override national or community rights to heritage. Often, such arguments reveal their underlying bias, ‘since they were

¹⁰ Report on the activities of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (2022–2023), UNESCO Digital Library; https://unesdoc.unesco.org/ark:/48223/pf0000386212_eng [accessed on 3 June 2025].

¹¹ G.M. Graham, ‘Protection and Reversion of Cultural Property: Issues of Definition and Justification’, *The International Lawyer*, 1987, Vol. 21, No. 3 (Summer 1987), pp. 755–793.

¹² *Ibidem*.

¹³ *Ibidem*.

¹⁴ J.H. Merryman, ‘Thinking about the Elgin Marbles’, *Michigan Law Review*, 1985, Vol. 83, Issue 8 (1985), pp. 1881–1923.

¹⁵ *Ibidem*.

¹⁶ S. Van Beurden, ‘LOOT: Colonial Collections and African Restitution Debates’, *Origins: Current Events in Historical Perspective*; <https://origins.osu.edu/read/loot-colonial-collections-and-african-restitution-debates> [accessed on 13 January 2025].

constructed around universal access for an audience in the Global North, not the audiences in the Global South'.¹⁷ A second category of arguments focuses on the conservation of collections, essentially encouraging the idea of 'conservation' over the idea of 'accessibility'. This idea is premised on the assumption that 'museum infrastructure in Africa was *de facto* inferior to that in Europe or America'.¹⁸ Third, legally oriented arguments justify allowing museums to continue their holdings as legally acquired (for example through donations), thereby restraining the acts and people demanding their removal from the continent.

This internationalistic position appears to have received legal recognition in the *Temple of Preah Vihear* case between Cambodia and Thailand, in a judgment delivered by the ICJ in 1962,¹⁹ wherein it confirmed the relevance of the principle of *uti possidetis iuris* for retaining cultural property even after the withdrawal of colonial powers. The main issue in this case concerned the delimitation of frontiers between postcolonial Cambodia and Thailand in the area of the Buddhist temple of Preah Vihear. A large temple complex seems to have been built between the tenth and twelfth centuries by the rulers of the Khmer Empire, one of the most powerful political and cultural entities in Southeast Asia. Both Cambodia and Thailand consider themselves heirs of this empire. The temple was rediscovered at the turn of the nineteenth and twentieth centuries, but its cultural and historical value was not taken into account by Siam (the official name of Thailand until 1939) when it demarcated its state borders with French Indochina some years later. The conflict broke out after the decolonisation of Cambodia. With the withdrawal of French forces in 1954, Thailand took advantage of the chaos and occupied the cultural site. Cambodia protested and brought the case before the International Court of Justice (ICJ), seeking resolution of the territorial dispute. In its decision, the ICJ did not explicitly deal with the question of the assignment of the temple to one of the states or succession to the former Khmer Empire, but it examined the technicalities of frontier demarcation between French Indochina, the predecessor of Cambodia, and Thailand. In its 1962 decision, the ICJ found that the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia. Consequently, Thailand

¹⁷ Ibidem.

¹⁸ Ibidem.

¹⁹ *Case Concerning the Temple of Preah Vihear (Merits)* Judgment of 15 June 1962, ICJ Reports 1962; on 6 October 1959 Cambodia approached the International Court complaining that 'Thailand had occupied a piece of its territory surrounding the ruins of the Temple of Preah Vihear, a place of pilgrimage and worship for Cambodians, and asked the Court to declare that territorial sovereignty over the Temple belonged to it and that Thailand was under an obligation to withdraw the armed detachment stationed there since 1954.' The court was of the view that 'the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia.' Therefore, Thailand was under 'an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory; by seven votes to five, [the Court found] that Thailand [was] under an obligation to restore to Cambodia any [sculptures, stelae, fragments of monuments, sandstone model and ancient pottery] which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities. (...) The temple of Preah Vihear is an ancient sanctuary and shrine situated on the borders of Thailand and Cambodia.' Cf. the case of Temple of Preah Vihear (*Cambodia v. Thailand*); <https://www.icj-cij.org/case/45> [accessed on 2 June 2025].

was under the obligation to withdraw its forces from the area of the temple. The relevant point was that Thailand was obliged to restore to Cambodia the objects (antiquities) removed from the temple or its surrounding area.²⁰

In 2013, the ICJ in its *Interpretation of 1962 Temple Vihear case*²¹ referred to Article 6 of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, known as the World Heritage Convention (WHC), to which both states are parties. The ICJ observed that ‘Cambodia and Thailand must co-operate between themselves and with the international community in the protection of the site as a world heritage.’²² Chechi, however, commented that ‘the ICJ obscured the fact that the regime for the protection of cultural heritage in wartime was applicable in the case of the Temple of Preah Vihear.’²³ It is pertinent to mention that Articles 6 and 7 of the WHC emphasise the need for ‘a system of international co-operation and assistance in the context of which its signatories adhere to the global commitment of preserving the cultural treasures of “outstanding universal value” located within their territories’.²⁴

The question for the international lawyer is how to respond to these developments. The standard literature on analysing this issue generally considers a ‘wide variety of legal, ethical and museological-based rationale’ encompassing the arguments for the restitution and return of looted cultural property in the context of colonial occupation. Guido Carducci identifies the legal instruments associated with the concepts of return and restitution: while ‘return’ refers to cases where objects left their countries of origin during colonial times, involving no reparation of injury, by contrast, most ‘repatriation’ claims depend on museum policies and goodwill.²⁵ Timothy McKeown, Thomas Hill and Catherine Bell, in their separate papers published in *UTIMUT: Past Heritage – Future Partnerships. Discussions on Repatriation in the 21st Century*, assess ‘the advantages and disadvantages of negotiated solutions *versus* imposed solutions’.²⁶ The authors highlighted that the US intends ‘that all museums should produce museum inventories and improve access

²⁰ Ibidem.

²¹ *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia V. Thailand)*; <https://www.icj-cij.org/case/151> [accessed on 6 June 2025].

²² Ibidem.

²³ A. Chechi, ‘The 2013 Judgment of the ICJ in the Temple of Preah Vihear Case and the Protection of World Cultural Heritage Sites in Wartime’, *Asian Journal of International Law*, 2016, Vol. 6, Issue 2, pp. 353–378.

²⁴ Ibidem, p. 361.

²⁵ G. Carducci, ‘“Repatriation”, “Restitution” and “Return” of “Cultural Property”’: International Law and Practice’, in: Gabriel M., Dahl J. (eds), *UTIMUT: Past Heritage – Future Partnerships. Discussions on Repatriation in the 21st Century*, Copenhagen, 2008, pp. 122–133; https://www.iwgia.org/images/publications/0028_Utimut_heritage.pdf [accessed on 20 January 2025].

²⁶ M. Gabriel, ‘Introduction: From Conflict to Partnership’, in: Gabriel M., Dahl J. (eds), *UTIMUT: Past Heritage...*, op. cit., p. 17; see also: C.T. McKeown, ‘Considering Repatriation Legislation as an Option: The National Museum of the American Indian Act (NMAIA) & The Native American Graves Protection and Repatriation Act (NAGPRA)’, in: Gabriel M., Dahl J. (eds), *UTIMUT: Past Heritage...*, op. cit.; T.V. Hill, ‘Notes for Remarks’, in: Gabriel M., Dahl J. (eds), *UTIMUT: Past Heritage...*, op. cit.; C.E. Bell, ‘That was then this is now – Canadian Law and Policy on First Nations Material Culture’, in: Gabriel M., Dahl J. (eds), *UTIMUT: Past Heritage...*, op. cit.

to their collections'. In relation to this, the US 'has passed repatriation legislations such as the 1989 NMAIA (National Museum of the American Indian Act) and 1990 NAGPRA (Native American Graves Protection and Repatriation Act) enabling native peoples to successfully claim back their heritage on legal grounds'. McKeown et al. also demonstrated Canada's state practice, where 'repatriation requests (...) are dealt with through case-by-case negotiations'.²⁷ Other scholars, such as e.g., George Abungu and Martin Skrydstrup, have taken the approach of 'universality *versus* cultural nationalism' to explain the complexities surrounding the issue.²⁸

However, in recent times, it appears that global attitudes are shifting from cultural internationalism to cultural nationalism and calls for initiatives to reshape the international rules governing cultural heritage. While international debates concerning the legal obligation to return cultural property looted during colonial times have evolved significantly over the last ten years, there is still no consensus on extending the scope of this obligation to museums, traders, auction houses, non-state actors, and states. Pott and Sutaarga explain that 'the problem of the return or transfer of cultural objects is rather complex and its solution demands a careful survey of the situation resulting from a historical process. It is wilful alienation of cultural property by the former colonies.'²⁹

As existing international law on the protection of cultural heritage has proved inadequate for dealing with the return of cultural property looted during colonial periods, the idea of bilateral arrangements centred on enhanced co-operation has recently gained traction. In fact, a series of international legal instruments to protect cultural property was developed after the Second World War. Some of these legal instruments have been undertaken within UNESCO and UNIDROIT. These include the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention)³⁰ and its two Protocols;³¹ the 1970

²⁷ C.T. McKeown, 'Considering Repatriation...', op. cit.; M. Gabriel, 'Introduction: From Conflict...', op. cit., p. 17.

²⁸ G.O. Abungu, "'Universal Museums': New Contestations, New Controversies", in: Gabriel M., Dahl J. (eds), *UTIMUT: Past Heritage...*, op. cit., pp. 122–133; and M. Skrydstrup, 'Righting Wrongs? Three Rationales of Repatriation and What Anthropology Might Have to Say About Them', in: Gabriel M., Dahl J. (eds), *UTIMUT: Past Heritage...*, op. cit., pp. 56–63.

²⁹ P.H. Pott, M.A. Sutaarga, 'Arrangements Concluded or in Progress for the Return of Objects: The Netherlands-Indonesia', *Museum*, 1979, Vol. XXXI, No. 1, pp. 38–42; cf. C. Scott, 'Renewing the "Special Relationship" and Rethinking the Return of Cultural Property: The Netherlands and Indonesia, 1949–79', *Journal of Contemporary History*, 2016, Vol. 52, Issue 3, pp. 646–668.

³⁰ 249 UNTS (1954) 240; the Convention entered into force on 7 August 1956. India signed and ratified it on 14 May 1954 and 16 June 1958, respectively. Presently 135 states are parties to this convention; the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict is available at: <https://www.unesco.org/en/heritage-armed-conflicts/1954-convention>, [accessed 12 January 2025].

³¹ Its First Protocol entered into force on 7 August 1956. Presently 112 states are parties to the First Protocol. India signed and ratified on 14 May 1954 and 16 June 1958, respectively; cf.: <https://www.unesco.org/en/heritage-armed-conflicts/states-parties> [accessed on 12 January 2025]. The 1999 Second Protocol entered into force on 9 March 2004. It creates a new category of 'enhanced protection' – for cultural property of the greatest importance for humanity. It contains no mandatory criminal sanctions regime. Presently, 88 states are parties to the Second Protocol.

UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention);³² the 1972 UNESCO Convention Concerning the Protection of the World Natural and Cultural Heritage (World Heritage Convention);³³ the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (1983 Vienna Convention);³⁴ the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects;³⁵ the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003 UNESCO Convention);³⁶ the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005 UNESCO Convention);³⁷ and the Council of Europe Convention on Offences relating to Cultural Property (Nicosia Convention), which entered into force on 1 April 2022.³⁸ These instruments assert the importance of protecting cultural heritage.

Recently, the United Nations (UN) has provided impetus to the emerging obligation of return and restitution of cultural property by adopting resolutions in the UN General Assembly (UNGA) and UN Security Council (UNSC). In 1973, the UNGA adopted the first resolution directly related to the subject of restitution of cultural property. This document, titled 'Restitution of works of art to countries victims of expropriation', was sponsored by 12 African states.³⁹ Its preamble declared that 'the prompt restitution to a country of its works of art, monuments, museum pieces and manuscripts and documents by another country, without charge (...) [will constitute] just reparation for damage done.' Since then, several resolutions have been adopted by the UNGA on this subject, including a recent one titled 'Return or Restitution of Cultural Property to the Countries of Origin' (RES/76/16

India has yet to become a party to it and appears to maintain a position similar to its stance on not becoming party to Protocols Additional to Geneva Conventions of 12 August 1949.

³² Available at: <https://www.unesco.org/en/node/66148> [accessed on 12 January 2025]. Presently 143 states have ratified the Convention, and India ratified it on 24 January 1977.

³³ Available at: <https://whc.unesco.org/archive/convention-en.pdf> [accessed on 12 January 2025]. This Convention entered into force on 17 December 1975. As of 18 August 2023, there are 195 States Parties to the Convention. India ratified it on 14 November 1977.

³⁴ Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/3_3_1983.pdf [accessed on 12 January 2025]. This Convention has yet to enter into force.

³⁵ Available at: <https://www.unidroit.org/instruments/cultural-property/1995-convention/> [accessed on 12 January 2025]. At present, 54 states are parties to this convention. India has not ratified it.

³⁶ Available at: <https://ich.unesco.org/en/convention> [accessed on 12 January 2025]. Presently, 181 states are parties to this convention, and India ratified it on 9 September 2005.

³⁷ Available at: <https://www.unesco.org/en/legal-affairs/convention-protection-and-promotion-diversity-cultural-expressions?hub=66535#item-2> [accessed on 12 January 2025]. At present, 153 states are parties to it. India ratified on 15 December 2006.

³⁸ Available at: <https://rm.coe.int/council-of-europe-convention-on-offences-relating-to-cultural-property/1680a5dafb> [accessed on 12 January 2025]. At present, 6 states are parties to this Convention, with India having yet to become party to it.

³⁹ UNGA Resolution 3187 of 1973; <https://www.worldlii.org/int/other/UNGA/1973/150.pdf> [accessed on 20 May 2025].

of 8 December 2021).⁴⁰ The UNSC adopted landmark resolutions 2199 (2015),⁴¹ issued under Chapter VII and establishing the direct link between the destruction and looting of cultural heritage and the financing of terrorism, and 2347 (2017).⁴² These resolutions focus exclusively on the major issue of the destruction, pillage, and smuggling of cultural property in the course of armed conflicts.

The adoption of these multilateral legal instruments has widened the ambit and scope for the protection of cultural property. Provisions related to special protection, enhanced protection, return of cultural property, international cooperation, and the recognition of illegally exported cultural property as a transnational criminal offence remain key distinguishable features of modern international law on cultural property.

INADEQUACY OF LEGAL FRAMEWORK TO TAKE ACCOUNT OF RESTITUTION AS A RESTRAINING PRINCIPLE IN THE CONTEXT OF STOLEN CULTURAL PROPERTY IN THE PURSUIT OF COLONIAL OCCUPATION

FUNDAMENTAL PRINCIPLES IN THE INTERNATIONAL LEGAL FRAMEWORK

In the last five decades since the 1970 UNESCO Convention, states have faced difficult experiences with return requests, exposing the inadequacies of UNESCO's regime for returning property looted during colonial occupation. This article seeks to identify two different phases of international response to the topic since the end of World War II.

⁴⁰ Resolution adopted by the General Assembly on 6 December 2021 at the 76th session,; https://digitallibrary.un.org/record/3952203/files/A_RES_76_16-EN.pdf [accessed on 20 May 2025].

⁴¹ S/RES/2199 (2015); <http://unscr.com/en/resolutions/doc/2199> [accessed on 13 January 2025].

⁴² S/RES/2347 (2017); [https://docs.un.org/en/S/RES/2347%20\(2017\)](https://docs.un.org/en/S/RES/2347%20(2017)) [accessed on 20 May 2025], wherein the Council 'condemns the unlawful destruction of cultural heritage, inter alia destruction of religious sites and artefacts, as well as the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other sites (...) notably by terrorist groups; (...) encourages Member States to propose listings of ISIL, Al-Qaida and associated individuals, groups, undertakings and entities involved in the illicit trade in cultural property to be considered by the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee'. Cf. also A. Chanaki, A. Papatthanassiou, 'The Council of Europe Convention on Offences relating to Cultural Property eventually enters into force: A new tool to the arsenal of international criminal law responses to the trafficking of cultural property', *EJIL:Talk!*, 14 April 2022; <https://www.ejiltalk.org/the-council-of-europe-convention-on-offences-relating-to-cultural-property-eventually-enters-into-force-a-new-tool-to-the-arsenal-of-international-criminal-law-responses-to-the-trafficking-of-c/> [accessed on 6 June 2025].

(I) PHASE ONE: CONCEPTUALISATION OF INTERNATIONAL PROTECTION APPROACH

A uniform approach has not been developed by states or other actors (such as UNESCO, museums or collectors) to address return requests. The Hague Regulations of 1907, the first international rules on the laws of war, state that 'the cultural property, regardless of whether it is privately owned, must not be destroyed, damaged, confiscated, seized, or pillaged in any way or form'. It further proposed that violators of these provisions may be prosecuted. While the Hague Regulations of 1907 do not contain any explicit provision concerning the restitution of looted cultural property, Article 3 provides for a duty to compensate. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention) lays down two significant principles in the preamble, setting the tone for the cultural internationalism approach.⁴³ The first is known as 'damage to cultural property is damage to all mankind', and the second as 'cultural heritage is a human experience', both of which support the policy of internationalism. With respect to the first, 'a damage caused to anyone's cultural property is to be considered as a damage to all mankind', and thus 'cultural heritage should be placed under international protection'. The Convention further declares that 'cultural heritage is part of the human experience regardless of where it originated from or where the artefact currently is held'.⁴⁴ Importantly, the 1954 Hague Convention places the duty of protecting cultural heritage upon the international community as a whole, a view often justified by museum curators who seek to 'highlight our shared past as a civilisation'.⁴⁵ It is considered the foundation of modern international heritage law. Furthermore, the 1954 Hague Convention contains detailed provisions concerning how a State party must safeguard and respect cultural properties (Articles 2 and 4).⁴⁶ Specifically, it calls upon the parties not to use cultural property for military purposes or for any purpose likely to expose it to destruction or damage in the event of armed conflict. States parties are under an obligation to train their military forces to respect the Convention's principles and provisions (Article 7).⁴⁷ Likewise, there are specific rules for States occupying another country under the Convention, which provides that they 'have a duty to assist local authorities to safeguard and preserve cultural property and to take all necessary measures to ensure its preservation in case the said local authorities are unable to do so'.⁴⁸

⁴³ The 1954 Hague Convention.

⁴⁴ Ibidem.

⁴⁵ Ibidem.

⁴⁶ Ibidem.

⁴⁷ Ibidem.

⁴⁸ Ibidem.

(II) PHASE TWO: IS THERE A LEGAL BASIS FOR CULTURAL NATIONALISM'?

On the other hand, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention)⁴⁹ takes the cultural nationalism approach. In support of this position, it is argued, first, that 'cultural property constitutes one of the basic elements of civilization and national culture, and (...) its true value can be appreciated only in relation to the fullest possible information regarding its origin, history, and traditional setting'.⁵⁰ Article 4 of the 1970 UNESCO Convention explicitly maintains a cultural nationalism approach as it authorises states to define cultural property.⁵¹ A second rationale expressed in the Convention is that 'cultural heritage can be best understood in the context of its geographic origin.' This expression seems to justify the position of developing countries that suffered huge losses of cultural heritage during the colonial era. It is asserted that 'cultural heritage contributes to building the image of a nation. When people feel that heritage belongs to them, it is thus directly related to their sense of collective identity.'⁵² Third, the 1970 UNESCO Convention obligates states to protect cultural heritage within their borders, and therefore provides a justification for the retention of cultural property.⁵³

LEGAL ISSUES

Two important aspects – the non-retroactive application of international treaties, and countries of origin – upon which legal positions are yet to be resolved, remain the focus of this article. For instance, the issue of countries of origin can be illustrated in cases where multiple states claim to be the country of origin, competing for the return of the same cultural property. A critical question arises in situations involving competing claims by more than one state. For example, the governments of India, Iran, Pakistan, and Afghanistan (as well as the Taliban) have all claimed ownership of the Koh-i-Noor. Another challenge arises when stolen cultural objects have crossed from one jurisdiction to another jurisdiction having knowledge that it

⁴⁹ The 1970 UNESCO Convention.

⁵⁰ J. Zhang, 'Moving Beyond Cultural Nationalism: Communities as Claimants to Cultural Heritage', *California Law Review* blog; <https://www.californialawreview.org/moving-beyond-cultural-nationalism/> [accessed 12 May 2021].

⁵¹ 'The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State: (a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory; (b) Cultural property found within the national territory; (c) Cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property; (d) Cultural property which has been the subject of a freely agreed exchange; (e) Cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.'

⁵² The 1970 UNESCO Convention.

⁵³ Ibidem.

was stolen property. Further complexity may arise in the International dispute over cultural property when private parties having different nationalities may pursue the claim for same cultural property. The international dimension is particularly noticeable in the case of *Autocephalous Greek-Orthodox Church v Goldberg & Feldman Fine Arts Inc.*⁵⁴ As analysed by Christa Roodt, in this case an art dealer had bought the Kanakaria mosaics, which originated from Cyprus, in the free port area of Geneva airport in 1988. The court, sitting in Indiana, applied Indiana law after assessing and weighing the substantive rules of Swiss and Indiana law.⁵⁵ It is generally assumed that 'international and transnational cultural property disputes tend to involve a wide range of parties, both States and non-State actors, such as museums, auction houses or individual dealers, or collectors.'⁵⁶

(I) NON-RETROACTIVE CHARACTER OF LEGAL INSTRUMENTS

It is well established that international legal rules cannot be applied retroactively. Indeed, Article 28 of the Vienna Convention on the Law of Treaties (VCLT) codified the general principle that international treaties do not apply retroactively in order to ensure legal certainty. This principle becomes an obstacle to the return of cultural property.

Although the above-mentioned instruments focus on the protection, respect, and criminalisation of offences concerning cultural property, they do not refer to the return of cultural property looted during colonial times. These instruments are prospective in their application and therefore do not create obligations to return cultural property looted during the colonial period to the countries of origin.

The 1954 Hague Convention and its two Protocols do, however, prescribe important rules for the prohibition of war plunder and a duty of restitution in the context of cultural properties.⁵⁷ This section of the paper will highlight the strengths and limitations of the 1954 Hague Convention and its Protocols in relation to their application to cultural property looted during colonial times.⁵⁸ One of the significant innovative ideas of the 1954 Hague Convention is its obligation on belligerents to afford a higher tier of special protection to cultural property considered to be of very great importance.⁵⁹ Three conditions are required for cultural property to be eligible for, and entitled to, special protection. First, the cultural property must not be used for military purposes; secondly, it must be situated at an adequate distance from military objectives; and thirdly, it must be entered in the International Register of Cultural Property under Special Protection. The 1954 Hague Convention obliges states to refrain from the removal of cultural property. Furthermore, it

⁵⁴ *Autocephalous Greek-Orthodox Church v Goldberg & Feldman Fine Arts Inc.*, 717 F. Supp 1374 (S.D. Ind. 1989) affirmed 917 F2d 278 (7th Cir 1990) No. 89-2809 cert. denied 112 S Ct 377 (1992).

⁵⁵ See C. Roodt, 'Restitution of art and cultural objects and its limits', *Comparative and International Law Journal of Southern Africa*, 2013, Vol. 46, No. 3, p. 296.

⁵⁶ See A.M. Tanzi, 'The Means for the Settlement of International Cultural Property Disputes: An Introduction', *Transnational Dispute Management*, January 2020.

⁵⁷ The 1954 Hague Convention and its two Protocols.

⁵⁸ *Ibidem*.

⁵⁹ Articles 8 and 9 of the 1954 Hague Convention.

prohibits and prevents state parties from engaging in any form of theft, pillage, or misappropriation of cultural property.⁶⁰ The First Protocol to the 1954 Convention expands the objectives of the Convention by providing detailed provisions against the illegal export, removal, or transfer of ownership of cultural property from occupied territories, and its return. Article I specifically prohibits occupying powers from exporting cultural objects from occupied territories and, in the event such exportation occurs, provides for their restitution.⁶¹

State's obligations with regard to safeguarding and respecting cultural property within the framework of international humanitarian law were further strengthened in the 1999 Second Protocol to the 1954 Hague Convention, which requires each party to place cultural property under enhanced protection, where the property is considered to be of the greatest importance for humanity. The system of enhanced protection is relatively weak, however, as a waiver may be invoked on the basis of imperative military necessity to permit the use of cultural property for military action.⁶² It is important to highlight that China proposed to remove this weakness by inserting a provision aimed at prohibiting collateral damage to cultural property under enhanced protection. This proposal, however, was not included in the Second Protocol.⁶³ Nonetheless, the Second Protocol introduced significant measures to strengthen both the 1954 Convention and its First Protocol. These include the adoption of a definition of 'military necessity' and the introduction of provisions for criminal responsibility and jurisdiction, which have been considered effective when compared with the 1954 Convention and its First Protocol. The 1999 Second Protocol also includes enforcement provisions requiring member states to comply with the Convention and Protocols.⁶⁴ It sets out additional penalties for serious violations and importantly recommends the establishment of a monitoring body, namely the Intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict, for the implementation of the Protocol.

The obligations envisaged under the 1954 Hague Convention were not explicitly retroactive owing to the deeply political and acrimonious nature of the issue of removal or plunder and return of cultural property.⁶⁵ At the time of the adoption of the 1954 Hague Protocol, it quickly became apparent that its regime would be disappointing for formerly colonised countries seeking the restoration of cultural property. A solution to some of these controversies, particularly the limited obligations under the 1954 Hague Convention and the controvertible retroactivity of the Protocol, was a crucial agenda item for the successful conclusion of the Second Protocol to the 1954 Hague Convention. In fact, the two major state actors, the US

⁶⁰ Article 4(3) of the 1954 Hague Convention.

⁶¹ The 1954 Hague Convention and its two Protocols.

⁶² Cf. J.-M. Henckaerts, 'New Rules for the Protection of Cultural Property in Armed Conflict', *ICRC Review of the Red Cross*, 1999, Vol. 81, No. 835, pp. 593–620.

⁶³ Ibidem; cf. J. Toman, *Cultural Property in War: Improvement in Protection. Commentary on the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, World Heritage Series, Paris, 2009, p. 295.

⁶⁴ The 1954 Hague Convention and its two Protocols.

⁶⁵ First and Second Protocol to the 1954 Hague Convention.

and the UK, were not especially keen to advance the restitution agenda under the 1954 Hague Convention.

The 1970 UNESCO Convention is the principal instrument for restoring cultural property under international law, described within the Convention by the general label 'Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property'.⁶⁶ The cornerstone of the 1970 UNESCO Convention is the return and restitution of cultural property, expressed in Article 7, which imposes an obligation to return a stolen or illegally exported cultural property with regard to objects 'imported after the entry into force of this Convention in both States concerned' (Article 7(b)(ii)).⁶⁷ One limitation of this provision is that it applies only to unlawfully removed objects from a state from 1972 onwards. Thus, for instance, it does not cover objects looted during the Holocaust era. By analogy, it is not applicable to cultural property looted in the pursuit of colonial occupation. However, it is worth mentioning that the 1970 Convention is relevant in its application to non-state actors, who are required to take measures to prevent illicit exports.

Another limitation of the 1970 UNESCO Convention is that it is up to each State party to specify in its domestic laws which cultural objects are of national importance and are therefore prohibited from export. Another constraint is that the scope of objects covered by the 1970 UNESCO Convention is narrow and does not include unregistered, illicitly excavated, or illegally exported objects.⁶⁸

The adoption of the 1970 UNESCO Convention has led to significant changes, both through domestic reforms and reforms within cultural institutions, including efforts by UNESCO's Intergovernmental Committee for the Promotion of the Restitution of Cultural Property⁶⁹ and the renewed policies of the International Council of Museums.⁷⁰ These policies explicitly emphasise the need for mediation or bilateral arrangements to resolve return claims.

Another international instrument, the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts,⁷¹ adopted after the 1970 UNESCO Convention, also did not address the return of cultural property looted during the colonial era. This omission was due to the fact that former colonial powers were reluctant to accept the demands of decolonised countries seeking restitution of cultural property as a link between independence and cultural development. The International Law Commission (ILC), while engaging in discussion, decided that there was no point in engaging with restitution of looted cultural property during colonial occupation, as such objects could not be identified as state property on the

⁶⁶ The 1970 UNESCO Convention.

⁶⁷ *Ibidem*.

⁶⁸ *Ibidem*.

⁶⁹ Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP) – UNESCO Digital Library; <https://unesdoc.unesco.org/ark:/48223/pf0000389120> [accessed 2 June 2025].

⁷⁰ International Council of Museums – The global museum network – International Council of Museums; <https://icom.museum/en/> [accessed 2 June 2025].

⁷¹ The 1983 Vienna Convention.

date of state succession.⁷² In fact, many cultural objects and collections had, over the years, moved to non-state actors or private museums. Thus, the rules of state succession could not evolve to deal with such looted material cultural heritage. In brief, the aim of the 1983 Vienna Convention was not to address the issue of cultural objects that did not form part of state property. Understandably, such a proposition was against the interests of newly independent states. The ILC suggested that the specialist UNESCO Committee, as envisaged under the 1970 UNESCO Convention, could be the relevant body to deal with such contesting postcolonial claims regarding cultural objects.

However, a few scholars advance the view that understanding articulated in Article 15 provides a viable and potential option for deciding claims for restitution or repatriation.⁷³ Article 15(1)(e) and (f) resolve that 'movable property, having belonged to the territory to which the succession of States relates and having become State property of the predecessor State during the period of dependence, shall pass to the successor State,' and that 'movable property of the predecessor State (...) to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory.'⁷⁴ The basis of this understanding seems to invoke the right of self-determination with respect to culture. It is argued that this principle of the right to self-determination in relation to culture may eventually contribute to enhancing the obligation to restore cultural heritage as a means of preserving national identity and tradition. Furthermore, under Article 28(4), 'the predecessor State shall cooperate with the successor state in efforts to recover any archives which, having belonged to the territory to which the succession of States relates, were dispersed during the period of dependence.'⁷⁵ It should be noted, however, that the Convention has not yet entered into force, as only seven states have ratified it to date.⁷⁶

It would be remiss not to highlight the dispute over the succession of the Koh-i-Noor. India claims that the diamond was extracted from the mines of central or south-eastern India long before the arrival of Alexander the Great. For centuries, it remained royal regalia of various Indian, Mughal, Persian, and Afghan monarchies. The war with the British East India Company led to the defeat of the Sikh Empire and of its incorporation into the British India. In 1849, the last Maharaja, the eleven-year-old Duleep Singh Bahadur, surrendered the Koh-i-Noor to the Queen of England, with the UK claiming it was given as a gift to Queen Victoria. The British administration thus asserted that it was merely a reward of war. However, India maintains that the young Maharaja, still a minor, was sent to London to personally present the diamond to Queen Victoria. According to India, this personal

⁷² Ibidem.

⁷³ A. Caligiuri, 'The Irreparability of Colonialism Legal Aspects Concerning the Restitution of Cultural Property Removed during Colonial Occupation', *Question of International Law* blog, 31 January 2024; <https://www.qil-qdi.org/legal-aspects-concerning-the-restitution-of-cultural-property-removed-during-colonial-occupation/> [accessed on 13 May 2025].

⁷⁴ The 1983 Vienna Convention.

⁷⁵ Ibidem.

⁷⁶ Cf. A. Caligiuri, 'The Irreparability...', op. cit.

visit of Dalip Singh was staged more as a ceremonial gesture to honour the Queen than a voluntary gift. In 1947, India and Pakistan underwent partition. Following the division of Punjab, Pakistan also laid claim to the Koh-i-Noor. Moreover, the British government deliberately failed to address the allocation of cultural property in the context of state succession within the legal instrument transferring powers to these newly independent states. As discussed above, the ILC also did not resolve the issue of distributing disputed cultural property in the Vienna Convention on State Succession. As a result, Koh-i-Noor is claimed by India, Pakistan, and the United Kingdom. Pakistan claim rests on the diamond's symbolic significance as a representation of the country's power, authority, culture, and heritage. The British government has firmly rejected demands for Koh-i-Noor's return on two procedural grounds: first, that Pakistan is not the sole claimant; and second, that the diamond was formally presented to Queen Victoria rather than seized as a war trophy. United Kingdom revealed that between 1997 and 2002, several other parties submitted claims for the repatriation of the diamond. As enumerated by A. Jakubowski, 'these included the representatives of India, Pakistan, and Afghanistan (...), an individual, Mr. Beant Singh Sandhanwalia, the last recognised heir of late Maharaja Duleep Singh, and officials of the Jagannath Temple in Puri, India, to which the gem had allegedly been bequeathed prior to its surrender to the British.'⁷⁷ In response, the British government reiterated its position that the existence of numerous and competing claims makes it impossible to determine a single rightful owner of the gem. Furthermore, it asserted that the Crown Jewels, including the Koh-i-Noor, form part of the United Kingdom's national heritage and are held by the Queen in her capacity as sovereign. This stance was recently reaffirmed by British Prime Minister David Cameron.⁷⁸

Similarly, the 1995 UNIDROIT Convention⁷⁹ contains provisions for the restitution of cultural property and the regulation of theft and illegal export, but it does not explicitly mention return requests related to colonial expropriation. It is also not retroactive. However, a few provisions of the 1995 UNIDROIT Convention may be interpreted as addressing repatriation requests for cultural goods illegally taken from former colonies. For instance, Article 10(3) provides that the absence of a non-retroactivity provision does not 'legitimise any illegal transaction of whatever nature which has taken place before the entry into force of this Convention (...) nor limit any right of a State or other person to make a claim under remedies available outside the framework of this Convention.'⁸⁰ In addition, under Article 5(3):

'the court or other competent authority of the State shall order the return of an illegally exported cultural object if the requesting State shows that the removal of the object from its territory significantly impairs one or more of the following interests: (a) the physical preservation of the object or of its context; (b) the integrity of a complex object; (c) the preservation of information of, for example, a scientific or historical character; (d) the tradi-

⁷⁷ A. Jakubowski, *State Succession in Cultural Property*, Oxford, 2015, pp. 92–93.

⁷⁸ Cf. *ibidem*; see also 'Koh-i-Noor diamond "staying put" in UK says Cameron', *BBC News*; <http://www.bbc.co.uk/news/uk-politics-10802469> [accessed on 4 December 2024].

⁷⁹ The 1995 UNIDROIT Convention.

⁸⁰ *Ibidem*.

tional or ritual use of the object by a tribal or indigenous community, or establishes that the object is of significant cultural importance for the requesting State.’⁸¹

The 2003 UNESCO Convention⁸² included provisions to take account of the special needs of communities in playing an active role in maintaining and conserving intangible cultural heritage, and therefore obligated state parties to ensure these communities’ participation in such efforts. The 2003 Convention introduced an expanded view of cultural heritage and included the non-material aspects of cultural property that are central to community identity. Article 11 of this Convention calls upon each state party ‘to ensure the safeguarding of the intangible cultural heritage present in its territory’ by involving communities and groups in the process of identifying, defining, and maintaining this heritage.⁸³ Recently, in 2024, while considering becoming party to 2003 UNESCO Convention, UK noted that its ratification ‘has potential to be a gamechanger for museums and galleries, as well as the communities they serve’.⁸⁴

In terms of the criminalisation of the unlawful taking and sale of cultural property, the Nicosia Convention draws heavily from the 2000 UN Convention against Transnational Organized Crime, which seeks to prevent and combat such crimes within a broader international framework addressing terrorism and organised crime. Over the past decade, it has been increasingly and urgently recognised that organised criminal groups are often closely connected to the trafficking and destruction of cultural property, whether to secure financing or to advance political objectives. Ongoing geopolitical conflicts in the Middle East have brought this issue to the forefront, as large-scale illicit excavations have occurred in countries such as Iraq, Afghanistan, Mali, and Syria. These activities have led to a dramatic increase in the illicit flow of cultural objects from conflict-affected regions. The Nicosia Convention seeks to close the existing gaps in the international protection regime by criminalising the illegal appropriation and trade of cultural heritage (Articles 3–11).⁸⁵

It is important to mention that although Chapter IV of the 1999 Second Protocol to the 1954 Hague Convention⁸⁶ contains provisions criminalising specific acts against cultural property when committed intentionally, the advantage of the Nicosia Convention lies in its provision of detailed measures to curb crimes against cultural property.

⁸¹ Ibidem.

⁸² The 2003 UNESCO Convention.

⁸³ Ibidem.

⁸⁴ See Jacob O’Sullivan, ‘Intangible Cultural Heritage Could be a Gamechanger for Museums’, *Museums Journal*, 1 February 2024; <https://www.museumsassociation.org/museums-journal/opinion/2024/02/intangible-cultural-heritage-could-be-a-gamechanger-for-museums/> [accessed on 13 May 2025].

⁸⁵ Cf. E. Gartstein, ‘Revisiting the 2017 Nicosia Convention’, *Center for Art Law*, 6 November 2024; <https://itsartlaw.org/art-law/revisiting-the-2017-nicosia-convention/> [accessed on 6 June 2025].

⁸⁶ The 1954 Hague Convention and its two Protocols.

ADVANCES AND PROGRESS IN THE OBLIGATION TO RETURN REQUESTS

To overcome the issue of retroactivity, several solutions are underway. Running parallel with the development of norms prohibiting the illegal trafficking of cultural property through multilateral treaties under the UNESCO regime, the post-colonial period has witnessed a significant rise in their institutional presence. The increase in bilateral agreements for the return of cultural property has become a recent trend. Other solutions include mediation, adoption of codes of ethics in museums, internal rules for the return of looted cultural property, bilateral agreements between States as well as between cultural institutions, new guidelines adopted for colonial collections (in countries such as Germany, the Netherlands, and Belgium), modified laws for return (as in France and Belgium), and cooperation initiatives from museums.⁸⁷ These solutions are administered and supervised through the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP).

ICPRCP

To address the non-retroactivity limitation, the ICPRCP or the Committee was established as a permanent intergovernmental body by the UNESCO General Conference in 1978, with India currently holding membership on the Committee for the 2022–2026 period).⁸⁸ The Committee is mandated to administer and provide an international platform to help settle disputes over the restitution of cultural property between UNESCO member states, particularly in cases that fall outside the scope of the 1970 Convention and therefore rely on negotiations between the concerned states.⁸⁹

The Committee also established an International Fund, supported through voluntary contributions from States and private institutions.⁹⁰ This Fund is intended to finance training and educational initiatives.⁹¹ Recently, the UNESCO General Conference authorised the Fund to be used, in part, to cover legal expenses and compensate individuals involved in lawsuits.⁹² This mechanism mirrors the UN Trust Fund, created in 1989, which was designed to assist States in settling disputes before the ICJ by easing the financial burden of court proceedings.⁹³

⁸⁷ German Museums Association, *Guidelines for German Museums. Care of Collections from Colonial Contexts*, 3rd edn, Berlin, 2021; <https://www.museumbund.de/publikationen/guidelines-on-dealing-with-collections-from-colonial-contexts-2/> [accessed on 20 December 2024].

⁸⁸ Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP) – UNESCO Digital Library; <https://unesdoc.unesco.org/ark:/48223/pf0000389120> [accessed on 4 June 2025].

⁸⁹ *Ibidem*.

⁹⁰ *Ibidem*.

⁹¹ *Ibidem*.

⁹² *Ibidem*.

⁹³ *Ibidem*.

As clarified in its Statute, this Committee does not function as a formal Tribunal that settles disputes through binding judgment.⁹⁴ Rather, it serves as a framework for, and facilitator of, intergovernmental negotiations on restitution requests concerning cultural property. In this capacity, the Committee operates as an advisory body.⁹⁵ Its mandate is limited to considering cases regarding cultural property of fundamental importance to the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO, and which has been lost due to colonial or foreign occupation, or through illicit appropriation.⁹⁶

However, the Committee's work over the past forty years has revealed certain limitations and may point to its relative ineffectiveness, likely due to the voluntary nature of its procedures, which allow disputing parties to opt in on a case-by-case basis. Nevertheless, in its intent to regulate the return of cultural property, the Committee adopted in 1999 the International Code of Ethics ('the Code') and Appropriate Rules of Procedure.⁹⁷ These instruments complement 1970 ICOM Declaration on the Ethics of Collecting⁹⁸ and the 1986 ICOM International Code of Professional Ethics (revised in 2004)⁹⁹ which together have helped promote the

⁹⁴ Under Article 4 of the Statutes, 'The Committee shall be responsible for:

1. seeking ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to its countries of origin when they are undertaken according to the conditions defined in Article 9. In this connection, the Committee may also submit proposals with a view to mediation or conciliation to the Member States concerned, it being understood that mediation implies the intervention of an outside party to bring the concerned parties to a dispute together and assist them in reaching a solution, while under conciliation, the concerned parties agree to submit their dispute to a constituted organ for investigation and efforts to effect a settlement, provided that any additional, necessary funding shall come from extrabudgetary resources. For the exercise of the mediation and conciliation functions, the Committee may establish appropriate rules of procedure. The outcome of the mediation and conciliation process is not binding on the Member States concerned, so that if it does not lead to the settlement of a problem, it shall remain before the Committee, like any other unresolved question which has been submitted to it;
2. promoting multilateral and bilateral cooperation with a view to the restitution and return of cultural property to its countries of origin;
3. encouraging the necessary research and studies for the establishment of coherent programmes for the constitution of representative collections in countries whose cultural heritage has been dispersed;
4. fostering a public information campaign on the real nature, scale and scope of the problem of the restitution or return of cultural property to its countries of origin;
5. guiding the planning and implementation of UNESCO's programme of activities with regard to the restitution or return of cultural property to its countries of origin;
6. encouraging the establishment or reinforcement of museums or other institutions for the conservation of cultural property and the training of the necessary scientific and technical personnel;
7. promoting exchanges of cultural property in accordance with the Recommendation on the International Exchange of Cultural Property;
8. reporting on its activities to the General Conference of UNESCO at each of its ordinary sessions.'

⁹⁵ Ibidem.

⁹⁶ Ibidem.

⁹⁷ Ibidem.

⁹⁸ Cf. <https://icom.museum/en/resources/standards-guidelines/code-of-ethics/> [accessed on 3 June 2025].

⁹⁹ *ICOM Code of Ethics for Museums*; <https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf> [accessed on 2 June 2025].

principle of respecting the cultural property interests of others within museums and among art dealers.¹⁰⁰ The Code has been widely acknowledged and implemented by art and antiquities trade organisations in various countries.

ICOM had advocated for the creation of a fund to serve as an operational tool for the Committee.¹⁰¹ This fund, subject to approval by relevant UNESCO bodies, could support the Committee's activities by enabling it to finance (a) research aimed at compiling complete collections; (b) technical co-operation initiatives, including expert assistance, grants, or equipment; (c) public information campaigns; and (d) in specific cases, return or restitution operations, such as covering transportation and insurance costs.¹⁰²

In 2010, UNESCO adopted the Rules of Procedure for Mediation and Conciliation to be applied before the Committee in accordance with Article 4(1) of the Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation.¹⁰³

Earlier, in 2008, the Association of Art Museum Directors (AAMD) developed a comprehensive policy addressing unprovenanced antiquities, grounded in the 1970 UNESCO Convention. It issued new guidelines stipulating that the acquisition of unprovenanced antiquities would be considered participation in illicit trade. The AAMD also established the 1970 cutoff date, meaning that its member institutions are required to acquire only those antiquities that can be shown to have been legally exported after 1970 or removed from their country of origin prior to that date. Accordingly, museum members must verify the ownership history of potential acquisitions dating back to 1970 and ensure that their acquisition policies, as well as information regarding new acquisitions, are publicly accessible.¹⁰⁴ Institutions such as the British Museum, the Metropolitan Museum of Art, and the J. Paul Getty Museum in Los Angeles have similarly implemented the 1970 cutoff date in their acquisition practices.¹⁰⁵

Since 2008, the Association of American Museums (AAM) has emphasised the prohibition of acquiring disputed antiquities and has required its members to rigorously research provenance before making acquisitions.¹⁰⁶ In 2007, the

¹⁰⁰ Ibidem.

¹⁰¹ Ibidem.

¹⁰² Ibidem; see also F. Shyllon, 'The Recovery of Cultural Objects by African States through the UNESCO and Unidroit Conventions and the Role of Arbitration', *Uniform Law Review*, Vol. 5, Issue 2, April 2000, pp. 219–240.

¹⁰³ *Mediation and conciliation procedures provided for within the framework of the Committee*; <https://unesdoc.unesco.org/ark:/48223/pf0000378896#:~:text=In%20order%20to%20exercise%20these%20mediation%20and%20conciliation,agree%20to%20amend%20them%20before%20the%20procedure.2%204> [accessed on 1 June 2025].

¹⁰⁴ *New Report on Acquisition of Archaeological Materials and Ancient Art Issued by Association of Art Museum Directors*; <https://cms.aamd.org/sites/default/files/document/2008ReportAndRelease.pdf> [accessed on 1 June 2025].

¹⁰⁵ Cf. <https://museumsandheritage.com/advisor/posts/museums-association-launches-guidance-address-legacy-british-colonialism/> [accessed on 2 June 2025].

¹⁰⁶ *Acquisition Guidelines*; <https://www.smithsonianmag.com/history/acquisition-guidelines-107940667/> [accessed on 2 June 2025].

International Council of Museums (ICOM) launched an urgent initiative and formulated a mediation process aimed at encouraging museums to avoid litigation over cultural objects which often delay the resolution of disputes. ICOM also adopted and implemented Codes of Ethics grounded in the principles of the 1970 UNESCO Convention.¹⁰⁷

A case study of the British Museum offers useful insight into the challenges and gaps in responding to repatriation requests. Established in 1753, the British Museum holds an extraordinary collection of more than eight million artefacts and is regarded as one of the world's oldest and most extensive museum collections. The institution has been heavily criticised for its categorical refusal to return the Parthenon/Elgin Marbles to Greece,¹⁰⁸ amid Greece's claim which has received support from both China and the EU. The British Museum operates as a statutory corporation governed by a Board of Trustees.¹⁰⁹ While legal ownership of the Museum collection is vested in the Board of Trustees, it is required to serve the public interest as defined by statute.¹¹⁰ A Board Trustee has 'no extraordinary rights to benefit from them, only obligations towards their beneficiaries, the public'.¹¹¹ The Museum Board of Trustees comprises twenty-five members: one appointed by the Crown, fifteen by the Prime Minister, four by the Secretary of State, and five by the Trustees themselves.¹¹² The British Museum Act of 1963 stipulates that Trustees have a fiduciary duty to preserve the collection and may only dispose of objects under very limited and exceptional circumstances.¹¹³ As such, the Board is legally and ethically responsible for managing the collection and is generally prohibited from returning any item. However, the Holocaust (Return of Cultural Objects) Act of 2009 created a legal exception, enabling British museums to repatriate artefacts looted during the Nazi era without contravening the 1963 Act.¹¹⁴ This legislation has opened a pathway for repatriations for artwork related to the Holocaust.

¹⁰⁷ The International Council of Museums (ICOM), established in 1946, is the only global organisation of museums and museum professionals committed to the protection of cultural and natural heritage. ICOM has approximately 30,000 members across 137 countries and has facilitated the preservation and conservation of cultural property on numerous occasions over the years. Furthermore, ICOM cooperates closely with UNESCO and maintains partner relations with the UN Economic and Social Council, the World Intellectual Property Organization, INTERPOL, and World Customs Organisation (WCO); cf. <https://icomuseum.com/en/about-us/missions-and-objectives/index.html> [accessed on 6 June 2025].

¹⁰⁸ The British Museum refers to the sculptures as the Parthenon Marbles, although they are still frequently referred to as the Elgin Marbles around the world. See R. Wilde, 'The Elgin marbles/Parthenon Sculptures', *ThoughtCo.*, 4 April 2019; <https://www.thoughtco.com/the-elgin-marbles-parthenon-sculptures-1221618> [accessed on 20 May 2025].

¹⁰⁹ British Museum Act of 1963; <https://www.britishmuseum.org/sites/default/files/2019-10/British-Museum-Act-1963.pdf> [accessed on 20 May 2025].

¹¹⁰ *Ibidem*.

¹¹¹ A. Pantazatos, 'The Ethics of Trusteeship and the Biography of Objects', *Royal Institute of Philosophy Supplement*, 2016, Vol. 79, pp. 179–197.

¹¹² British Museum Act of 1963.

¹¹³ *Ibidem*, see also H.R. Godwin, 'Legal Complications...', *op. cit.*, pp. 147–148.

¹¹⁴ Cf. <https://www.legislation.gov.uk/ukpga/2009/16/contents> [accessed on 6 June 2025].

While the ICOM Code of Ethics for Museums sets out shared international standards,¹¹⁵ national museums and cultural institutions in countries, such as Germany,¹¹⁶ Belgium,¹¹⁷ and United Kingdom,¹¹⁸ often develop their own internal policy frameworks for handling artefacts acquired during the colonial period.

VOLUNTARY RETURNS

Development of legislation relating to return requests has allowed states to devise options for voluntary returns. This may be an independent decision of an individual cultural institution or museum that possesses one or more cultural objects removed during the colonial era. For instance, in December 2022, the Cambridge University Museum of Archaeology and Anthropology proposed returning to Nigeria over 100 Benin bronzes taken from the Kingdom of Benin by the British military during the expedition to Benin City in 1897.¹¹⁹ However, such voluntary returns have also proved unsuccessful due to the absence of a clear legal framework, as these returns now depend upon the goodwill of the UK. In the above-mentioned case, for example, in May 2023 the Cambridge University Museum postponed the return, citing a decree issued by the Nigerian President on 28 March 2023 that appointed a Nigerian traditional ruler as the owner and custodian of all artefacts to be returned.¹²⁰ The UK's refusal raised several new issues, particularly concerning the right of the receiving country to freely dispose of its cultural heritage once it has been recovered.

Another emerging practice involves the temporary return of cultural property under long-term loan agreements. Such arrangements enable the country of origin to

¹¹⁵ 'ICOM Code of Ethics for Museums', adopted in 1986 and revised in 2004; <https://icom.museum/en/resources/standards-guidelines/code-of-ethics/> [accessed on 23 December 2024].

¹¹⁶ See German Museums Association, *Guidelines on Dealing with Collections from Colonial Contexts*, Berlin, 2018; <https://www.museumsbund.de/wp-content/uploads/2019/10/dmb-guidelines-colonial-context.pdf> [accessed on 20 May 2025]. 'This text outlines some core recommendations: (a) not every discussion that looks like a restitution demand must end in restitution; (b) the museums are urged to consider alternatives to the restitution of the physical object; (c) if there is a clear right to restitution, the object must be given back and the museum or the relevant authority should not advance the argument based on prescription or time lapse; (d) all claims dating to the colonial times are time-barred', see A. Caligiuri, 'The Irreparability...', op. cit.

¹¹⁷ Restitution Belgium, *Ethical Principles for the Management and Restitution of Colonial Collections in Belgium*, June 2021; <https://restitutionbelgium.be/en/foreword> [accessed on 11 November 2024].

¹¹⁸ Arts Council England, *Restitution and Repatriation: A Practical Guide for Museums in England*, 2023; <https://www.artscouncil.org.uk/media/21957/download?attachment> [accessed on 6 June 2025].

¹¹⁹ 'Cambridge University to return Benin Bronzes to Nigeria', *BBC News*, 14 December 2022; <https://www.bbc.com/news/uk-england-cambridgeshire-63973271> [accessed on 10 December 2024], see also A. Caligiuri, 'The Irreparability...', op. cit.

¹²⁰ Cf. M. Dzirutwe, 'Return of Benin Bronzes delayed after Nigerian president's decree', *Reuters*, 10 May 2023; <https://www.reuters.com/world/africa/return-benin-bronzes-delayed-after-nigerian-presidents-decree-2023-05-10/> [accessed on 11 December 2024].

regain legal ownership while permitting the holding country to continue exhibiting the cultural goods in its museums for a defined period. For example, in 2002, France and Nigeria concluded an agreement regarding the statuettes of Nok and Sokoto, whereby Nigeria's ownership title over the statuettes was recognised in exchange for a renewable 25-year loan to the Quay Branly Museum in France.¹²¹

Cultural institutions collaborate with museums to undertake temporary exchanges of artworks, conduct joint research programmes, host shared exhibitions, and carry out collaborative restoration projects. In 2010, the Government of the Republic of Peru and Yale University entered into a Memorandum of Understanding under which Yale was to return to Peru all artefacts removed from the site of Machu Picchu between 1912 and 1916, upon completion of an inventory.¹²² A similar MoU was concluded in 2011 between Yale University and the Universidad Nacional de San Antonio Abad del Cusco, whereby the parties undertook 'to collaborate and jointly develop an international facility and associated programs designed to serve as a base for the display, conservation and study of the Machu Picchu collections as well as for the interchange of students, scholars and scholarship regarding Machu Picchu and Inca culture'.¹²³

In recent years, digitisation and the creation of replicas have emerged as means of overcoming the practical difficulties associated with transferring requested cultural objects. Such agreements enable the country of origin to retain a digital copy of cultural goods and to exhibit replicas in its cultural institutions, particularly where the transfer of the originals from the holding country would be impractical or unfeasible. Efforts towards formal arrangements began in 1984 under the auspices of ICPRPC. With its assistance, an agreement was reached between the Government of Jordan and the Cincinnati Art Museum (USA), whereby the two parties undertook to exchange plastic casts of parts of the sandstone panel of Tyche with the Zodiac

¹²¹ See 'Press Release 5 March 2002 ICOM Red List: Nigeria's Ownership of Nok and Sokoto Objects recognised', *CIMCIM Bulletin*, No. 48, March 2002; https://cimcim.mini.icom.museum/wp-content/uploads/sites/7/2019/01/Bulletin_48_March2002.pdf [accessed on 21 November 2024]; 'Une convention entre la France et le Nigéria à propos des œuvres Nok et Sokoto du future musée du quai Branly', 13 February 2002; <http://www2.culture.gouv.fr/culture/actualites/communiqu/tasca2002/nok.htm> [accessed on 21 November 2024]. As observed by A. Caligiuri, 'the agreement between France and Nigeria over the Nok and Sokoto statuettes was formally based on Article 7 of the 1970 UNESCO Convention', cf. Caligiuri A., 'The Irreparability...', op. cit., p. 60.

¹²² A. Chechi, L. Aufseesser, M.-A. Renold, 'Case Machu Picchu Collection – Peru and Yale University', *Platform ArThemis*, Art-Law Centre, University of Geneva, October 2011; <https://plone.unige.ch/art-adr/cases-affaires/machu-picchu-collection-2013-peru-and-yale-university/case-note-2013-machu-picchu-collection-2013-peru-and-yale-university> [accessed on 21 November 2024].

¹²³ See 'Memorandum of Understanding between Universidad Nacional de San Antonio Abad del Cusco and Yale University Regarding the UNSAAC-Yale University International Center for the Study of Machu Picchu and the Inca Culture', 11 February 2011; https://plone.unige.ch/art-adr/cases-affaires/machu-picchu-collection-2013-peru-and-yale-university/memorandum-of-understanding-between-the-government-of-peru-and-yale-university-11-february-2011/at_download/file [accessed on 21 November 2024].

held by each of them.¹²⁴ In the long term, it is hoped that such digitisation proposals and agreements, if implemented in good faith, could establish a new model for successful return requests.

HUMAN RIGHTS STRATEGIES FOR THE PROTECTION OF CULTURAL PROPERTY

The emerging global strategies incorporating human rights dimension into cultural property constitute a timely development. This approach can, in turn, provide additional legal avenues and tools for claims seeking the return of stolen colonial property under the multilateral human rights regime. The invocation of human rights rules in relation to the restitution of such property has featured in recent activities and deliberations of the Human Rights Council. In 2009, through resolution 10/23, the Council 'established the mandate of the independent expert in the field of cultural rights',¹²⁵ appointing Ms Farida Shaheed to advance the protection of cultural rights. Through a series of ten thematic reports, the Special Rapporteur elaborated upon the content of Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹²⁶ and was tasked with coordinating efforts with intergovernmental and non-governmental organisations, other special procedures, the Committee on Economic, Social and Cultural Rights, UNSECO, and other relevant actors.¹²⁷ Initially focusing on various aspects of cultural rights and conducting a preliminary study on the destruction of cultural heritage as a violation of human rights, the Human Rights Council, in its resolution 37/17 of 22 March 2018, noted with concern 'the organized looting, smuggling, and theft of and illicit trafficking in cultural property that could undermine the full enjoyment of cultural rights'.¹²⁸ Again in 2025, Human Rights Council, called upon states to strengthen 'international cooperation on the return or restitution of cultural properties of spiritual, ancestral, historical and cultural value to countries of origin, including but not limited to objets d'art, monuments, museum pieces, manuscripts and documents, and strongly encourages relevant private entities to similarly

¹²⁴ UNESCO, *Report by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation*, 1987, 24 C/94;; <https://unesdoc.unesco.org/ark:/48223/pf0000075160> [accessed on 24 October 2024].

¹²⁵ Report of the Special Rapporteur in the Field of Cultural Rights, Thirty-first session, Human Rights Council, 3 February 2016, UNGA A/HRC/31/59; https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.59_E.docx [accessed on 6 June 2025].

¹²⁶ Report of the Independent Expert in the Field of Cultural Rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council, Fourteenth session of Human Rights Council, UNGA, A/HRC/14/36, 22 March 2010; <https://digitallibrary.un.org/record/680585?ln=en&v=pdf> [accessed on 6 June 2025].

¹²⁷ Ibidem.

¹²⁸ Cultural rights and the protection of cultural heritage, resolution adopted by the Human Rights Council on 22 March 2018, Human Rights Council, Thirty-seventh session, 26 February–23 March 2018, Agenda item 3, A/HRC/RES/37/17, 9 April 2018; <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/37/17&Lang=E> [accessed on 6 June 2025].

engage, including through bilateral dialogue and with the assistance of multilateral mechanisms, as appropriate'.¹²⁹ This convergence warrants further exploration and operationalisation to ensure the return of cultural property.

Although the Human Rights Council does not explicitly address stolen colonial property, the Expert Mechanism on the Rights of Indigenous Peoples, in its study *Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage*,¹³⁰ it has established a link between the restitution of cultural property and human rights, specifically in cases concerning indigenous communities, connecting such stolen property to the rights of indigenous peoples under, *inter alia*, Article 11 of the United Nations Declaration on the Rights of Indigenous Peoples. Furthermore, part six of the Study by the Expert Mechanism emphasises that 'the right to redress and restitution where violations of the rights of indigenous peoples have occurred is a foundational element to ensuring reconciliation and the future commitment to protecting the rights of indigenous peoples. Under human rights law, there is a strong principle in favour of restitution when a violation has occurred.'¹³¹ Such initiatives for repatriation through the multilateral human rights regime may reshape the states' public policies, ultimately advancing the cause of cultural nationalism.

CONCLUSIONS

The shift in international law concerning the protection of cultural objects was introduced by the 1954 Hague Convention and its Protocols, yet obligation to return looted property from occupied colonies was not explicitly recognised in any of the treaties. However, since the 1990s, several international initiatives have addressed this issue. States are legally obliged to have recourse to all appropriate measures to secure the return of looted cultural property, including through human rights law. Three major legal developments can be identified: first, the obligation to return cultural property to the State of origin has attained the status of a customary obligation under international law. Its roots can be traced historically and have been further reinforced by recent initiatives within the corpus of human rights law. Second, the rise of bilateral agreements in recent decades, alongside the evolution of multilateral treaties, raises major conceptual and policy considerations. One view is that bilateral agreements and multilateral treaties concluded under UNESCO can mutually promote and enforce the obligation to return cultural objects. Another perspective warns that such bilateral agreements may prove counterproductive, undermining the stability and integrity of multilateral treaties and threatening the vision of

¹²⁹ Cultural rights and the protection of cultural heritage: revised draft resolution, Fifty-eighth session, Human Rights Council, 24 February–4 April 2025, A/HRC/58/L.4/REV.1; <https://docs.un.org/en/A/HRC/58/L.4/REV.1> [accessed on 6 June 2025].

¹³⁰ *Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, Thirtieth session, Human Rights Council, 19 August 2015, A/HRC/30/53; <https://documents.un.org/doc/undoc/gen/g15/185/41/pdf/g1518541.pdf> [accessed on 15 May 2024].

¹³¹ *Ibidem*.

cooperative and non-discriminatory measures for the protection of cultural heritage as envisaged by the architects of UNESCO. Third, under emerging international law, looted cultural property may be classified as a transnational criminal offence, in which case the effective operationalisation of international cooperation becomes all the more essential and imperative.

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