MUSINGS OF THE MONTH

JULY 2025

CONTENTS

Introducing: July Musings of the Month

At the dynamic crossroads of creativity, culture, and the law, new voices continue to shape how we define, protect, and engage with art and heritage. Each month, HALO's *Musings of the Month* celebrates these voices with the purpose of elevating diverse and timely perspectives from across the globe at the intersection of art, law, ethics, and policy.

In this July edition, we delve into some cultural heritage questions of our time, exploring everything from intangible traditions in mountain communities to AI's role in post-conflict art recovery. This month's featured muses include academics, legal practitioners, military leaders, and emerging scholars whose work challenges, critiques, and reimagines the frameworks surrounding cultural protection.

This month, we feature five powerful written contributions:

- **Dr. Angelia Jia Wang** argues that traditional copyright frameworks are fundamentally misaligned with the communal and intergenerational nature of intangible cultural heritage, especially in high mountain regions.
- **Tim Purbrick**, a former British Army officer and UNESCO consultant, offers an inside look at how the UK military has implemented cultural property protection under international law.
- **Maureen Pradal and Timothée Charmeil** examine the ethical responsibilities of U.S. museums in acquiring foreign artifacts.
- **Sarthak Arya and Isha Shroff**, law students with a focus on international humanitarian law and tech policy, explore how AI can support the identification, restitution, and protection of stolen cultural property post-conflict.
- **Ryan P. Walsh** analyzes the 2024 European Court of Human Rights decision in *Getty Trust v. Italy*, where the court upheld Italy's claim over the "Victorious Youth" bronze statue.

Together, these pieces challenge the space of art law to open into more humanitarian aspects of cultural heritage policy, advocating for more equitable, culturally informed approaches to heritage protection.

Through *Musings of the Month*, we aim to cultivate an ongoing space of reflection, inquiry, and dialogue — one that bridges legal scholarship, creative practice, and cultural advocacy.

Join us each month as we spotlight new muses and amplify the voices reshaping the evolving relationship between art, culture, and the law. And, as always, we would be delighted to welcome you as a muse, as art and cultural heritage law is for all, and without critique, we would be aimless curators, without challenges to the conscience of our collective creativity.

Yours,

Renée Ramona Robinson

Cultural Heritage on the Edge: Copyright in High Mountain Communities

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***Dr. Angelia Jia Wang**

1. Introduction

As climate change and cultural appropriation threaten the world's most fragile traditions, the law remains ill-equipped to respond. Intangible cultural heritage (ICH) is vital to cultural identity and social cohesion, particularly in high mountain communities where traditions are deeply intertwined with ecological and spiritual practices. Defined under the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention for the Safeguarding of Intangible Cultural Heritage (2003), ICH encompasses oral traditions, performing arts, rituals, and traditional craftsmanship. However, these cultural expressions face significant threats, not only from the impacts of climate change, which disrupt the ecological and social systems that sustain them but also from inadequacies in intellectual property (IP) frameworks. Copyright law, in particular, often fails to address ICH's collective, intergenerational, and community-based nature, leaving it vulnerable to misappropriation and commodification.

High mountain regions such as the Himalayas, Andes, and Karakoram face converging threats: rapid climate change threatens the ecosystems that underpin cultural practices, while copyright frameworks rooted in Western concepts of individual authorship and originality struggle to accommodate the communal and fluid nature of these traditions. As climate-driven migration and globalization intensify, the need for robust legal mechanisms to safeguard ICH in these regions has become more urgent.

This Article contends that copyright law, as currently structured, is fundamentally misaligned with the realities of ICH in high mountain communities. Through doctrinal critique and comparative case studies, it reveals how existing legal tools often marginalize rather than protect traditional knowledge. In response, the Article proposes reforms grounded in principles of equity, cultural pluralism, and community sovereignty—offering a roadmap for more inclusive and context-sensitive protection of cultural heritage in a rapidly changing world.

2. Copyright and the Community-Based Nature of ICH

Copyrights grant author control over the use of their work, particularly in commercial contexts. These rights include authorizing or prohibiting the work's reproduction, distribution, public performance, and adaptation. In the case of ICH, Chen points out that economic rights allow communities to regulate how their cultural expressions are used by third parties, ensuring that they benefit economically from commercializing their heritage. For example, a WIPO report shows that traditional music or folklore could be copyrighted, allowing the community to license it to film producers or media companies. However, cultural expressions are often developed collectively over time without an individual "author" who can claim ownership under copyright law. Additionally, the commercialization of ICH could commodify cultural practices in ways that undermine their original meaning or significance. Thus, Zheng indicates that while economic rights can provide financial protection, they may not fully align with the nature of cultural heritage.

Copyright law, rooted in Western notions of individual authorship and originality, fundamentally conflicts with ICH's collective and intergenerational characteristics. High mountain communities pass down cultural expressions through oral traditions and shared practices, making attributing authorship to a single individual or entity difficult. Also, copyright's time-limited protections fail to address the long-term stewardship required to safeguard cultural heritage. More specifically, rituals tied to specific ecological cycles, such as agricultural festivals, may lose relevance as climate patterns shift. With climate-driven emigration, ICH may be practiced across borders and or by a diaspora community rather than a group of people living together in the same place.

Moral rights, provided by the Berne Convention, seem more suitable for protecting the personal connection between the creator and their work, regardless of its commercial value. Two key moral rights are the right of attribution, which ensures the creator is credited for their work, and the right of integrity, which protects the work from being distorted or misused in ways that harm the creator's reputation. In the case of ICH, moral rights could ensure that a community is recognized as the source of cultural expression, even if it is commercialized. Furthermore, the right to integrity could prevent the misuse or distortion of sacred or culturally significant practices, preserving the dignity and authenticity of the heritage. For example, sacred ceremonies, traditional

songs, or communal stories could be safeguarded against commercial or entertainment modification that strips them of their cultural meaning.

The divergence between legal traditions demands greater effort in harmonizing the law of moral rights of attribution and integrity. A research report argues that moral rights must be reimagined to encompass collective authorship and evolving cultural expressions. Common law systems, with their weaker moral rights protections, present further obstacles, necessitating reforms to integrate communal rights and perpetual protections.

3. Challenges of Copyright Protection for ICH

In some countries, efforts have been made to address the protection of traditional cultural expressions (TCEs). For instance, Section 31(5) of the Nigerian Copyright Act 2004 protects "folklore" as a subject matter for copyright. It defines it as a group-oriented and tradition-based creation of groups or individuals reflecting the expectation of the community as an inadequate expression of its cultural and social identity, standards, and values. However, TCEs in Nigeria often overlap across regions, making attribution to a specific group difficult. Furthermore, similar expressions may carry distinct cultural values and customary laws in different communities. The Nigerian Copyright Commission's sole authority to grant permissions adds complexity, as what is acceptable to one community may be offensive to another.

While Nigeria created positive legal rights, Australia sought moral recognition through communal moral rights. Australia proposed the 2003 Indigenous Communal Moral Rights Bill to protect the cultural interests of Indigenous communities by granting legal recognition to communal moral rights. It sought to prevent culturally inappropriate uses of Indigenous works by enshrining collective moral claims in law. However, the Bill faced criticism for its one-size-fits-all approach, which failed to account for the diversity of Indigenous customs and values and insufficient consultation with Indigenous communities during its drafting. Although the Bill was not enacted, it highlighted the importance of community-centric legislation that bridges the gap between traditional customary laws and modern legal systems, offering valuable lessons for global efforts to protect TCEs.

Geographical Indication (GI) protection is an effective alternative to copyright for safeguarding traditional crafts. Bidriware, a traditional metal handicraft in India, is known for intricate inlay work of silver, brass, or gold on a blackened zinc and copper alloy. With a GI granted to Bidriware in 2006, only artisans from the Bidar region, adhering to traditional techniques, can market their products under this name. This form of protection addresses the communal nature of traditional crafts, where designs and methods are passed down through generations rather than created by a single author. However, GI protection is limited to tangible goods and does not extend to performing arts, rituals, or other intangible cultural expressions.

4. Decolonizing Intellectual Property Law

Decolonizing IP challenges Western-centric frameworks that overlook the cultural contexts of Indigenous communities. Mosley highlights that these frameworks perpetuate inequities by prioritizing economic exploitation over cultural heritage's spiritual and communal significance.

One key approach is shifting from the individualistic focus of copyright to recognizing collective authorship and community stewardship of ICH. Kouletakis' critique of TRIPS as a colonial imposition underscores the need to replace rigid IP regimes with more flexible, locally informed systems. This involves empowering communities to define their cultural priorities and ensuring that benefit-sharing mechanisms genuinely reflect their values.

Decolonization also requires dismantling the artificial separation between cultural and natural heritage in IP frameworks, as seen in regulating genetic resources and cultural expressions. Emphasizing relational autonomy and interdependence can help protect ICH as a living practice rather than commodifying it as a static resource. These shifts are crucial for achieving equitable and sustainable protection of cultural heritage in high mountain regions.

5. Recommendations

National legal regimes should reform moral rights to recognize communities, rather than individuals, as the authors of cultural expressions, ensuring they are credited as custodians of ICH and preventing misappropriation or false claims of ownership by outsiders. The right of integrity must safeguard ICH from distortion, misuse, or commodification that undermines its cultural or spiritual significance. It requires community consent and adherence to ethical guidelines to adapt sacred ceremonies or traditional songs for commercial purposes. Additionally, differences between civil law and common law systems pose challenges to moral rights reform, necessitating efforts to integrate collective authorship and perpetual protections into jurisdictions with weaker moral rights frameworks.

International frameworks require better coordination to protect ICH effectively. Collaboration between UNESCO and the World Intellectual Property Organisation (WIPO) is essential to address ICH's collective and intergenerational nature. UNESCO could expand its 2003 Convention to incorporate copyright principles for safeguarding ICH, while WIPO could focus on establishing frameworks for collective copyright and creating registries that document ICH, satisfying fixation requirements without alienating customary practices. Joint efforts should prioritize working with communities to design instruments that balance cultural preservation with commercial opportunities. Harmonized guidelines from UNESCO and WIPO can further encourage states to adopt national laws recognizing communal authorship and moral rights, ensuring ICH's integrity and proper attribution within global IP systems.

Reforming the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) under the World Trade Organization is crucial to support ICH better. The

Agreement could explicitly incorporate exceptions for traditional and community-based cultural expressions, allowing high mountain communities to retain control over their ICH without conflicting with international intellectual property obligations. Expanding the scope of GI protections to include intangible cultural practices would help safeguard cultural expressions from appropriation or misuse without community consent. Additionally, introducing mandatory benefit-sharing mechanisms would ensure communities are fairly compensated for the commercial exploitation of their ICH while protecting its authenticity and preventing distortion.

Countries in culturally rich high mountain regions—including the Himalayas, Andes, and Karakoram—should pursue regional legal cooperation to safeguard shared ICH. Countries in these areas could work together to develop regional legal frameworks that recognize collective authorship, promote moral rights, and ensure long-term protection beyond the limited duration of traditional copyright. Regional organizations, such as the South Asian Association for Regional Cooperation (SAARC) or the Association of Southeast Asian Nations (ASEAN), could establish ICH registries to document and protect cultural expressions, providing evidence for copyright claims while respecting customary laws. Additionally, cross-border cooperation mechanisms are essential to address the shared nature of ICH in high mountain regions, where cultural practices often transcend national boundaries, fostering mutual preservation and respect for collective heritage.

6. Conclusions

Safeguarding intangible cultural heritage (ICH) in high mountain communities requires coordinated legal reform across international, regional, and national levels—anchored by a decolonial normative framework that centers community autonomy and cultural continuity. At the international level, organizations like UNESCO and WIPO must lead the effort to harmonize global IP systems with the realities of ICH. UNESCO should expand its 2003 Convention to incorporate copyright principles, while WIPO can establish frameworks for collective authorship and develop registries that satisfy fixation requirements without alienating customary practices. Collaborative guidelines from these organizations can encourage member states to adopt legal mechanisms that ensure ICH's integrity and proper attribution.

At the regional level, high mountain regions such as the Himalayas, Andes, and Karakoram need to collaborate to develop legal frameworks that reflect their shared cultural practices. Regional organizations could establish ICH registries to document and protect cultural expressions while respecting customary laws. Additionally, cross-border cooperation mechanisms are vital to address the shared nature of ICH, fostering mutual preservation and respect for collective heritage.

At the national level, countries must integrate customary laws into copyright frameworks and reform moral rights to recognize communities as the authors of cultural expressions. This includes safeguarding the integrity of ICH from commodification or misuse and ensuring that communities are credited as custodians of their heritage. Expanding GI protections to include intangible cultural practices and introducing benefit-sharing mechanisms for the commercial use

of ICH are essential steps to achieve equitable and sustainable protection.Ultimately, decolonizing IP law is critical to achieving justice for Indigenous and marginalized communities. Moving beyond rigid, Western-centric frameworks to more locally informed and flexible approaches can empower communities to define their cultural priorities. These reforms must ensure that communities remain the rightful custodians of their heritage, preventing misappropriation and commodification while fostering equitable commercialization that upholds the traditions, identities, and values of high mountain communities for future generations. Without such transformation, IP law will continue to reproduce the very inequalities it ought to redress.

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Delivering Military Cultural Property Protection: The Role of UK Defence and the British Army

The British Army's Cultural Property Protection Special to Arm training course at the National Trust's Hinton Ampner (2019)

*Tim Purbrick

Cultural property is the tangible, visual and totemic cultural expression of a community, a society, a nation and, ultimately, of mankind. It is defined in Article 1 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict as 'movable or immovable property of great importance to the cultural heritage of every people'.[1] The definition includes monuments, archaeological sites, groups of historical buildings, works of art, manuscripts and books, scientific collections and archives.

The primary legislation regarding the protection of cultural property during armed conflict and occupation is the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999, which were ratified by

[1] UNESCO's website: https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention?hub=415, accessed at 1900hrs on 17 November 2024.

the UK Parliament in 2017 as the Cultural Property (Armed Conflicts) Act 2017.[2] In addition to the 1954 Hague Convention, other sources of the relevant international rules include: 1977 Additional Protocols to the 1949 Geneva Convention; customary international law of armed conflict; international criminal law (war crimes and crimes against humanity); international human rights law; the World Heritage Convention; 1970 UNESCO Convention; United Nations Security Council Resolutions; UN Secretary-General's bulletin 1999/13; and regional arrangements.[3]

The 1954 Hague Convention places a number of obligations on armed forces during peacetime, armed conflict and occupation. In peacetime, armed forces are obliged to: communicate the Convention to their personnel by including the protection of cultural property in their regulations and training in order to foster a spirit of respect for cultural property;[4] and, to plan or establish specialists whose role will be to cooperate with the civilian authorities responsible for safeguarding cultural property and to secure respect for cultural property.[5]

During armed conflict, armed forces must: refrain from using cultural property and its immediate surroundings which are likely to expose it to destruction or damage[6]; refrain from acts of hostility directed against cultural property[7]; prohibit, prevent, stop theft, pillage or misappropriation of, and acts of vandalism directed against cultural property[8]; refrain from any act directed by way of reprisals against cultural property[9]; and, respect personnel engaged in protection of cultural property and allow them to continue to carry out their duties where interests of security allow.[10]

In occupation the military obligations are to: as far as possible support competent national authorities in safeguarding and preservingcultural property[11]; take necessary measures (in close co-operation with competent national authorities who are unable to do so) to preserve cultural property damaged by military operations[12]; prohibit and prevent illicit export, removal or transfer of ownership of cultural property, archaeological excavation and any alteration to or change of use of CP intended to conceal or destroy cultural, historical or scientific evidence[13]; and, prevent exportation of cultural property from a territory occupied by it during armed conflict, take custody of cultural property imported into its territory from any occupied territory and return cultural property taken from occupied territory to competent authorities at

[2] UK Government legislation website: https://www.legislation.gov.uk/ukpga/2017/6/contents, accessed at 1400hrs on 12 November 2024.
[3] UNESCO *Protection of Cultural Property, Military Manual*, 2016, paragraphs 7-33, pages 3-10.
[4] Article 7(1),1954 Hague Convention.
[5] Article 7(2), 1954 Hague Convention.
[6] Article 4(1), 1954 Hague Convention.
[7] Article 4(1), 1954 Hague Convention.
[8] Article 4(3), 1954 Hague Convention.
[9] Article 4(4), 1954 Hague Convention.
[10] Article 15, 1954 Hague Convention.
[11] Article 5(1), 1954 Hague Convention.
[12] Article 5(1), 1954 Hague Convention.
[13] Article 9, Second Protocol to 1954 Hague Convention.

close of hostilities, pay indemnity to good-faith holders of cultural property that has to be returned.[14]

For most of history, before and since the advent of relevant laws, the story of armed forces and cultural property has been one of damage, destruction, looting and vandalism. In many respects, this history continues its melancholy march today. However, through this grim history there have been glimpses of a thread of respect for and protection of cultural property and the restitution of looted cultural property in the form of war crimes tribunals[15], legislation[16], United National Security Council Resolutions[17] and the education, training and operational actions of international organisations and armed forces.[18]

Perhaps the foremost glimpse of this thread, and the most relevant for the British Army today, was the establishment and work of two specialist Allied military units during World War 2: the Monuments, Fine Arts and Archives Branch (MFAA) and the Art Looting Investigation Unit (ALIU), a part of the Office of Strategic Services (OSS), the forerunner of the Central Intelligence Agency.[19] While planning the establishment of the modern cultural property protection capability, I was fortunate to have access to the Army Historical Branch, from whom I obtained the original MFAA papers held in the National Archives. I was able to access the reports of and information relating to the ALIU from US and online sources.

In order to bring a capability into the structure of armed forces – particularly, as in the United Kingdom Defence case, one which is a part of the Law of Armed Conflict, a treaty obligation and a 'whole force responsibility' to deliver - it is necessary to put in place the required elements that will ensure that authority is given for the capability, a Defence- level policy is published, military regulations are adapted, doctrine is promulgated, military personnel are educated and trained and specialist personnel are established.

Shortly before the Bill to ratify the 1954 Hague Convention and its two Protocols entered the United Kingdom Parliament for ratification, the Secretary of State for Defence, Michael Fallon MP, announced in Parliament that as part of the ratification process Defence

[14] Chapters I and II, First Protocol to 1954 Hague Convention.
[15] The International Criminal Tribunal for the former Yugoslavia (ICTY, 1993-2017) and the prosecution of Ahmad al Faqi al Mahdi at the International Criminal Court (2016).
[16] 1954 Hague Convention, 1970 UNESCO Convention, 1998 Rome Statute, International laws (including the Law of Armed Conflict) and national laws.
[17] UNSCR 2100 (2013) authorising the MINUSMA mission in Mali in paras 16(f) and 17 permitted 'all necessary means' for the protection of cultural heritage – this can be up to and including the application of lethal force. UNSCR 2347 (2017) addressed the protection of cultural heritage.
[18] Education and training provided by UNESCO, OSCE, EU, ICRC, ICCROM and NGOs and the military cultural property protection capabilities within the armed forces of, *inter alia*, the Netherlands, Austria, United Kingdom, United States and France.
[19] Their roles were to ensure that Allied Forces protected cultural property from damage (air and artillery bombardment) through the provision of lists, photographs and maps, to provide first aid to damaged structures, to document looting and wanton vandalism, to identify those responsible for looting with a view to restitution and war crimes prosecutions as well as the prevention of cultural property being used to finance the continuation of German military operations or a post-war neo-Nazi regime.

would establish a military cultural property protection unit.[20] This announcement subsequently initiated the development of the Defence policy and Army doctrine.

In 2021 the UK Ministry of Defence issued a cultural property protection policy wrapped into the Human Security Policy[21] as one of NATO's cross cutting topics.[22] The Army's Land Warfare Centre wrote a Cultural Property Protection Doctrine Note[23] to provide advice for operational commanders, staff and military personnel. Defence's Manual of Military Law[24] is being updated[25] in order to incorporate amendments such as the Cultural Property (Armed Conflicts) Act 2017, which is the law applicable for UK service personnel. Collectively, these documents meet, in my view, the obligation to introduce into regulations 'such provisions as may ensure observance of the present Convention'.[26]

Knowing what cultural property is where and communicating this information to those involved in the planning and execution of military operations is fundamental to an armed force's ability to deliver against their legal obligations to respect and protect cultural property.[27] In my experience, the only State which has integrated their cultural property data into their military geospatial systems is Estonia.[28]

In order to educate troops to respect cultural property, a cultural property protection page was published on the British Army's Knowledge Exchange (AKX)—an online military research tool on the Army's intranet. We ran military cultural property protection conferences, sought to update the cultural property protection aspects of the Mandatory Annual Military Training Test, published articles in Soldier Magazine, and produced and delivered presentations on the general practice of military cultural property protection and the legal obligations on military personnel and participating in training. Cultural property protection should be included in all appropriate through-career and specialist military education courses.

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[20] Column 628, Hansard, 18 April 2016, Michael Fallon MP, Secretary of State for Defence, in response to an Urgent Question from Robert Jenrick MP.
[21] JSP 985, Human Security, Ministry of Defence, 15 December 2021.
[22] NATO's cross-cutting topics relating to Human Security include: Protection of Civilians (PoC), Children And Armed Conflict (CAAC), Cultural Property Protection (CPP), Women, Peace and Security (WPS), Conflict-Related Sexual Violence (CRSV), Combat Trafficking in Human Beings (CTHB), Sexual Exploitation and Abuse (SEA) and Building Integrity (BI).
[23] Cultural Property Protection Doctrine Note, 19/05, Land Warfare Centre, 2019.
[24] Joint Service Publication 383.
[25] International Society for Military Law and the Law of War (ISMLLW) meeting, update from Strategic Command's Senior Legal Advisor, 5 December 2024.
[26] Article 7(1), 1954 Hague Convention.
[27] UNESCO Protection of Cultural Property, Military Manual, 2016, paragraph 71, page 23.
[28] I was able to utilise this data during the delivery of the UNESCO Military CPP course that was delivered in Tallinn in January 2024. There may well be other States which have achieved this data integration. The United States Defense Intelligence Agency has cultural property data held on MIDB (Modernized Integrated Database or Military Intelligence Integrated Database) which is used for targeting by the Five Eyes community. A failing, in my view, of the 1954 Hague Convention is that it does not oblige States to provide lists, locations and descriptions of their cultural property to UNESCO for use by armed forces during conflicts. This failure means that we are asking military personnel to meet legal obligations to cultural property on the battlefield without providing them with the information required to deliver against them.

Opportunities should be developed to deliver command, staff and personnel training through Command Post Exercises (CPX) – training for headquarters staff without troops - field exercises – training delivered when deployed with troops in the field and Pre-Deployment or Mission Support Training (PDT and MST). During my time in Command of the CPPU, cultural property protection training and information that formed a part of the PDT for British Forces deploying on Op NEWCOMBE, in support of the United Nations' MINUSMA mission in Mali,[29] and on Op ELGIN, a part of the NATO Mission to Kosovo.

The Secretary of State for Defence's 2016 announcement in Parliament provided the political authority for the Ministry of Defence to order the Army to deliver a cultural property protection unit,[30] which it did by establishing the all Reserves and tri-Service Cultural Property Protection Unit (CPPU) with 15 personnel in 2018.[31] This establishment considered the Unit's own training, equipment, personnel, information, concepts, doctrine, organisation, equipment and infrastructure.[32] Of these, identifying the right personnel is, perhaps, the most important task. I imposed criteria that included individuals having a relevant degree, five years relevant experience and current work in cultural property in their civilian occupation. Ideally, they would already be a serving Reserve officer with staff training – quite an ask! We developed a Cultural Property Protection Special to Arm course to train the officers of the Unit. This was delivered first to a UK and international audience in 2019, covering lessons from history, staff planning processes, the legal framework, illicit trafficking, war crimes, targeting, first aid for damaged cultural property and a final practical exercise that included a property to be evacuated, a cultural property refuge and a damaged structure that was followed by a staff planning exercise.

The Law of Armed Conflict requires armed forces to meet obligations to cultural property during armed conflict and occupation. This paper has briefly outlined those obligations and a consideration of the military structure required through which armed forces can deliver against those obligations, in particular within United Kingdom Defence and the British Army.

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[29] The information relating to the cultural property geospatial data and information in the Army's Area of Responsibility was generously provided by academics at universities in the United Kingdom and passed to the Defence Geographic Centre (DGC) for inclusion in geospatial information systems and used for briefing the force prior to their deployment.

[30] Defence instruction to Army Headquarters, 15 September 2016, actioned by Brig Roly Walker (Head of Strategy) on 20 September 2016, by ordering me to carry out the establishment action for the Cultural Property Protection Unit within the Directorate of Information (DINFO).

[31] In parallel to the political authorisation, I had written a Concepts Branch paper titled *Delivering a Cultural Property Protection Capability*, which was endorsed by the Army's Force Development Committee in 2015.

[32] Collectively these are called the Defence Lines of Development (DLODs).

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From Law to Ethics: How U.S. Museums Must Protect Foreign Artifacts Beyond Legal Frameworks

In May 2024, the European Court of Human Rights ruled that Italy is the rightful owner of "Victorious Youth," an ancient Greek statue displayed at the J. Paul Getty Museum in Los Angeles. Image Credit.

***Maureen Pradal & Timothee Charmeil**

Introduction

Western museums are facing an increasing number of claims to return works that were unethically obtained, stolen, or looted and museums in the United States and museums in the United States are no exception to this phenomenon.

In the absence of a clear legal framework or a designated authority to regulate authenticity and provenance, buyers and sellers must exercise care and diligence when handling cultural property transactions. Despite auction houses and dealers providing various ownership and condition assurances and art transactions often include complex complex authentication mechanisms, it remains to buyers and in particular to museums to undertake independent due diligence on the provenance of an artwork. Indeed, provenance research can lead to new information about how cultural property was acquired and its chain of ownership. Lack of proper provenance research can lead to severe consequences: legal proceedings initiated by legitimate owners seeking restitution and reputational damage for the acquiring institution. As recently as early 2024, following detailed provenance research, the Fowler Museum at the University of

California, Los Angeles, chose to voluntarily return several items from its collection to the Asante Kingdom in Ghana.

This article highlights the necessity for U.S. museums to not only adhere to international legal standards in acquisitions but also to develop and enforce robust internal due diligence processes. By prioritizing thorough provenance research, U.S. museums can reduce the risk of legal disputes and restitution claims, especially in an art market that is becoming increasingly expensive.

I) An International Legal Framework Rooted in the Ambiguity of Cultural Property

Navigating international law on cultural artifacts is as challenging as unearthing them, requiring lawyers to skillfully navigate a labyrinth of norms to ensure these treasures remain in their rightful territories or are lawfully exported.

A labyrinth of international conventions

This complexity stems from a tangled web of international conventions – some directly applicable but ratified by too few countries, others widely ratified but requiring incorporation into domestic law, a step rarely taken.

The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, along with its two Protocols, stands as the foremost international treaty dedicated to safeguarding cultural heritage during armed conflict. Yet its scope extends beyond wartime, requiring party States to take proactive measures in peacetime, such as inventorying cultural property, planning for its evacuation, and appointing authorities to oversee its protection. The Convention unequivocally mandates that state parties "undertake to prohibit, prevent, and, if necessary, put a stop to any form of theft, pillage, or misappropriation of, and any acts of vandalism directed against, cultural property."

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is the cornerstone international instrument regulating the global movement and trade of cultural materials. It offers States parties a unified framework to prohibit and prevent the illicit transfer of cultural property and fosters international cooperation to combat trafficking and facilitate restitution. This includes measures such as establishing a list of significant public and private cultural property whose export would result in an appreciable impoverishment of the national cultural heritage.

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects facilitates the restitution of stolen cultural property and the return to their country of origin of artifacts removed in violation of its cultural heritage laws. Uniquely, this Convention is directly applicable, requiring no implementing legislation. Unfortunately, it has been ratified by far too few States.

In addition to these international conventions, a myriad of bilateral agreements further bolsters the protection of cultural property. In accordance with Section 303 of the Convention on Cultural Property Implementation Act (CPIA), the United States has established agreements with several countries, including China, Italy, and Turkey.

Defining the indefinable: the notion of Cultural Property

Despite their differences, these international conventions share a common core: their focus on the concept of 'cultural property'. Not all artifacts are deemed worthy of special protection, but only those elevated to the status of "cultural property." The applicability of these texts thus hinges entirely on the clarity of the definition of cultural property. This is the crux of the issue.

Take, for instance, the Hague Convention, which specifies that for an item to qualify as cultural property, it must be "of great importance to the cultural heritage of every people." While elegant on paper, this definition offers no concrete guidance for identifying artifacts that constitute cultural property. A poem may itself deserve protection, but protecting artifacts requires more than poetic language.

The same definitional issue arises in the UNIDROIT Convention, which describes cultural objects as those that, "on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art, or science and belong to one of the categories listed in the Annex to this Convention." Once again, this definition lacks practical clarity. However, it includes an additional element meant to provide further precision: a list. Yet, it offers little help, as it includes equally vague notions such as "Objects of ethnological interest." Given such ambiguity, it falls to national laws to ensure the effective protection of cultural artifacts.

II) An Intertwining of National Laws: US and Foreign Legislation

Navigating national laws proves to be no simpler task due to the multitude of applicable legal frameworks. At a minimum, two sets of national laws invariably come into play: first, the law of the artifact's country of origin, and second, the law of the purchaser's location (i.e., the United States). On top of these, a third set of national laws often comes into play: the law of the country where the seller is based. Indeed, sellers are frequently located in a third country, distinct from the artifact's place of origin.

Not only are numerous national laws applicable, but these legal frameworks vary significantly from one country to another. In some cases, national laws impose outright prohibitions

on the importation of cultural property from specific nations. For instance, U.S. legislation enforces permanent restrictions on the import of cultural materials unlawfully removed from Iraq after August 1990 and from Syria after March 2011.

US Law

The CPIA serves as the governing law in the United States, incorporating the principles of the 1970 UNESCO Convention into domestic legislation. It prohibits the importation of stolen cultural objects that are listed in the inventory of public or secular institutions in countries party to the Convention. As stipulated in Article 7, "no article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this title, or after the date of entry into force of the Convention for the State Party, whichever is later, may be imported into the United States."

The CPIA grants the Department of Homeland Security the authority to seize and forfeit stolen cultural property, whether at the border or after it has entered the country. To exercise this power, the government need only demonstrate that the cultural property was stolen from an institution after the date when both the United States and the country of origin became parties to the UNESCO Convention (whichever is later) and that the property originated from a documented public collection. Importantly, there is no requirement to prove that the importer had knowledge of or intent to commit any wrongdoing.

The CPIA - limited to civil forfeiture with no criminal penalties - offers weak deterrence and is rarely invoked against traffickers. In contrast, the National Stolen Property Act (NSPA) imposes harsher penalties by criminalizing the knowing transport, receipt, and possession of stolen property valued over $5,000 across borders. This has proven effective in prosecuting the trafficking of stolen artifacts originating from established collections in foreign countries

EU Law

While U.S. museums must navigate the complexities of domestic law, they often face additional challenges posed by European regulations, as sellers are frequently based in Europe.

The export of cultural goods from the European Union is regulated by Regulation (EC) No. 116/2009, which requires an export license issued by the competent authority of the member state where the cultural object is located (art. 2).

Annex 1 of the Regulation provides a detailed list of cultural goods requiring an export license, which is broad enough that U.S. museums will almost always need to secure one when

importing items from EU-based sellers. Notably, the list applies regardless of the cultural goods' origin, extending the license requirement to artifacts originating outside the European Union.

In conclusion, mastery of U.S. law alone is insufficient; it requires a sophisticated understanding of multiple foreign legal systems—an understanding that proves exceedingly challenging for many museums to attain.

III) From Compliance to Commitment: The Need for Ethical Codes in U.S. Museums

Museums are evolving into centers of cultural education, shaping how societies perceive history and heritage. To fulfill this purpose, they must go beyond legal compliance, taking proactive steps to establish self-imposed ethical guidelines. The time has come to move from compliance to commitment.

Codes of Ethics Today: Promises on Paper, Not Practical Norms

Countless Codes of Ethics govern the trade and importation of foreign artifacts. Though not legally binding, these codes are strongly encouraged, despite their evident flaws. These codes vary in their focus. Some target specific stakeholders, such as art dealers—like UNESCO's International Code of Ethics for Dealers in Cultural Property—or museums, exemplified by the ICOM Code of Ethics for Museums. Others address particular art forms, such as the International League of Antiquarian Booksellers (ILAB) Code of Usages and Customs, or specific historical periods, like the Antiquities Dealers Association (ADA) Code of Conduct.

Though fundamentally different in their approach, these codes share one common flaw: the extreme vagueness of their prescribed standards. Rather than setting clear norms, they are filled with lofty intentions and abstract promises. Article 1 of UNESCO's International Code of Ethics for Dealers in Cultural Property serves as a striking example. It states that "Professional traders in cultural property will not import, export or transfer the ownership of this property when they have reasonable cause to believe it has been stolen … or illegally exported." This provision is devoid of substance, as it provides no guidance on the conditions under which a professional trader is expected to have "reasonable cause to believe" an artifact falls into these categories.

Art may embrace abstraction, but its protection cannot.

Codes of Ethics Tomorrow: Turning Ideals into Concrete Standards

To address these gaps, a new framework of concrete ethical standards is needed. We propose that these "Codes of Ethics 2.0" take the form of detailed step plans, outlining specific actions and verifications museums should undertake before acquiring or importing foreign artifacts.

Such an approach would not only enhance the protection of artifacts and cultural property but also bring greater transparency to how museums handle these invaluable items.

For instance, these Codes should not only require museums to consult databases of stolen works before acquiring an artifact but also specify exactly which databases are consulted, as the choice of database can significantly impact the thoroughness of the verification process. These databases fall into three categories: international databases—such as INTERPOL's Stolen Works of Art; national databases—such as the FBI's National Stolen Art File (NSAF); and private databases—such as the Art Loss Register.

Should museums delay taking this path, they may find themselves facing the wrath of public opinion—a tribunal far harsher than any court of law when it comes to foreign artifacts.

Conclusion

In a world where legal frameworks fall short and provenance remains ambiguous, U.S. museums must transcend mere compliance by embracing rigorous ethical standards. From robust due diligence to self-imposed codes of conduct, the path forward demands commitment.

Ethical clarity could be the museum world's true masterpiece.

***Maureen Pradal** (Elvinger US, LL.M. Columbia Law School) & **Timothee Charmeil** (Elvinger US, LL.M. Harvard Law School)

CULTURAL HERITAGE AT WAR –

AI AND POST-CONFLICT ART RECOVERY

The Art Recovery Effort in W.W. II - Report - The New York Times. Image Credit.

***Sarthak Arya and Isha Shroff**

'*Art has always been important in human history since it shows cultural identity and reflects our past.*'

Over the years, wars have regularly harmed this invaluable legacy, leaving a trail of stolen artefacts and destroyed masterpieces in their wake. From the infamous Nazi art plunder during World War II, when countless artefacts were taken from Jewish culture and European museums to the more recent destruction seen in Iraq and Ukraine, the theft and destruction of cultural artefacts during wartime is a terrible pattern that continues to this day. Future generations lose their historical and cultural identity due to these actions.

This article focuses on post-conflict situations and examines the intersection of art crime, artificial intelligence (AI), and International Humanitarian Law (IHL). It explores how AI can support the recovery and preservation of cultural heritage during and after conflict, addressing the urgent need for restitution and protection. Additionally, it will ensure that the regulations controlling these procedures change to reflect new technological developments.

But finding these misplaced gems is no easy feat. The problem is complex: displaced artefacts are hard to track down, and without clear provenance, identifying them can be practically impossible; documentation is sometimes lacking, particularly for old or undocumented works. Ownership disputes, insufficient documentation, and conflicting international regulations create an environment that allows art crime to flourish unchecked, making the legal challenges associated with restitution much more difficult.

The tools we have, however, also change as the world does. AI is one of the new technologies that brings hope for resolving these enduring issues. We can develop cutting-edge methods for identifying stolen or looted works, confirming their legitimacy, and tracking their historical (original) owners using AI. AI offers us a once-in-a-lifetime opportunity to bridge the gaps in traditional art crime recovery methods through image identification, pattern analysis, and cross-referencing massive databases.

Art crimes in conflict areas are not merely theft or destruction—they are deliberate acts to erase history, identity, and memory. When conflict breaks out, cultural heritage is targeted and is viewed as property that should be looted, sold, or destroyed as part of the enormous destruction. In addition to the physical loss of artefacts, these crimes cause profound emotional and cultural harm to the people and communities to which these items historically belonged. *(Oosterman, 2022)*

The 2003 looting of Iraq's National Museum is among the most heartbreaking instances. Armed groups looted the museum, stealing thousands of rare and historic artefacts as the nation fell into turmoil after the takeover. Not only did Iraq lose these items, but all of humanity did as well. The fundamental basis of civilization itself was represented by many of these artefacts, some of which date back thousands of years. Their theft dealt a blow to humanity's collective past. Iraq's cultural legacy has been severely damaged because, although certain artefacts have been found over the years, many more have been lost and are scattered throughout international illicit markets. *(Emberling, 2008)*

In 2001, the Taliban destroyed the Bamiyan Buddhas in Afghanistan, a significant act of cultural erasure and disrespect for Afghanistan's rich history and global cultural heritage. The act was a rejection of diversity and a declaration of ideology. The loss was incalculable regarding its artistic value and the message it conveyed about the frailty of our shared past. *(UNESCO, 2021)*

More recently, a wide range of cultural artefacts have been destroyed and displaced as a result of the ongoing violence in Ukraine. Historical landmarks, churches, and museums have been looted or damaged as the battle continues. The loss of Ukraine's cultural legacy brings to light a tragic fact: art and cultural heritages are frequently destroyed when war breaks out in a country. Finding, tracking, and returning valuable items to their proper homes is becoming more and more difficult as they are relocated, hidden, replicated or sold. It may take generations to restore Ukraine's rich, creative, and historical past, significantly impacting its cultural identity. *(UNESCO, 2024)*

These instances scratch the surface of the more significant trend of art crimes in conflict areas. Art crimes in conflict areas are a vital trend involving destruction, theft, and concealment

of cultural heritages. These crimes symbolise a struggle to preserve a people's soul and culture. International collaboration, technology, and legislation are crucial for preserving these gems and ensuring preservation for future generations. The nexus of international cooperation, technology, and legislation becomes necessary, providing hope amidst severe loss.

With the efforts of IHL in 1954, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict is among the first and most prominent attempts. The ashes of World War II, which saw some of the most pervasive and destructive art crimes in history, gave rise to this historic agreement. The Convention represented a worldwide recognition that cultural legacy must be preserved despite the turmoil of war. It requires countries to respect, preserve, and make it easier for people to return cultural property if it is stolen or looted. Although it was a significant advancement, its practical influence has frequently been constrained by enforcement issues. *(UNESCO, Convention 1954)*

The Hague Convention's original structure gained much-needed teeth in 1999 with the introduction of the Second Protocol. It establishes a twelve-member Intergovernmental Committee to oversee the implementation of the Second Protocol and de facto the Convention. This agreement created stronger safeguards for endangered cultural heritages, especially in contemporary wars where it is becoming harder to distinguish between military and civilian targets. In order to hold people liable for destroying or stealing cultural property, it also reinforced procedures for pursuing infractions. The Second Protocol strengthened the notion that preserving art and history is a shared global obligation by establishing cultural heritage protection as an issue of international law. *(Second Protocol UNESCO, 1999)*

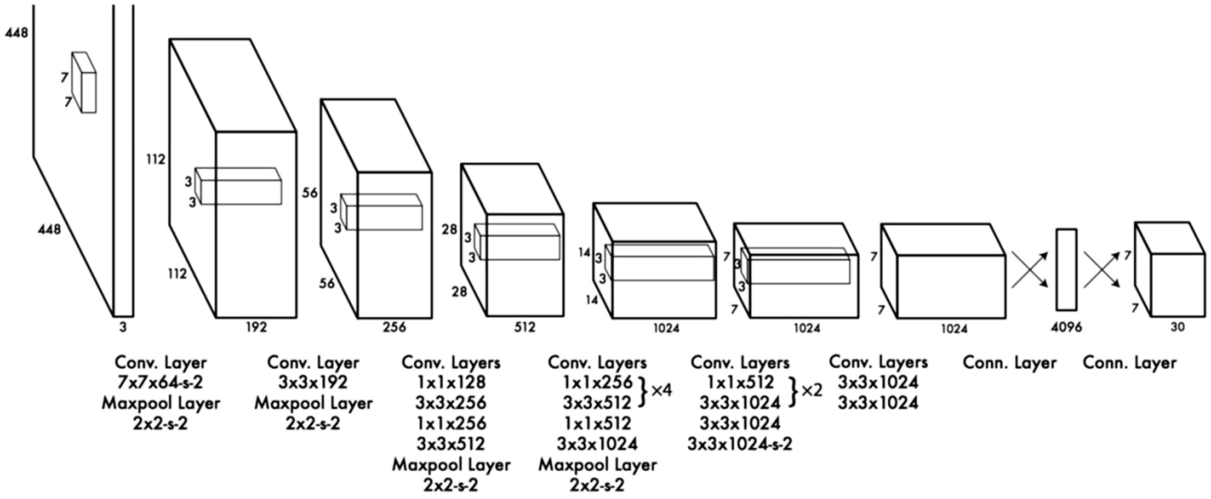
The battle against the illegal trafficking of cultural property has been advanced by the UNESCO and UNIDROIT Conventions. Since the demand for stolen art drives a large portion of looting in conflict areas, these treaties seek to keep looted artefacts out of international markets. These conventions aim to bridge the gaps that enable art crimes to flourish by promoting international collaboration in the tracking and returning stolen artefacts. *(Against Illicit Trafficking UNESCO, 2024)* The challenge lies in strengthening safeguards and utilising advanced technologies to enhance the practical application of International Human Rights Law, ensuring art and cultural heritage are timeless representations of humanity.

A ray of hope for tackling the intricate problems of art crime in conflict areas, particularly in light of IHL, is provided by the quick developments in AI. AI is becoming a revolutionary weapon in the battle against wartime art theft and destruction by filling enforcement gaps and improving our capacity to detect, monitor, and retrieve stolen cultural heritage. There are two main approaches: provenance analysis and deep learning algorithms.

Provenance analysis, which tracks an artefact's ownership history to determine who owns it, is one of the most promising uses of artificial intelligence. This endeavour has historically been challenging since documentation is sometimes lacking or insufficient, particularly for things displaced during conflicts. AI is capable of sorting through enormous volumes of data, including museum inventories, auction house archives, and historical ownership records, to recreate the path taken by a stolen item. This is also a game-changer for bolstering **restitution claims** before IHL tribunals. Claimants have historically had a hefty

burden of proof in art crime proceedings, requiring them to provide copious evidence to support their ownership—something AI could help dramatically reduce. *(Kelly, 2023)*

Deep learning algorithms *(Shrivastava, 2021)* can detect concealed indicators that may have been overpainted, covered, or damaged over time, such as catalogue numbers, seals, or autographs. By analysing high-resolution photos, these sophisticated techniques can reveal information the human eye cannot see, aiding in reconstructing the disjointed histories of stolen artefacts. Consider an artificial intelligence machine that has been taught to identify the faint watermark of an old document or the traces of a long-lost painter's signature hidden beneath layers of overpaint. These discoveries offer an opportunity to return cultural heritages to their proper owners and provide vital proof for restitution claims.



YOLO model ConvNet

Developments in AI have the potential to significantly aid in the restoration of cultural heritage that has been stolen. Applying such technology, however, necessitates striking a delicate balance to handle ethical issues. For AI to be used responsibly in art crime investigations, especially in post-conflict contexts, transparency, privacy, and cultural sensitivity are essential. Transparency fosters trust among stakeholders, including governments, cultural organisations, and communities. However, total transparency may have unforeseen repercussions. For instance, exposing AI techniques or datasets can unintentionally let traffickers or forgers alter documents or produce fake artefacts. Similarly, disclosing information about cultural assets that have been stolen or concealed could unintentionally expose unprotected objects to criminal networks.

Transparency needs to be strictly regulated to reduce these hazards. Only reputable organisations, such as international cultural preservation organisations or judicial bodies, should have access to sensitive AI technologies and datasets. Researchers and academics can still profit from shared anonymised data and generic methodology by finding a balance between advancing research and protecting sensitive data. This methodical approach preserves the trust of impacted communities while guaranteeing the integrity of cultural assets.

It is equally important to address privacy concerns. To preserve the security and dignity of people and communities, AI systems must abide by strict data privacy regulations. To avoid

abuse or illegal access, sensitive data should be anonymised while being analysed and kept in a safe location. Blockchain technology and advanced encryption can provide further security levels, guaranteeing that ownership records are secure and impenetrable. In public reports or presentations, personal information should never be shared without the express permission of all parties. AI-driven investigations can preserve the safety and confidence of the people and cultures they are intended to serve by putting privacy first.

Cultural artefacts are far more than just historical artefacts. They are intricately interwoven with the communities' identity, spirituality, and memory. AIsystems must be designed with awareness of these cultural nuances to analyse and restore cultural property properly. Ignoring these sensitivities runs the danger of creating harm; for instance, restitution procedures may begin without first consulting the proper custodians, or biased datasets may result in the incorrect identification of sacred things. Such errors have the potential to undermine confidence and sustain past injustices.

AI systems must integrate cultural awareness into their design and application to address these risks. This approach resonates with UNESCO’s principles of inclusive and community-driven heritage preservation and the ethical frameworks outlined in the 1954 Hague Convention. Although these rules offer a strong basis for preserving cultural assets, enforcement strategies frequently fall short. By employing machine learning to track down stolen artworks, confirm their provenance, and enable meaningful interaction with impacted communities, AI can help close this gap. The restoration of cultural assets becomes more equitable and inclusive when those most affected are included in these procedures.

Beyond just causing a physical catastrophe, art crimes during times of conflict also target the core of our shared humanity. These crimes, which range from the wilful destruction of historical sites to the looting of museums in war-torn areas like Iraq, Ukraine, and Afghanistan, are attacks on memory, identity, and history itself rather than just theft or vandalism. Even while significant protections are offered by international frameworks like the Hague Convention and UNESCO Conventions, upholding these rights is extremely difficult.

A path ahead is provided by international humanitarian law and technical innovations like artificial intelligence. This combination of technology, ethics, and legislation may fill gaps in cultural heritage protection and return. By helping governments and communities find and restore stolen artefacts, AI can promote justice and reinforce humanity's dedication to preserving its common past.

In the future, cultural asset preservation could be revolutionised by the cooperation of technology, international law, and ethical duty. By bringing these forces together, we can preserve the representations of human tenacity, inventiveness, and individuality for upcoming generations. Cultural heritage preservation is a powerful expression of our shared experiences and global identity, and it goes beyond simple protection.

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The 1995 UNIDROIT Convention's Influence on the Development of Customary International Law for the Return of Cultural Property: The European Court of Human Rights 2024 Judgment in the Case of The J. Paul Getty Trust v. Italy

GIF created by author using public domain images from the J. Paul Getty Museum. Source images include: Statue of a Victorious Youth (Unknown artist, 300–100 B.C.) and Statue of a Victorious Youth (pre-conservation), courtesy of the Getty Museum.

***Ryan P. Walsh**

I. Introduction

The dispute over the Victorious Youth—a prized classical Greek bronze housed at the J. Paul Getty Museum—has reignited longstanding tensions at the intersection of cultural heritage, private property, and international law. The case under consideration concerns a confiscation order issued

by Italian authorities to recover cultural property held within the collection of a U.S.-based museum. While ostensibly a straightforward question of ownership, the case encapsulates a complex transnational dispute involving human rights, cultural property, and the evolution of customary due diligence standards in cultural property acquisitions.

The central artifact in question, the *Victorious Youth*, is a bronze statue from the classical Greek period, currently housed in the J. Paul Getty Museum ("the Getty"). Discovered in the Adriatic Sea in 1964, the statue's provenance reflects a contentious trajectory—passing through several hands before resurfacing in Munich in 1972 and being purchased by the Getty in 1977.

For decades, Italian authorities sought the return of the Victorious Youth without success.[1] After negotiating the return of 40 other objects from the Getty's collection in 2007, Italian officials initiated enforcement proceedings in domestic courts to secure the Bronze's restitution resulting in a contested confiscation order. The prolonged litigation culminated in Italy's Court of Cassation upholding the confiscation order. Following that decision, two key developments took place: (1) the Italian Ministry of Justice sent an international request to U.S. authorities through a bi-lateral Mutual Legal Assistance Treaty ("MLAT") seeking assistance to recover the Bronze; and, in response, (2) the Getty petitioned the European Court of Human Rights ("Eur. Ct. H.R."), asserting the confiscation violated its right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 of the European Convention on Human Rights.

Though novel, *Getty v. Italy* is not the first cultural property dispute brought before the Eur. Ct. H.R. under Article 1 of Protocol No. 1. In 1996, Swiss art dealer Ernst Beyeler petitioned the Eur. Ct. H.R., arguing Italy had violated Article 1 of Protocol No. 1 "…on the ground that the Italian Ministry of Cultural Heritage had exercised a right of pre-emption over a Van Gogh painting which, he alleged, he had lawfully purchased." While both claims invoked the same Article, Beyeler challenged pre-emption, and Getty contested confiscation. In both cases, the Eur. Ct. H.R. noted Article 1 of Protocol No. 1 comprises three distinct rules: "the first rule… is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule…covers deprivation of possessions and subjects it to certain conditions; the third rule…recognizes that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. . . ."

In *Beyeler*, the Court found Beyeler "had to bear a disproportionate and excessive burden" and therefore Article 1 of Protocol No. 1 had been violated. The court distinguished *Getty* from

[1] Italian authorities made numerous attempts to recover the Bronze after learning it was in Munich. *See*, Getty v. Italy, Eur. Ct. H.R. at ¶16 (1973: Italian Ministry official requested German authorities to "intervene to prevent any resale… ." German authorities conducted interviews but determined evidence was insufficient for indictment), *See also* ¶ 20 (1974: Italian Authorities opened an official investigation making a second request to German Authorities for assistance. The request was denied), ¶ 40-41 (1977: after the Bronze was imported to U.S., Italian customs authorities requested U.S. Customs Service to investigate whether it had properly entered the U.S.. Investigators found no violation of U.S. customs law.), ¶ 62 (1989: General Director for Archeological Objects of the Italian Ministry for Cultural and Environmental Heritage requested Getty return the Bronze through a direct plea to the then Director of the Getty. The request was denied.); ¶ 63-64 (1995: Italian Ministry of Foreign Affairs, through the Italian Consulate in Los Angeles, attempted to negotiate with then curator of antiquities at the Getty for the return of the Bronze. The restitution request was dismissed as "unrealistic.")

Beleyer, finding no violation of their right to peaceful possession of property under Article 1 of Protocol No. 1. How did the Court arrive at this determination and what influence did the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects ("the Convention") play in its reasoning? This discussion explores the Court's possible rationale for invoking the Convention in its 2024 judgment on the *Victorious Youth*, situating this within the evolution of customary international law on cultural property and assessing the broader implications of the Convention and the Eur. Ct. H.R.'s judgment in this context.

II. The 1995 UNIDROIT Convention: Persuasive Authority in International Cultural Property Disputes

The Eur. Ct. H.R. relies on the Convention as a normative standard-setting framework and yardstick for measuring the development of international practices related to the return of stolen or illegally exported cultural property. The Convention is not directly applicable to the relationship between Italy and the U.S. because the U.S. is not party to the Convention, and as such, the Convention could not be used as a mechanism to directly facilitate the return of the statue in question. However, the Court observed the relevance of Articles 1, 2, 5, 6, and 9 of the Convention in contemplating its judgement. The Court cited Article 1 because the dispute is of "an international character" about "the return of cultural objects;" Article 2 to demonstrate the Statue falls within the definition of "cultural object;" Article 5 to point to the obligations of a "competent authority" when faced with a "request" for the return of a cultural object illegally exported; Article 6 to address the question of compensation and good faith, and Article 9 to highlight that the rules of the Convention are a minimum standard.

The Court relies on these Articles as persuasive authority to strengthen its final judgement and support its decision that, (1) Italy's confiscation order of the *Victorious Youth* falls within the "public or general interest" exception to the general rule for the protection of personal property embodied in Article 1 of Protocol No. 1 thus allowing Italy to lawfully interfere with the Getty's right to peacefully enjoy its possession; (2) the legal basis for the confiscation order was "sufficiently clear" and "foreseeable" and thereby in accord with the principles of lawfulness; and (3) no violation of Article 1 of Protocol No. 1 occurred.

III. Cultural Property and the "General or Public Interest" Exception

The European Convention on Human Rights establishes property protection as a fundamental right. However, the protection afforded under Article 1 of Protocol No. 1 is not absolute. States retain the authority to interfere with property rights when such interference is justified by a legitimate aim and proportional to that aim—a principle commonly referred to as the "fair balance" test.

In *Getty v. Italy*, the Eur. Ct. H.R. upheld Italy's confiscation order, reasoning it served the "general or public interest" of safeguarding cultural heritage. The Court emphasized cultural property's role in preserving national identity and historical memory. To substantiate this, the Court referenced international legal frameworks, including the 1995 UNIDROIT Convention, as evidence of an emerging consensus around the protection and restitution of cultural property.

While the United States is not a party to the Convention, the Court underscored the Convention's role as a persuasive authority, reflecting broader international legal norms.

IV. Legal Foreseeability and the Evolution of Due Diligence Standards

Once the Eur. Ct. H.R. determined the protection of cultural property was a "general interest" (and thus an exception to the established rule protecting private property), it had to determine if Italy's legal basis for the interference with the Getty's possession of the *Victorious Youth* comported with the principles of lawfulness. To assess the legality of the measure taken, the Court looked at whether the measure was "sufficiently clear" and "foreseeable."

A critical issue in the case was whether the Getty could have reasonably anticipated the legal consequences of acquiring the *Victorious Youth*. The Getty argued Italian law was unclear, citing the lack of a statute of limitations for cultural property. The Court rejected this argument, noting Italian law and the principles enshrined in the Convention place the onus on the possessor to demonstrate good faith and due diligence and that "absence of a time-limit…can[not] automatically lead to the conclusion that the interference in question was unforeseeable."

The Eur. Ct. H.R. cited Article 4 of the Convention, which delineates a robust due diligence standard, as persuasive authority. This standard obligates purchasers to thoroughly investigate the provenance of cultural artifacts and ensures good faith is not presumed but demonstrated. The Court's reliance on the Convention's due diligence framework underscores its normative influence, even in jurisdictions not formally bound by its provisions.

V. Balancing Rights: A "Fair Balance" Analysis in Cultural Property Disputes

The Eur. Ct. H.R. conducted a meticulous analysis to balance the general interest of the community with individual property rights. This assessment hinged on the "reasonable relationship" between the "means employed" (the confiscation order) and the "aim sought" (the restitution of the statue). Central to this balancing test was the due diligence standard embedded in Italian domestic law and jurisprudence, which the Court evaluated for reasonableness.

The due diligence standard applied by the Italian district court mirrors the framework outlined in Article 4 of the 1995 UNIDROIT Convention, which places the burden of proving good faith on the possessor. The Italian Court of Cassation upheld this standard, finding it reasonable based on evidence presented during the Getty's acquisition of the *Victorious Youth*. Notably, the Court pointed to Mr. Getty Senior's expressed doubts about the statue's provenance during negotiations, coupled with the Getty's failure to consult Italian authorities or independently verify compliance with relevant legal requirements.

In its judgment, the Eur. Ct. H.R. specifically referenced Article 4(4) of the Convention, which elucidates the concept of due diligence and underscores the obligation to investigate the provenance of cultural objects thoroughly. This citation served to reinforce the principle that heightened diligence for cultural property acquisitions is both justified and reflective of evolving international norms. The Court concluded the Italian judiciary's application of this standard (here is an English translation of 2018 Pesaro Court Decision rejecting Getty appeal) was neither "manifestly unreasonable" nor inconsistent with the principles of lawfulness.

VI. Conclusion: The Role of the 1995 Convention in Shaping Customary International Norms

In *Getty v. Italy*, the European Court of Human Rights' references to the 1995 UNIDROIT Convention—alongside both Parties' reliance on the Convention in their arguments before Italy's domestic courts—highlight the Convention's growing significance as a normative instrument in international law. This case demonstrates a clear expression of a developing international public order where, in disputes involving states not party to a convention, the principles of that convention are explicitly invoked by non-state parties to substantiate their claims.

By framing the protection of cultural property as a "general or public interest" within the context of property rights under the European Convention on Human Rights, the Court signals the emergence of a due diligence standard in customary law for bona fide purchasers of cultural property. While these due diligence requirements have not yet crystallized as customary international law, the progression toward this status underscores the considerable influence of the 1995 UNIDROIT Convention on both international and domestic legal discourse.

This evolution has significant global implications. As cultural property disputes increasingly involve cross-border complexities, the Convention's principles—operating as both hard and soft law—serve as a model for harmonizing legal standards. The integration of the Convention's due diligence framework into judicial reasoning reflects a broader trend toward standardizing practices that promote transparency, accountability, and fairness in cultural property transactions.

Moreover, the dual role of the Convention as both a binding treaty for State Parties and a persuasive authority for non-Party States demonstrates its dynamic influence in shaping *opinio juris* and contributing to the gradual development of customary norms. This case invites deeper reflection on the interplay between hard and soft law in shaping international legal standards and raises pivotal questions about the mechanisms through which normative principles achieve global acceptance.

In a world where cultural heritage is increasingly viewed as a shared resource for humanity, the principles of the 1995 UNIDROIT Convention stand as a beacon for future disputes. These principles protect cultural heritage and encourage a cohesive international legal framework. The *Getty v. Italy* decision thus underscores the importance of collaborative international efforts in safeguarding humanity's cultural legacy.

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