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The appropriation of cultural heritage expressions and its impact on identity: legal challenges that last from armed conflicts to peacetime

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The appropriation of cultural heritage expressions and its impact on identity: legal challenges that last from armed conflicts to peacetime

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Abstract

This article explores the complex relationship between the appropriation of cultural heritage manifestations – such as cultural objects – and the preservation of a people's identity, addressing the challenges posed both in periods of armed conflicts and in peacetime scenarios. It examines the historical evolution of international legal frameworks designed to protect cultural heritage, focusing on key instruments pertinent to the UNESCO legal regime and with emphasis to cultural objects. The paper highlights how the looting and the destruction of these assets during wartime, particularly during the World Wars, have left a lasting legacy of cultural loss. It also investigates the continuing challenges of protecting cultural heritage expressions in peacetime, where illicit trafficking and the illegal appropriation of cultural objects persist. Through this analysis, the article sheds light on the ethical and legal dilemmas surrounding restitution, emphasising the importance of recognising diverse cultural heritage expressions as fundamental aspects of identity and reparation. It concludes by addressing the role of international organisations such as UNESCO in fostering a global dialogue on cultural restitution, highlighting the need for a balanced approach to preserving both the physical and cultural integrity of heritage in an increasingly globalised world. The study maintains a primarily legal character and rests on a firm theoretical standpoint, based on the analysis of bibliography and international documents.

Keywords: UNESCO. International Law. Cultural Heritage Expressions. Cultural Objects. Cultural Appropriation.

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Abstract

Questo articolo esplora la complessa relazione tra l'appropriazione di manifestazioni del patrimonio culturale - come gli oggetti culturali - e la conservazione dell'identità di un popolo, affrontando le sfide poste sia in periodi di conflitti armati che in scenari di pace. Il documento esamina l'evoluzione storica dei quadri giuridici internazionali volti a proteggere il patrimonio culturale, concentrandosi sugli strumenti chiave pertinenti al regime giuridico dell'UNESCO e ponendo l'accento sugli oggetti culturali. Il documento evidenzia come il saccheggio e la distruzione di questi beni in tempo di guerra, in particolare durante le guerre mondiali, abbiano lasciato un'eredità duratura di perdite culturali. Inoltre, analizza le sfide che continuano a porsi nella protezione delle espressioni del patrimonio culturale in tempo di pace, dove persistono il traffico illecito e l'appropriazione illegale di oggetti culturali. Attraverso questa analisi, l'articolo fa luce sui dilemmi etici e legali che circondano la restituzione, sottolineando l'importanza di riconoscere le diverse espressioni del patrimonio culturale come aspetti fondamentali dell'identità e della riparazione. L'articolo si conclude affrontando il ruolo di organizzazioni internazionali come l'UNESCO nel promuovere un dialogo globale sulla restituzione culturale, evidenziando la necessità di un approccio equilibrato per preservare l'integrità fisica e culturale del patrimonio in un mondo sempre più globalizzato. Lo studio mantiene un carattere prevalentemente giuridico e poggia su un solido punto di vista teorico, basato sull'analisi della bibliografia e dei documenti internazionali.

Parole chiave: UNESCO. Diritto internazionale. Espressioni del patrimonio culturale. Oggetti culturali. Appropriazione culturale.

Introduction

The international legal discourse on cultural objects has evolved around a variety of instruments and definitions, reflecting the complexity and multidimensional nature of culture (Francioni & Lenzerini, 2023). In this context, cultural objects can be broadly understood as physical remnants of the past – human-made items of archaeological, historical, pre-historical, artistic, scientific, literary, or technical significance (Roodt, 2015).

These assets carry historical and symbolic meaning and often become central to disputes over cultural identity, ownership, and restitution.

While cultural objects can fall under the broader notion of cultural heritage[1], as established by various international instruments, the two concepts are not interchangeable. Cultural heritage, particularly as defined by the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (Unesco, 1972), traditionally refers to *in situ* sites, monuments, and landscapes of "outstanding universal value"[2].

According to the Convention, cultural heritage comprises immovable properties rather than movable objects. Therefore, not all cultural objects would fall within the scope of this instrument. Nevertheless, this Convention remains a cornerstone in shaping the normative framework for understanding how culture is valued and protected at the international level (Francioni & Lenzerini, 2023).

It is important to clarify that, for the purposes of this study, we refer to "cultural objects" as a flexible and inclusive category (Unidroit, 2001), encompassing tangible items that may also be considered as an expression of cultural heritage or cultural property under specific conventions or legal systems.

In fact, the terminology around culture in international law is not uniform: "cultural heritage", "cultural property", and "cultural objects" often overlap but have distinct meanings and legal implications.

For instance, cultural property has developed as a specific concept within the law of armed conflict and is treated differently from cultural heritage under instruments such as the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit

[1] For this reason, we adopt the term "cultural heritage expressions" or "cultural heritage manifestations" throughout this paper, as it better encompasses the diversity of cultural forms discussed, including cultural objects and cultural property. It is worth noting that the term "heritage" broadens the scope of what is to be protected, allowing for the inclusion not only of tangible cultural elements but also of intangible aspects and the human connections to cultural objects.

[2] In fact, the 1972 Convention was not intended to cover all forms of heritage. To address this, UNESCO's General Conference adopted a Recommendation promoting national-level protection of significant cultural and natural heritage. This led to further instruments expanding the scope of protection: the 1989 Recommendation on the Safeguarding of Traditional Culture, which paved the way for the 2003 Convention on Intangible Cultural Heritage; the 2001 Convention on Underwater Cultural Heritage; and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

Import, Export and Transfer of Ownership of Cultural Property (Unesco, 1970) and the 1995 Convention on Stolen or Illegally Exported Cultural Objects of the International Institute for the Unification of Private Law (UNIDROIT) (Unidroit, 1995). In general, cultural property can be viewed as movable artifacts with economic value, making them subject to international trade. However, it can also be seen as objects with intrinsic worth, representing human creativity and belonging to a unique or exceptional tradition of craftsmanship, which is currently recognised as “intangible cultural heritage” (Francioni, 2011).

Rather than attempting to rigidly categorise these terms, this paper uses “cultural objects” as the primary reference for discussing international rules and practices concerning their appropriation and commodification. This choice reflects both the analytical focus and the practical challenges arising from disputes involving artworks, antiquities, and other cultural objects.

Given the significance and scope of what cultural objects represent, it becomes essential to understand the international legal mechanisms designed to safeguard them, particularly in the face of threats such as armed conflict, illicit trade, and environmental degradation. Despite UNESCO’s activity and contribution to the diffusion of culture, a lot of cultural objects – and by extension, the cultural identity they embody – remain vulnerable, as many of them are presented in the “Red Lists” of cultural objects that can be subjected to theft and traffic (Unesco, 2023).

This paper explores the legal frameworks regulating the appropriation and protection of cultural objects. In the dynamics of a globalised economy, “cultural sharing” has been seen as beneficial in several aspects: cultural exchange and product marketing are not inherently harmful; rather, the point is to respect different legal values and traditions (Katrini, 2018).

However, there are situations in which this “exchange” may acquire a new connotation and come to be recognised as appropriation – rather than interesting economic

opportunities, which are done by, with the consent and/or under the control of the community of origin.

Thus, after providing a brief overview on the origins of such practices, we investigate whether international law succeeds in creating a balance between legitimate sharing and harmful appropriation. Are we talking only about cultural sharing, or about practices that undermine the identity of peoples?

The study – although drawing on historical and sociological perspectives – maintains a primarily legal character. It is based on a theoretical framework supported by relevant literature and international legal instruments. It is divided into two parts and addresses key issues such as the meaning and implications of cultural appropriation and whether international law effectively supports fair and respectful cultural exchange. The analysis concludes with reflections on the increasing recognition of cultural objects as global assets, which has intensified debates around historical reparation, especially in relation to restitution claims by formerly colonised nations.

1. "Cultural sharing" around the world at different times: appropriating mere artifacts or the identity of a people?

The circulation of cultural objects is a phenomenon that transcends geographic and temporal boundaries. This dynamic between countries and regions is the result of a complex network of reasons and circumstances, being fuelled by a myriad of forces throughout History, such as the ancient recognition of the practice of looting in favour of the winning group in a war (Renfrew, 2014); illegal trafficking, an ingenious tool that has the capacity to redistribute objects from around the world between museum collections, private collections and specialised markets (Piagentini, 2021); and the trade in works of art and antiques, that generated around 67.8 billion dollars only in 2022 (Art Basel and Ubs, 2023).

Contrary to what it may seem, however, the appreciation and sharing of cultural objects can, in fact, cause harm to an expression of the cultural heritage of their countries of origin, since they not only disperse the local collection between different locations across the globe – with the consequent loss of valuable elements for the collection of a given locality or nation – but they also cause a "*progressive distancing from the material culture itself*" of the society in question, weakening the connection of people with their local community and hindering the preservation of a national identity (Piagentini, 2021).

In parallel, the growing interest in local works and artifacts, in addition to stimulating the expansion of the legitimate market, has also the potential to encourage undue subtraction from private collections, museums and places dedicated to religious practice, in addition to looting of monuments and ancient buildings (Unesco, 2020a).

In view of this, the analysis proposed in the first part of the paper is related to the potential that the circulation or "sharing" of these cultural objects around the world has to hamper the preservation of the identity of a people.

Considering that "cultural appropriation" is especially controversial because individuals from affluent and powerful majority cultures often appropriate elements from marginalised indigenous minority cultures[3], we question if "appropriating" cultural objects would contribute to cultural sharing, or, instead, if it could be a tool through which the essence of a group is expropriated?

To address this question, the adopted definition for "cultural appropriation" refers to the appropriation that happens across cultural boundaries, involving individuals from one culture adopting or utilising items created by individuals from another culture for their own use or possession (Young, 2008). We, thus, provide a brief overview from the roots of expropriating cultural property or "cultural appropriation", until the advent of the modern era.

[3] Cultural appropriation is viewed as being intrinsically linked to the oppression of these minority cultures.

2.1. *Brief overview of the expropriation of cultural objects: origins and significance*

The expropriation of cultural objects has its origins in ancient times, having been legitimised by the war customs of remote eras. In a context of armed conflicts, the practice of looting the assets of the losing group in favour of the winners was a prerogative considered lawful and legitimate (Piagentini, 2021). In this sense, it could even be stated that "*stripping defeated cities and even the temples of enemies or their ornaments is an action considered lawful and confirmed by ancient practices*"[4] (Gentile, 1877).

An example of this was the looting carried out by the Roman war campaigns against Mediterranean cities between the second and third centuries BC. The massive expropriation of statues and paintings, carried out mainly by the military leader Marcus Claudius Marcellus, gained even more strength among the Roman generals from then on. They began to loot luxury objects, transforming them into a source of income or decorations for triumphant marches (Jarych, 2013).

It should be noted that, despite the validity attributed to the looting that occurred at that time, there were already controversies regarding the looting of goods considered sacred (Piagentini, 2021). The Roman lawyer and politician Cicero (106-43 BC), by way of illustration, was in favour of prohibiting the "*destruction and looting of sacred goods when this military action was not justified*", that is, "*when it had no use in weakening the enemy*" (Robichez, 2015).

Before him, Polybius already disapproved of the practice of looting temples (Polański, 2014). Following this reasoning, Roman war customs reflected the idea that sacred property should be considered an exception to the right of conquest, highlighting the imposition of severe punishments by the respective Senate on looters for violating sanctuaries (Zhang, 2018).

[4] In the original in Italian: "*Spogliare le città vinte e anche i templi dei nemici dei loro ornamenti è cosa lecita e per antica consuetudine confermata*".

Then, another moment in History in which there was a great wave of circulation of cultural goods was the period of expansionism, mostly at the initiative of European nations. When new regions were found on other continents – in Asia, Africa, the Americas, and Oceania – and with the experience of colonisation, looting became a practice adopted in different parts of the world (Piagentini, 2021).

The first major period of this colonialist trend occurred between the 16th and 18th centuries as a result of great navigations, the expansion of borders and the arrival of the Portuguese and Spanish in America. The 19th century, in turn, witnessed new types of imperialism, for the most part in Asia and Africa, giving way to a significant flow of cultural goods (Piagentini, 2021).

It is no coincidence, therefore, that the 2018 Report on the Restitution of African Cultural Heritage, developed in collaboration with the French Ministry of Culture and the Paris Nanterre University, highlights the central role played by the search for cultural assets and their transfer to European capitals occupied in the colonial enterprise (Sarr & Savoy, 2018).

The Royal Museum for Central Africa, located in Tervuren (Belgium), is one of the living examples of this historical period. Created by Leopoldo II, in 1898, with the aim of serving as a propaganda tool for his colonial project (Africa Museum, 2020), the museum houses a collection of around 120,000 ethnographic objects, predominantly from the region where the Democratic Republic of the Congo is located, in addition to approximately 8,000 pieces originating from the Americas and another 5,000 from Oceania (Africa Museum, 2013).

2.2 *Threats to a people's identity: when sharing becomes appropriation*

Initially, it is worth considering that beyond the legal framework of international law, "heritage" can be understood differently in diverse cultural contexts, broadly including elements of a collective past that remain significant for a current culture (La Salle, 2014).

Thus, tangible cultural heritage is appropriated when an item is removed from the artisan or from the community – nevertheless, artworks are just one of many types of items that could be subject to cultural appropriation (Young, 2008). This form of appropriation resulted, for instance, in the accumulation of many objects from all around the world in famous museums (La Salle, 2014).

Regarding the African continent, specifically, the flow or destruction of cultural objects in the colonial period occurred through some main channels. The first of them is closely related to the imposition of foreign religions on the local population, which led to the abandonment, elimination and/or expatriation of objects that referred to local veneration practices[5]. The flow of objects also took place during the exchange of gifts as a sign of hospitality and through looting or the removal of pieces of art by researchers – who claimed that the artifacts would be objects of study and subsequent dissemination of African art around the world (Shyllon, 2009).

The doctrine of the time did not leave aside issues linked to the colonial reality, stating that, when a Nation took possession of a country, therefore establishing its dominion, everything that was included in the conquered territory would become the property of that nation (Vattel, 2004).

Consequently, the domination would encompass "*ancient and original possessions, as well as all its acquisitions made by fair means in themselves or accepted as such among the Nations* (...)". Also, the assets of individuals, "*taken as a whole, must be considered as assets of the Nation, in relation to other States*", since they are part of the national wealth itself (Vattel, 2004).

In this sense, diplomatic missions and expeditions of an archaeological and scientific nature also had their share of contributions to the international flow of cultural goods. An

[5] In this way, to a certain extent, interfering and seeking to expropriate intangible or immaterial heritage.

example that deserves to be highlighted is that of British diplomacy in the Aegean region throughout the 19th century. This is because, in addition to performing functions of a political nature, the consular service also took on the role of managing the excavations carried out at the site – leading to the acquisition of several pieces that would make up the collection of the British Museum (Piagentini, 2021).

Between the years 1801 and 1805, as well, parts of the sculptures that remained among the ruins of the Parthenon were removed, with the artifacts sent to Great Britain. Thus, approximately half of the original Parthenon sculptures that survived the damage perpetrated over the course of its history are in the British Museum, and much of the other 50% in Athens, Greece (The British Museum, 2019). With that in mind, in 1983 the Greek government requested, for the first time, the return of the monument's friezes, as it was a unique work, therefore belonging to a group which had its integrity broken (Neves, 2020).

The British government, in turn, highlighted a series of reasons for keeping the works under its control. The alleged motives range from the impossibility of completely restoring the Parthenon friezes – considering that 40% of them were destroyed – to the argument that the parts were acquired legitimately, having been rescued from possible definitive dismantling (Neves, 2020).

In parallel to the alleged reasons that led to the expatriation of artifacts and works of art, the commodification of cultural goods was and still is among the main routes that drive the movement of tangible cultural heritage among the most different regions. More specifically, with the redefinition of the concept of art during the Renaissance era, the way in which the pieces produced were sold underwent considerable changes (Piagentini, 2021).

This is, in fact, a period in which art also began to be produced for satisfying higher levels of society, in order to guarantee social self-affirmation, with artists being

“requested and invited to European courts to create magnificent environments, beautify the interior of castles and the arrangement of parks” (Lipovetsky & Serroy, 2015).

It was also at this same moment that interest in Classical Antiquity grew, with the consequent appreciation and incorporation of Greek and Roman works and artifacts into the collections of the richest social strata (Piagentini, 2021).

Later, the modern era in the West is considered another important historical moment regarding the relationships drawn between art and society. With the development of an artistic sphere free from noble and Church domains, especially in the 18th and 19th centuries, the branch of commercial art emerged, focused on profit and immediate success – even if temporary –, seeking to meet and adapt to the demands from the market (Lipovetsky & Serroy, 2015).

These cultural objects, or manifestations of cultural heritage, therefore – cease to be essentially the ancestral representation or symbol of a certain group and –, become a product for commercial purposes: they are yet nothing more than items to be bought and sold (La Salle, 2014).

During this same period, there was a rapidly growth in collections of cultural objects (both public and private), with pieces from different origins and periods, increasing the flow of works of art and artifacts on the international scene. This movement opened up space not only for increasingly specialised professionals who act as intermediaries between market countries and countries of origin, but also gave rise to the emergence of regulations aimed at preventing the emptying of national cultural collections, through the recognition of the illegitimacy of exporting this form of heritage (Piagentini, 2021).

What is certain is that these transformative processes linked to the patrimonialisation of cultural objects have the potential to destroy the nature of cultural heritage as a continually evolutionary process. This usually leads to the underestimation of the potential that cultural objects can have with regard to people’s daily lives, which may

prevent their transmission to future generations – except in the form of evoking a distant past (Sciurba, 2015) – and, consequently, "dispossessing" the identity of a group.

Many of these flows of cultural objects that have occurred throughout History – both in peacetime and in times of armed conflicts and conquest – have gone far beyond mere sharing: the appropriation of such assets can constitute an irreparable loss to the identity of a people or community.

The following section, therefore, analyses how international law has regulated such practices and whether it has managed to ensure that cultural heritage is preserved and not expropriated.

3. The protection of manifestations of cultural heritage under international law: promoting historical reparation?

Until the end of the 19th century, legal frameworks and codified war practices legitimised the right to loot and take for oneself what previously belonged to the losing party (Sarr & Savoy, 2018).

After the repercussions and consequent public discussions about the so-called "artistic achievements" arising mainly from the period of the Napoleonic Empire, however, European nations began to abstain from such practices for a century – at least when they were against each other. On the other hand, the old *modus operandi* continued to be implemented during the wars of conquest in Asia and Africa in the mid-19th century (Sarr & Savoy, 2018).

In this context, it is worth highlighting the important initiative led by Czar Alexander II of Russia, and embodied in the Brussels Draft for an International Declaration on the Laws and Customs of War (1874), which was a step considered as fundamental in the

movement to codify laws relating to armed conflicts (International Committee of the Red Cross, n.d.).

Among the provisions envisaged were those that specifically dealt with acts of looting – preventing such practices in cases where cities had been taken by assault, without forgetting to seek to protect private property from possible looting (Schindler & Toman, 2004)[6].

Despite not having achieved success – mainly due to the lack of consensus among the fifteen Nations involved[7], as several major powers did not fully support the declaration or its principles –, the Declaration became one of the main bases for the establishment of the Hague Conventions on land warfare and their annexed regulations (International Committee of the Red Cross, n.d.).

Another period that encouraged broad debate on this topic was the one that experienced the North American Civil War, with the establishment of the document entitled "Instructions for the government of armies of the United States in the field" of 1863 (Bischoff, 2004), better known as the Lieber Code, designed to establish rules of conduct for Union soldiers during the civil war in the United States of America (USA) (Gesley, 2018), which would later serve as inspiration for the 1907 Hague Regulations and the 1954 Hague Convention (Bischoff, 2004).

Among other provisions, the code provided in its article 35 that "classical works of art (...) must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded" (United States of America, 1863).

[6] For instance, Art.8 stated that "The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences even when State property, shall be treated as private property"; Art. 38 predicted that "(…) Private property cannot be confiscated", whereas Art. 39 predicted that "Pillage is formally forbidden".

[7] Which were Austria-Hungary, Belgium, Denmark, France, Germany, Italy, Luxembourg, the Netherlands, Portugal, Russia, Spain, Sweden, Switzerland, the United Kingdom and the United States of America.

It is, however, from the 20th century onwards that the circulation of cultural goods – lacking robust regulation in more distant times – began to gain more concrete normative contours. International law followed this trend, with the establishment of the Hague Regulations in 1907, containing provisions that not only prohibited the destruction of the property of the opposing nation – except in cases in which it was strictly necessary – but also prohibited the confiscation of works of art (Bischoff, 2004).

It was also foreseen that the inhabitants of the attacked places should protect buildings dedicated to religion, art, and science, indicating them with clear and distinct signs. Such treaties, although binding on the signatory parties, did not guarantee compliance with the established standards to prevent the dismantling of cathedrals, museums, and libraries during the First World War (Bischoff, 2004).

This event, by causing such devastation, led international efforts to be mobilised in order to seek specific regulations aimed at protecting expressions of cultural heritage during conflicts. The result was the establishment, in 1935, of a Treaty known as the “Roerich Pact”, promulgated by the countries of the Pan-American Union (Organization of American States, 1935).

With the advent of the Second World War (1939-1945), however, attempts to defend works and artifacts ended up being emptied, mainly due to the destruction of cultural objects and looting committed by Nazi troops (Bischoff, 2004) – as it will be discussed in the following section.

It is undeniable that the growing complexity in the understanding of cultural heritage expressions has been matched by a corresponding increase in the complexity of the law (Francioni, 2011). In this second part, therefore, we analyse how international law has been working to regulate “cultural sharing” and if it has succeeded in guaranteeing a balance between exchange and “product marketing” done with the consent and/or under the control of the community of origin – or, if instead, it has allowed cultural appropriation to spread.

3.1 *The transformation of the scenario after the Second World War: necessary interventions*

The Second World War brought a new dimension to the damage of different expressions of cultural heritage. In this context, we highlight the actions perpetrated by Alfred Rosenberg, a Nazi ideologist responsible for a special task force – entitled *Einsatzstab Reichsleiter Rosenberg* (ERR) – (Jeu de Paume, 2019) –, aimed at looting public and private objects in invaded European nations (International Military Tribunal, 1947).

The ERR "began operations in occupied France shortly after the invasion (...), when the Führer authorized the seizure (...) of cultural property belonging to Jews and Freemasons, and other 'enemies of the Third Reich'" (Jeu de Paume, 2019).

Among the targets, museums, libraries, collections, and private homes were violated under the Führer's orders, and until July 14, 1944, at least 21,903 art objects located in the West were seized, including paintings and famous pieces. Furthermore, 69,619 Jewish homes were looted in the West, requiring the use of 26,984 train carriages to transport the confiscated furniture (International Military Tribunal, 1947).

Never before have artworks been so relevant to a political movement and never before have they been removed at such a rate; so many have been lost and many others still remain hidden (Nicholas, 1996).

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was established as a result of the devastation caused by the looting and bombing that occurred during that period of war. Known as the "Hague Convention", this was the first treaty aimed strictly at protecting cultural heritage, prohibiting the destruction and looting of properties belonging to the category in question, except in cases where there is imperative military necessity (Bischoff, 2004).

The text of the document provides the definition of cultural property in its Article 1, covering pieces, whether movable or immovable, of great relevance to the cultural heritage of people, such as “monuments of architecture, art or history, whether religious or secular (...) works of art; manuscripts, books and other objects of artistic, historical or archaeological interest” (Unesco, 1954).

In truth, it is possible to state that, based on a broad reading of Article 3, the Convention also seeks to promote general protection of cultural property in times of peace, by providing that the parties must undertake efforts to safeguard “*cultural property situated within their own territory against the foreseeable effects of an armed conflict*”, adopting the measures they deem necessary and appropriate (Unesco, 1954).

Article 4, in turn, provides that there is a duty of respect on the part of the Parties (not only) with regard to cultural assets located in their own territories – as well as those located within the scope of other contracting subjects –, and the responsibility to prevent, if necessary, “*any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property*” (Unesco, 1954).

The Preamble of the Hague Convention does not fail to highlight the importance of protecting this heritage, since “*damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind*”, because “each people makes its contribution to the culture of the world” (Unesco, 1954). This Preamble, in fact, contains the rationale underlying the principle of “respect for cultural heritage”, *i.e.* the principle that concerns the general obligation to respect cultural heritage of significant importance during armed conflicts, specifically by refraining from deliberate destruction and damage (Francioni, 2011).

In this line of reasoning, in parallel to the 1954 Convention, a Protocol was adopted, providing the obligations of the Parties to, during an armed conflict, prevent the export of cultural goods from an occupied territory and, in the case of expatriation, to return the pieces at the end of hostilities (Unesco, 1954). This Protocol has historical importance,

as it highlights the reversal that is taking place, in the understanding and conscience of international society, in relation to the trafficking of cultural goods and the need to operate the return and restitution (Piagentini, 2021).

Later, the second Protocol (1999) – a subsequent, independent legal instrument – provided for the so-called "reinforced protection" for specific cultural assets, endowed with the special conditions provided for in the document – such as the protection of cultural heritage deemed of greatest importance to humanity through internal measures (Comitê Internacional da Cruz Vermelha, 2004).

It should be noted, at this point, that all these legal "interventions" were provided based on the perception of the damage that times of armed conflicts could bring to cultural property.

In conclusion, cultural property became an element for innovation and for the progressive development of the law in at least three key areas: 1) the recognition of attacks on cultural property as international crimes, particularly war crimes and crimes against humanity; 2) the strengthening of individual criminal responsibility under international law – in addition to domestic law – for serious offenses against cultural property; and 3) the ongoing development of state responsibility for the intentional destruction of cultural heritage (Francioni, 2011).

3.2 The protection of cultural heritage expressions in peacetime: obstacles and challenges still present

The process of constructing an international legal regime to protect expressions of cultural heritage in peacetime developed independently of the analogous process for wartime, and is much more recent. It began in earnest only in 1970 with the promulgation of the 1970 UNESCO Convention (Unesco, 1970).

The central difference between the two regimes is that the wartime instruments dedicated to protecting cultural heritage expressions apply mainly to the conduct of armed forces, whereas the peacetime instruments also regulate the conduct of private actors[8]. Another fundamental difference is that peacetime instruments focus primarily on trade in cultural property, whereas wartime instruments also protect its physical integrity (Bischoff, 2004).

Thus, the 1970 UNESCO Convention brings the concept of cultural objects with a broader spectrum – when compared to the definition contained in the Hague Convention (Unesco, 1970). It comes to add to existing international regulations, being the first to address the issue in times of peace (Bischoff, 2004).

In its Article 2, the 1970 Convention reinforces the fact that the import, export and transfer of ownership of cultural property is one of the primary causes of the impoverishment of the cultural heritage of their origin countries, with international cooperation being one of the best methods to protect the cultural property of each Nation against the dangers resulting from these acts (Unesco, 1970).

In addition to such Convention, regarding the protection of cultural objects in peacetime, UNIDROIT also works to contain clandestine actions, having established in 1995 the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Unidroit, 1995).

The 1995 UNIDROIT Convention seeks – to a certain extent – to advance the purpose of the 1970 UNESCO Convention to regulate transnational trade in cultural property. While the protection afforded by the 1970 UNESCO Convention is limited to stolen property that is part of the inventory of a museum or a public monument, the 1995 UNIDROIT Convention extends its protection to any theft of cultural property. Therefore,

[8] For the purposes of this paper, we draw this distinction for didactic clarity. It is, nevertheless, important to emphasise that International Humanitarian Law (IHL) applies to all parties involved in armed conflicts – whether State or non-State actors. This means that non-state armed groups and paramilitary forces are also bound by its provisions. Under IHL, cultural property benefits from the same general protections granted to civilian property, particularly in contexts of occupation and active hostilities.

property stolen from private individuals or private collections, even though there is no official record of it, can be claimed by its original owners (Bischoff, 2004).

With the specific objective of combating illicit trafficking in cultural goods, the 1995 Convention provides a set of rules and mechanisms aimed at facilitating the restitution and return of such goods between Contracting States, as one of the efforts to protect and preserve cultural heritage from each country (Unidroit, 1995). After all, the protection of these resources may rightly require the return of parts of cultural sites that have been removed during an armed conflict or of cultural assets that have been illegally retained (Roodt, 2015).

In fact, several nations that were colonised began to demand the restitution of their cultural property – which had been transferred to the colonial powers during the period of domination. The preservation of cultural assets in their places of origin is an essential factor for a more accurate understanding of past cultures and traditions, consequently, the removal of a cultural object could result in the irreparable loss of this type of understanding (Gerstenblith, 1995).

Nevertheless, regardless of the intense legislative activity of UNESCO[9] – consisting of the development and adoption of recommendations and conventions on the protection of cultural and historical values –, the fight against the practice of clandestinely trading these resources has intensified, just as the awareness of the moral damage caused by looting has increased.

The greed for these objects – whose prices have increased dramatically –, the vulnerability of sites in conflict zones, and the leniency of sanctions are still challenges that need to be overcome to contain the illegal appropriation and commodification of "blood antiquities" (Unesco, 2020b).

[9] As mentioned earlier, this paper primarily focuses on the UNESCO legal framework. However, it recognises that other significant international organisations, such as UNIDROIT, have also made valuable contributions to the protection of cultural property and cultural heritage within their respective systems.

The truth is that, often, the conflict between the countries of origin and those of destination over the restitution of expatriated cultural objects is permeated by a series of narratives. As already noted, several works of art and artifacts left their original lands many years or decades ago – whether through looting carried out in different historical periods, donations, archaeological discoveries, or through illicit trafficking –, so repatriation requests are often affected by the different circumstances that led to their expatriation (Costa, 2018).

At the same time, the recognition, preservation, and implementation of different expressions of cultural heritage – which is of public interest due to its essential impact on society, attributable to its importance for education, economy and, in general, for the entire population (Albu & Lesan, 2021) –, in its complexity, runs the risk of being incompatible with the dynamics of a globalised economy. This current economy imposes criteria of approval, conformity and efficiency that are often difficult to reconcile with the slow times of traditions, knowledge and their transmission (Sciurba, 2015).

The issues raised by restitution are far from being limited to legal aspects relating to legitimate property. They are also political, symbolic, philosophical and identity-based. Restitutions involve deep reflection on history, memories and the colonial past, as well as on the history of the formation and development of Western museum collections; but equally in the different conceptions of heritage, museums and their ways of presenting objects; on the circulation of things and, finally, on the nature and quality of relationships between peoples and nations (Sarr & Savoy, 2018).

Despite the difficulties and challenges encountered in promoting the restitution of these objects and even historical reparation, it should not be ignored that restoring them can be vital, for example, for the reconstitution of the identity of a people (Roodt, 2015). Openly dealing with restitution, therefore, means talking about justice, rebalancing, recognition, restoration and reparation, but above all: it is opening the way for the establishment of new cultural relationships based on a rethought relational ethics (Sarr & Savoy, 2018).

Understanding claims for the return of certain cultural objects requires going beyond the interpretation of applicable international and national laws, focusing on issues of possession, ownership, and reparations, and on conceptual debates about the meaning of national and universal heritage (Losson, 2022).

UNESCO's performance as a normative entrepreneur in this area, nevertheless – although growing –, still has its own limitations (Wiktor-Mach, 2019). UNESCO's paradoxical role stands out: on the one hand, the organisation has promoted the adoption of a series of legal instruments and mechanisms that favour refunds and morally support the principle of returns; on the other hand, these instruments, mechanisms and support often proved to be ineffective in helping to resolve return requests (Losson, 2022).

For instance, in the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage of 2003 – which applies in times of war and in peacetime (Francioni, 2011) –, Member States recall and reinforce the principle of "respect for cultural heritage", while also expressing their "*serious concern about the growing number of acts of intentional destruction of cultural heritage*". They emphasise being mindful that "*cultural heritage is an important component of the cultural identity of communities (…) so that its intentional destruction may have adverse consequences on human dignity and human rights*", and reaffirm their commitment to "*fight against its intentional destruction in any form so that such cultural heritage may be transmitted to the succeeding generations*" (Unesco, 2003). The declaration – as also evidenced by the frequent use of the modal verb "should" –, however, is not legally binding; rather, it reflects the aspirations of Member States (UNFF, 2004).

Besides, the UNESCO regime takes into account mainly the interests of States and non-governmental organisations (NGOs)[10] with a view to protecting cultural heritage as an

[10] Despite the advancement and refinement of international instruments aimed at protecting art and cultural heritage, these regimes also have significant flaws. Typically, they are designed by a specific

end in itself, regardless of the function and representation of these objects for the life of a certain group (Lixinski, 2015).

The result is the alienation of the very communities from which that form of cultural heritage originates, in favour of an almost absolute interpretation of the preservationist paradigm – the physical structure of the cultural heritage must be protected in any case, even if the cost of preservation is the exclusion or severe restriction of important cultural activities from the protected area, with the consequence of transforming that heritage into nothing more than a physical structure, without any cultural life associated with it (Lixinski, 2015).

Despite decades of looting, illicit trafficking and cultural appropriation, these communities and peoples can now count on many means by which they can have their cultural objects restituted or returned[11]. International practice demonstrates genuine advancements in the restitution of cultural property, both in the methods employed and in the proposed solutions, which reflect a broad range of approaches to restitution (Cornu & Renold, 2010).

Developments in this field appear to be guided by emerging ethical principles that shape the formation of both public and private collections – this is one of the reasons why it is also important to use due diligence when acquiring an art object, in order to prevent, mitigate or reduce risks within the context of the art market (Toscano Franca Filho, 2019).

In the future, UNESCO – which continues to be a culturally inclusive forum – will have to seek compromises between diverse interests and perspectives. The basic tension in

group of experts in the fields of art and cultural heritage, and are organised around the interests of these professionals, often overlooking other important aspects related to art and cultural heritage.

[11] The term “restitution” is generally used to refer to property that was looted during wartime or stolen – it always implies an unlawful situation. On the other hand, “return” is the preferred term for property that was taken for the benefit of a colonial power and later restored to its country of origin, as well as for cases involving unlawful export. In the context of colonisation, the question of unlawfulness doesn't arise if the dispossession was in accordance with the national and international laws in effect at the time. In such cases, the return of property is typically based on the necessity of restoring irreplaceable cultural heritage to those who created it.

heritage management – how to balance the need to preserve the past and, at the same time, transform it into an asset for societies and local communities – must be resolved in a discussion in which no country or region is privileged and a true inclusion is promoted (Wiktor-Mach, 2019).

4. Final remarks

Considering the intricate history of cultural appropriation, the analysis presented herein underscores the complexities and challenges inherent in safeguarding different expressions of cultural heritage in the contemporary world. From ancient practices of looting in the wake of military conquests to the commodification of cultural objects in modern times, the history of the circulation of cultural objects reveals how their appropriation has often undermined the identity and continuity of the cultures from which they originated.

While cultural sharing can certainly promote the exchange and appreciation of diverse traditions, it is crucial to recognise the fine line between cultural sharing and cultural appropriation, which can damage the integrity of a community's identity and heritage.

UNESCO's efforts through legal frameworks such as the 1972 World Heritage Convention aim to safeguard both tangible and intangible heritage, yet the persistence of illegal trafficking, looting, and the global art market highlight the ongoing vulnerability of cultural property to exploitation.

Despite the established international norms and protocols intended to protect cultural objects, significant gaps remain in ensuring that they are not stripped from their rightful contexts or commodified to the detriment of the cultural identities they represent.

This paper demonstrates that international law, though instrumental in promoting cultural protection, has not yet fully addressed the complexities of balancing cultural sharing with

respect for local identity and heritage. More robust enforcement mechanisms, as well as a more nuanced understanding of the significance of cultural objects, are essential to prevent further appropriation that undermines the dignity and heritage of nations and peoples.

Ultimately, the challenge remains not only in the preservation of cultural objects but in ensuring that the world recognises their deeper significance. It is critical to approach different expressions of cultural heritage with respect for the communities they represent, and to foster an international legal framework that champions the protection of cultural identity alongside the sharing and appreciation of these invaluable resources. Only then a truly equitable global cultural exchange might be achieved.

The future of cultural heritage protection will require balancing the preservation of cultural objects with the recognition of historical injustices, ensuring that these resources are safeguarded for future generations while also addressing the rightful demands for restitution and reparation.

This paper has contributed to the ongoing discourse by investigating the evolution of cultural heritage protection under international law, the challenges posed by cultural appropriation, and the continued need for legal and ethical reforms to ensure that cultural objects are preserved, respected, and shared in a manner that reflects their true value to humanity. UNESCO, thus, remains an important forum for discussion and international action, being fundamental in balancing the need to preserve the past while transforming it into an asset for local peoples and groups.

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