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USUAL INTERNATIONAL OBLIGATIONS TO PROTECT THE CULTURAL HERITAGE OF PEPOLE

الالتزام الدولي العادي بحماية التراث الثقافي للشعوب

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Abstract:

Parties to various international conventions on cultural heritage are mandated to uphold ordinary circumstances international obligations concerning the safeguarding of their national cultural treasures. These obligations encompass responsibilities for the designation, conservation, and implementation of preventative measures. Moreover, these parties are also obligated to protect the cultural heritage of other nations, with a focus on fostering international collaboration and refraining from actions that could damage the heritage of others. They are further committed to curbing the illicit trafficking and trade of cultural assets by enhancing measures for prevention and deterrence against this intensifying threat.

Keywords: international conventions; contractual obligations; cultural heritage; legal protection; conservation and prevention.

المخلص:

يقع على الدول الأطراف الموقعة لمختلف الاتفاقيات الدولية المتعلقة بحماية التراث الثقافي للشعوب التزامات دولية في الظروف العادية تخص حماية تراثها الثقافي الوطني، والتي تتعلق بتدابير التعيين والمحافظة والوقاية؛ كما عليها التزامات دولية تجاه تراث الدول الأخرى تتمحور حول الالتزام بالتعاون الدولي وكذا الالتزام بالامتناع عن الإضرار بتراث الدول الأخرى، كما تلتزم كذلك فيما يخص منع النقل والمتاجرة غير المشروعة لمختلف عناصر التراث الثقافي بتشديد تدابير الوقاية والردع لهذه الظاهرة الخطيرة والمتنامية.

الكلمات المفتاحية: الاتفاقيات الدولية؛ الالتزامات الاتفاقية؛ التراث الثقافي؛ الحماية القانونية؛ المحافظة والوقاية

1. INTRODUCTION

The scope of international law's protective measures has broadened from individuals to encompass entities that are vital to human existence and cultural identity. In this context, the cultural heritage of communities has emerged as increasingly significant, especially in light of the widespread devastation witnessed during and after World War II.

Global community has acknowledged the imperative to enhance efforts to forge a framework of conventions dedicated to the preservation of this irreplaceable wealth, which underpins the cultural diversity of global populations. This heritage is now explicitly targeted within a worldwide strategy aimed at cultural eradication.

The protection of heritage demands substantial human and material resources, necessitating international support and collaboration, especially given that many threats to heritage are global and transcend national borders. The international community has ratified several treaties that establish a system of enduring conventional

obligations (neither temporary nor exceptional) To ensure a minimum level of protection for peoples' cultural heritage under normal circumstances, and in light of the ongoing looting and destruction of cultural heritage we're witnessing across the world, we question the existence of these obligations within the international convention system and the dimensions of the protection that can be provided through them.

1. National Obligations Toward Cultural Heritage:

This section highlights the crucial responsibility of national governments to preserve cultural heritage, as mandated by the 1972 Paris Convention. It emphasizes that the primary obligation to protect and transmit cultural and natural heritage to future generations rests with individual states, which must effectively use their resources for these purposes.

1-1 Commitment to Designate and Conserve National Cultural Heritage as per the 1972 Paris Convention:

Under international guidelines set by UNESCO, cultural heritage is defined as an

embodiment of traditional culture and creativity, deeply embedded within a specific community. This preservation is regulated by the standards of the 1972 Paris Convention. It is rooted in tradition and heritage, reflecting the community or its members, and acknowledged in response to societal desires as an expression of cultural and social identity, embracing diverse forms of significant value from historical, artistic, scientific, or aesthetic viewpoints."¹Article 1 of the 1972 Paris Convention categorizes cultural heritage into:

- **Monuments:** Architectural works, paintings, and significant archaeological elements like inscriptions and caves, noted for their global importance.

- **Groups:** Sets of buildings, whether separate or connected, that, owing to their architecture, coherence, or integration into the landscape, possess exceptional global value from a historical, or scientific standpoint;

- **Sites:** Collections of buildings, either separate or connected, valued for their architectural, historical, or scientific significance.

The 1972 Paris Convention focuses on tangible cultural heritage, while the 1954 Hague Convention was the first to provide a detailed definition of cultural properties. Article 1(a) of this Convention describes cultural property as:

- both movable and immovable assets of great cultural importance, including architectural works, historic structures, archaeological sites, artworks, manuscripts, books, scientific collections, and archives."²

The 2003 Convention for the Safeguarding of Intangible Cultural Heritage introduced the concept of intangible heritage. According to Article 1, Paragraph 1, it includes:

- Practices, expressions, knowledge, and skills, along with the associated tools and spaces, recognized by communities as part of their heritage. "³

The state is responsible for safeguarding, conserving, restoring, and transmitting this heritage to future generations within its jurisdiction⁴. The state is also compelled to undertake robust and effective measures to

safeguard this heritage within its capabilities in several critical areas:⁵

- Implementing a public policy to actively integrate cultural heritage into community life and general planning strategies.

- Establishing departments as necessary across state regions to protect, conserve, and present cultural heritage, equipped with competent staff and necessary resources.

- Creating scientific and technical studies, and allocating the necessary resources to mitigate threats to cultural heritage.

- Implementing a range of legal, scientific, technical, administrative, and financial strategies to identify, protect, preserve, display, and revive cultural heritage.

- Encouraging the establishment or improvement of national and regional training centres focused on the protection, conservation, and presentation of cultural heritage, while promoting scientific research in these areas.

1-2 Commitment to Preventing Damage to Cultural Heritage Elements:

The 1954 Hague Convention requires state parties to protect cultural properties from harm during peacetime, including by adopting preventive measures. The 1999 Second Protocol to the Hague Convention further specifies steps to ensure minimum protection during peacetime.⁶

These measures are designed not only to mitigate the effects of armed conflicts but also to prepare for natural disasters and other calamities. Such measures include:

- Moving cultural properties away from potential military targets to safer locations.
- Creating comprehensive guides that include necessary maps detailing the locations of these properties, and producing documentary films to highlight their cultural significance.⁷
- Developing emergency plans to protect against structural collapses or fires, including constructing robust or specially equipped storage facilities designed to withstand emergencies and fires. These efforts also encompass restoration initiatives aimed at fortifying structures against bombing raids and other hazards.⁸

2. State Obligations Towards the Heritage of Other Nations

Article 6 of the 1972 Paris Convention outlines:

1. State parties must respect national sovereignty while collaboratively protecting global cultural and natural heritage sites.
2. State Parties agree to help in the protection, and presentation of the heritage when requested by the host state.
3. State Parties must avoid any actions that might damage this heritage in other State Parties' territories.

These stipulations establish duties towards the preservation of cultural heritage across nations, emphasizing cooperation and respect for sovereignty.

2-1 Commitment to International Cooperation

The 1972 Paris Convention highlights the critical role of international cooperation, which can take financial, technical, or scientific forms. Each State Party is urged to seek international assistance when necessary, particularly when the heritage in question holds global significance.⁹

According to the 1972 Paris Convention, states seeking international assistance for World Heritage sites must submit a comprehensive request to demonstrate the need for such aid.¹⁰

2-2 Commitment to Abstain from Damaging the Heritage of Other Nations

State Parties are also committed to avoiding actions, directly or indirectly, that could damage cultural heritage within the territories of other states, as stipulated in the 1972 Paris Convention,"¹¹ Article 07/01 of the 1954 Hague Convention mandates implementing military measures during peacetime to ensure compliance with the Convention and respect for cultural properties.

Article 30/02 of the Second Protocol to the 1999 Hague Convention requires states to include cultural property protection in their military guidelines, emphasizing the military's role in safeguarding heritage during conflicts.¹²

Additionally, State Parties must establish military divisions or specialists

tasked with protecting cultural properties and assisting civil authorities.¹³

3. Obligations to prevent Illicit transfer and export of Cultural Heritage:

Cultural property, as a vital representation of a nation's heritage, derives its intrinsic value from a well-documented understanding of its origin, historical context, and traditional significance. It is, therefore, crucial for each state to safeguard the properties within its territory from theft, unauthorized excavation, export, and illicit transfer, honouring both its heritage and that of other nations.

Recognizing that national efforts alone are inadequate, international collaboration is essential. Thus, the global community has ratified several international conventions aimed at controlling the movement of cultural properties across borders and thwarting their illegal trade.¹⁴

Specific laws also regulate these activities, reinforcing the comprehensive framework for cultural heritage protection.

3-1 Obligations Related to the Domestic Regulation by the State Party

State Parties are required to strengthen their national systems with protective measures to prevent the illicit transfer, export, and trafficking of cultural heritage

1. Establishment of a Specialized Department for the Preservation and Protection of Cultural Heritage Elements:

This includes establishing one or more specialized departments dedicated to the preservation and protection of cultural heritage, supported by adequate funding and qualified staff. As outlined in Articles 04 and 05 of the 1972 World Heritage Convention, these departments are responsible for:¹⁵

- Drafting and implementing laws and regulations to prevent the illegal movement of cultural properties.
- Supervising archaeological excavations, safeguarding cultural properties in their original locations, and protecting sites designated for future archaeological research.
- Establishing rules that align with the ethical principles set forth in international conventions to guide concerned individuals (museum curators, collectors of antiquities,

dealers of antiquities, etc.), ensuring their implementation.

- Implementing necessary educational measures to instil and cultivate respect for cultural heritage across all nations.
- Appropriately announcing the disappearance of any cultural property.

2. National Inventory of Cultural Heritage Elements:

Department referred to earlier is tasked with the creation and regular update of a national inventory of significant cultural properties, both public and private, as stipulated by Article 05 of the UNESCO 1970 Convention.

Inventories play a critical role in identifying cultural properties whose export could severely diminish national heritage, as detailed in the Convention on the Protection of the Underwater Cultural Heritage.

Similarly, Article 03/7 of the 1995 Unidroit Convention clarifies the concept of “*public collections*” by defining them as collections of cultural properties that are registered or otherwise identifiable, forming the basis for the restitution of stolen cultural items.¹⁶

3-2 Obligations Related to Monitoring the Entry and Exit of Cultural Heritage Elements

State Parties are committed to enforcing a series of procedures regarding the movement of cultural properties into and out of their territories, which includes:

1. Mandatory Export License:

State Parties mandate an export license for each culturally significant property that is legally exported. They also enforce a prohibition on exporting such items without the requisite license, particularly targeting those involved in the export or import of these assets.¹⁷

2. Necessary Measures in Accordance with National Laws:

State Parties are required to take actions in line with their national laws to prevent acquiring cultural properties illicitly exported from other countries. In cases where a cultural property is stolen from a museum, public monument, or similar institution and listed in the institution's inventory, legal

mechanisms must enable rightful owners to recover it.¹⁸

Claimants must provide substantial evidence, such as documentation, to support their claim and ensure fair compensation to any bona fide purchaser. They must also handle the costs for returning such properties and ensure these are returned free of customs duties or other charges.

3. State Parties' Commitment to Impose Penalties or Administrative Sanctions :

State Parties need to impose penalties or administrative sanctions on those violating conventions related to cultural heritage. Specifically, the Convention on the Protection of the Underwater Cultural Heritage prohibits commercial exploitation of such heritage and calls for measures to discourage any such activities.¹⁹

This framework aims to reinforce the legal and regulatory barriers against unauthorized activities that threaten cultural heritage.

3-3 Obligations Related to International Cooperation and Coordination:

State Parties are dedicated to enhancing cooperation and coordination to combat the various forms of illicit transfer and trafficking of cultural properties, as outlined below:

When a State Party faces the threat of looting or ongoing risks to its cultural heritage, other concerned State Parties are required to engage in coordinated international efforts to formulate and implement practical measures. This cooperation focuses on overseeing the export, import, and international trade of endangered cultural items. Pending formal agreements, each state is urged to implement temporary measures to avert permanent damage to the cultural heritage of the state making the request. These interim measures include:

- Preventing property transfer actions that could facilitate the illicit import or export of these properties.
- Facilitating collaboration among relevant agencies to speed up the return of illicitly exported cultural items to their rightful owners.
- Allowing claims by legitimate owners or their representatives for the restitution of lost or stolen cultural properties.

- Upholding each State Party's right, as stipulated by the convention, to deem certain cultural properties as non-exportable and to ensure their recovery if exported.²⁰

4. CONCLUSION:

The international convention system for protecting cultural heritage has established a comprehensive and robust framework of obligatory rules, fostering ongoing, mutual, and thorough protection among State Parties. These conventions respect the principle of state sovereignty over territories while assigning primary responsibility to these states for safeguarding their national heritage at both domestic and national levels. This encompasses tasks such as designation, preservation, and protection from damages potentially arising from armed conflicts through pre-emptive measures.

Furthermore, State Parties are required to engage in international cooperation when solicited and to abstain from actions that could harm the heritage of other nations. States are obligated to prevent smuggling and illicit transfers of cultural properties by regulating their entry and exit through measures such as export licenses and notifying the country of origin when possible. Moreover, commitments related to international cooperation and coordination are emphasized to enhance the effectiveness of these measures. Should a State Party seek assistance due to threats like looting of its cultural heritage, other concerned State Parties are expected to participate actively in an international effort to devise and execute the necessary interventions.

While the convention system adopted by the international community is comprehensive and well-organized, covering various aspects related to the protection and preservation of cultural heritage, it still exhibits significant gaps in its implementation and monitoring mechanisms.

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¹³ States have complete freedom to organize such services, and there is no requirement to form related services permanently, Roger O'Keefe et al., op. cit., p 37.

¹⁴ UNESCO Convention on the Measures to be Taken to Prohibit and Prevent the Import, Export, and Transfer of Ownership of Cultural Properties by Unlawful Means.

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