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'All Asiatic Vague Immensities': International Law, Colonialism and the Return of Cultural Artefacts

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'The Trouble with the Engenglish is that their hiss hiss history happened overseas, so they dodo don't know what it means.' A recent addition to postcolonial literature, Sanghera's 2021 text, *Empireland*, begins with this evocative line quipped by the fictional character of Whisky Sisodia in Rushdie's *The Satanic Verses*. Sanghera is arguing, inter alia, for the return of the 'emotional loot' of Britain from across the vast swathes of its former colonies.[1] This empire was, according to a genealogical analogy by Prabhakar Singh, born in a Westphalian wedlock between mercantilism and civilisationism, thrived on Asian and African territories, and served by a concierge found in international law.[2] International law has a colonial grammar and, when conjoined with geopolitics, had a colonizing effect on the Third World. The initial attempt of internationalisation of heritage law through establishing the International Museums Office is a glaring example: the League of Nations recommended that preservation of artistic and archaeological patrimony was of interest to 'civilised states'.[3] The subsequent attempts at codification of international cultural law starting with the 1939 Draft International Convention for the Protection of National Collections of Art and History continued this trend by not providing obligations for the High Contracting Parties with respect to their colonies. Even today, international

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[1] Sathnam Sanghera, *Empireland: How Imperialism has Shaped Modern Britain* (Penguin UK, 2020) 47.

[2] Prabhakar Singh, 'From 'Narcissistic' Positive International Law to 'Universal' Natural International Law: The Dialectics of 'Absentee Colonialism'' (2018) 16:1 *African Journal of International and Comparative Law* 56, at 56-57.

[3] Sebastian M Spitra, 'Civilisation, Protection, Restitution: A Critical History of International Cultural Heritage Law in the 19th and 20th Century' (2020) 22:2 *Journal of the History of International Law* 329, at 338-340.

cultural law offers a fertile ground for the manifestation of various 'dark sides'. One of these is the adroit misuse of colonial syntax under the collective shade of an 'authorized heritage discourse'.[4] This hegemonic discourse, proposed by Western practitioners and experts acting as 'cultural brokers', creates a problem of gaze. Lixinski calls this an exclusionary 'conservation paradigm'.[5] The corpus of international cultural law under the various UNESCO conventions views heritage through a Euro-American gaze of universalism, uniformity, protective custody, state sovereignty, and economic development. When these Euro-American institutions are not viewing cultural heritage as souvenirs, they customarily invoke human rights, albeit excessively focussing on individual rights. Their gaze is from the First World; it is from a distance, with limited interaction with subaltern stakeholders and traditional communities[6] – a gaze reminiscent of Yeats' 'Asiatic vague immensities' in *The Statues*.

This Reflection argues for a chance for redemption of international cultural law, while making a case for the decolonization of European museums through the return of colonial plundered art to communities of origin and the realization of their right to recover their cultural assets. The Third World is still grappling with its *un passé qui ne passe pas*,[7] and the return of portable and tangible heritage including cultural artefacts such as statues, books, paintings, handicrafts, relics, friezes, ecofacts and manuports is a recurring question. In 2020, the French National Assembly voted to deaccession its museums, and return to Benin twenty-six sub-Saharan colonial artefacts and a throne looted as spoils in 1892 from the former Kingdom of Dahomey, and return to Senegal a nineteenth-century sword. Previously, the French President admitted that colonization was tantamount to a crime against humanity. This has triggered a dialectic debate over the return of irreplaceable cultural heritage in the context of the still prevalent ill-effects of colonization as manifested in the form of racial discrimination, postcolonial territorial or sovereignty disputes, irreversible economic drain of former colonies, the stuttering pace of multilateralism, and so on. Coupled with the question of owing reparations and the vehement calls for iconoclasm (including, among other things, the removal or destruction of the confederate statues of colonial figures and changing of racist eponyms as a part of the Black Lives Matter protests), reversing colonial amnesia constitutes arguably the primary challenge, contingent upon the solution of which rests the efficacy of international cultural law.

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[4] Lucas Lixinski, 'Luci e Ombre: The Bright and Dark Sides of International Heritage Law' (2013) 22:1 *The Italian Yearbook of International Law Online* 133, at 144-145.

[5] Lucas Lixinski, *International Heritage Law for Communities: Exclusion and Reimagination* (OUP, 2019) 202.

[6] Ibid, 150-151.

[7] Keun- Guwan Lee, 'Chapter 35: Asia' in Francesco Francioni & Ana Filipa Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law* (OUP, 2020) [hereafter, 'Francioni & Vrdoljak (2020)'] 835, at 848.

This Reflection attempts to, first, establish the importance of tangible and portable antiquities as a part of cultural heritage and for the development of community identity; second, look into the doctrinal divide between universalism and nationalism; third, analyse the applicability and binding value of the various UNESCO and UNIDROIT conventions; fourth, explore the alternate human rights approach premised on the concept of state succession and self-determination; and last, gauge the crystallization of customary international law in this regard.

Construing Culture Without Heritage, Heritage Without Culture

Cultural heritage cannot be delimited exhaustively; it encompasses both tangible cultural and intellectual property as well as non-material intangible aspects of a culture associated with its communities. The prefix 'cultural' is not merely a stylistic addition and requires some unpacking. These tangible and intangible properties obtain cultural value interpreted in the context of their history and geography, and in relation to the communities, their ancestral legacy, and cultural development.[8] This makes them not only tokens of the past, but integral to a community's esteem and a part of its continuous identity development. [9] Moreover, culture thrives in its natural environment, oftentimes sacred.[10] Once divorced from therein, such antiquities are reduced to mere commercial commodities and lose their heritage character.[11] They no longer play a part in civilizational harmony or development and may threaten communities and their heritage with extinction.[12] This acknowledgement of the intergenerational, environmental, and anthropological character of these objects, and their belongingness to a particular peoples, clan or territory that would form their interpretative reference points, compelled drafters to use the term cultural heritage instead of cultural property in the first place and justified their protection under international law.[13]

Lost cultural heritage as it will be discussed in this article entails, among other things, objects damaged or taken as bounty in armed conflicts, wars, crimes against

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[8] Lyndel V Prott & Patrick J O'Keefe, 'Cultural Heritage or Cultural Property' (1992) 1:2 *International Journal of Cultural Property* 307, at 311.

[9] 'Report of the Special Rapporteur in the field of cultural rights', UN General Assembly Official Records, Seventy-first Session, 2016, A/71/317 at para 6.

[10] Dalee Smabo Dorough & Siegfried Wiessner, 'Chapter 18: Indigenous Peoples and Cultural Heritage' in Francioni & Vrdoljak (2020) 407, 410.

[11] Roger W Mastalir, 'A Proposal for Protection of the "Cultural" and "Property" Aspects of Cultural Property Under International Law' (1992) 16:4 *Fordham International Law Journal* 1033, at 1039.

[12] Anthanasios Yupsanis, 'Cultural Property Aspects in International Law: The Case of the (Still) Inadequate Safeguarding of Indigenous Peoples' (Tangible) Cultural Heritage' (2011) 58 *Netherlands International Law Review* 335, at 338.

[13] Ibid, 343.

humanity, or genocide. It includes for example organized looting of Jewish property during the Holocaust, objects stolen or illicitly traded during peacetime, and objects taken during colonial expropriation.[14] The first two categories are subject to adequate protection in private international law, domestic statutes,[15] as well as the decisions of the International Court of Justice, the International Criminal Court, and ad hoc tribunals. However, colonial expropriation has scant mention. Apart from the level of protection, even the preferred terminologies are different. While 'restitution' refers to the restoring of cultural heritage lost to theft, trade, armed conflicts or unlawful excavations, 'return' is used to imply the restoring of antiquities subject to colonial accession.

Universalism Versus Nationalism

Cultural universalism or internationalism is posited on the idea that cultural heritage cannot be cabined within state boundaries and belongs collectively to all humankind.[16] The 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage provides that 'outstanding universal value from a historical, aesthetic, ethnological or anthropological point of view' is a qualifier for considering an object or a group of objects as cultural or natural heritage. Once classified, cultural or natural heritage becomes of 'outstanding interest and therefore needs to be preserved as part of the world heritage of mankind as a whole'. The rationale is an extension from the collective responsibility of states to safeguard cultural property. This idea is iterated in the 1954 Hague Convention for the Protection of Cultural Property, which considers any damage to cultural heritage and property anywhere as damage to the cultural heritage of all humankind.

Universalists argue that the distribution of cultural heritage across continents ties cultures together and promotes a shared heritage, knowledge, and dialogue. This way museums become reinterpretative agents of 'interculturality'. This is the stance of the United States and others, as reflected in the *travaux préparatoires* of the Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Sale of Cultural Property of 1964.[17] Universalists argue that European museums are non-sectarian, cosmopolitan, and encyclopaedic in outlook, and since

[14] Karen Goepfert, 'The Decapitation of Rameses II' (1995) 13:2 *Boston University International Law Journal* 503, at 504.

[15] Elizabeth A Klesmith, 'Nigeria and Mali: The Case for Repatriation and Protection of Cultural Heritage in Post-Colonial Africa' (2014) 4:1 *Notre Dame Journal of International & Comparative Law* 45, at 49.

[16] Yupsanis (2011) 344.

[17] Ana Filipa Vrdoljak & Lynn Meskell, 'Chapter 2: Intellectual Cooperation Organisation, UNESCO, and the Culture Conventions' in Francioni & Vrdoljak (2020) 32.

they are endowed with resources and archaeological technologies, they are capable of offering better protection and wider public accessibility to cultural heritage than communities of origin themselves or national museums in the Third World.[18]

On the other hand, cultural nationalism advocates the return of colonial artefacts on the grounds that the tangible link between a community's cultural heritage and their territory of origin must not be severed if there is to be a proper interpretation of the cultural heritage. This includes reconstruction of the past and present ethnic identities of the peoples and preventing the turning of the 'societies of origin from history's objects into subjects'.[19] Cultural nationalists argue that cultural property constitutes a part of national cultural heritage. This stance is supported by the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, which suggests that cultural property is a part of the national culture, the true value of which can be appreciated only in relation to the civilizational origin, history, and traditional setting.

History is witness to the damage caused to artefacts as they were negligently uprooted and transported out of colonized countries. For example, the original sculpture panels of the Amravati Stupa in present-day Andhra Pradesh, India, were excavated by Sir Walter Elliot in 1854 and then taken away to far off places and used as lawn adornments by colonial officers. The panels suffered great damage en route, impeding reconstruction efforts of the monument in India. Similarly, the ancient Greek Elgin marbles, which were removed from the temples in the Acropolis of Athens, suffered a great deal of discolouration and damage due to pollution after transportation to London, accidents, vandalism, thefts, and erroneous cleaning and moulding. 'Secured' in Western metropolitan cities, these antiquities are not within the practical reach of the peoples from their respective societies of origin, nor readily available for scholarly or educational work. According to Felwine Sarr and Bénédicte Savoy in the 2018 report commissioned by the French government, African national museums have only around three thousand cultural heritage objects of minor significance. Historians, art aficionados, and researchers can attest that accessioning images of artefacts, manuscripts, and so on in the West entails a herculean ordeal through intellectual property barriers and expensive reproduction requests.

Admittedly, the interchange of cultural property among various nations fosters cultural exposure and appreciation for diversity. However, scholars have warned against reading interchange as synonymous to exchange or retention.[20] Societies of

[18] Evelien Campfens, 'Whose Cultural Objects? Introducing Heritage Title for Cross-Border Cultural Property Claims' (2020) 67 *Netherlands International Law Review* 257, 266.

[19] Yupsanis (2011) 345.

[20] Vrdoljak & Meskell (2020) 32.

origin not only have the right to access, use, and enjoy their heritage, but also the responsibility to safeguard and transmit it to their future generations and make changes thereto if compelled by need or to make them relevant.[21] The indispensability of these collective rights in the context of Indigenous and Tribal Peoples has been reinforced in the Indigenous and Tribal Peoples Convention (ILO Convention No. 169 of 1989). According to the International Council of Museums, there is no exclusivity or dichotomy between the legitimate desire of states to preserve their own national and cultural heritage and the idea of a universal cultural heritage.[22] Importantly, interculturality or accessibility should not be prejudicial against societies of origin or used as an excuse for colonial injustice. An equitable interaction of cultures out of reciprocity and mutual respect is the *sine qua non* of interculturality.[23] A balance which rests on historic wrongs and tilts in favour of retention by colonial museums against realization of the collective rights of postcolonial communities is far from equitable.

International Conventions

Most UNESCO and UNIDROIT conventions pertain to military conflicts or illegal thefts and are not directly applicable to colonial expropriation per se. The 1970 UNESCO Convention is the first international legal instrument aimed at safeguarding cultural property and heritage during peacetime. However, its ambit is limited to thefts, clandestine excavations and illicit exports. According to Article 11 of the Convention, illicit implies the 'export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country for a foreign power'. Further, Article 12 prescribes that state parties shall 'take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property' in the 'territories for the international relations of which they are responsible'. While the Convention makes no explicit mention of cultural property acquired by means of colonization, the *travaux préparatoires* mention that such territories were intended to include colonies for the purposes of the article.[24] Apart from inclusion, another issue is the non-retroactivity of the Convention, which impedes applicability to cultural property removed during historical colonization. Article 15 allows state parties to conclude special bilateral agreements among themselves regarding restitution of cultural property that has been dislocated from the territory of origin prior to the Convention entering into force. Suggestions to extend the

[21] Dorough & Wiessner (2020) 409, 411.

[22] Vrdoljak & Meskell (2020) 32.

[23] Ibid, 420.

[24] 'Means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property', UNESCO, 1964, SHC/MD/3, at para 67.

applicability of the Convention to important cultural properties inalienable and inseparable from the cultural and civilisational history of the state or territory of origin had been rejected as evidenced by the *travaux préparatoires*.[25] In any case, the Convention is non-self-executing, which allows for evasion by states.

Similarly, the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects does not address colonial expropriation and is limited to theft and illicit export. It is also non-retroactive in application. However, Article 10(3) states that non-retroactivity does not legitimise any illegal transaction which that took place prior to the entry into force of the Convention. Further, non-retroactivity does not limit the rights of the states to make claims or avail remedies for the restitution or return of stolen or illegally exported colonial heritage. According to Article 5(3), states can be ordered to return stolen or illegally exported colonial heritage if the requesting state satisfactorily establishes that the removal from the territory of origin significantly impairs the physical preservation of the property or its context, or the integrity of a complex object, or the preservation of information or scientific or historical character, or the traditional or ritual use of the object by communities of origin, or if the object is of significant cultural importance for the state.

Additionally, there is the UNESCO Intergovernmental Committee, a permanent intergovernmental body independent of the 1970 UNESCO Convention, which facilitates bilateral negotiations over restitution and returns of cultural property, including cultural property which possesses spiritual value and cultural heritage that has been lost due to colonial or foreign occupation.

The jurisprudence has not yet matured to answer two contentious legal questions: Why should the artefacts and antiquities be returned when they were not unlawfully or illicitly transferred and were taken away legitimately or consensually? Why should objects moved prior to the entry of force of Conventions, particularly those moved during colonization, be returned in light of the non-retroactivity of state party obligations?

With respect to the first contention, admittedly, much of the dislocation was through explorations, expeditions, scientific or civil missions, or even donations and purchases, which *prima facie* might seem lawful. However, as Sarr and Savoy aptly note, many of these transactions were in reality akin to 'forced methods for purchases' and 'raids'. They call such transactions 'rationalized systems of exploitation'.[26] The explicit constraints in the form of taxes, threats, and reprisals make it hard to believe that natives either consented to or were compensated for such transactions. Consequently,

[25] 'Means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property', UNESCO, 1970, SHC/MD/5, at 10 (Annex. II).

[26] Sarr and Savoy (2018) 56-57.

they recommend that the cultural property so acquisitioned should be returned, unless there is categorical evidence or information which corroborates that natives had full knowledge and had given consent freely. The same rationale had been applied in favour of the return of Jewish owned artworks seized by Nazis. Notwithstanding the receipts and records of voluntary sale, these agreements were often rendered void on both moral and legal grounds owing to indications of duress, undue influence, and compromise to obtain visas for safe relocation.[27]

With respect to the issue of non-retroactivity, bilateral negotiations outside the 1995 UNIDROIT Convention could be viably explored to ensure as per Article 10(3) that there is no legitimization of past wrongdoing. Another potential avenue for exploration is that restitution of cultural property subject to theft, pillage, misappropriation, or vandalism germinated as a principle of customary international law in the eighteenth century and gradually evolved until its codification in various UNESCO conventions. Zhang Yue undertakes an interesting intertemporal analysis to establish the same, albeit in the context of wartime plunder. He traces the trajectory of the evolution of the customary norm from the *res divini iuris*, which is the divine Roman law protecting sacred objects from state ownership or control, up to the early UNESCO conventions of 1899 and 1907. If it is indeed agreed that colonial expropriation did not occur in abstract, but through means of theft, misappropriation, and vandalism, or even during incursions and wars that are prohibited under customary international law, why should the principle of restitution not be extended to colonial plunder as well? History is replete with instances where colonizers looted antiquities as part of wars. For example, in the 1892 Franco-Dahomean war, which led to the latter's colonization until 1959, France looted expensive artefacts that are only now being returned. In the Siege of Seringapatam in the final Anglo-Mysore War of 1799, Tipu Sultan was defeated by Arthur Wellesley's British troops. Wellesley had admitted in a letter that "scarcely a house in the town was left unplundered" and had even offered the loot for sale.

In any case, it is not that colonization or the systemic dislocation of cultural property stopped with the coming into force of the UNESCO conventions. According to Sarr and Savoy, African cultural artefacts were frequently acquired by French museums until as late as 1994.[28] These were either previously acquired in colonial conquests, or handed down by colonial officials and their families, or acquired from the art markets.

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[27] Karin Edvardsson *Björnberg*, 'Historic Injustices and the Moral Case for Cultural Repatriation' (2015) 18:3 *Ethical Theory and Moral Practice* 461, at 464.

[28] Sarr and Savoy (2018) 49.

Alternative Approaches of State Succession and Self-Determination

Some, like Ana Filipa Vrdoljak, have favourably turned to the concept of state succession to make their case for restitution.[29] Article 15(e) of the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts stipulates that 'movable property, having belonged to the territory to which the succession of states relates and having become state property of the predecessor state during the period of dependence, shall pass to the successor state'. Further, Article 15(f) provides that 'movable state property of the predecessor state … to the creation of which the dependent territory has contributed, shall pass to the successor state in proportion to the contribution of the dependent territory'. Furthermore, according to Article 28(4), the predecessor state shall cooperate with the successor state for the recovery of articles dispersed from the dependent territory of origin which the latter has succeeded to. Not very different is Article 4(a) of the 1970 UNESCO Convention, which states that cultural property created by the nationals of a state constitutes cultural heritage of the respective state. The provisions on state succession codify the principle of equity in preservation of cultural heritage of occupied peoples, and make for a tenable alternate route for establishing restitution or return claims.

Human rights treaties can also make the restitution case. This is hinted in the 1966 UNESCO Declaration of Principles of International Cultural Co-operation, which provides that 'every people has the right and duty to develop its culture' and this principle must be applied with due regard for human rights. The Declaration on Granting Independence to Colonial Countries and Peoples (UNGA Resolution 1514 of 1960) has acknowledged that colonization impeded the cultural development of colonized peoples and hindered the realization of their right to cultural self-determination, which is a norm of peremptory character (along with the prohibition of racial discrimination and apartheid, and the prohibition of slavery, in draft conclusion 23).[30] The human right to self-determination is in Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Articles 27 and 15 of the Covenants respectively guarantee community rights to minorities to enjoy their own culture, which includes a way of life closely associated with the territory and the use of its resources as attested by the Human Rights Committee's General Comment No. 23. The 1995 UNIDROIT Convention also embraces the idea that the right to cultural self-determination cannot be progressively met in absence of their cultural heritage, created on their territory by their own genius.

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[29] Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (CUP, 2006) 202.

[30] UN International Law Commission, *Peremptory norms of general international law (jus cogens)*, UN Doc A/74/10, https://legal.un.org/ilc/reports/2019/english/chp5.pdf (accessed 14 October 2021).

Specifically with regard to the rights of Indigenous and Tribal peoples, pursuant to Resolution 5/2012 of the International Law Association, states are obligated to recognize, respect, safeguard, promote and fulfil the rights of Indigenous and Tribal Peoples to their resources. Additionally, according to Karolina Kuprecht, an Indigenous or Tribal community's right to repatriation in cases of dispossession from ancestral land, which is well established by regional human rights courts, can be effectively transposed to make a case for repatriation of cultural property as well. This is because both are conjunctive rights owing to the uncompromisable link between the community, its land, and cultural heritage.[31] Thus, retention of cultural artefacts also leads to a loss of cultural identity of a nation and in turn its sovereignty.[32] Admittedly, the continuing colonization of Indigenous and Tribal peoples is distinguishable from the experiences of postcolonial communities of origin or national communities at large. This reflection attempts to make a case only for the restitution of artefacts through the axioms of general international cultural law binding on states.

Customary International Law and the Doctrine of Specifically Affected States

As mentioned, restitution of cultural property lost due to theft, pillage, misappropriation or wartime plunder is customary international law. Customary law can also be extended to restitution of cultural property lost to colonial expropriation. There is ample state practice and *opinio juris* evidenced by the administrative acts of states, their diplomatic conduct especially at international and intergovernmental conferences, decisions of national courts, and teachings of the highly qualified publicists of these states, and so on. Numerous states have started exerting pressure on their former colonizers to return their cultural artefacts. India has long demanded that its lost heritage be returned, including the Kohinoor diamond, which has become emblematic of its restitution struggle. China too has been a vocal critic of commercial trade of antiquities of Chinese origin in other countries, most notably the 2009 auctioning of Yuanmingyuan artefacts that the British and French expeditionary forces looted during raids on the Old Summer Palace in 1860.[33] Sri Lanka and Indonesia have been liaising with Dutch museums and private collectors seeking return of objects taken away in the sixteenth century. Similarly, South Korea, Cambodia, Laos, and other states, are demanding a return of their respective colonial heritage. Pressure is mounting from African countries as well. An Ethiopian obelisk looted by Mussolini from the city of Axum during the Italian invasion is now being returned. Germany is

[31] Karolina Kuprecht, *Indigenous Peoples' Cultural Property Claims: Repatriation and Beyond* (Springer, 2014) 175.

[32] Siegfried Wiessner, 'Culture and the Rights of Indigenous Peoples' in Ana Filipa Vrdoljak (eds.), *The Cultural Dimension of Human Rights* (OUP, 2014) 118.

[33] Keun- Guwan Lee (2020) 836, 838.

finalizing the return of royal bronzes from the Kingdom of Benin to Nigeria. There are also calls by Algeria and the Democratic Republic of Congo, as well as in the Caribbean and Pacific from Jamaica and Easter Island. With a welcome focus on human rights and cultural diplomacy, former colonies are beginning to acknowledge and remedy historic wrongs. In addition to France, the Netherlands has also committed itself to an unconditional return of looted museum objects to former colonies by bringing its museums under a National Policy Framework. The country intends to include its former colonies in the finalisation of the legislative framework in an endeavour to avoid a neo-colonial approach.

State practice is not just limited to bilateral demands. Domestic courts have begun to interpret international human rights law progressively to approve restitution claims. The Consiglio di Stato of Italy deemed in 2008 that the retention of the Venus of Cyrene, a headless marble sculpture, violated the right of self-determination of the peoples of its former colonies, in this case Libya, and ordered its return. The 1973 UN General Assembly Resolution 3187 passed with an overwhelming majority and deplored 'the wholesale removal, virtually without payment, of objets d'art from one country to another, frequently as a result of colonial or foreign occupation'. The Resolution called upon states to prohibit the continuing expropriation of such artworks in light of their 'special obligations'.[34] The International Law Association's Committee on the Rights of Indigenous People also noted that norms of customary character had developed on the preservation of cultural heritage and identity, right to traditional resources, and reparation and redress.[35]

States specially affected by the subject-matter can independently give birth to customary norms notwithstanding the support of other non-specially affected states.[36] The state practice and *opinio juris* of states that have been former colonies and hence at the receiving end of colonial oppression and expropriation carries more weight in this regard. Consequently, owing to widespread and representative participation by former colonies whose interests are specially-affected, it can be argued that a customary international law norm for restitution has crystallized. The practice of such states should be ascribed greater weight in such situations so as to rebalance of scales in custom formation until now weighted in favour of the global North.

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[34] Sebastian M Spitra, 'Civilisation, Protection, Restitution: A Critical History of International Cultural Heritage Law in the 19th and 20th Century' (2020) 22 *Journal of the History of International Law* 329, at 347.

[35] Dalee Smabo Dorough & Siegfried Wiessner (2020) 423.

[36] Kevin Jon Heller, 'Specially-Affected States and the Formation of Custom' (2018) 112:2 *American Journal of International Law* 191, at 207.

Conclusion

In A Plea for the Return of an Irreplaceable Cultural Heritage to those who Created It, former UNESCO Director General Amadou-Mahtar M'Bow solemnly called upon states to return cultural properties to the countries from which it they were taken. He asked that at least those items that best represent the culture of the societies of origin, and that are most vital to them, be returned by means of bilateral agreements, donations, or fair exchanges. Such action would not only help peoples recover a part of their memory and the ability to self-determine their identity, but to also foster respectful civilizational dialogue.

According to Sundhya Pahuja, while the colonial character of international law has gradually become more ambivalent and diluted, minimizing the imperial character of international law is a continuous project for the Third World and requires ongoing strategies of decolonization. Returning a museum's colonial inventory is one way to enact such decolonization. Museums usher in aesthetic and political narratives alike, and in this sense they act as constitutional spaces, albeit requiring adequate representation of communities, inclusion of and access to all, protection of ownership and intellectual property rights of communities of origin, and above all an audit of their colonial past and loot.[37] By shedding their Hobbesian adjective, as Dan Hicks argues in his compelling recent book *The Brutish Museums*, museums can be a transformative weapon in their own right.[38] Through the return of colonially expropriated artefacts, some human rights violations are redressed, as are some of the vestiges of colonial injustice still experienced by peoples as the 'afterlife of colonialism'. The restoration of these objects offers international law a path to redemption where it may escape from the brooding omnipresence of absentee colonialism.

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[37] Stacy Douglas, 'Museums as Constitutions: A Commentary on Constitutions and Constitution Making' (2015) 11:3 *Law, Culture and the Humanities* 349, at 350.

[38] Dan Hicks, *The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution* (Pluto Press, 2020) 7.