POLITICS, LEVERAGE, AND BEAUTY: WHY THE COURTROOM IS NOT THE BEST OPTION FOR CULTURAL PROPERTY DISPUTES

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I. INTRODUCTION

A museum’s acquisition of antiquities and cultural property creates sensitive issues that should be carefully considered.1 Cultural property is at risk of being destroyed because of pillaging and looting of ancient art.2 Countries can protect their cultural property through international agreements, such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict (“1954 Hague Convention”) or the United Nations Educational, Scientific, and Cultural Organization’s (“UNESCO”) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“1970 UNESCO Convention”).3 Furthermore, according to the International Council of Museums (“ICOM”), museums should conform to such international agreements when acquiring pieces for their collection.4 If a country claims a museum illegally obtained cultural property, legal action may ensue.5

This Article will first discuss the concepts of cultural property and the restitution of such objects to their country of origin.6 Next, different international agreements will be discussed to present some of the options countries have to protect their cultural property.7 Further, museums’ acquisition guidelines, as set forth by professional associations, will be examined.8 Then, a dispute between Peru and Yale University, as well as a separate dispute between Italy and the J. Paul Getty Museum, will be discussed to show how countries resort to legal actions in

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2 Id.


6 See infra notes 12–16 and accompanying text.

7 See infra notes 17–61 and accompanying text.

8 See infra notes 62–78 and accompanying text.
demanding the return of their cultural property. This Article argues while legal action is available for repatriation cases, it is not the most effective option. Additionally, given the international nature of repatriation actions, this Article argues cooperation and respect are vital in avoiding legal battles and obtaining private agreements to resolve the parties’ disputes.

II. BACKGROUND

A definition of cultural property can be found in the United Nations Educational, Scientific, and Cultural Organization’s (“UNESCO”) Convention to stop unlawful transfer of cultural property. In this Convention, cultural property is property designated as being important to a state’s history, archaeology, science, and art. This includes archaeological discoveries, antiquities, and historical monuments. It also includes objects of artistic interest, like drawings, paintings, sculptures, and statues. Many countries accepted or ratified the UNESCO Convention, so this description provides a generally acceptable definition to use for further discussion in this area of law.


The Convention for the Protection of Cultural Property in the Event of Armed Conflict (“1954 Hague Convention”) was adopted in 1954 at The Hague in response to mass destruction of cultural property during World War II. The 1954 Hague Convention states that damage to a particular country’s cultural property is damage to mankind’s cultural heritage. The contracting parties (“Parties”) agreed that cultural heritage should receive international protection, and such protection would not be effective unless countries began organizing

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9 See infra notes 79–143 and accompanying text.
10 See infra notes 144–202 and accompanying text.
11 See id.
13 Id.
14 Id. at art. 1(a)–(k).
15 Id. at art. 1(g)(i)–(iv).
protective measures in time of peace. The 1954 Hague Convention emphasized the importance of national and international cooperation in protecting cultural property.

The 1954 Hague Convention intended to apply its provisions when war or any armed conflict arose between two or more of the Parties. The Parties are to safeguard their own cultural property and prepare to care for that property during an armed conflict. The 1954 Hague Convention also applied in scenarios of partial or total occupation of a Party, by a Party. Throughout any occupation of another Party, the occupying Party is obligated to provide support to safeguard and preserve cultural property. During times of peace, the Parties are to foster a spirit of respect by its militia for all cultural property.

A Second Protocol to the Convention was adopted in 1999, elaborating on the instructions for safeguarding a country’s cultural property. For example, it defines when cultural property could receive enhanced protection. Furthermore, it instructs Parties to establish criminal offenses under their domestic law for any violation of the Protocol. The 1954 Hague Convention was not replaced by the Second Protocol—instead, Parties have a basic level of protection under the 1954 Hague Convention along with increased protection under the Second Protocol. The United States is a Party to the 1954 Hague Convention but not the Second Protocol.

In the 1960s, the pillaging of cultural property concerned many countries worldwide, as critical cultural information was irretrievably lost as objects were taken from the countries. For example, Mayan monuments in Belize, Mexico, and Guatemala were disassembled and sold, usually to museums in the United States. In response to such concerns, UNESCO adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property ("1970 UNESCO Convention") to address issues regarding the transfer of cultural property. Specifically, UNESCO wanted to protect knowledge that...
might be obtained from the scientific study of the objects. The 1970 UNESCO Convention stated that cultural property constituted basic elements of civilization and culture, and every nation should protect its cultural property against theft and unlawful excavation or export. Furthermore, it said nations have a moral obligation to respect not only their own cultural heritage, but also that of other nations.

The 1970 UNESCO Convention called for nations to draft laws and regulations, establish a national inventory of protected property, supervise archaeological excavations, and protect its cultural heritage. The goal was to adopt appropriate measures to prevent museums and other institutions from acquiring cultural property illegally exported from another nation.

The United States consented to the 1970 UNESCO Convention in 1972. However, since the Convention was not based in United States law, it required special legislation for implementation in the United States. The legislation, the Convention of Cultural Property Implementation Act (“CPIA”), was passed in 1982 and signed into law in 1983. The CPIA provided authority to carry out the 1970 UNESCO Convention and achieve international cooperation in preserving cultural property and enhancing the international understanding of the world’s heritage.

In the CPIA, the United States implemented the essential obligations of the 1970 UNESCO Convention, such as prohibiting the import of stolen cultural property into the United States. The CPIA also requires the United States to apply import regulations to any objects identified as belonging to a nation whose cultural property is in danger of being pillaged. Furthermore, the CPIA established the Cultural Property Advisory Committee (“Committee”). The Committee reviews requests submitted by foreign governments and provides recommendations about agreements between other countries.

UNESCO recognized the 1970 UNESCO Convention insufficiently addressed the process for actually returning the cultural property to the country of origin. For example, the 1970 UNESCO Convention provided for restitution of illegally exported or stolen objects even if the possessor was a good faith possessor. However, countries approach the property interest between the original owner and the good faith purchaser of the object differently.

\[\text{Background: U.S. Implementation of the 1970 UNESCO Convention, supra note 32.}\]
\[\text{1970 UNESCO Convention, supra note 12, at pmbl.}\]
\[\text{Id.}\]
\[\text{Id. at art. 5 (stating provisions to ensure protection of cultural property from illicit transfer).}\]
\[\text{Id. at art. 7.}\]
\[\text{Id.}\]
\[\text{Id.}\]
\[\text{Background: U.S. Implementation of the 1970 UNESCO Convention, supra note 32.}\]
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\[\text{Id.}\]
\[\text{Id.}\]
\[\text{Id.}\]
\[\text{Id. at 480.}\]
law countries require a transferor to have valid title before the purchaser acquires valid title.\footnote{See generally 1970 UNESCO Convention, supra note 12, at art. 13 (discussing measures countries may take in facilitating the return of cultural property, but not defining “rightful owner”).} Civil law countries provide greater protection to a purchaser who acquired the stolen property in good faith.\footnote{The 1995 UNIDROIT Convention, supra note 49. The International Institute for the Unification of Private Law (UNIDROIT) is an independent organization that coordinates private and commercial laws between States. UNIDROIT: An Overview, UNIDROIT (2009), http://www.unidroit.org/dynasite.cfm?dsmid=103284.} The 1970 UNESCO Convention could not overcome the differences in property law in the different countries.\footnote{Schneider, supra note 50, at 480–82.}

UNESCO turned to the International Institute for the Unification of Private Law (“UNIDROIT”) to develop the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (“1995 UNIDROIT Convention”) to establish regulations that would apply between contract nations when returning objects.\footnote{Conference Celebrating the 10th Anniversary of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, Paris, Fr., June 24, 2005, UNESCO Information Note: UNESCO and UNIDROIT—Cooperation in the Fight Against Illicit Traffic in Cultural Property, 2, U.N. Doc. CLT-2005/Conf/803/2 (June 16, 2005), available at http://unesdoc.unesco.org/images/0013/001399/139969E.pdf.} The 1995 UNIDROIT Convention tried to reconcile the positions of protecting good faith purchasers and those wishing to obtain the maximum level of protection for cultural property.\footnote{Id. at 3.}

Both the 1970 UNESCO Convention and 1995 UNIDROIT Convention protected owners of stolen objects, but the 1995 UNIDROIT Convention also protected nations who lost cultural property as a result of illegal export.\footnote{Id. at 4.} The 1995 UNIDROIT Convention focused on the recovery phase of stolen or illegally exported cultural objects.\footnote{Id. at 5.} Under the 1995 UNIDROIT Convention, the owner of the cultural property could bring a claim for stolen objects or those illegally exported.\footnote{See generally Status of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects – Signatures, Ratifications, Accessions, UNIDROIT, http://www.unidroit.org/english/conventions/1995culturalproperty/main.htm (last visited Mar. 19, 2011) (providing a link to show the current status of the 1995 UNIDROIT Convention); see also Ricardo J. Elia, International Approaches to Archaeological Heritage Management II: Plunder and Preservation, MATRIX, (Oct. 28, 2003, 1:50 PM), http://www.indiana.edu/~arch/saa/matrix/ael/ael_mod08.htm (stating the United States took part in the negotiations, but did not sign the final instrument).} It also implemented time limits on claims, insuring a balance between legal predictability and recovery of the object.\footnote{Id. at 5.} The United States has not signed the 1995 UNIDROIT Convention.\footnote{Association of Art Museum Directors, Art Museums and the International Exchange of Cultural Artifacts, 1 (2001), available at http://www.aamd.org/papers/documents/CulturalProperty_000.pdf.}

B. MUSEUMS RECOGNIZE THE RESPONSIBILITY TO MAINTAIN AND PROTECT THE WORLD’S CULTURAL PROPERTY

American museums strive to preserve works of art, including cultural property, and condemn actions that damage objects.\footnote{Id.} As a result, high standards of ethics and professionalism are used when acquiring objects.\footnote{Id.} Many museums have their own checks and balance systems...
for acquiring works of art; for example, trustees, directors, and staff members may evaluate the object and its origins to determine the appropriate course of action for a museum’s acquisitions.  

Museums authenticate works already in their collections, as well as those being considered for acquisition. In examining an acquisition proposal, the museum verifies the seller or donor’s good title to the object and verifies it was not illegally imported. Sometimes conclusive proof is unavailable, but museums use utmost caution and respect when acquiring art from other countries.

The Association of Art Museum Directors (“AAMD”) reviews professional practices for acquiring and exhibiting works of art. For example, the AAMD recognizes the 1970 UNESCO Convention as defining the pertinent date before which museums need to apply more rigorous standards in acquiring objects for their collections. Therefore, members of the AAMD should not acquire the work unless it was outside its country of origin before 1970 or it was legally exported from that country after 1970.

The AAMD also requires the member museums to thoroughly research the history of the object and obtain written documentation of its history, such as import or export documents. Further, the guidelines encourage full disclosure from sellers and donors and full compliance with all applicable laws. However, the AAMD recommendations are not legally binding, they are only guidelines. Nonetheless, museums understand it may be necessary to go beyond what is required by the law when acquiring artwork—the acquisitions should be responsible and ethical as well as legal.

Another resource for museums is the International Council of Museums’ (“ICOM”) Code of Ethics, which established minimum professional standards for the international museum community. As art professionals realized the problems of pillaging and illicit traffic of objects, many museums adopted the Code of Ethics. Pursuant to this Code, museums must comply with all local, national, and international legislation. Such international legislation includes the 1954 Hague Convention and its protocols, the 1970 UNESCO Convention, and the 1995 UNIDROIT Convention.

64 Id. at 2.
65 Id.
66 Id.
67 Id.
70 Id.
71 Id.
72 Id.
74 ASSOCIATION OF ART MUSEUM DIRECTORS, supra note 69.
77 CODE OF ETHICS, supra 75, at § 7.
78 See id. at § 7.2 (listing international legislations).
C. **Two Current Cases Illustrate How Foreign Countries Pursue the Return of Cultural Property From Museums in the United States**

1. **Peru Brought an Action against Yale University in a United States District Court, Demanding Return of Objects Exported from Peru in the Early 20th Century**

Peru brought an action against Yale University ("Yale") in 2008 to seek return of artifacts, antiquities, and related objects.\(^79\) Peru alleged Yale violated laws in Peru and the United States, and violated the spirit of international conventions, including the 1970 UNESCO and the 1995 UNIDROIT Conventions.\(^80\)

In 1893, Peru enacted a law prohibiting excavation without government permission.\(^81\) In 1911, Hiram Bingham, a Yale employee, arrived at Machu Picchu in Peru for an expedition.\(^82\) The President of Peru approved Bingham’s request for his 1911 expedition to Peru.\(^83\) Before Bingham arrived, the Peruvian government declared ownership of all articles found during excavations and prohibited the exportation of objects having historical and archaeological importance.\(^84\) After his 1911 excavation, Bingham sought permission to return in 1912.\(^85\) In response to his request, the government of Peru enacted a law in 1912 allowing the expedition to proceed, but restricted its scope and conduct.\(^86\) A decree was later issued to reinforce the ban on exporting artifacts, but allowed an exception where the objects could be exported to Yale under specified conditions, which included Peru’s right to demand the return of the objects.\(^87\)

Peru approved a third expedition in 1914–15.\(^88\) Peru issued a new decree in 1916 allowing seventy-four boxes of excavated artifacts to be exported to Yale.\(^89\) The complaint alleged the export request was granted after Yale promised to return the artifacts within eighteen months and send the completed research studies of the objects to Peru.\(^90\) Peru alleged that by 1916, Bingham’s expeditions stripped the area of the important archaeological objects and transported those objects to Yale.\(^91\)

Peru stated that Yale was fully aware at all times that Peru could demand the return of the artifacts and Peruvian law required Yale to return them if such request was made.\(^92\) In 1918 and 1920, Peru requested the return of the objects.\(^93\) Bingham requested an extension for the

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\(^81\) Original Complaint at 6.

\(^82\) Id. at 3.

\(^83\) Original Amended Complaint at 7.

\(^84\) Id. at 4.

\(^85\) Id.

\(^86\) Id. at 8.

\(^87\) Id. at 4–5.

\(^88\) Id. at 9.

\(^89\) See id. (claiming Yale promised to return the artifacts after eighteen months).

\(^90\) Id. at 6.

\(^91\) Id. at 11.

\(^92\) See Amended Complaint at 32 (alleging the Ambassador of Peru in 1918 demanded the return of the seventy-four boxes of artifacts exported in 1916, and another request was made by the Government of Peru in 1920).
artifacts’ return, and Peru then issued another decree to formally extend the time of the artifacts’ return.\footnote{94}

In 2003, Yale posted an inventory of its Peruvian artifacts on its Peabody Museum website.\footnote{95} This prompted Peru to inquire about which artifacts were in Yale’s possession and how those objects were obtained.\footnote{96} Yale maintained that it returned all the 1914–15 artifacts, but also admitted it kept the artifacts from 1912 even though Peru requested their return.\footnote{97} Further, Yale claimed Bingham legally purchased another group of artifacts during his earlier expeditions.\footnote{98}

Peru and Yale created a Memorandum of Understanding (“MOU”) in 2007 to establish a collaborative relationship for the research of the artifacts excavated by Bingham.\footnote{99} Yale agreed to create an exhibition of the artifacts that would travel to various spots in the United States, Canada, and other countries.\footnote{100} Peru then agreed to construct a museum in Cuzco, Peru where the artifacts would be transferred after the traveling exhibition.\footnote{101} Further, Yale agreed to acknowledge Peru’s title in the artifacts, which would terminate Yale’s rights in certain objects.\footnote{102} In return, Yale would retain specific rights to the objects for ninety-nine years.\footnote{103} Nonetheless, the MOU failed because the parties ultimately could not agree on which artifacts should be transferred.\footnote{104} Peru then filed its lawsuit against Yale.\footnote{105}

In its lawsuit, Peru claimed it never relinquished ownership of any of the excavated objects.\footnote{106} Yale responded, arguing that Peru ignored applicable law in force during the Bingham expeditions and claimed Article 522 of Peru’s Civil Code of 1852, which was in force during the expeditions, provided any treasures or buried objects with no ascertainable owner belonged to the finder.\footnote{107} Yale argued a congressional code trumps executive decrees in Peruvian law.\footnote{108} Yale also argued Peru ignored a 1921 decree recognizing Yale’s title to duplicate objects from the expedition and requiring Yale to only return unique artifacts.\footnote{109} Finally, Yale cited American case law that held Peru does not have a right to artifacts exported from Peru before 1929.\footnote{110}

\footnote{94} Original Complaint at 15.
\footnote{95} Amended Complaint at 33.
\footnote{96} \textit{Id.} at 33–4.
\footnote{97} \textit{Id.} at 34.
\footnote{98} \textit{Id.}
\footnote{100} \textit{Id.} at § 3(a).
\footnote{101} \textit{Id.} at § 3(b).
\footnote{102} \textit{Id.} at § 3(d)(i)–(iii).
\footnote{103} \textit{Id.} at § 3(d)(iv). A usufructuary right is defined in the MOU as the right to use the objects for academic, curatorial, or scientific purposes that may include the right to restore and exhibit. \textit{Id.} at § 2.
\footnote{105} Amended Complaint at 34.
\footnote{106} Original Complaint at 18.
\footnote{107} Yale University’s Reply to Peru’s Opposition to Its Motion to Dismiss, Republic of Peru v. Yale Univ., No. 309CV01332, (D. Conn., Jan. 8, 2010), 2010 WL 1370453.
\footnote{108} \textit{Id.}
\footnote{109} \textit{Id.}
\footnote{110} See \textit{id.} (citing Peru v. Johnson, 720 F. Supp. 810, 813 (C.D. Cal. 1989)).
Over ninety years has passed since the excavations and exportations, which made the statute of limitations an issue in the lawsuit. Peru claimed the Peruvian statute of limitations applied, which had not yet expired. However, the Connecticut statute of limitations ran after three years for tort claims and six for contract claims. Therefore, Yale argued, if Connecticut law applied to Peru’s claim, the statute of limitations ran long ago.

Peru once again asked Yale to return the objects by July 7, 2011, which marks the 100th anniversary of Machu Picchu rediscovery. In November 2010, Yale resumed negotiations with Peru, realizing a judicial ruling would probably not fully satisfy either party. The parties signed a new Memorandum of Understanding where Yale agreed to send all the objects to Cuzco, Peru. A museum and research center will be built to house the collection in Peru.

2. Italy Pursues the Return of the “Victorious Youth” Bronze Statue from the J. Paul Getty Museum

Over the last decade, Italy initiated multiple lawsuits against the J. Paul Getty Museum (“Getty”) and its curators in courts within the United States and abroad. One of these legal disputes involved a bronze statue, Victorious Youth, dating from around the fourth century B.C. In 1964, fishermen discovered the statue in the Adriatic Sea off the coast of Italy. After the statue was sold, Italy instituted criminal charges against the purchasers in 1966 alleging they purchased and concealed stolen property of the Italian State. Yet because the object was not discovered in Italy’s territory, it could not be a part of the State’s cultural property.

Sometime before 1971 the sculpture was exported to Brazil, then to England, and finally to Germany where the statue came into possession of local art dealers. In 1972, the art dealers offered the statue to Mr. J. Paul Getty. Mr. Getty’s lawyers received a legal opinion from the dealers’ Italian counsel saying the Italian government did not have a claim to the Victorious Youth.
Youth bronze statue.\textsuperscript{126} Apparently, since the Italian government failed to enter an appearance at the criminal trial in 1966, the government had no interest in the statue, and the art dealers were good faith purchasers who held good title that could be sold to Mr. Getty.\textsuperscript{127} Mr. Getty eventually acquired the statue from the art dealers in 1977 for $3.95 million, and subsequently placed it in his museum.\textsuperscript{128}

In 2005, the Getty Museum publicly announced half of the objects within its antiquity collection were purchased from dealers suspected of selling objects stolen from Italy.\textsuperscript{129} Italy then requested the return of Victorious Youth from the Getty in 2006.\textsuperscript{130} The Victorious Youth statue is considered one of the finest original bronzes from the classical era, which partially explains why the countries continue to dispute its ownership.\textsuperscript{131}

Italy brought an action in Italy against the Getty claiming the bronze was smuggled out of the country without appropriate export papers.\textsuperscript{132} The Getty asserted it bought the statue with clear title through the appropriate legal channels.\textsuperscript{133} It also noted while American case law recognized a foreign state might own artifacts found within its territory, a nation’s export restrictions on artifacts does not create a binding declaration of ownership to those objects.\textsuperscript{134} As a result, it seemed Italy could not claim ownership to the statue just because it may have passed through Italy and been illegally exported from the country.\textsuperscript{135} Further, the Getty emphasized how the statue was not acquired from Italy, but rather the museum acquired it years after it was already (allegedly) illegally exported to the art dealers in Munich.\textsuperscript{136}

In 2006, the Getty began negotiations with the Italian Ministry of Culture to reach an agreement concerning the antiquities in the museum’s collection.\textsuperscript{137} In October 2006, the Italian Ministry of Culture and the Getty signed an agreement where the Getty would return twenty-six objects to Italy, while Italy agreed to renounce claims to six other objects in the museum’s collection and also agreed to make significant loans to the Getty.\textsuperscript{138} The Getty would also provide Italy with written support for its claim of ownership to the Victorious Youth statue.\textsuperscript{139} Nonetheless, Italy disavowed the agreement in November 2006 and said it would not reach a final agreement with the Getty if it did not include the return of the Victorious Youth.\textsuperscript{140}

\textsuperscript{126}Id.
\textsuperscript{127}Id.
\textsuperscript{128}Id. (noting the museum said it purchased the statue through legal channels).
\textsuperscript{129}Reppas, supra note 119, at 108.
\textsuperscript{130}Memorandum from the Ronald L. Olson & Luis Li to the Delegation from the Italian Ministry of Culture, supra note 121, at 4.
\textsuperscript{131}Povoledo, supra note 120.
\textsuperscript{132}See id. (discussing closing arguments between Italian prosecutors and the Getty lawyers).
\textsuperscript{133}Id.
\textsuperscript{134}Memorandum from the Ronald L. Olson & Luis Li to the Delegation from the Italian Ministry of Culture, supra note 121, at 15.
\textsuperscript{135}Id.
\textsuperscript{136}Id.
\textsuperscript{138}Id.
\textsuperscript{139}Id.
\textsuperscript{140}Id.
In February 2010, an Italian judge ordered the *Victorious Youth* be confiscated from the Getty Museum and returned to Italy.\(^{141}\) The Italian prosecutor encouraged the Getty to resume negotiations and return the piece to Italy now that the Italian court issued the confiscation order.\(^{142}\) He further stated that if the United States did not recognize the Italian court order, the case would be brought to an American court.\(^{143}\)

III. ARGUMENT

Countries can bring cultural property claims to the courtroom.\(^{144}\) However, there are other useful tools for addressing such claims.\(^{145}\) For example, parties can examine the ideas set forth in international conventions, such as the 1954 Hague Convention, the 1970 UNESCO Convention, and the 1995 UNIDROIT Convention.\(^{146}\) In reviewing cultural property claims, it is also noteworthy that professional associations, such as the International Council of Museums ("ICOM") and the American Association of Art Directors ("AAMD"), issued guidelines addressing acquisition, restitution, and repatriation policies that give effect to legal and ethical considerations about objects in a museum’s collection.\(^{147}\) The AAMD guidelines indicate even if a claim is not actionable under United States’ law, the museum should still attempt to reach an agreement.

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\(^{143}\) Id.


\(^{147}\) See generally ASSOCIATION OF ART MUSEUM DIRECTORS, *supra* note 145 (quoting the 2008 AAMD President who said acquisitions of antiquities and ancient art should be responsible, ethical, and legal); CODE OF ETHICS, *supra* note 145 (stating museums need to follow international and local legislation and treaty obligations).
equitable settlement with the country seeking repatriation. There are also other legal and ethical concerns museum professionals are encouraged to consider. While these sources and guidelines may not be legally binding throughout the world, the principles are important in moving forward with cultural property disputes.

A. PERU AND ITALY’S CLAIMS ILLUSTRATE HOW A LEGAL SETTING MAY NOT BE THE MOST EFFECTIVE FORUM FOR OBTAINING A REMEDY IN CULTURAL PROPERTY ACTIONS

In its action Peru claimed Yale fraudulently held cultural property objects for decades after being excavated and exported, violating the laws in Peru and the United States. Further it claimed Yale violated the spirit of international conventions and treaties, including the 1970 UNESCO and the 1995 UNIDROIT Conventions. Even if the evidence could support Peru’s claim to the artifacts, it still faced a significant hurdle in its lawsuit: the statute of limitations. Yale argued Peru’s claims were time-barred because Yale exercised dominion over the artifacts for the last ninety years. Peru tried to move up the statute of limitations by claiming Yale only asserted ownership to the artifacts in 2005 when Yale’s Provost wrote a letter to Peru stating Yale had title to the artifacts. Given these arguments, the focus of the case shifted from resolving an issue of ownership to determining whether the claim could even survive in an American court.

The dispute between Yale and Peru illustrates a problem when parties resort to litigation in pursuing the return of cultural property objects—a subsidiary issue, like the statute of limitations, can decide the case rather than a determination of the primary issue of ownership.

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149 See CODE OF ETHICS, supra note 145, at § 7–8 (discussing how museums should operate in both a legal and professional manner).
150 Compare 1970 UNESCO Convention, supra note 146, at art. 20 (stating the Convention is open for accession by all States, but accession will only be effected by depositing certain documents with UNESCO’s Director-General), with 1970 UNESCO Convention, supra note 146, at pmbl. (noting the importance of cultural property and that it is effectively protected through national and international cooperation); see also 1954 Hague Convention, supra note 146, at art. 32 (stating deposit of appropriate instruments with UNESCO’s Director-General is required for accession); About AAMD, AAMD (last visited Mar. 20, 2011) http://www.aamd.org/about/#Mission (defining AAMD’s mission for its members, and detailing membership requirements such as museum size and standards of operation to be considered for AAMD membership); International Council of Museums (ICOM), CODE OF ETHICS, supra note 145 (stating the Code of Ethics reflects generally accepted principles in the international museum community).
152 Id.
154 Yale University’s Reply to Peru’s Opposition to Its Motion to Dismiss, Republic of Peru v. Yale Univ., No. 309CV01332 (D. Conn., Jan. 8, 2010), 2010 WL 1370453.
155 Id.
156 See generally id. (providing arguments as to why Connecticut law time-barred Peru’s claims).
157 See generally Yale University’s Reply to Peru’s Sur-Reply to Further Support of Yale’s Motion to Dismiss, Republic of Peru v. Yale Univ., No. 3:09-cv-01332, (D. Conn., Jun. 4, 2010) 2010 WL 2647315. (arguing Connecticut statutes of limitations apply and bar Peru’s claims and addressing why Peruvian statutes of limitation
It is difficult to achieve a mandated return of the cultural objects in dispute.\textsuperscript{158} This difficulty means parties often resort to the media and other public outlets hoping to encourage a private settlement that both parties can agree upon and enact.\textsuperscript{159}

Peru and Yale created a Memorandum of Understanding in 2007, but it was never enacted because Peru filed its lawsuit instead of proceeding under the agreement.\textsuperscript{160} Yale could try to convince the public of its rightful possession of the artifacts and how it could better care for and study the objects, but this fact would not be determinative of the legal issues presented in court.\textsuperscript{161} Without an effective methodology to resolve the dispute, litigation continued while the ownership issue subsided to a technical procedural issue.\textsuperscript{162}

In the case between Italy and the Getty, the Getty denied any legal or ethical obligation to return the statue, believing it properly acquired the statue and no new facts indicated otherwise.\textsuperscript{163} Italy claimed it not only had a legal right to the statue, but there was also an ethical obligation for the Getty to return the statue to Italy.\textsuperscript{164} However, Italy may not actually be the country of origin since the statue is actually attributed to a Greek sculptor.\textsuperscript{165} Given the statue is actually part of Greek cultural heritage, Italy’s claim does not involve the typical ethical considerations for repatriating cultural property to the country of origin.\textsuperscript{166}

As of 2010, an Italian judge ordered the statue be returned to Italy.\textsuperscript{167} It is unclear how this order will actually be enforced against the Getty in California since a United States court proceeding would be required to enforce the foreign judgment.\textsuperscript{168} Further, the Getty said it will
appeal the Italian decision and would object to any action Italy may pursue in American courts.169

Similar to Peru’s case, Italy could face a number of legal technicalities in the American legal system that may prevent the ultimate issue of ownership from being resolved.170 Also, since the history of the object indicates it is from a Greek sculptor, and it was discovered in international waters, Italy’s claim to ownership may be diminished.171 When American courts examine claims for returning artifacts to a foreign country, strong evidence is required in showing the object came from the country instituting the claim.172 Italy’s claim that its export laws were violated may not support a claim of ownership to the statue.173 The illegal export of an object does not automatically subject the importer to action in an American court.174 Therefore, it is unclear as to whether an American court will even enforce the Italian judgment.175

Contention over the ownership of objects can hinder relationships between the parties.176 Maintaining and respecting cultural property is an important aspect of international relationships.177 Pursuing the action in a courtroom does not lead to productive results.178 Repatriation is not always a necessary or ideal solution to the dispute over cultural property.179 Parties are often better suited to create private agreements concerning the object in question.180 Both disputes discussed in this Article tried to create private agreements in returning the cultural

169 Id.
170 Compare Glenn, supra note 153 (stating the statute of limitations gives Yale a strong legal case), with Lufkin, supra note 167 (saying the claim may be barred by statute of limitations because Italy knew the statue was located at the Getty since at least 1977).
171 See Memorandum from the Ronald L. Olson & Luis Li to the Delegation from the Italian Ministry of Culture, supra note 163 (saying Italy’s cultural patrimony cannot be damaged because the object actually represents Greek culture).
172 See id. at 12 (citing Gov’t of Peru v. Johnson, 720 F. Supp. 810, 812 (D. Cal. 1989), which dismissed Peru’s claim after it could not show the objects came from modern-day Peru and not some other neighboring country).  
173 See id. at 15 (noting three sources that claim export restrictions do not create binding ownership on cultural artifacts).
174 See id. (citing four sources in support of arguing an importing nation’s law is not violated by bringing in artwork that has been illegally exported from another country).
175 See Lufkin, supra note 167 (commenting on the need for a U.S. court to grant authority to enforce the Italian judgment).
176 See Povoledo, supra note 158 (stating an agreement between the Italian culture minister and the Getty museum was signed only after the parties agreed to set aside the question of the statue’s ownership).
177 Compare 1970 UNESCO Convention, supra note 146, at art. 2 (stating illegal transfer of cultural property is a primary cause of impoverishing a culture’s heritage and international cooperation can protect cultural property from such danger), with 1970 UNESCO Convention, supra note 146, at art. 12 (stating the parties shall respect the cultural heritage of any territories for which they are responsible for their international relations).
178 Compare Guerra, supra note 158 (noting a lawsuit had been filed and carried out under U.S. laws, but Peru still made a public demand for the return of the objects by 2011) with Nicole Winfield, Italian Court Orders Getty Museum to Return Statue, THE HUFFINGTON POST, Feb. 11, 2010, http://www.huffingtonpost.com/2010/02/11/italian-court-orders-gett_n_458481.html (stating that Italy wants the Getty resumes negotiations on the statue’s return given the court order for the statue’s return).
179 See Alexander A. Bauer, Shane Lindsay & Stephen Urice, When Theory, Practice and Policy Collide, or Why Do Archaeologists Support Cultural Property Claims?, in ARCHAEOLOGY AND CAPITALISM: FROM ETHICS TO POLITICS 45, 53 (Y. Hamilakis & P. Duke eds., 2007) (recognizing it is beneficial to circulate cultural materials because it may encourage respect for cultural dynamics and diversity).
180 Compare Memorandum of Understanding, supra note 145 (providing terms of an agreement to create a collaborative relationship focused on education and research of the objects), with Press Release, The Getty Trust, supra note 159 (describing the terms of the October 2006 agreement reached between the parties).
property.\textsuperscript{181} However, neither agreement was actually completed by the parties.\textsuperscript{182} The parties seemed to recognize the importance and power of private agreements arranging for the return of objects, but were simply not willing to compromise on particular issues.\textsuperscript{183} However, when they resorted to legal action, other issues, such as the statute of limitations, overshadowed the issue of ownership.\textsuperscript{184}

\section*{B. International Conventions and Professional Guidelines Emphasize the Importance of Respect, Cooperation, and Communication in a Cultural Property Dispute}

Relationships are strained when parties cannot reach an agreement about the return of objects.\textsuperscript{185} All parties will be better served if there is open communication and an attempt to build a relationship with the country claiming ownership.\textsuperscript{186} These ideals are reflected in guidelines addressing cultural property issues.\textsuperscript{187} The AAMD guidelines encourage an equitable response to the claim, even if the claim does not have a basis in American law.\textsuperscript{188} ICOM encourages a dialogue between the parties in repatriation actions.\textsuperscript{189} Instead of starting a fight in a courtroom or in the media, museums should consider the respect and cooperation encouraged in professional guidelines.\textsuperscript{190} Cooperation and respect is critical in such situations because cultural property has recognized importance for all mankind; it should not divide the international community.\textsuperscript{191}

There are additional actions countries may take to insure their cultural property is protected while providing a more effective resolution to cultural property ownership.\textsuperscript{192} For

\begin{itemize}
\item \textsuperscript{181} Id.
\item \textsuperscript{182} See generally Glenn, supra note 153 (saying the parties reached an agreement in 2007 but Peru filed its lawsuit after Peruvian scholars and activists objected); Press Release, The Getty Trust, supra note 159 (claiming the Italian Ministry rejected the agreement when they said no agreement would be reached without the transfer of the statue).
\item \textsuperscript{183} Id.
\item \textsuperscript{184} See \textit{generally} Yale University’s Reply to Peru’s Sur-Reply to Further Support of Yale’s Motion to Dismiss (providing Yale’s argument as to why the statute of limitations bars Peru’s claim).
\item \textsuperscript{185} See Press Release, The Getty Trust, supra note 159 (saying Italy’s demand for the statue ended the meeting because there was no room for further discussion); \textit{see also} Glenn, supra note 153 (stating that pressure from activists in Peru led to the collapse of 2007 agreement).
\item \textsuperscript{186} See Willard L. Boyd, \textit{Museums as Centers of Cultural Understanding, in IMPERIALISM, ART AND RESTITUTION} 47, 54 (John Henry Merryman ed., 2006) (stating museums should be open and seek a relationship with the nation requesting repatriation).
\item \textsuperscript{187} \textit{See Code of Ethics} § 6.2, \textit{supra} note 145 (recommending museums prepare for a dialogue about returning an object to its country of origin); 1970 UNESCO Convention, \textit{supra} note 146, at pmbl. (stating the protection of cultural property is effective when nations cooperate).
\item \textsuperscript{188} Boyd, \textit{supra} note 186, at 55.
\item \textsuperscript{189} \textit{See Code of Ethics} § 6.2, \textit{supra} note 145 (recommending museums prepare for a dialogue about returning an object to its country of origin).
\item \textsuperscript{190} \textit{Compare Code of Ethics} § 6.2, \textit{supra} note 145 (recommending museums prepare for a dialogue about returning an object to its country of origin), \textit{with Association of Art Museum Directors, supra} note 145 (stating museums should respect a country’s right to protect its cultural property).
\item \textsuperscript{191} \textit{See} 1970 UNESCO Convention, \textit{supra} note 146, at pmbl. (stating cultural property is one of civilization’s basic elements).
\item \textsuperscript{192} \textit{See generally} 1954 Hague Convention, \textit{supra} note 146 (providing provisions for countries to protect cultural property during war or occupation); 1970 UNESCO Convention, \textit{supra} note 146 (providing provisions preventing the illegal transfer of stolen cultural property); 1995 UNIDROIT Convention, \textit{supra} note 146 (providing provisions preventing illegal transfer of stolen or illegally exported cultural property).
\end{itemize}
example, the 1954 Hague Convention provides direction for countries to protect cultural property during war and occupation. These conventions are available frameworks for countries, but unfortunately many have not yet decided to become signing parties to these agreements. In some cases, countries have signed the 1970 UNESCO Convention, but have not signed its counterpart, the 1995 UNIDROIT Convention. UNESCO presented information on these treaties and encouraged countries to sign both.

Cultural property faces many dangers, including risk of destruction during war or being the subject of illegal transfers. Cultural property provides an opportunity to understand other cultures and formulate relationships with other countries. Nonetheless, museums should not acquire objects removed from their origin illegally or violate some other law. When such claims appear, the courtroom is available for either party, but this may not provide the most effective method of resolution. The claims should be seriously considered, but private agreements are the preferable resolution if the parties can actually execute such agreements.

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193 See generally 1954 Hague Convention, supra note 146 (providing provisions for countries to protect cultural property during war or occupation).
195 See id. at 2 (recommending both the 1970 UNESCO Convention and 1995 UNIDROIT Convention be considered for ratification at the same time).
196 Compare 1970 UNESCO Convention, supra note 146 (listing the parties to the 1970 UNESCO Convention), with 1995 UNIDROIT Convention, supra note 146 (listing the signatures, ratifications, and accessions for the Convention).
197 See Conference Celebrating the 10th Anniversary of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, supra note 194, at 2 (recommending UNESCO Member States consider both the 1970 UNESCO Convention and 1995 UNIDROIT Convention for ratification at the same time).
198 Compare 1954 Hague Convention, supra note 146, at pmbl. (stating cultural property is in increasing danger of destruction given the warfare technique developments), with id. at 1 (stating that trafficking in cultural property is developing into a universal problem that affects countries and requires international regulation).
199 See Alexander A. Bauer, Shane Lindsay & Stephen Urice, supra note 179 (recognizing it is beneficial to circulate cultural materials because it may encourage respect for cultural dynamics and diversity).
200 See ASSOCIATION OF ART MUSEUM DIRECTORS, supra note 145 (explaining how the AAMD disproves of illicit excavation or theft of any art or archaeological materials).
201 See generally Case Summary: Peru v. Yale University, INTERNATIONAL FOUNDATION FOR ART RESEARCH, http://www.ifar.org/case_summary.php?docid=1184620401 (last visited Oct. 8, 2010) (providing the case history since 2008); Winfield, supra note 178 (noting since the Italian court order has been issued, Italy must still ask for enforcement of the order in the United States while the Getty said it will appeal the Italian court decision).
202 Compare 1970 UNESCO Convention, supra note 146, at pmbl. (stating the protection of cultural property is effective when nations cooperate), with Glenn, supra note 153 (saying the parties reached an agreement in 2007 but Peru filed its lawsuit after Peruvian scholars and activists objected), and Press Release, The Getty Trust, supra note 159 (saying the agreement was denied in November 2006 after Italy refused to reach a final agreement without the statue’s transfer).
IV. CONCLUSION

This Article discussed cultural property and cases involving the restitution of such objects. Different international agreements were discussed to present the options countries have in protecting their cultural property. The recent disputes between Peru and Yale University and between Italy and the Getty Museum were discussed to show how countries resort to legal action in demanding the return of their cultural property. The Article argued although legal action is available for repatriation cases, it is not the most effective option. Given the international nature of repatriation actions, this Article also argued that cooperation and respect is vital in avoiding legal battles and obtaining private agreements to resolve the parties’ disputes.

Cultural property has an important place in both a nation’s history as well as in mankind’s history. The fight for ownership of an object may stem from pride or be motivated by tourism opportunities and the accompanying revenues. It is a difficult discussion to determine who should be the rightful owner of an ancient object of art or other cultural property. However, as seen with Peru and Italy, resorting to the legal system is not likely to resolve the claim of ownership. There are those cases where the object was illegally obtained that require legal action. However, sometimes the primary purpose of bringing a courtroom action is to create leverage in reaching a settlement for the objects. This may not be an ideal use of the legal system, but it is a valid technique in negotiations. At some point, countries may have to realize the museums properly acquired the objects. They may need to concede the object is surviving in its current location. Nonetheless, as the claim to cultural property is important in defining a nation’s history, it seems unlikely we have seen the last of legal actions against museums for repatriation or restitution.

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203 See supra notes 12–143 and accompanying text.
204 See supra notes 17–61 and accompanying text.
205 See supra notes 79–143 and accompanying text.
206 See supra notes 151–175 and accompanying text.
207 See supra notes 176–202 and accompanying text.