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UN General Assembly Resolution 79/133 (12 December 2024) A Step Forward towards the Protection of Cultural Property from Illicit Trafficking?

Viorel CHIRICIOIU

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**UN General Assembly Resolution 79/133 (12 December 2024)
– A Step Forward towards the Protection of Cultural
Property from Illicit Trafficking?**

Viorel CHIRICIOIU*

University of Bucharest – Faculty of Law

Abstract: *On 6 December 2024, the General Assembly of the United Nations adopted, without a vote, Resolution 79/133, dealing with the pressing issues of return and restitution of cultural property items unlawfully removed from their countries of origin. This Resolution, though not legally binding, stands to prove the reaffirmation of fundamental principles and rules in this field by the international community of States, showing, in our view, a firm commitment to these values as already enshrined in international treaties and conventions. This article seeks to briefly comment the Resolution and its most important provisions, as well as whether the legal effects thereof have any actual practical efficiency.*

Key-words: *Cultural Property, Illegal Traffic, Return and Restitution of Cultural Property, General Assembly, UNESCO.*

* PhD Candidate and Seminar Convener in International Law, Faculty of Law, University of Bucharest, Romania; Notary Public, Bucharest Chamber of Notaries Public, Romania; viorel.chiricioiu@drept.unibuc.ro. The opinions expressed in this paper are solely the author's and do not engage the institutions he belongs to.

1. Introduction

The issue of the return and restitution of cultural heritage items unlawfully removed from their countries of origin has long presented challenges for both Public and Private International Law alike. Starting with the adoption by UNESCO of the First Protocol to the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict,¹ passing through the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property² and eventually unifying the lingering private law aspects by UNIDROIT under the 1995 Convention on Stolen or Illegally Exported Cultural Objects,³ these issues have been tackled before both international and domestic courts, tribunals and commissions, which have endeavored to reconcile diverging aspects held by the various private legal systems around the world, such as the statute of limitations for such claims, the doctrine of the good faith holder or the acquisitive prescription of items. These matters have also been, particularly in recent years, a very important part of the international judicial cooperation in criminal matters, with police and law enforcement agencies around the world coming together to fight against and prevent traffic in cultural heritage.

Although entire treatises can be (and have been) written on these matters, the purpose of the present article is to discuss a very recent development in the field: in December 2024, the UN General Assembly (hereinafter ‘UNGA’) passed Resolution 79/133, entitled ‘Return or restitution of cultural property to the countries of origin’,⁴ bringing back into the light the various aspects covered by these issues as well as the multiple branches and organs directly involved, underlining and re-encouraging international efforts to this end.

This article provides a short analysis of the Resolution, its historical and legal characteristics and its implications for the international protection of cultural heritage. As will be shown, the Resolution explores (although briefly and in a non-legally binding manner) several legal principles including State obligations under

¹ First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (done at The Hague, 14 May 1954, entered into force 7 August 1956), 249 UNTS 358.

² Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted at Paris, 14 November 1970, entered into force 24 April 1972), 823 UNTS 231.

³ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (done at Rome, 24 June 1995, entered into force 1 July 1998), 2421 UNTS 457.

⁴ UN General Assembly Resolution 79/133 (6 December 2024), A/RES/79/133.

International Law, jurisdictional and immunity challenges and various enforcement mechanisms.

2. Procedural and Legal Background

The Resolution started as a draft co-sponsored by 25 States, among which Afghanistan, Bosnia and Herzegovina, China, Egypt, Germany, Greece (which had the original initiative of the project), Italy, Serbia and Yemen.⁵ Most notably, the resolution was adopted without a vote and without reference to a Main Committee, signifying in our view the significance given unanimously by all UN Member States to these issues and their willingness to enhance international cooperation in order to tackle the most recent challenges in the field.

A very interesting aspect is that the Resolution recalls in its very first preambulatory paragraphs the main international legal framework adopted throughout the decades with respect to the protection of cultural property and cultural heritage, including the above-mentioned 1970 Convention on Illicit Traffic, the 1995 UNIDROIT Convention, but also the 1972 World Heritage Convention,⁶ the 2001 Underwater Heritage Convention⁷ and the 2003 Intangible Heritage Convention.⁸ This works, in our opinion, as more than just an enumeration of the relevant legal instruments, by reaffirming the commitments undertaken by the international community under these key treaties. By reference to the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict as well as a number of (binding) Security Council Resolutions, most notably Resolution 2347 of 2017⁹ (the first one to directly focus on the protection of cultural heritage from armed conflict), the Resolution also aligns with the relevant International Humanitarian Law rules seeking to protect cultural property from the threats of armed conflicts, dangers which include misappropriation

⁵ UN General Assembly, 79th session, Agenda item 10, 'Return or restitution of cultural property to the countries of origin' (Draft resolution, 19 November 2024), A/79/L.16.

⁶ Convention Concerning the Protection of the World Cultural and Natural Heritage (done at Paris, 16 November 1972, entered into force 17 December 1975), 1037 UNTS 151.

⁷ Convention on the Protection of the Underwater Cultural Heritage (done at Paris, 2 November 2001, entered into force 2 January 2009), 2562 UNTS 45694.

⁸ Convention for the Safeguarding of the Intangible Cultural Heritage (done at Paris, 17 October 2003, entered into force 20 April 2006), 2368 UNTS 3.

⁹ UN Security Council Resolution 2347 (24 March 2017), S/RES/2347 (2017).

and theft of cultural items, often followed by the illicit import, export and traffic thereof.

By referencing these international conventions, the General Assembly Resolution seeks to strengthen the existing normative framework for the restitution of cultural items, urging States to develop efficient and effective legal mechanisms in order to facilitate such returns. However, given the non-legally binding character of the Resolution and the fact that International Law is heavily reliant on the cooperation and the good will of States, the actual and proper enforcement of these legal instruments and the provisions thereof naturally depends upon domestic legislation and international legal cooperation¹⁰.

3. Key Principles Provided by the Resolution

We point out that General Assembly Resolution 79/133 outlines specific measures to enhance the return and restitution of cultural property which, albeit adopted under a non-binding form, still represent in our view valuable guidelines for the actions of States, international agencies and NGOs in this domain.

The main key principles we have identified shall be set out below in turn:

3.1. Strengthening and enhancing international cooperation

The Resolution calls upon both States and international structures such as UNESCO, INTERPOL, ICOM (the International Council of Museums), the UN Office on Drugs and Crime, as well as other relevant agencies, in order to collaborate in fighting against the illicit trafficking of cultural items and facilitating restitution efforts of such items, including (and this, in our view, is a good idea, but one which should be further explored and developed) through international judicial cooperation in criminal matters.¹¹

UNESCO is also commended for its training and awareness programmes for museum managers and experts, legal professionals and law enforcement authorities all around the world.¹²

Very interestingly in our opinion, the Resolution also makes direct and express reference to the UN Convention against Transnational Organised

¹⁰ Carmen-Gina Achimescu (Puscasu), Ion Galea, Drept international public, Hamangiu, Bucharest, 2023, pp 6-8

¹¹ UNGA Resolution 79/133, paras 1, 5, 16, 22, 38.

¹² UNGA Resolution 79/133, para 3.

Crime,¹³ urging States to ‘fully’ make use of its provisions in preventing, prohibiting and fighting against cultural property traffic.¹⁴ This, we believe, sets the ground for ensuring the Convention’s further application in this field, though of course this can only be achieved through State practice and law enforcement procedures.

States are also asked to strengthen and – though not expressly written as such but, we believe, this can be inferred from the *corpus* of the Resolution – even synchronise and perhaps standardise – their criminal justice policies and strategies in the field, which naturally comes by means of cooperation.¹⁵

Not least of all and very pragmatic in our view, the Resolution underlines that one of the main ways cooperation is achieved is represented by the conclusion of bilateral treaties and the development of mutual legal assistance, as well as the application of the *aut dedere aut judicare* principle¹⁶ which, should be noted, fully finds its place in this field.

3.2. Bilateral negotiations and mediation

Going one step beyond simply underlining the value of negotiations for the promotion of international cooperation, the Resolution also encourages States to further engage in bilateral negotiations (heavily promoted by UNESCO and the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation) in order to make arrangements for the voluntary return and restitution of removed or misappropriated cultural objects.¹⁷

The Resolution also makes appeal to States to consider the rules of procedure on mediation and conciliation, adopted by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation¹⁸ as well-recognized and well-established alternative dispute resolution mechanisms under International

¹³ United Nations Convention against Transnational Organised Crime (done at New York, 15 November 2000, entered into force 29 September 2003), 2225 UNTS 209.

¹⁴ UNGA Resolution 79/133, para 22.

¹⁵ UNGA Resolution 79/133, para 27.

¹⁶ UNGA Resolution 79/133, para 44.

¹⁷ UNGA Resolution 79/133, para 2.

¹⁸ UNGA, Director-General of the United Nations Educational, Scientific and Cultural Organization on the action taken by the organization on the return or restitution of cultural property to the countries of origin (1 August 2012), UN Doc A/67/219, Annex I (‘Recommendations adopted by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its sixteenth session’), 21-23 September 2010, Recommendation No. 4.

Law.¹⁹ The General Assembly thus invites States to settle any disputes concerning the return of restitution of cultural property by using these means rather than the more traditional litigation before international courts and tribunals. History has shown that more recent non-judiciary, alternative mechanisms have been (surprisingly) successful in settling such issues. This was the case, for example, with the UN Compensation Commission created under the Security Council in order to process and settle claims and compensations for the losses incurred during the Iraqi invasion of Kuwait (and which included aspects relevant for the return of stolen cultural property²⁰), as well as with the Eritrea-Ethiopia Claims Commission, established as an independent arbitration body intended to settle all claims and damages deriving from the armed conflict taking place between the two States between 1998 and 2000, which once again covered very relevant aspects for the protection of heritage.²¹

From our research, these alternative mechanisms of conciliation and mediation have not yet been used by States in the field of cultural property restitution and reparation, but of course the appeal made by the General Assembly is valid in our opinion and may indeed lead to a development of easier, faster and more efficient dispute resolution.

3.3. Capacity building and training

As recently as June 2023, UNESCO reported that the domain of ensuring the proper restitution and return of cultural property is well supported through the good practices of providing either technical support or professional training to the individuals, bodies and organisations directly involved in this field.²² As also discussed below, such training and programmes may very well pave the way for more efficient cultural dialogue and bilateral agreements between States, with recent examples of relevant practice including the repatriation by the British of over 170 cultural items belonging to the Aboriginal

¹⁹ UNGA Resolution 79/133, para 33.

²⁰ See, for example, UN Compensation Commission, 'Report and Recommendations Made by the Panel of Commissioners concerning Part Two of the First Installment of Individual Claims for Damages Above US\$100,000 (Category "D" Claims)', UN Doc S/AC.26/1998/3 (12 March 1998).

²¹ See, for example, Eritrea-Ethiopia Claims Commission, *Partial Award between the State of Eritrea and the Federal Democratic Republic of Ethiopia – Central Front – Eritrea's Claims 2, 4, 6, 7, 8 and 22* (28 April 2004).

²² UNESCO, UNESCO Round Table – 'New forms of agreement and cooperation in the field of return and restitution of cultural property' (27 June 2023) – Full synthetic report <<https://unesdoc.unesco.org/ark:/48223/pf0000388845>> accessed 8 March 2025.

Anindilyakwa people of Northern Australia, or the restitution by the French of more than two dozens of items to the people of Benin.²³

In fact, the Resolution appreciates the work undertaken by UNESCO through an ambitious project carried out between 2021 and 2024 among experts in Europe, Africa, Asia and Latin America for the specific purpose of preventing and stopping illicit trafficking in cultural items, by supporting training programmes and emphasising the need to align domestic laws with the States' international obligations under treaties and customary law.²⁴ UNESCO has also launched several specialised partnerships with various cultural institutions around the world for implementing and disseminating higher awareness among the general public,²⁵ which should also contribute to properly and timely identifying and reporting any unlawful or criminal activity directed against cultural items.

3.4. Digital inventories and provenance research

The Resolution appreciates the work undertaken by UNESCO and by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation in having prepared inventories of cultural items and implementing various modern standards of cataloguing, describing and recording,²⁶ such as the 'Object-ID' international standard facilitating the identification of cultural property in case of theft, used by INTERPOL²⁷ or by the International Council of Museums (ICOM).²⁸

States Members are of course invited and encouraged to draw up inventories of their cultural objects (even in digital form), in order to prevent the theft of items and to facilitate the return thereof in case of misappropriation.²⁹ All these inventories – created by States on their own initiatives, as well as to

²³ UNESCO, 'UNESCO's action to promote new forms of agreement and cooperation for the return and restitution of cultural property' (22 March 2024) <www.unesco.org/en/fight-illicit-trafficking/agreement-and-cooperation-return-and-restitution> accessed 8 March 2025.

²⁴ UNGA Resolution 79/133, para 3.

²⁵ UNGA Resolution 79/133, para 38.

²⁶ UNGA Resolution 79/133, paras 2 and 31.

²⁷ INTERPOL, Cultural heritage crime – Object ID <www.interpol.int/Crimes/Cultural-heritage-crime/Object-ID> accessed 8 March 2025

²⁸ ICOM, Object ID <<https://icom.museum/en/resources/standards-guidelines/objectid/>> accessed 8 March 2025.

²⁹ UNGA Resolution 79/133, para 28.

register items found during excavations or which are subject to illegal traffic – should be shared and should contribute to worldwide databases.³⁰

We firmly believe that the idea of creating and developing national and international databases to document cultural items is an already extending procedure, which is more than welcome in establishing and pointing out the clear provenance of such items, addressing evidentiary challenges in legal proceedings and helping improve cooperation between international law enforcement agencies.

4. Issues of State Responsibility and State Jurisdictional Immunities

The legal framework surrounding the restitution of cultural property raises several complex questions concerning State sovereignty, jurisdiction and responsibility. These are briefly tackled by the Resolution and the main ideas are described here in turn:

4.1. State sovereign immunity vs. restitution claims

First, the Resolution affirms the importance of the sovereign jurisdictional immunities of States in that some States may invoke sovereign immunity to resist claims for restitution of cultural items, arguing that objects held in State collections and museums may be beyond the reach of foreign legal claims for the return thereof to their countries of origin.

As such, the Resolution takes note of the UN Convention on Jurisdictional Immunities of States and Their Property,³¹ which may apply to cultural heritage since items of cultural property being part of a State's cultural heritage and not intended to be sold, as well as items placed on an exhibition of a cultural character and not intended to be sold, are given as specific examples of property of the State against which post-judgment measures of constraint are prohibited unless the State agrees to this or specifically earmarks the property for satisfying a specific claim.³² The Convention is not yet in force (having only 24 of the required 30 States Parties as of March 2025), but the Resolution invites States to consider becoming Parties thereto nevertheless.³³

³⁰ UNGA Resolution 79/133, para 29.

³¹ United Nations Convention on Jurisdictional Immunities of States and Their Property (done at New York, 2 December 2004, not yet in force), UNGA Resolution 59/38, Annex.

³² UN Convention on Jurisdictional Immunities of States and Their Property, Art 21(1)(d) and Art 21(1)(e).

³³ UNGA Resolution 79/133, para 14.

However, even if the Convention is not yet in force, State practice, national and international jurisprudence and doctrine all seem to point out that cultural heritage is subject to a customary rule of ‘qualified’ immunity from measures of constraint, in the sense that allegations of theft, misappropriation or illegal removal from the country of origin may allow such measures be taken even against foreign sovereign States, as the restitution of seized or stolen cultural items should prevail.³⁴

4.2. State responsibility and due diligence

The Resolution reaffirms the international obligations of States to prevent and prohibit illicit trafficking in cultural items, to ensure the return of stolen cultural property and, of course, not to engage in such acts themselves. Under International Law, failure to take proactive measures in this sense may constitute a breach of state responsibility, potentially triggering legal consequences. All this should of course be analysed by reference to the Articles on State Responsibility for Internationally Wrongful Acts³⁵ and established custom.

First, States have to comply with their duties assumed under the main international treaties in the field – the 1954 Hague Convention, the 1970 Illicit Traffic Convention, the 1995 UNIDROIT Convention etc. States therefore have the obligation to act to the utmost of their abilities in order to put an end to, prohibit and prevent acts of illicit trafficking, import or export of stolen cultural property.

Secondly, reading in light of the International Court of Justice reasoning in the *Bosnian Genocide* case,³⁶ States have an additional obligation not to commit such acts *themselves*³⁷, as it of course may be illogical for them to have to prohibit such acts from being committed by others, while being allowed to do so themselves. Naturally, breaches of these obligations may entail the international responsibility of States before international courts and tribunals.

³⁴ See, for example, Riccardo Pavoni, ‘Cultural Heritage and State Immunity’ in Francesco Francioni and Ana Filipa Vrdoljak (eds), *The Oxford Handbook of International Cultural Heritage Law* (Oxford University Press 2020) 551-580.

³⁵ International Law Commission, ‘Responsibility of States for Internationally Wrongful Acts’, Annex to General Assembly Resolution 56/83 (12 December 2001), UN Doc A/RES/56/83, as corrected by UN Doc A/56/49(Vol. I)/Corr.4.

³⁶ ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 43 [166].

³⁷ Bogdan Aurescu, Ion Gâlea, Elena Lazăr, Ioana Oltean, *Drept International Public, Scurta culegere de jurisprudenta pentru seminar*, Hamangiu, Bucharest, 2018, pp 168-174

5. Conclusion

By reaffirming the international commitments under the existing framework of the UNESCO conventions and by promoting enhanced cooperation in this field, General Assembly Resolution 79/133 strengthens legal mechanisms for the restitution of cultural items unlawfully removed from their countries of origin.

The Resolution itself is not legally binding, but it carries significant moral and political weight and value, especially – in our view – since it was adopted by consensus and without a vote, being eventually able to influence State practice, judicial decisions and law enforcement, as well as even leading to the development and evolution of Customary International Law.

However, as it happens with this category of *soft law* international acts, it is eventually up to the States, to their good faith, good cooperation and good policies, to actually adopt, implement and enforce these recommendations and suggestions made by the General Assembly.

Several obstacles exist, such as a lack of uniformity between the domestic laws of the various States (which would necessitate, we believe, stronger enforcement from the international level), the still-existing reluctance of certain States and certain State-owned institutions in ensuring the full restitution of misappropriated cultural items, the lack of funds, financing and/or institutional capacity for the proper training and instruction of the relevant personnel in enhancing the fight against illicit trafficking and, an ever-present menace, armed conflicts, which threaten to give birth to further violations and breaches of International Law.

In our view, Resolution 79/133 clearly represents a step forward in the restitution and return of cultural property at least from a political point of view, if not also from a legal one. Indeed, it lacks the force and effects specific to a binding Security Council Resolution or that of an international treaty, but we believe that it is a good starting point for the unification and development of the global endeavours towards cultural restitution.

By strengthening international cooperation, encouraging recourse to legal and diplomatic solutions as well as alternate dispute resolution mechanisms, underlining the importance of training and cultural diplomacy and policies, while reinforcing the obligations States have under existing International Law, Resolution 79/133 contributes to a more just and equitable framework for the return of cultural heritage. However, its success will depend on how effectively (and efficiently) the key international legal principles shall be integrated into the domestic legal systems of States, and whether the relevant enforcement mechanisms can be strengthened to hold States and institutions

accountable for any violations. Indeed, the law exists, but we feel that without proper accountability and enforcement it may very well remain without effect and application.

Furthermore, the relevance of these provisions in armed conflicts underlines the need for stronger legal measures and, in our opinion, stronger enforcement in order to prevent the destruction and particularly the illicit trade of cultural property in war zones. As the global community continues to grapple with the legacies of cultural displacement of the past and as we continue to bear witness to conflicts affecting cultural property either through destruction and damage or through misappropriation and theft, International Law continues to play a crucial role in shaping the future of cultural heritage protection, return and restitution.

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