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“WHY DID CONSTANTINOPLE GET THE WORKS? THAT’S NOBODY’S BUSINESS BUT THE TURKS.”¹A NEW APPROACH TO CULTURAL PROPERTY CLAIMS AND GEOGRAPHIC RENAMING UNDER THE 1970 UNESCO CONVENTION

INTRODUCTION

In spite of the forty-one years of intermittent display at the Metropolitan Museum of Art,² an impressive provenance of famous art collectors, and documented ownership by the Merrin Gallery,³ on April 27, 2017, the Republic of Turkey began the process to reclaim the *Anatolian Marble Female Idol of Kiliya Type* or *Guennol Stargazer* (“the *Stargazer*”)⁴ from Christie’s

1. THE FOUR LADS, ISTANBUL (NOT CONSTANTINOPLE) (Columbia Records 1953). This hit song describes the renaming of Constantinople to Istanbul and illustrates the confusion that was created by this change. *Id.*

2. The Metropolitan Museum of Art was founded in 1870 and is located on Fifth Avenue in New York City. See *An Overview of the Museum*, METROPOLITAN MUSEUM OF ART (APR. 2010), <https://www.metmuseum.org/press/general-information/2010/an-overview-of-the-museum>; *Id.* (“The Metropolitan Museum of Art is one of the world’s largest and finest art museums. Its collection spans 5,000 years of world culture, from prehistory to the present and from every part of the globe.”).

3. The Merrin Gallery was founded in 1963 and is located in New York City. The Merrin Gallery began by sharing a space with a jewelry store and is now a premier gallery that focuses on housing artifacts from the Pre-Columbian Americas, Europe, and the eastern Mediterranean. *Treasures from Antiquity*, MERRIN GALLERY, <http://merringallery.com/about/> (last visited May 22, 2019).

4. *PRESS RELEASE: The Guennol Stargazer*, CHRISTIE’S (Mar. 24, 2017), <http://www.christies.com/about-us/press-archive/details?PressReleaseID=8647&lid=1>; Christie’s provides that:

The Guennol Stargazer . . . [is] one of the finest and largest preserved Anatolian marble female idols of Kiliya type. . . . “Stargazer” is the colloquial title derived from the slightly tilted-back angle at which the large head rests on the thin neck, thus creating the whimsical impression of a celestial stare. There are only about 15 nearly complete idols that survive, although fragmentary examples, particularly heads, abound. Most of the complete examples have been broken across the neck, as the present figure, suggesting that the sculptures were ritually “killed” at the time of burial.

Auction House (Christie's).⁵ Turkey's claim rested on the legal concept of repatriation⁶ and the notion that the *Stargazer* constituted Turkey's cultural property.⁷ Turkey's claim of ownership over the *Stargazer* occurred one day prior to its expected auction at Christie's.⁸ Turkey alleged that the *Stargazer* is an "integral and invaluable part of the artistic and cultural patrimony of the Republic of Turkey" and, without injunctive relief,⁹ Turkey would suffer irreparable harm.¹⁰ Turkey's claim to the *Stargazer* not only affected an auction for Christie's,¹¹ but also shed light on how the leading treaty governing cultural property ownership is incapable of addressing the modern landscape of cultural property disputes.¹²

Multiple international treaties govern cultural property claims between countries and foreign owners.¹³ The leading source of law promoting international collaboration with the

Id.

5. Christie's Auction House is one of the largest international auction houses, with locations in forty-six countries, and was founded in 1766. The *Stargazer* was set for auction at Christie's New York, which is located in Rockefeller Plaza. *Who We Are*, CHRISTIE'S, <http://www.christies.com/about-us/welcome-to-christies/> (last visited June 9, 2019).

6. "Repatriation is the restoration of a person or thing to its place or state of origin." *Repatriation*, in THE WOLTERS KLUWER BOUVIER LAW DICTIONARY DESK EDITION (2012).

7. Claims exercising cultural property ownership and recovery are guided by international treaties. Complaint, Republic of Turkey v. Christie's Inc., No. 17 Civ. 3086 (S.D.N.Y. 2017).

8. See generally Republic of Turkey v. Christie's Inc., No. 17 Civ. 3086 (S.D.N.Y. 2017); see also *The Guennol Stargazer—An Iconic Work of Art From the 3rd Millennium BC*, CHRISTIE'S (Apr. 5, 2017), <http://www.christies.com/features/The-Guennol-Stargazer-8195-3.aspx>; Leila Amineddoleh, *Why Turkey Tried—and Failed—to Halt Christie's Auction of a \$14.4 Million Statue*, ARTSY (May 3, 2017), <https://www.artsy.net/article/artsy-editorial-turkey-failed-halt-christies-auction-144-million-statue>.

9. This is a type of relief requested by the plaintiff where the court will prohibit or require the other party to refrain or preform an act. Here, the Republic of Turkey's aim was to restrict Christie's Auction House from auctioning the *Stargazer*. Complaint, *supra* note 7, at 1, 5; *Injunctive Relief*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/injunctive_relief (last visited June 9, 2019).

10. Complaint, *supra* note 7, at 1, 5.

11. Amineddoleh, *supra* note 8.

12. Joseph P. Fishman, *Locating the International Interest in Intranational Cultural Property Disputes*, 35 YALE J. INT'L L. 347, 357–59 (2010).

13. Grant Strother, *Resolving Cultural Property Disputes in the Shadow of the Law*, 19 HARV. NEGOT. L. REV. 335, 341 (2014).

goal of preserving cultural property during peacetime, however, is the United Nations Educational, Scientific, and Cultural Organization's¹⁴ (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970¹⁵ ("UNESCO Convention").¹⁶ The UNESCO Convention supports a country's right to reclaim ownership of cultural property originating in its borders.¹⁷ "Under the UNESCO Convention, [an origin] country¹⁸ has a claim for any cultural property that was illegally exported out of its country after 1970"; however, if the property was outside of the origin country prior to 1970, it cannot pursue a claim of repatriation.¹⁹

With regard to the *Stargazer* case, Turkey signed and ratified the UNESCO Convention in 1981.²⁰ Christie's was able to show

14. UNESCO is a specialized agency of the United Nations and was founded in 1945 closely after the end of World War II to promote international cooperation in education, science, culture, and communication. *The Organization's History*, U.N. EDUC., SCI. & CULTURAL ORG [UNESCO], <http://www.unesco.org/new/en/unesco/about-us/who-we-are/history/>.

15. *What is UNESCO?*, UNESCO, <http://www.unesco.org/education/asp/pdf/wunesco.pdf> (last visited June 9, 2019); Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231 [hereinafter 1970 UNESCO Convention].

16. See Fishman, *supra* note 12, 375 n.52 (citing John H. Merryman, *Article: Two Ways of Thinking About Cultural Property*, 80 AM. J. INT'L L. 831 (1986)).

17. 1970 UNESCO Convention, *supra* note 15, art. 29.

18. Origin country or country of origin can be defined "as the State that exercises sovereignty over the country of origin" or "to whose cultural tradition the object is linked." Anastasia Strati, *Deep Seabed Cultural Property and the Common Heritage of Mankind*, 40 INT'L & COMP. L.Q. 859, 887 n.72 (1991).

19. 1970 UNESCO Convention, *supra* note 15, art. 29; Kelvin D. Collado, *A Step Back for Turkey, Two Steps Forward in The Repatriation Efforts of Its Cultural Property*, 5 J. L., TECH. & INTERNET 1, 2 (2014).

20. 1970 UNESCO Convention, *supra* note 15; *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property*. Paris, 14 November 1970, UNESCO, <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha> (last visited May 22, 2019) [hereinafter *List of State Parties to the 1970 Convention*]; The Fight Against the Illicit Trafficking of Cultural Objects – The 1970 Convention: Past and Future, *The Fight Against the Illicit Trafficking of Cultural Objects – The 1970 Convention: Past and Future, Information Kit*, 9, U.N. Doc. CLT/2011/CONF.207/6 (Mar. 15–16, 2011), available at <http://unesdoc.unesco.org/images/0019/001916/191606E.pdf>.

fifty years of the *Stargazer's* provenance,²¹ which exceeded the requirements of the UNESCO Convention.²² The unique aspect of Turkey's claim of ownership over the *Stargazer* was that it rested on Turkey's bypassing the 1970 UNESCO Convention ratification date and, instead, enforcing the law of the Ottoman Empire—the predecessor to the Republic of Turkey.²³ The Ottoman Empire law stated that any property illegally taken out of the country after 1906 rightfully belonged to it and that it had the right to exercise its ownership claim.²⁴

Turkey's complaint alleged that Christie's possession and subsequent sale of the *Stargazer* would directly violate Turkey's national patrimony law, rooted in the 1906 Ottoman Empire law, which provides that Turkey has the right of ownership over all illicitly traded cultural property and prohibits the export of cultural property.²⁵ Turkey asserted that the year 1906 preempted the 1970 UNESCO Convention date.²⁶ The initiation of this action highlights that a number of parties to the UNESCO Convention do not accept its legitimacy in resolving cultural property claims.²⁷

Further complicating the issue of cultural property is the shifting status of nations both in name and geographic border. As nations change over the course of years, it leaves a question as to which nation has historical property rights. Had the *Stargazer*

21. *PRESS RELEASE: The Guennol Stargazer*, *supra* note 4.

22. 1970 UNESCO Convention, *supra* note 15.

23. Republic of Turkey v. Christie's Inc., No. 17 Civ. 3086 (S.D.N.Y. 2017); The Ottoman Empire was created by the Ottoman dynasty, named after Osman I. The Ottomans derived from the Ottoman *beylik*, or principality/emirate (in Northwest Anatolia), which was insignificant during the time of the Mongols, but which later rose to prominence under Osman. Before the rise of the Ottomans, therefore, Anatolia had no single "Anatolia tribe," but rather various *beyliks*. The Ottoman Empire lasted more than six hundred years, ending in 1922 when it was replaced by the Republic of Turkey. Over the course of the Ottoman Empire's history, the empire controlled Hungary, Greece, parts of Ukraine, Iraq, Greater Syria, Egypt, and North Africa. Malcolm Edward Yapp & Stanford Jay Shaw, *Ottoman Empire*, *ENCYCLOPEDIA BRITANNICA*, <https://www.britannica.com/place/Ottoman-Empire> (last updated Nov. 27, 2018).

24. Yapp & Shaw, *supra* note 23; Collado, *supra* note 19.

25. *Christie's Inc.*, No. 17 Civ. 3086; SPECIAL ISSUE: WORLD HERITAGE IN TURKEY, 80 *WORLD HERITAGE* 1, 18-19 (June 2016), *available at* <http://unesdoc.unesco.org/images/0024/002451/245197e.pdf>.

26. *Christie's Inc.*, No. 17 Civ. 3086.

27. *Id.*

originated from the geographic region of Crimea, now no longer under the control of Turkey,²⁸ could Turkey attempt to seek the return of the *Stargazer*? Ambiguities, such as this, challenge how international conventions should be enforced and the manner in which they will impact countries rich in cultural property.

This Note will proceed in four Parts. Part I will provide a concise history of the 1970 UNESCO Convention and examine its purpose, goals, and the global circumstances surrounding its creation. Part I will further address how the UNESCO Convention defines cultural property and highlights the importance of encouraging signatory countries to identify their cultural property. Part II will consist of two sections which will explain the impact of other major international treaties regulating cultural property, including the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (“Hague Convention”) and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and Other International Legal Instruments on Illicit Trade (“UNIDROIT Convention”), and provide an overview of Turkey’s cultural property protective legislation. Part III is comprised of two sections. First, it will discuss the cultural protection laws Turkey has implemented and provide an overview of how Turkey enforces its rights. Second, there will be a discussion on how the UNESCO Convention should apply to geographic renaming and how understanding the idea of culture and the concept of geographic renaming has affected cultural property claims under the international treaties. Part IV will propose a two-part solution. The first will recommend that the UNESCO Convention adopt an amendment including an element of good faith in the prosecution and resolution of cultural property claims. The second will recommend a mandate for signatory countries to record their geographic borders as a preemptive measure to address cultural property claims. This will become increasingly important as geographic

28. In March 2014, the President of Russia, Vladimir Putin, annexed the Ukrainian controlled peninsula of Crimea and reclaimed it for the Russian Federation. Reuters, *How Russia Took Crimea Without a Fight from Ukraine*, NEWSWEEK (July 24, 2017), <http://www.newsweek.com/russia-crimea-ukraine-how-putin-took-territory-without-fight-640934>; Sophie Pinkham, *How Annexing Crimea Allowed Putin to Claim He Had Made Russia Great Again*, GUARDIAN (Mar. 22, 2017), <https://www.theguardian.com/commentis-free/2017/mar/22/annexing-crimea-putin-make-russia-great-again>.

renaming and border restructuring issues and concerns with defining culture become more prevalent.²⁹

I. 1970 UNESCO CONVENTION

Part I consists of two sections. In Section A, there will be a detailed explanation of the circumstances surrounding the creation of the 1970 UNESCO Convention. Complications highlighted therein will include the heightened post-World War II appropriation of cultural property and the refusal of major countries to accept the UNESCO Convention. Section B will provide insight as to how the UNESCO Convention defines cultural property.

A. The History and Implementation of the 1970 UNESCO Convention

The UNESCO Convention regulates the illicit trafficking of cultural property with the intention to preserve and protect cultural property by returning the property to its country of origin.³⁰ The UNESCO Convention is an international treaty³¹ and is recognized by international scholars as one of the “most influential cultural property treaties currently in force, the other being the Hague Convention.”³² The UNESCO Convention, like many other international treaties, is not enforced through UNESCO or an authoritative body, but through the ratifying states’ accompanying legislation and bilateral state agreements.³³ The UNESCO Convention has been widely adopted, with 137 countries having either accepted, ratified, or notified succession of the UNESCO Convention, including seven states who have accepted or ratified it within the last two years.³⁴

29. See *infra* note 154.

30. 1970 UNESCO Convention, *supra* note 15, art. 29; Strother, *supra* note 13, at 342–43.

31. By its terms, the Convention enters into force three months after thirty countries have ratified it. 1970 UNESCO Convention, *supra* note 15, art. 29. International convention become a binding form of international law once a country chooses to become a party to the convention by signing and ratifying it.

32. Fishman, *supra* note 12; Strother, *supra* note 13, at 341.

33. Zsuzsanna Veres, *The Fight Against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention*, 12 SANTA CLARA J. INT’L L. 91, 98 (2014).

34. See *List of State Parties to the 1970 Convention*, *supra* note 20 (for a complete list of parties to the convention); Joshua E. Kastenberg, *Assessing the*

The UNESCO Convention is premised upon the ideal “that cultural property constitutes one of the basic elements of civilization and national culture and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting.”³⁵ The UNESCO Convention codifies the principle that to preserve the cultural property’s true value, there must be measures in place to protect cultural property from theft and illicit export.³⁶ The rising interest in protecting cultural property arose in response to the post-World War II³⁷ acceleration of the illicit international trade of cultural property.³⁸ Wealthy nations, such as the United States, France, Germany, and Japan, encouraged this trade through their growing demand for cultural artifacts from developing countries.³⁹ The market demand often resulted in less economically stable countries using their cultural property as a source of finite economic development.⁴⁰

Evolution and Available Actions for Recovery in Cultural Property Cases, 6 DEPAUL-LCA J. ART & ENT. L. & POL’Y 39, 49 (1995).

35. 1970 UNESCO Convention, *supra* note 15, pmbl.

36. 1970 UNESCO Convention, *supra* note 15.

37. John Graham Royde-Smith & Thomas A. Hughes, *World War II*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/World-War-II> (last updated Dec. 30, 2018) (World War II lasted from 1939 – 1945.).

38. Katherine D. Vitale, *Note: The War on Antiquities: United States Law and Foreign Cultural Property*, 84 NOTRE DAME L. REV. 1835, 1839–40 (2009); 1970 UNESCO Convention, *supra* note 15.

39. The Nazis often stole moveable property from those they were persecuting and, post-war, many Eastern European countries made great efforts to enact legislation to reclaim their properties. Some restitution cases have gained a great deal of notoriety, such as the *Woman in Gold*. There, the Nazis stole a portrait and, when World War II ended, the portrait was donated to the Austrian government, but the rightful owner fought to have it returned to her family. *Who Was Maria Altman? The Real Story Behind the ‘Woman in Gold’*, BIOGRAPHY, <https://www.biography.com/news/woman-in-gold-maria-altmann-biography> (last updated Sept. 3, 2018); *Property Restitution in Central and Eastern Europe*, U.S. DEP’T. ST. (Oct. 3, 2007), <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>; *1,200-Year-Old Viking God Odin Statuette Seized in Central Turkey*, DAILY SABAH (May 30, 2019), <https://www.dailysabah.com/investigations/2019/05/30/1200-year-old-viking-god-odin-statuetteseized-in-central-turkey> (Discussing Turkey’s seizure of a statuette from a private Turkish citizen and noting Turkey’s reliance on its “rich historical heritage to attract millions of foreign visitors each year[]” as a consideration for the seizure.); Merryman, *supra* note 16; Mehmen Komurcu, *Cultural Heritage Endangered by Large Dams and Its Protection under International Law*, 20 WIS. INT’L L.J. 233, 295 (2002).

40. Merryman, *supra* note 16, at 832. Furthermore,

When the UNESCO Convention was drafted, it was the singular international accord that addressed the preservation of cultural history through the suppression of illegal trafficking during peacetime.⁴¹ At the advent of the UNESCO Convention, the United States was a highly influential signatory, with the treaty being largely based on United States law.⁴² The United States has not only ratified the UNESCO Convention, but has also codified it in the Convention on Cultural Property Implementation Act⁴³ (CPIA).⁴⁴ The United States' past support of the UNESCO Convention has been a critical component in legitimizing UNESCO's standards and enforcement across the globe.⁴⁵ Notwithstanding this support, other major nations who actively engaged or supported illegal trafficking have not been quick to accept the UNESCO Convention; with wealthier countries conspicuously absent from the international discussion or engaging in tactics to significantly delay the ratification of the treaty.⁴⁶ To

[i]n market nations, the demand exceeds the supply. France, Germany, Japan, the Scandinavian nations, Switzerland and the United States are examples. Demand in the market nation encourages export from source nations. When, as is often (but not always) the case, the source nation is relatively poor and the market nation wealthy, an unrestricted market will encourage the net export of cultural property.

Id.; Komurcu, *supra* note 39.

41. The Fight Against the Illicit Trafficking of Cultural Objects – The 1970 Convention: Past and Future, *supra* note 20, at 9.

42. Kastenburg, *supra* note 34, at 49.

43. The Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601–13, was the result of the United States' ratification of the UNESCO Convention and gives the President the power to impose import restrictions on property in violation of the UNESCO Convention. *Convention on Cultural Property Implementation Act (CPIA) of 1983: Fact Sheet*, ARCHEOLOGICAL INST. AM., <https://www.archaeological.org/news/sitepreservation/75> (last visited Nov. 11, 2017).

44. Bureau of Educational and Cultural Affairs, *The 1970 UNESCO Convention*, U.S. DEPT. ST., <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/process-and-purpose/background> (last visited July 31, 2018); Vitale, *supra* note 38, at 1842–43.

45. Kastenburg, *supra* note 34, at 49 n.77.

46. *List of State Parties to the 1970 Convention*, *supra* note 20; See Lyndel V. Prott, *Strengths and Weaknesses of the 1970 Convention: An Evaluation 40 years After Its Adoption*, UNESCO 2 (June 20–21, 2012) (The United States had multiple drafts before Congress would pass it in 1983, and France only

date, the United States effectively remains one of three major art-importing countries to adopt the UNESCO Convention; however, this ended in 2018 when the United States announced its intention to withdraw from the overall UNESCO organization.⁴⁷

B. Understanding the 1970 UNESCO Convention

The UNESCO Convention defines cultural property as “property which, on religious or secular grounds, is specifically designated by each country as being of importance for archaeology, prehistory, history, literature, art or science” and falls under outlined categories.⁴⁸ The UNESCO Convention’s categories of

passed it in 1997, Japan and the United Kingdom in 2002, Switzerland in 2003, Germany in 2007 and the Netherlands in 2009).

47. See Kastenbergh, *supra* note 34, at 49 n.77 (“The United Kingdom, Germany, Italy, and Japan are not signatories. And in reality, the United States is the only major art-importing country. Canada and Australia are not large art markets. These nations do, however, import more than export.”); Heather Nauert, *The United States Withdraws from UNESCO*, U.S. DEP’T ST. (Oct. 12, 2017), <https://www.state.gov/the-united-states-withdraws-from-unesco/>.

48. Article 1 of the 1970 UNESCO Convention states:

For the purposes of this Convention, the term ‘cultural property’ means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories: (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest; (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance; (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries ; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest; (g) property of artistic interest, such as: (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original works of statuary art and sculpture in any material; (iii) original engravings, prints and lithographs; (iv) original artistic assemblages and montages in any material; (h) rare manuscripts

cultural property include, but are not limited to, paintings, drawings, antiques, ancient artifacts, instruments, rare minerals, and property relating to history or owned by people of national importance.⁴⁹ Furthermore, the relevant property could be linked to archaeological and scientific missions, property which was freely exchanged, and property that was received as a gift or purchase.⁵⁰

By becoming a signatory party to the UNESCO Convention, a country acknowledges that origin countries have the right to exercise claims to their cultural property.⁵¹ Signatory parties also gain the protections of the UNESCO Convention if they choose to seek the return of their cultural property.⁵² The UNESCO Convention places great importance on each country's ability to

and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; (i) postage, revenue and similar stamps, singly or in collections; (j) archives, including sound, photographic and cinematographic archives; (k) articles of furniture more than one hundred years old and old musical instruments.

1970 UNESCO Convention, *supra* note 15, art. 1.

49. *Id.*

50. Article 4 of the 1970 UNESCO Convention states:

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State: (a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory; (b) cultural property found within the national territory; (c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property; (d) cultural property which has been the subject of a freely agreed exchange; (e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

1970 UNESCO Convention, *supra* note 15, art. 4.

51. 1970 UNESCO Convention, *supra* note 15, art. 4.

52. *Id.*

determine its cultural interests to it and, in turn, requires signatory countries to create improved measures to combat illicit trade and implement enhanced protections aimed at suppressing the black market⁵³ for cultural artifacts.⁵⁴ Countries cannot, however, make claims to cultural property or pursue any legal remedies in repatriation if the cultural property was already outside of their country prior to the creation of the UNESCO Convention in 1970.⁵⁵

The overarching goal of the UNESCO Convention “is to protect the knowledge that can be derived from the careful, scientifically-informed retrieval and study of archaeological material, and to preserve ethnological material in its societal context.”⁵⁶ Along with being the inaugural international treaty to focus primarily on preserving cultural property, the UNESCO Convention is unique in that it allows countries agency in determining their cultural property and how they choose to exercise ownership over it.⁵⁷ The UNESCO Convention places great importance on the countries’ ability to define what constitutes their cultural

53. The term ‘black market’ is used to describe the situation where illicit trafficking of objects can be traded for money, drugs, weapons, and counterfeit goods. *Works of Art*, INTERPOL, <https://www.interpol.int/Crime-areas/Works-of-art/Works-of-art> (last visited Nov. 25, 2018).

54. Article 2 of the 1970 UNESCO Convention states:

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country’s cultural property against all the dangers resulting there from.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary repatriation.

1970 UNESCO Convention, *supra* note 15, art. 2.

55. Collado, *supra* note 19, at 2.

56. Bureau of Educational and Cultural Affairs, *supra* note 44.

57. See Fishman, *supra* note 12, at 358. (“Even the most cursory review of the 1970 UNESCO Convention reveals that “[t]he “State” and its “national” culture, laws, institutions and enforcement regimes permeate every aspect.”); see also Christopher M. Bruner, *Culture, Sovereignty, and Hollywood: UNESCO and the Future of Trade in Cultural Products*, 40 N.Y.U. J. INT’L L. & POL. 351, 358–59 (2008).

property, relying on the premise that the origin country is best equipped to make the determination of what is culturally or historically significant.⁵⁸

II. ADDITIONAL INTERNATIONAL CONVENTIONS & TREATIES ADDRESSING CULTURAL PROPERTY

This Part provides an understanding of the international conventions regulating cultural property other than the UNESCO Convention and gives an overview of the Turkish legislation in place to protect cultural property. In Section A, there will be a brief history and explanation of the international agreements⁵⁹ regarding the protections afforded to cultural property in peace and wartime. Section B will provide an account of the evolution of Turkey's cultural property laws and the claims it has brought against the international art community.

A. International Conventions Protecting Cultural Property

This Section provides a brief overview of the 1954 Hague Convention and the 1995 UNIDROIT Convention, both of which address with the importance of cultural property protection. The 1954 Hague Convention came into effect prior to the UNESCO Convention. The 1995 UNIDROIT was signed twenty-five years after the UNESCO Convention.⁶⁰ Together, these international agreements present a timeline of how the global community and

58. See, e.g., Roger W. Mastalir, *A Proposal for Protecting The "Cultural" And "Property" Aspects of Cultural Property Under International Law*, 16 *FORDHAM INT'L L.J.* 1033, 1141–42 (1993) (The United States, for example, has limited the definition of protected cultural property in the 1983 CPIA. Under the U.S. definition, objects do not become cultural property until they have been removed from or are threatened with removal from their cultural context.); Bruner, *supra* note 57.

59. Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 215, First Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 358, and Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, Mar. 26, 1999, 2253 U.N.T.S. 212, 38 *I.L.M.* 769 [hereinafter, collectively 1954 Hague Convention and Protocols]; Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 2421 U.N.T.S. 457 [hereinafter 1995 UNIDROIT Convention].

60. 1954 Hague Convention and Protocols, *supra* note 59; 1995 UNIDROIT Convention, *supra* note 59.

the United Nations treat cultural property and show the heightened significance placed on preserving origin countries' history through cultural property protections.⁶¹

1. The 1954 Hague Convention

Before the creation of the UNESCO Convention, the sole international legislation focusing on cultural property protection was the 1954 Hague Convention.⁶² This international agreement was designed to provide guidelines for understanding ownership of cultural property during wartime.⁶³ The need for the Hague Convention was a direct result of the widespread looting of cultural treasures from origin countries during and immediately following World War II.⁶⁴

During World War II, cultural property was regularly pillaged and sold on the black market.⁶⁵ The Hague Convention attempted to reduce this harm by highlighting the importance of implementing legislation designed to curb the ravaging of a country's cultural history.⁶⁶ UNESCO's logic for acknowledging the need for cultural property protection was that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world."⁶⁷ Notwithstanding this intent, the following Articles in the Hague Convention largely undercut the goal of protecting the global community and preserving global culture by allowing signatory

61. 1954 Hague Convention and Protocols, *supra* note 59; 1995 UNIDROIT Convention, *supra* note 59.

62. The Hague Convention was created in 1954 in reaction to the destruction of cultural property that occurred during World War II. "It is the first international treaty with a world-wide vocation focusing exclusively on the protection of cultural heritage in the event of armed conflict." *1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, UNESCO, <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols/1954-hague-convention/> (last visited June 9, 2019).

63. 1954 Hague Convention and Protocols, *supra* note 59.

64. *1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, *supra* note 62.

65. Vitale, *supra* note 38, at 1839 n.21.

66. *Id.*

67. 1954 Hague Convention and Protocols, *supra* note 59, pmb1.

countries to waive cultural property obligations if warranted by military necessity.⁶⁸

2. The UNIDROIT Convention

The 1995 UNIDROIT came into effect after the Hague Convention and the UNESCO Convention.⁶⁹ The UNIDROIT Convention expanded upon the goal of protecting the global community that was first articulated in the Hague and UNESCO Conventions.⁷⁰ Namely, the UNIDROIT Convention's preamble states that its goals are to "protect[] [] cultural heritage and [] cultural exchanges for promoting understanding between peoples, and the dissemination of culture for the well-being of humanity and the progress of civilisation."⁷¹ The UNIDROIT Convention, unlike the Hague Convention, better embodies the ideal

68. "The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver." 1954 Hague Convention and Protocols, *supra* note 59, art. 4(2). The Hague Convention states:

Apart from the case provided for in paragraph 1 of the present Article, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger. Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity.

1954 Hague Convention and Protocols, *supra* note 59, art. 11; Marilyn E. Phelan, *The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects Confirms a Separate Property Status for Cultural Treasures*, 5 VILL. SPORTS & ENT. L.J. 31, para. 4 (1998).

69. "UNIDROIT is an independent intergovernmental organisation with its headquarters in the Villa Aldobrandini in Rome. Its purpose is to study needs and methods for modernising, harmonising and coordinating private and, in particular, commercial law between States and groups of States." *The 1995 UNIDROIT Convention*, UNESCO, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1995-unidroit-convention/> (last visited June 9, 2019). The UNIDROIT Convention is the most recent international treaty that focuses on cultural property protection and is described as a complimentary legal tool to the UNESCO Convention. Neither Turkey nor the United States is a party to the UNIDROIT Convention. 1995 UNIDROIT Convention, *supra* note 59.

70. 1995 UNIDROIT Convention, *supra* note 59.

71. *Id.* pmb1.

that it is imperative to protect cultural property—not just to safeguard developing nations from being exploited, but also to aid in creating a more culturally sensitive and educated global community.⁷²

Notably, these conventions have continued to recognize the importance of cultural property as exemplified in the UNIDROIT Convention's definition of cultural property.⁷³ The UNIDROIT Convention defines it as objects of cultural "importance for archaeology, prehistory, history, literature, art or science and belong[ing] to one of the categories listed in the Annex to the Convention."⁷⁴ It further expanded the definition of cultural property by removing the requirement that cultural property be a moveable piece of tangible property; rather, the convention expanded it to all objects.⁷⁵ The UNIDROIT Convention, furthermore, does not permit member states to waive their obligations to protect cultural property due to military necessity.⁷⁶ Instead, if a member country wishes not to follow the regulations of the convention, it may withdraw at any time, freeing them from their obligations while correspondingly forfeiting the protections afforded under the UNIDROIT Convention.⁷⁷ Although the UNIDROIT Convention is a more contemporary cultural property treaty, there are no 'safeguards' for countries who fail to meet their obligations⁷⁸ and it lacks that widespread international support the UNESCO Convention maintains.⁷⁹

72. *Id.*

73. *Id.*

74. *Id.*; *Contra* 1954 Hague Convention and Protocols, *supra* note 59, pmb1. ("Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world").

75. Collado, *supra* note 19, at 2.

76. 1995 UNIDROIT Convention, *supra* note 59, art. 9. At most, the UNIDROIT Convention states UNESCO is not required to "to recognise or enforce a decision of a court or other competent authority of another Contracting State that departs from the provisions of this Convention." *Id.*

77. 1995 UNIDROIT Convention, *supra* note 59, art. 15(4). "Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal shall take effect on the first day of the sixth month following the date of the deposit of the notification." *Id.*

78. 1995 UNIDROIT Convention, *supra* note 59.

79. While sixty-three countries, including the United States and the United Kingdom have signed the convention, very few have actually ratified or implemented the convention into domestic law. Strother, *supra* note 13, at 342–43;

B. A History of The Republic of Turkey's Legislation Protecting Cultural Property

The current Turkish Constitution devotes one Article to cultural property protection, which states that there will be “promotive and supportive measures towards [protections] and Turkish law will regulate any limitations.”⁸⁰ As noted in the litigation between Turkey and Christie’s, Turkey tried to enforce the 1906 Decree from the Ottoman Empire—the predecessor nation to the Republic of Turkey.⁸¹ The 1906 Decree held that all moveable and immovable antiquities, whether known or unknown, are “the property of the Ottoman Empire” and any right to donate, collect, or preserve these antiquities belonged to the Ottoman Empire.⁸² The 1906 Decree remained in force until 1973 when a new law was enacted to preserve property.⁸³ The current Turkish law in effect is the 1983 Law on the Protection of Cultural and Natural Property, which provides Turkey with an unqualified right to exercise ownership over stolen cultural property, claiming “a thief cannot convey title.”⁸⁴

Membership, UNIDROIT, <https://www.unidroit.org/about-unidroit/membership> (last updated Apr. 8, 2019).

80. The Constitution of the Republic of Turkey states:

The State shall ensure the protection of the historical, cultural and natural assets and wealth, and shall take supportive and promotive measures towards that end. Any limitations to be imposed on such privately-owned assets and wealth and the compensation and exemptions to be accorded to the owners of such, because of these limitations, shall be regulated by law.

TÜRKIYE CUMHURİYETİ ANAYASASI [CONSTITUTION] Nov. 7, 1982, art. 63 (Turk.).

81. Republic of Turkey v. Christie’s Inc., No. 17 Civ. 3086 (S.D.N.Y. 2017); Emrah Özsynay, *Protection of Cultural Heritage in Turkish Private Law*, 6 INT’L J. CULTURAL PROP. 278, 278 (1997).

82. Decree of Antiquities, art. 4 (1906) (Turk.); Özsynay, *supra* note 81.

83. Sibel Özel, *Under the Turkish Blanket Legislation: The Recovery of Cultural Property Removed from Turkey*, 38 INT’L J. LEGAL INFO. 177, 177–80 (2010).

84. *Id.*; Michael J. Kelly, *Conflicting Trends in the Flourishing International Trade of Art and Antiquities: Restitution in Integrum and Possessio animo Ferundi/Lucrandi*, 14 DICK. J. INT’L L. 31, 32–33 (1995) (quoting Mark Rose & Ozgen Acar, *Turkey’s War on the Illicit Antiquities Trade*, ARCHAEOLOGY, Mar.–Apr. 1995, at 45–46).

Turkish law has codified that the right to ownership of cultural property is absolute and does not require the country to physically possess the cultural property. Therefore, as long as the property was found or excavated within Turkey, the right of ownership remains Turkey's.⁸⁵ This type of all-encompassing ownership is not unheard of in countries rich in cultural property.⁸⁶ Although these laws appear to guarantee a right to cultural property in the future, some have argued that these laws are responsible for a significant portion of the illicit cultural property in the black market.⁸⁷ By enacting and seeking enforcement an all-encompassing ownership law, Turkey has seemingly left its citizens, archaeologists, scientists, and others without a way to privately own artifacts. This has resulted in people resorting to looting or selling and buying property on the black market because there is no way to own or protect their possessions or to keep their discoveries legally.⁸⁸

Turkey is presently filing thousands of claims for the return of its cultural property, some of which were stolen during the Ottoman Empire and prior to the 1970 UNESCO Convention date.⁸⁹ The majority of Turkey's reparation claims have been brought against foreign museums.⁹⁰ Most often, Turkey targets museums which acquired the property legally and in accordance with the applicable conventions, but prior to the museum's acquisition, there was a disputed or questionable ownership history of the artifact.⁹¹ Turkey's litigious attitude has caused both

85. Ozel, *supra* note 83 (Turkey may also enforce its right of ownership at any time.).

86. *See id.* ("Italy, Greece, and Mexico all prefer to enact such blanket legislation.").

87. John A. Cohan, *An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property (Part Two)*, 28 U.C. DAVIS ENVIRONS ENVTL. L. & POL'Y J. 1, 9 (2004).

88. *Id.*

89. *Turning Detective in Hunt for Artifacts*, CHINA DAILY (Sept. 7, 2017), http://europe.chinadaily.com.cn/world/2017-09/07/content_31675040.htm.

90. Dan Bilefsky, *Seeking Return of Art, Turkey Jolts Museums*, N.Y. TIMES (Sept. 30, 2012), <http://www.nytimes.com/2012/10/01/arts/design/turkeys-efforts-to-repatriate-art-alarm-museums.html>.

91. Republic of Turkey v. Christie's Inc., No. 17 Civ. 3086 (S.D.N.Y. 2017); Republic of Turkey v. Metropolitan Museum of Art, 762 F. Supp. 44 (S.D.N.Y. 1990); Republic of Turkey v. OKS Partners, No. 89-3061-WJS, 1994 U.S. Dist. LEXIS 17032, at 2, 4 (D. Mass. 1994).

art dealers and museums to be extremely conservative when verifying the provenance of cultural artifacts out of fear of future litigation.⁹²

III. TURKEY'S ATTEMPT TO APPLY THE 1906 YEAR AND MODERN CONCERNS WITH THE 1970 UNESCO CONVENTION

This Part will encompass two sections. Section A will review Turkey's approach to reclaiming its cultural property and discuss how Turkey's claims are creating a chilling effect on the art industry. Section B will examine issues in applying international conventions to countries experiencing geographic renaming and provide an analysis of how culture is defined by the conventions.

A. Overview of How Turkey Enforces Its Rights

Turkey is one of the most litigious countries in its quest for the return of cultural property and it continues to file numerous claims.⁹³ Turkey exercises its purported ownership rights, typically over museum-owned pieces, by sending letters claiming ownership to dozens of pieces without substantive evidence. As

92. Amineddoleh, *supra* note 8, at 733 (“As buyers, museums should be subject to greater scrutiny when acquiring objects. Museums have the ability and responsibility to appropriately research their acquisitions, as their objective is to house and preserve artwork.”). *Archaeological Material and Ancient Art*, AM. ALLIANCE MUSEUMS (July 2008), <http://www.aam-us.org/resources/ethics-standards-and-best-practices/collections-stewardship/archaeological-material-and-ancient-art> (These guidelines reference the UNESCO Convention and require all museums to “[r]igorously research the provenance of an object prior to acquisition,” “[m]ake a concerted effort to obtain accurate written documentation with respect to the history of the object, including export and import documents,” and “[r]equire sellers, donors, and their representatives to provide all available information and documentation.”). *Museums, Ethics, Best Practices, and Position Papers*, COMM. CULTURAL POL’Y, <https://web.archive.org/web/20151117031259/http://committeeforculturalpolicy.org/aamd-on-art-museums-private-collectors-pdf/> (last visited June 9, 2019) (The Association of American Museum Director Policies has published official guidelines relating to the acquisition of archaeological material and ancient art, the identification and restitution of works stolen by Nazis, the stewardship and acquisition of sacred objects, and their policy of deaccession.)

93. *Turning Detective in Hunt for Artifacts*, *supra* note 89.

litigation progresses, Turkey often rescinds a number of its original claims.⁹⁴ This process has significantly undercut its credibility and the goals the conventions hoped to inspire of preserving and sharing culture.⁹⁵

Turkey has, furthermore, not been discouraged by lengthy litigation battles.⁹⁶ One recent success for Turkey was the return of the Roman sarcophagus of *Hercules*, which was illegally taken from Turkey in the 1960s.⁹⁷ Here, Turkey spent more than twenty years litigating with the Boston Museum of Fine Arts⁹⁸ until the Museum abdicated its claim to the bust.⁹⁹ It has also filed a criminal complaint against the Metropolitan Museum of Art for items donated to the museum by a private collector.¹⁰⁰ Turkey has gone so far as to send members of its Parliament to international galleries exhibiting Turkish property to examine any pieces that could constitute cultural property.¹⁰¹ Turkey's aggressive and litigious approach to enforcing its cultural property rights not only ignores the UNESCO Convention's purpose and goals, but the legal regulations as well.¹⁰²

The 1990 monumental case *The Republic of Turkey v. Metropolitan Museum of Art* has helped to shape museums reactions to Turkish claims.¹⁰³ The case focused on Turkey's claim that the

94. Collado, *supra* note 19, at 2.

95. Tom Mashberg, *No Quick Answers in Fights Over Art*, N.Y. TIMES (July 1, 2013), <http://www.nytimes.com/2013/07/02/arts/design/museums-property-claims-are-not-simply-about-evidence.html>.

96. *Turning Detective in Hunt for Artifacts*, *supra* note 89.

97. *Id.*

98. Located in Boston, Massachusetts and founded in 1870, The Museum of Fine Arts is the fourth largest museum in the United States. *About the MFA*, MUSEUM FINE ARTS, BOSTON, <http://www.mfa.org/about> (last visited June 9, 2019).

99. *Greek God Hercules Reunited with His Bottom Half as Museum Agrees to Send Back 'Looted' Bust to Turkey*, DAILY MAIL (July 22, 2011), <http://www.dailymail.co.uk/news/article-2017629/Weary-Herakles-reunited-half-looted-bust-returns-Turkey.html>.

100. Collado, *supra* note 19, at 15 (Turkey alleged there needed to be a further investigation into the Norbert Schimmel collection donated to the museum when the Metropolitan Museum did not return the pieces when asked.).

101. Emin Avundukluoglu, *Turkish MPs to Go Abroad to Probe Smuggled Artefacts*, ANADOLU AGENCY (Nov. 6, 2017), <https://www.aa.com.tr/en/politics/turkish-mps-to-go-abroad-to-probe-smuggled-artefacts/957779>.

102. 1970 UNESCO Convention, *supra* note 15, pmbl.

103. *Republic of Turkey v. Metropolitan Museum of Art*, 762 F. Supp. 44 (S.D.N.Y. 1990).

Metropolitan Museum of Art had acted in bad faith when it purchased artifacts and then attempted to conceal the illegal provenance of the acquisitions.¹⁰⁴ The paramount aspect of this case is that the United States judicial system looked to, and expressed a desire to enforce, the UNESCO Convention.¹⁰⁵

A second notable case is the *Republic of Turkey v. OKS Partners*, which involved Turkey's desire to have historical coins returned under cultural property claims.¹⁰⁶ In this action the U.S. District Court was presented with translations of Turkish laws into English with differing interpretations of the same law.¹⁰⁷ One interpretation of the Turkish law gave the coins the status of being "state property," and the other interpretation detailed the coins as "having the quality of state property."¹⁰⁸ The difference in the translations could fundamentally dictate how the Court would resolve Turkey's claim to the coins.¹⁰⁹ The Court analyzed Turkey's enactment of the law stating that when moveable objects, such as coins, were discovered, there must be an immediate report of their discovery to Turkey.¹¹⁰ Due to Turkey's moveable objects law, the Court concluded that Turkey, "at the very least," had an unconditional right to the return of the coins.¹¹¹

These two cases are not unique. Turkey has spent a great deal of time over the past decade pursuing cultural property claims publicly.¹¹² With Turkey's emergence as a leader in the quest for

104. *Id.* at 45; Lydian Hoard, *Turkey and Metropolitan Museum of Art*, ARTHEMIS, <https://plone.unige.ch/art-adr/cases-affaires/lydian-hoard-2013-turkey-and-metropolitan-museum-of-art-1/> (last visited June 9, 2019) (Turkey's claims centered on the allegation that the Metropolitan Museum of Art concealed the illicit origins of artifacts purchased. Turkey also attempted to apply the 1906 patrimony law. The parties ultimately reached a settlement agreement where the artifacts were returned to Turkey, and the parties stipulated that they would work together on cultural property concerns going forward.).

105. Kastenber, *supra* note 34, at 49.

106. *Republic of Turkey v. OKS Partners*, No. 89-3061-WJS, 1994 U.S. Dist. LEXIS 17032, at *2-4 (D. Mass. 1994).

107. *Id.* at 3.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 8.

112. See, e.g., Burak Akinci, *Turkey Hunts for Numerous Historical Artifacts Smuggled Aboard*, XINHUA NET (Nov. 10, 2017), http://news.xinhuanet.com/english/2017-09/03/c_136579485.htm (for examples of the Republic of Turkey's claiming property from the Lourve in Paris,

reparation of cultural property, it is important to note how it has addressed cultural property claims through means other than litigation.¹¹³ Notably, although Turkey has used aggressive tactics towards museums,¹¹⁴ it has placed great importance on showing appreciation to private citizens who have voluntarily returned cultural property to Turkey.¹¹⁵

Further enhancing the tension and fear of litigation fostered by Turkey is the issue that the legal landscape of Turkey is challenging to define.¹¹⁶ The changing border of the Republic of Cyprus¹¹⁷ exemplifies the ambiguity between the Turkish government's authority and the scope of its enforceable claims.¹¹⁸ Presently, there is discord as to how to govern culturally rich areas in the northern part of Cyprus.¹¹⁹ Turkey, which currently exercises control, refuses to allow archaeological digs to occur in this

France, the J. Paul Getty Museum in Los Angeles, California, and a Berlin museum); Collado, *supra* note 19, at 15 ("The Sphinx had been on display in a German museum since 1934, and prior to Germany agreeing to give the 3,000 year-old Sphinx to Turkey, legal ownership of the Sphinx had been in dispute for decades because neither country could produce documents that established legitimate ownership. It was only after Turkey threatened to prohibit German archaeologists from excavating in Turkey that the German museum capitulated and agreed to deliver the Sphinx to Turkey." Importantly, Turkey never actually proved when the property left Turkey and, therefore, Germany was not legally required to return the property but did so anyway under Turkey's threats.).

113. Euronews, *Stockport Woman Receives Hero's Welcome in Turkey*, EURONEWS (Sept. 27, 2017), <https://www.euronews.com/2017/09/27/stockport-woman-receives-heros-welcome-in-turkey>.

114. Bilefsky, *supra* note 90.

115. For example, an English woman returned an urn to Turkey that she bought while on vacation in the ancient Greek city of Ephesus. Euronews, *supra* note 113. On her own accord, she had the urn valued and, when she realized it was a relic that would be considered cultural property, sought to return the urn to Turkey. *Id.* As a result of her acts, Turkey invited her to spend a week in Turkey, presented her with gifts and brought her to see the urn on display in the Museum of Anatolian Civilizations. *Id.* Turkey's show of gratitude to this particular instance and exemplifies how Turkey hopes to encourage the return of cultural property amicably between themselves and private citizens. *Id.*

116. Angelos Anastasiou, *Ancient Sites in the North 'At Risk'*, CYPRUS MAIL (Oct. 8, 2017), <https://cyprus-mail.com/2017/10/08/ancient-sites-north-risk/>.

117. *Id.* (The Republic of Cyprus currently controls the island of Cyprus, but the northern part of the island is still under Turkish control.).

118. *Id.*

119. *Id.*

part of Cyprus.¹²⁰ Cyprus, however, encourages the excavations and hopes to preserve any cultural property, monuments, or artifacts before they are destroyed irrevocably.¹²¹ It also appears to be on the verge of accusing Turkey of violating the 1954 Hague Convention's protocol promoting cooperation over culturally rich sites.¹²² The Hague Convention requires countries sharing territory to support one another "as far as possible" to achieve the common goal of "safeguarding and preserving its cultural property."¹²³ Turkey unreservedly banned all archaeological digs at the expense of cultural property preservation in 2017.¹²⁴

Conversely, distinguished museums, such as the Metropolitan Museum,¹²⁵ the Getty,¹²⁶ and the Guggenheim,¹²⁷ speak to their altruistic mission to "display global art treasures[.]" but have been continuously confronted with Turkey's relentless pursuit to seek the return of cultural property alleged by Turkey to have been illicitly traded.¹²⁸ It appears that museums act as conservatively as the law requires, and often look to others in the art

120. *Id.*

121. *Id.*

122. *Id.*; 1954 Hague Convention and Protocols, *supra* note 59.

123. Anastasiou, *supra* note 116; 1954 Hague Convention and Protocols, *supra* note 59.

124. Anastasiou, *supra* note 116.

125. *Mission Statement*, METROPOLITAN MUSEUM OF ART, https://www.metmuseum.org/-/media/Files/About%20The%20Met/Annual%20Reports/2010_2011/Mission%20Statement.pdf?la=en (last visited June 9, 2019) ("To collect, preserve, study, exhibit, and stimulate appreciation for and advance knowledge of works of art that collectively represent the broadest spectrum of human achievement at the highest level of quality, all in the service of the public and in accordance with the highest professional standards").

126. *About*, J. PAUL GETTY MUSEUM, <http://www.getty.edu/museum/about.html> (last visited June 9, 2019) ("The J. Paul Getty Museum seeks to inspire curiosity about, and enjoyment and understanding of, the visual arts by collecting, conserving, exhibiting and interpreting works of art of outstanding quality and historical importance.").

127. *Foundation*, SOLOMON R. GUGGENHEIM FOUNDATION, <https://www.guggenheim.org/foundation> (last visited June 9, 2019) ("Committed to innovation, the Solomon R. Guggenheim Foundation collects, preserves, and interprets modern and contemporary art, and explores ideas across cultures through dynamic curatorial and educational initiatives and collaborations. With its constellation of architecturally and culturally distinct museums, exhibitions, publications, and digital platforms, the foundation engages both local and global audiences.").

128. Bilefsky, *supra* note 90.

industry,¹²⁹ including other international museums, art dealers, and auction houses, to ensure that they are acting in good faith and taking all reasonable steps to verify the provenance of cultural property.¹³⁰ The fear of lengthy, costly, and time-consuming litigation has chilled museums from acquiring cultural property when they cannot substantiate the piece's entire history.¹³¹

Turkey, with its numerous claims to cultural property, has created a tumultuous situation for the art world.¹³² Although the art industry largely adheres to the regulations of the UNESCO Convention, Turkey's attempt to litigate and enforce the Ottoman Empire's cultural property date of 1906 has frustrated the purpose of having international regulations promoting cooperation.¹³³ When museums fail to immediately comply with Turkey's cultural property demands, the result often ends in the public shaming of the museum and encourages museums to avoid promoting and exhibiting pieces tied to Turkish history and culture.¹³⁴

129. See, e.g., *Developing a Collections Management Policy*, AM. ALLIANCE MUSEUMS, <https://www.aam-us.org/wp-content/uploads/2018/01/developing-a-cmp-final.pdf> (last visited June 9, 2019) (for an example of a leading group publishing guidelines for how to deal with international acquisitions).

130. Bilefsky, *supra* note 90; Mashberg, *supra* note 95. Furthermore,

in 2008, the Association of Art Museum Directors, the industry's major trade group, wrote sweeping guidelines advising museums that they "normally should not" acquire a work unless solid proof exists that the object was, before 1970, outside the country where it was discovered in modern times, or was legally exported from that country after 1970.

Id.

131. Bilefsky, *supra* note 90.

132. *Id.*

133. *Id.*

134. *Id.* Furthermore,

Turkey's aggressive tactics, which come as the country has been asserting itself politically in the Middle East in the wake of the Arab Spring, have particularly alarmed museums. Officials here are refusing to lend treasures, delaying the licensing of archaeological excavations and publicly shaming museums. . . . [Hermann Parzinger, president of the Prussian Cultural Heritage Foundation stated that] "They should be careful about making moral claims when their museums are full of looted treasures acquired [] by the Ottomans

Although Turkey's tactics have created anxiety for museums, whose stated purposes are to facilitate engaging society through art and history,¹³⁵ they have proved successful for Turkey.¹³⁶ The State's aggressive campaign for its cultural property has been unique as many other countries tend to use these disputes as opportunities to share their cultures and strengthen sovereign relationships.¹³⁷ This may not be the case for long, however, as other developing nations are beginning to follow Turkey's footsteps and utilizing more aggressive litigation tactics to reclaim

in their centuries ruling parts of the Middle East and south-east Europe."

Id.

135. See *Developing a Mission Statement*, AM. ALLIANCE MUSEUMS, <https://www.aam-us.org/wp-content/uploads/2017/12/Developing-a-Mission-Statement-2018.pdf> (last visited June 9, 2019) (for a discussion of the creation of a mission statement for museums and examples from accredited museums which show the central focus is connecting individuals with works they would not otherwise experience).

136. It has been reported that:

[l]ast year the Pergamon agreed to return a 3,000-year-old sphinx from the Hittite Empire that Turkey said had been taken to Germany for restoration in 1917. German officials said Turkey had threatened to block major archaeological projects if the sphinx did not come home. In another victory for Turkey, last month the University of Pennsylvania's Museum of Archaeology and Anthropology announced that it had agreed to lend indefinitely 24 artifacts to Turkey from ancient Troy whose murky provenance helped inspire the 1970 Unesco convention. Turkey, in turn, promised future loans and collaboration with the university.

Bilefsky, *supra* note 90; Turkey's Ministry of Culture and Tourism has reported that 4,310 historical artifacts have been returned between 2004 and 2018. *4,310 Historical Artifacts Returned to Turkey in Last 14 Years*, DAILY SABAH (Dec. 19, 2018), <https://www.dailysabah.com/history/2018/12/19/4310-historical-artifacts-returned-to-turkey-in-last-14-years>; Akinci, *supra* note 112 ("A total of 4,269 objects have been brought back between 2003 and 2016, according to figures released by the Culture ministry.").

137. *Good Faith Acquisition of Antiquities?*, ILLICIT CULTURAL PROP. (Nov. 1, 2007), <http://illicit-cultural-property.blogspot.com/2007/11/good-faith-acquisition-of-antiquities.html> (Princeton University Art Museum acquired an Apulian red figure loutrophos from South Italy in good faith, but Italy exercised its right of ownership over the piece, and the two entities worked out an agreement where the piece will be kept at Princeton, but the title has been transferred back to Italy.).

cultural property.¹³⁸ In addition to this new approach to asserting claims, Turkey also threatens to cease lending cultural property treasures to museums around the world and has followed through on these threats even when the museum capitulates to Turkey's demands.¹³⁹ The fear of a flood of litigation, criminal charges, public shaming, and overall intimidation tactics have led museums to fear engaging with Turkey, creating an apparent chilling effect on museum acquisitions.¹⁴⁰

B. Concerns of the Present and Future

This section explores how the UNESCO Convention has addressed the issue of a country's pursuit of cultural property claims when the property no longer resides within its borders and how international treaties have dealt with the idea of culture.

1. How to Apply the UNESCO Convention when Countries Experience Geographical Renaming

UNESCO adopted the World Heritage Convention¹⁴¹ in 1972, and with this convention came the Operational Guidelines¹⁴² for the Implementation of the World Heritage Convention ("World

138. See, e.g., Bilefsky, *supra* note 90 (Egypt and Greece are increasing their demands for cultural property).

139. *Id.*; Carol Vogel, *Metropolitan Museum to Return Turkish Art*, N.Y. TIMES, Sept. 23, 1993, at 13, available at <https://www.nytimes.com/1993/09/23/arts/metropolitan-museum-to-return-turkish-art.html> (Turkey pursued the Metropolitan Museum of Art ("the MET") for six years seeking the return of 200 objects from the sixth century, and it ended with the Met agreeing to return all pieces within thirty days.).

140. William G. Pearlstein, *White Paper: A Proposal to Reform U.S. Law and Policy Relating to The International Exchange of Cultural Property*, 32 CARDOZO ARTS & ENT. L.J. 561, 570–72 (2014); Bilefsky, *supra* note 90.

141. An international treaty adopted by UNESCO in 1972 as a way to compile all concepts on nature conservation and the preservation of cultural property. *The World Heritage Convention*, UNESCO, <http://whc.unesco.org/en/convention/> (last visited June 9, 2019).

142. "The World Heritage Committee . . . has developed precise criteria for the inscription of properties on the World Heritage List and for the provision of international assistance under the World Heritage Fund." *The Operational Guidelines for the Implementation of the World Heritage Convention*, UNESCO, <http://whc.unesco.org/en/guidelines/> (last visited June 9, 2019) [hereinafter *Operational Guidelines*].

Heritage Guidelines”).¹⁴³ The World Heritage Guidelines provides how a country can address modifications to a World Heritage boundary and specifies the proper channels to resolve major¹⁴⁴ and minor¹⁴⁵ geographic renaming¹⁴⁶ changes, as well as

143. Convention Concerning the Protection of the World Cultural and Natural Heritage, Dec. 17, 1975, 27 U.S.T. 37, 1037 U.N.T.S. 151, *available at* <http://whc.unesco.org/en/conventiontext/>.

144. The Operational Guidelines provide that:

If a State Party wishes to significantly modify the boundary of a property already on the World Heritage List, the State Party shall submit this proposal as if it were a new nomination (including the requirement to be previously included on the Tentative List—see paragraph 63 and 65). This re-nomination shall be presented by 1 February and will be evaluated in the full year and a half cycle of evaluation according to the procedures and timetable outlined in paragraph 168. This provision applies to extensions, as well as reductions.

Operational Guidelines, *supra* note 142, § III.I, ¶ 165.

145. *Id.* at § III.I, ¶¶ 163–64. The Operational Guidelines provide:

163. A minor modification is one which has not a significant impact on the extent of the property nor affects its Outstanding Universal Value. 164. If a State Party wishes to request a minor modification to the boundaries of a property already on the World Heritage List, it must be prepared in compliance with the format of Annex 11 and must be received by 1 February by the Committee through the Secretariat, which will seek the evaluation of the relevant Advisory Bodies on whether this can be considered a minor modification or not. The Secretariat shall then submit the Advisory Bodies' evaluation to the World Heritage Committee. The Committee may approve such a modification, or it may consider that the modification to the boundary is sufficiently significant as to constitute a significant boundary modification of the property, in which case the procedure for new nominations will apply.

Id.

146. Geographic renaming is the process of renaming or re-defining the geographic region of a country. *Lawmaker Proposes Renaming Philippines*, BUS. STANDARD (June 12, 2017), https://www.business-standard.com/article/news-ians/lawmaker-proposes-renaming-philippines-117061200387_1.html.

modifications to the countries' name.¹⁴⁷ The UNESCO Convention, conversely, does not have a section that acknowledges modifications to countries' names or changes to boundaries in its Operational Guidelines.¹⁴⁸ Thus, international courts and individual states must resolve these issues without a guiding law or precedent, leaving opportunities for inconsistent judgments and uncertain precedents.

Peru v. Johnson demonstrates how geographic renaming can affect a country's claim of ownership over cultural property.¹⁴⁹ The United States District Court in California held that cultural property seized in California's customs service could not be substantially verified as owned by Peru.¹⁵⁰ The fact that Peru could not establish that the items were excavated from modern-day Peru and, furthermore, Peru's present laws concerning cultural property were not precise or recent enough to establish genuine ownership were significant factors in the Court's decision to deny Peru's claim.¹⁵¹ Although the topic of geographic renaming was addressed in this case, the District Court failed to create a

147. "A State Party may request that the Committee authorize a modification to the name of a property already inscribed on the World Heritage List. A request for a modification to the name shall be received by the Secretariat at least 3 months prior to the meeting of the Committee." *Operational Guidelines*, *supra* note 142, § III.1, ¶ 167.

148. UNESCO, Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), *available at* http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/OPERATIONAL_GUIDELINES_EN_FINAL_FINAL.pdf.

149. Cohan, *supra* note 87, at 71; *Peru v. Johnson*, 720 F. Supp. 810, 812 (C.D. Cal. 1989).

150. *Johnson*, 720 F. Supp. at 812–15.

151. The Court held that:

Peru may not prevail in this action to recover the artifacts here concerned because: (a) We do not know in what country they were found and from which they were exported. (b) If they were found in Peru, we do not know when. (c) We do not know if they were in private possession in Peru more than one year after the official registry book was opened. (d) The extent of Peru's claim of ownership as part of its domestic law is uncertain.

Id. at 815.

working judicial precedent.¹⁵² Since the cultural property could have originated from Bolivia or Ecuador, Peru could not establish complete ownership in modern-day or historical Peru; accordingly, the Court held that this invalidated the State's cultural property claim.¹⁵³

2. Who Should Retain Ownership: Can This Be Determined by the UNESCO Convention?

In 2012, the *New York Times* reported on Turkey's aggressive work to reclaim cultural artifacts and the impact of its changing borders.¹⁵⁴ Although some countries seek to protect their rights by enacting laws that safeguard their claims to cultural property even when it is beyond their geographic borders, this fails to adequately address this increasingly complicated area.¹⁵⁵ Many scholars and countries are of the mindset that the property should belong to the place where it gained its significance, and the UNESCO Convention has failed to sufficiently describe how countries should address this issue.¹⁵⁶

To accurately analyze how the UNESCO Convention deals with the geographic renaming of signatory countries requires an understanding how UNESCO, and the larger international community, defines culture.¹⁵⁷ Notably absent from the discussion of cultural property is a precise definition of culture in the UNESCO Convention, Hague Protocol, UNIDROIT Convention, and the following UNESCO-adopted conventions.¹⁵⁸

152. *Id.*

153. Cohan, *supra* note 87, at 71 ("Even if Peru could prove that the objects originated from sites that were Peruvian in pre-Columbian times, the proper claimant today might be Bolivia or Ecuador.").

154. Bilefsky, *supra* note 90.

155. Collado, *supra* note 19, at 2.

156. *Id.* 1970 UNESCO Convention, *supra* note 15.

157. Collado, *supra* note 19, at 4; Bruner, *supra* note 57, at 358–59; *Good Fences*, *ECONOMIST* (Dec. 17, 1998), <http://www.economist.com/node/179771>.

158. 1970 UNESCO Convention, *supra* note 15; 1995 UNIDROIT Convention, *supra* note 59; 1954 Hague Convention and Protocols, *supra* note 59; Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Oct. 20, 2005, 2440 U.N.T.S. 311, 45 I.L.M. 269; Collado, *supra* note 19, at 4; Bruner, *supra* note 57, at 358 ("As U.S. officials have lamented, the Culture Convention offers no definitions for "culture" and "cultural identity," key concepts upon which the operative terms and central rights and obligations of the document are constructed. As a consequence, the scope of the document's application is difficult to predict.").

Legal scholars interpret cultural property ownership in two ways.¹⁵⁹ The first perspective on cultural property has been described as 'cultural internationalism,' which centers on the idea that "everyone has an interest in the preservation and enjoyment of cultural property, regardless of its provenance, mired past, or to whom it originally belonged."¹⁶⁰ This concept of cultural property places great importance on viewing cultural property as a "component of common human culture,"¹⁶¹ and the Hague Protocol best embodied this definition.¹⁶² The second perspective on cultural property is referred to as 'cultural nationalism,' which supports the notion that "cultural property is best understood in its original context."¹⁶³ It is from this perspective that countries can seek the remedy of repatriation for property taken outside of the origin countries' borders, and this concept is embodied and codified in the UNESCO Convention Preamble.¹⁶⁴

When analyzing Turkey's cultural property claims under these two approaches to cultural property ownership, Turkey's efforts are exceptionally culturally nationalistic, at times to the expense of preserving its history.¹⁶⁵ Turkey, however, is not alone in its culturally nationalistic approach; this is the dominant standard

159. Merryman, *supra* note 16, at 831–32; Collado, *supra* note 19, at 4; Bruner, *supra* note 57, at 361.

160. Collado, *supra* note 19, at 5.

161. *Id.*

162. 1954 Hague Convention and Protocols, *supra* note 59, pmb. ("Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world"); Merryman, *supra* note 16, at 832.

163. Collado, *supra* note 19, at 5.

164. Merryman, *supra* note 16, at 831–33; 1970 UNESCO Convention, *supra* note 15, pmb. ("Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting[.]").

165. Collado, *supra* note 19, 5;

A cultural nationalist would likely view Turkey's repatriation efforts in a more sympathetic light, and quite possibly, as legitimate means to regain control of its heritage; while a cultural internationalist would see Turkey's efforts as a country merely using its political clout, in a non-legitimate way, to force museums' hands.

Id.

in pursuing cultural property claims and international treaties dealing with cultural property.¹⁶⁶

In conjunction with these two approaches is the notion that a nation is defined through its history and culture, and that the concept of a country can only be determined through clear, distinctive, geographic borders.¹⁶⁷ This approach raises issues such as if cultural property relating to Turkish history is sourced from an area no longer under Turkish control, Turkey could be prohibited from exercising a claim of ownership over it, particularly considering that Turkey would no longer be able to show the property in its 'original context' as required in the nationalistic approach. The conventions regulating cultural property lack a definitive answer to the question of whether a sovereign state is entitled to a monopoly on its culture. As such, countries are left to struggle to address issues of culture, government, and geographic borders with regard to their reparation claims.¹⁶⁸ The ambiguity in how to conceptualize culture and country must be reconciled as countries continue to experience geographic border changes and a transparent avenue to resolve impending property disputes is paramount.¹⁶⁹

IV. PROPOSED SOLUTIONS

Turkey's aggressive approach in reclaiming its cultural property is harmful to the very notion of cultural property because it too severely chills the dissemination and understanding of cultural heritage, the basis of cultural property conventions.¹⁷⁰ Instead of attempting to enforce an international treaty, which

166. Merryman, *supra* note 16, at 846.

167. *Good Fences*, *supra* note 157.

168. *Peru v. Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989).

169. See Laura Smith-Spark & Claudia Rebaza, *Catalonia Government Dissolved After Declaring Independence from Spain*, CNN (Oct. 28, 2017), <http://www.cnn.com/2017/10/27/europe/catalonia-independence-spain/index.html> (for a discussion of Catalonia declaring independence from Spain in October 2017); *South Sudan Country Profile*, BBC (Aug. 6, 2018), <http://www.bbc.com/news/world-africa-14069082> (for a discussion of South Sudan gaining independence from Sudan in 2011); Alex Hunt & Brian Wheeler, *Brexit: All You Need to Know About the UK Leaving the EU*, BBC (May 10, 2019), <http://www.bbc.com/news/uk-politics-32810887> (for a discussion of how the UK voted to leave the European Union in June 2016).

170. Collado, *supra* note 19; 1970 UNESCO Convention, *supra* note 15; Hague Convention and Protocols, *supra* note 59; 1995 UNIDROIT Convention, *supra* note 59.

Turkey's aggressive cultural nationalistic campaign continues to undermine, an amendment needs to be created for the current UNESCO Convention which accounts for these modern circumstances and tactics.

This Note proposes a two-part solution that addresses areas the current UNESCO Convention has not resolved.¹⁷¹ First, the UNESCO Convention will need to adopt stricter language requiring countries to look at cultural property claims as an opportunity for cooperation. As seen in the chronology of conventions dealing with cultural property, countries have continued to sign and ratify the conventions even as the goals of the conventions have become more globally-focused and signatory countries have fewer safeguards.¹⁷² The UNESCO Convention and the UNIDROIT Convention completely removed the ability for a country to default on its obligations based upon military necessity.¹⁷³ The next logical step in the world of cultural property protection would be to not only encourage international cooperation, but mandate a good faith effort to resolve cultural property disputes quickly and amicably prior to litigation. Such cooperation evinces the goals of the convention to promote understanding of the different cultures of the world and the global human culture. Once the UNESCO Convention accepts this amendment, it will have greater authority to regulate frivolous or unsubstantiated allegations.

Second, the UNESCO Convention will need to amend the Operational Guidelines to reflect a way for countries to exercise repatriation rights over their cultural heritage after their geographic borders have changed. The amendment should be created by utilizing the structure of the Operational Guidelines to the World Heritage Convention.¹⁷⁴ In instituting a pathway for countries to register their current and past borders, UNESCO would grant countries the ability to make repatriation claims to

171. 1970 UNESCO Convention, *supra* note 15.

172. *See* 1970 UNESCO Convention, *supra* note 15, pmb.; *see also* 1995 UNIDROIT Convention, *supra* note 59, pmb.; *see also* 1954 Hague Convention and Protocols, *supra* note 59, pmb.

173. *See* 1970 UNESCO Convention, *supra* note 15; *see also* 1995 UNIDROIT Convention, *supra* note 59; *contra* 1954 Hague Convention and Protocols, *supra* note 59.

174. *See* Convention Concerning the Protection of the World Cultural and Natural Heritage, *supra* note 143; *see also* Operational Guidelines, *supra* note 142.

property significant to their culture and national identity. This would also provide clarity to how UNESCO will address the cultural property disputes concerning culture, government, and geographic borders. Although complications are foreseeable when providing a pathway for countries to register their borders retroactively, adopting an amendment aligned with the bright-line reparation date of 1970 to allow countries to also register their borders as of 1970 and re-register if borders change would likely address the growth in litigation. Implementing such a process would provide clear documentation and notice of cultural property ownership and enable countries to preserve their cultural heritage even when their boundaries no longer control the specific geographic region.

CONCLUSION

In order for the UNESCO Convention to succeed as intended, UNESCO must address the manner of litigation Turkey has encouraged and account for the growing concerns related to geographic renaming. This Note recommends that UNESCO acknowledge the current climate of cultural property concerns, particularly with regard to the litigiousness of countries rich in cultural property and reevaluate how to best enforce the intent of the UNESCO Convention.

By mandating countries attempt to resolve their disputes with good faith, UNESCO will provide a much-needed venue for dialogue and innovation concerning property ownership. In placing a higher standard of good faith requirement on both parties, purchasers will effectively be held to a stricter standard when considering the provenance of the artifacts. In addition, countries rich in cultural property will be restricted from resorting to aggressive and frivolous litigation and media tactics that have shown to be counterintuitive to the goal of preserving the world's artifacts. Furthermore, by creating a geographic renaming amendment to the Operational Guidelines, UNESCO would proactively resolve future cultural property claims and begin addressing the seemingly conflicting concepts of culture, national identity, and a state's geography.

The above, two-part amendment to the UNESCO Convention and Operation Guidelines will position UNESCO to adapt to the current uncertainties surrounding cultural property claims and, ultimately, enable UNESCO to achieve its fundamental goal of

“enrich[ing] the cultural life of all peoples and inspire[ing] mutual respect and appreciation among nations. . . .”¹⁷⁵

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175. 1970 UNESCO Convention, *supra* note 15, pmb1.

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