2012

Enforcing Restitution of Cultural Heritage Through Peace Agreements

Ana Filipa Vrdoljak, University of Western Australia
Enforcement of restitution of cultural heritage through peace agreements

Ana Filipa Vrdoljak

1. Introduction

Peace agreements consolidated in modern times provide an important source of international law. They have been especially significant in the formulation of the international and regional protection of cultural heritage from the early twentieth century onwards.\(^2\) There has been a marked escalation in the number and a transformation in the nature of armed conflicts since the end of the Cold War.\(^3\) Most are intra-state conflicts, with many driven by ethnic and religious differences,\(^4\) with minorities and indigenous peoples ‘often the targets, rather than the perpetrators of violence’.\(^5\) This period has also witnessed a concomitant proliferation in peace agreements.\(^6\) Although peace agreements covering intra-state conflicts had increased, a significant proportion of conflicts resumed, particularly those with an ‘ethnic’ element.\(^7\) The UN Secretary-General noted: ‘[N]urturing ethnic cultures and traditions lay[s] the foundations for lasting stability’.\(^8\) There is an urgent need to examine the role of culture and cultural heritage in the implementation of relevant international norms and maximising successful, sustainable peace agreements.

I would suggest that how cultural heritage is historically dealt within peace agreements falls broadly into three discernible categories:

1. restitution and restoration of cultural heritage as reparations between existing states, post conflict;
2. cultural rights guarantees and restitution and protection of cultural heritage within existing states; and
3. cultural rights guarantees and restitution and protection of cultural heritage in new states, being the latest iteration.

---

1 Professor, Faculty of Law, The University of Technology, Sydney, and Visiting Professor, Legal Studies Department, Central European University.
8 UN Doc.SG/SM/12833 (2010).
This classification is vital because each distinct category transitions from violent conflict to peace, it brings with it its own dangers for cultural heritage and differing responses to such threats.

In this chapter, I explore the implications of this three-tiered typology for the implementation of cultural heritage law - with particular reference to restitution – using the relevant peace treaties arising from the Paris Peace conferences of 1919 as case studies. These treaties not only typify the ‘old wine in new bottles’ adage but laid down foundational principles for contemporary international cultural heritage law and their implementation schema may provide potential solutions for the resolution of disputes today. Whilst remaining cognisant of their limitations, these post-World War I peace treaties deserve to be reassessed in respect of their contribution to the development and implementation of cultural heritage law.

2. Peace through reparations

Until the 1990s, the preponderance of peace agreements concerned international armed conflicts, that is, between existing states. Treaties from the 1648 Treaty of Westphalia to the post-1945 peace agreements moved beyond the immediate inter-state conflict and endeavoured to attain lasting peace through the establishment of a new international order. From provisions covering religious tolerance, to minority guarantees to early human rights protections, each of these peace settlements addressed the ‘cultural’ to varying, but limited, degrees. They in part defined and were defined by these treaties which frame the new international order.

From 1815 onwards, these peace agreements often also contained detailed provision for restorative reparations covering cultural heritage. In response to violations of the laws of war and international humanitarian law, they sanctioned external restitution between states of movable cultural heritage (e.g. artworks, archives, etc.) and reconstruction of immovable heritage (e.g. libraries, places of worship, etc.). These peace treaty provisions and subsequent practice arising from their implementation reinforced the emergence of a specialist field of international law for the protection of cultural heritage, and codification in the 1954 Hague Convention for the Protection of Cultural Property during Armed Conflict and its two protocols.

---


11 De Visscher, supra note 2; and Vrdoljak, supra note 10.

Until the mid-twentieth century, these two strands in inter-state peace agreements ran parallel. It was only with the Allied governments’ response to the atrocities of the 1930s and 40s that they combined. This merging reflected the design of the post-1945 international order and ensuing codification of human rights and cultural heritage protections.

A. Post-World War I treaty framework sanctioning reparations

The restitution provisions contained in the Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles) of 1919 set a precedent for the return of cultural objects as a remedy for significant and deliberate cultural loss inflicted in contravention of international law particularly international humanitarian law, even if the object being ‘returned’ was legally acquired by the holding State. U.S. delegate David Hunter Miller noted that there was an entitlement to damage for violations of international law, which included obligations arising in respect of cultural property protected by the 1899 and 1907 Hague Regulations. The peace conference delegates were motivated by a broader desire to secure peace and stability by restoring communities, territories, and cultural objects and archives. US President Woodrow Wilson stated that liberated territories must be ‘restored’. Adding: ‘Without this healing act the whole structure and validity of International Law is forever impaired’. Elaborating upon Wilson’s words, D.H. Miller noted that restoration was not limited to physical reconstruction but would extend to psychological restoration, including the reconstitution of national cultural patrimonies.

Article 247 of the Treaty of Versailles concerning restitutions to be made to the University of Louvain and Belgium were to be mediated through the Inter-Allied Commission (Reparations Commission) established under the treaty. The Commission was to consider reparation


13 Berlia, supra note 12, at p.2; and Vrdoljak, supra note 10, at pp.266ff.
14 Arts.245-247, Treaty of Peace between the Allied and Associated Powers and Germany, Versailles, 28 June 1919, in force 10 January 1920, Cmd 516 (1920); British and Foreign State Papers, vol.112, p.1; (1919) 225 Parry’s CTS 189; (1919) 13(supp.) AJIL 151 at 276.
16 Burnett, supra note 15, vol.2, p.303, Doc.454
17 Burnett, supra note 15, vol.1, p.423, Doc.47.
18 Articles 233 and Annex II, Treaty of Versailles. Articles 245 and 246 make not specific reference to the application of the Reparation Commission. Indeed, Article 245 states that the transfers were to take place ‘in accordance with a list which will be communicated … by the French Government’. Article 246 provided that
claims and provide Germany (and its allies) with ‘a just opportunity to be heard’.\textsuperscript{19} Five delegates from the nominated Powers would take part and vote on proceedings which were held in private.\textsuperscript{20} The Commission was not bound by any particular rules of law, evidence or procedure but was to be guided by ‘justice, equity and good faith’ and its decisions were to ‘follow the same principles and rules in all cases where they were applicable.’\textsuperscript{21}

\section*{B. Rationale for the Versailles reparations provisions}

There was little agreement amongst legal commentators of the class of the return sanctioned by Article 247 of the Treaty of Versailles. Such returns proscribed by the provision were described as reparations, restitution-in-kind, or reconstitution of works of art. Indeed, usage of these terms in this context bears little resemblance to the terminology of reparations in state responsibility with which we are familiar today.

\subsection*{1. Reparations}

There was great resistance among the Allied peace negotiators to the broadening of the ‘reparations’ element of the peace agreements to cultural heritage. Allied governments were particularly reluctant to sanction the plunder by a victor of another State’s cultural heritage. The works of art returned pursuant to Article 247 had been acquired by the German holding institutions legitimately and had not been confiscated during the First World War.\textsuperscript{22} Therefore, Charles de Visscher argued this was neither a case of restitution nor recovery but was acknowledgement of Belgium’s ‘right to compensation’ for cultural losses caused by German infringement of the rules of war.\textsuperscript{23} This interpretation was augmented by the location of the provision within the treaty and its enforcement by the Reparation Commission, whose mandate covered the full range of war reparations.\textsuperscript{24}

\begin{itemize}
\item \textsuperscript{19} Pt VIII Reparations, Section I: General Provisions, Article 233, Treaty of Versailles.
\item \textsuperscript{20} Including the United States, Great Britain, France, Italy, Japan, Belgium and the Serb-Croat-Slovene State: Pt VIII Reparations, Section I: General Provisions, Annex II, para.2, Treaty of Versailles.
\item \textsuperscript{21} Pt VIII Reparations, Section I: General Provisions, Annex II, para.11, Treaty of Versailles.
\item \textsuperscript{24} Pt VIII Reparations, Section II: Special Provisions, Treaty of Versailles.
\end{itemize}
2. *Restitution-in-kind*

The Treaty of Versailles provision arose initially from an acceptance of restitution-in-kind in recognition of the massive cultural losses suffered by France and Belgium.\(^{25}\) Unlike the French, Belgium successfully introduced a provision, Article 247 that reduced its claims for restitution from the general to the specific.\(^{26}\) It permitted the return of objects of equivalent number and value to the University of Louvain and the reconstitution of specific art works that had been legally acquired by the returning States prior to the armed conflict to Belgium generally. Even though the peace negotiators were at pains to diminish the appearance of promoting such relief, Article 247 became an important, early example of restitution-in-kind.\(^{27}\) The British delegate expressed concern about the draft provision sanctioning this remedy because ‘[t]he bartering about of objects of art caused very bitter feeling in 1814’.\(^{28}\) Indeed, German commentators feared that the draft article would lead to a repetition of the Napoleonic confiscations which had occurred one hundred years before undertaken under the legal ‘fig leaf’ of peace treaties.\(^{29}\)

3. *Reconstitution of works of art*

The majority of commentators concurred that this provision facilitated the reconstitution of the works of art but could not agree whether the rationale was the promotion of Belgian national patrimony or the heritage of humanity.\(^{30}\) Thomas Bodkin, whilst advocating the reconstitution of dismembered works of art, questioned the legitimacy of its application in this case. He argued that the lack of security and poor conditions under which the works were kept on their return to Belgium threatened cultural objects that were part of the common heritage of all mankind.\(^{31}\) On the other hand, de Visscher maintained the provision facilitated the reconstitution of national cultural patrimony, a purpose which rendered it consistent with the restitution provisions contained in other Paris peace treaties.\(^{32}\)


\(^{32}\) De Visscher, *supra* note 2, p.829.
4. Reconstitution of national cultural patrimony

The notion of the reconstitution of national cultural patrimony also informed Article 245 of the Treaty of Versailles. This provision provided for the restitution from Germany to France of ‘trophies, archives, historical souvenirs or works of art’ taken from France during ‘the War of 1870-71 and the World War’.  

With the territorial restoration of Alsace-Lorraine to France, there was a similar restoration of cultural heritage with a special link to this territory. Further, there was a belief that the restoration of the cultural objects would secure a great measure of stability within Europe. Significantly, the provision endeavoured to correct a historic wrong by redistributing cultural objects which had been removed well prior to the First World War. This rationale also underpinned peace agreements finalised between successors States following the dissolution of the Austro-Hungarian Empire discussed below.

3. Peace through unity

Peace agreements covering intra-state conflicts represent the dominant core of contemporary international law-making and scholarship in this area. The period after 1989, has been defined by a sharp escalation in armed conflicts within existing states, which were invariably characterised by ethnic and religious divisions. In contrast to prior historical periods, a significant proportion of intra-state conflicts were terminated by peace agreements. The two decades after 1989 also witnessed an exponential rise in peace agreements, with majority covering intra-state conflicts. These peace agreements have proved diverse and innovative in redefining state institutional structures and processes to defuse divisions and stave off renewed violence. Provisions covering cultural heritage have figured prominently in several of these peace agreements.

The sheer volume and creative nature of these post-Cold War peace agreements has led to responses from legal scholars and international organisations, focused predominantly on civil and political aspects of peace (and transition) processes. The United Nations has adopted various guidelines and recommendations which redefine and reinforce rule of law principles, human rights, combating impunity, and democratic governance. Likewise legal and social science scholarship has focussed on this growing body of legal practice to theorise anew on

---

33 The requirements of Article 245 were fulfilled. See Hollander, supra note 19, p.32.
35 Harbom and Wallensteen, supra note 3.
37 Bell, supra note 31, p.5.
rule of law, constitutionalism and governance. Indeed, one leading scholar has argued that these agreements have given rise to a specialised body of law governing peacemaking. These conflicts and related peace processes intensified multilateral law-making and scholarship on cultural heritage and related human rights norms, particularly cultural rights. The last two decades has seen the adoption of seven multilateral instruments on cultural heritage. These have broadened the types of cultural heritage recognised and protected by the international community to include intangible heritage, and promoted the importance of cultural diversity and the effective realisation of human rights. Likewise, there has been a reiteration and elaboration of existing human rights norms and adoption of specialist international and regional minority instruments which has led to resurgence in cultural rights, and culminated in the appointment of the first UN Independent Expert on Cultural Rights in 2009. Yet, reference to peace agreements and their implementation is largely tangential to these efforts.

A. Post-World War I peace agreements and remedies

The first peace treaty with Turkey and the Allied Powers (Treaty of Sèvres (1920)) represented an early intersection in international law between restitution of cultural property and nascent human rights protections through formulation of protection for minorities and denunciation of crimes against humanity. The unratified Treaty of Sèvres was of limited immediate impact, being replaced by the Treaty of Lausanne in 1923. Nonetheless, principles contained in this peace treaty served as a significant precursor to the international community’s response to the subsequent formulation of specialist cultural heritage instruments after 1945.

The first efforts to define what constitutes crimes against humanity occurred after the First World War in response to the persecution of minorities by a state within its own territory. The Preliminary Peace Conference established the Commission on the Responsibilities (1919 Commission), to investigate violations by Germany and its allies of the laws and customs of

---

39 Bell, supra note 31.
44 Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties for Violations of the Laws and Customs of War, Majority and Dissenting Reports, Conference of Paris, (1920) 14 American Journal of International Law 95 at122.
war and ‘the principles of the laws of nations as they result[ed] from the usages established among civilized peoples, from the laws of humanity and from the dictates of public conscience.’

It recommended the peace treaties include provisions for the establishment of a tribunal to investigate and prosecute persons on charges including murders and massacres, deportation of civilians, denationalise of the inhabitants of occupied territory, pillage, confiscation of property, wanton devastation and destruction of property, and wanton destruction of religious, charitable, educational, and historic buildings and monuments. The commission found that these acts were prohibited by the Hague Regulations and those not specifically enumerated fell within the Martens clause.

The Treaty of Sèvres accommodated the 1919 Commission’s recommendation. Under Article 230, Turkey was obliged to recognise and cooperate with any tribunal appointed by the Allies to prosecute alleged perpetrators responsible for massacres during the war on ‘territories which formed part of the Turkish Empire on 1st August 1914.’ The later Treaty of Lausanne contained no such provision. Instead, it incorporated a Declaration of Amnesty which was ‘desirous to cause the events which have troubled the peace in the East to be forgotten.’ These thwarted prosecution efforts were an extension of a lengthy history of minority protection in international law aimed at preventing such policies and acts.

While the Treaty of Sèvres reflected the schema of minority protections contained in other Paris peace treaties, it was markedly different from them. Its provisions reinforced Allied efforts to hold persons accountable and ‘to repair so far as possible the wrongs inflicted on individuals in the course of the massacres perpetrated in Turkey during the war.’ Accordingly, the Treaty sanctioned the reversal of forced assimilation and restitution of confiscated property. It provided that because of the nature of the regime in Turkey from 1 November 1914, conversions to Islam by non-Muslims were not recognised unless such persons voluntarily adhered to the Islamic faith after ‘regaining their liberty.’ Turkey was to assist searches for and return of individuals ‘of whatever race or religion, who [had] disappeared, been carried off, interned or placed in captivity.’ It established an arbitral commission composed of representatives nominated by Turkey, the claimant community and the League’s Council, with power to detain any person who took part in or incited massacres

---

45 Eighth recital, Preamble, 1907 Hague IV Convention (‘Martens clause’).
47 Arts 42-46, Section III, 1907 Hague IV Convention; and 1919 Commission, supra note 39 at 19.
48 See Art.228, Treaty of Sèvres. As a consequence of the United States’ dissenting report, no provision for the prosecution of crimes against ‘the laws of humanity’ was included in the peace treaties with Germany, Austria, Hungary or Bulgaria: 1919 Commission, supra note 39 at 14; and Memorandum of Reservations Presented by the U.S. Representatives, Annex II, 4 April 1919, (1920) 14 American Journal of International Law 127 at 134.
49 Arts II, IV and V, Declaration of Amnesty, 24 July 1923, annexed to Treaty of Lausanne.
51 Art.142, Treaty of Sèvres (emphasis added).
52 Ibid.
or deportations and make orders concerning their property.\textsuperscript{53} It was required to facilitate the work of mixed commissions appointed by the League’s Council to receive and investigate complaints from victims or their families and order the release and restoration of the ‘full enjoyment’ of the rights of such people.

The Treaty of Sèvres also provided for the internal restitution of property to victims of the massacres or deportations perpetrated within Turkish territory during the war.\textsuperscript{54} An arbitral commission composed of representatives nominated by Turkey, the claimant community and League’s Council had power to detain persons who took part in or incited massacres or deportations and make orders concerning their property. Turkey was required to recognize the ‘injustice of the law of 1915 relating to Abandoned Properties’ declaring it and related legislation ‘null and void, in the past as in the future.’ Property was to be restored free of any encumbrances, or compensation to the present occupier or owner. Current owners or occupiers could bring an action against those from whom they had acquired title. The commission could dispose to the property of individual members to the community if they had died or disappeared without heirs. Interest in immovable property was voided, with the government indemnifying the present owner. Turkey was required to provide labour for any necessary reconstruction or restoration work.

None of the reported decisions of proceedings brought pursuant to this provision dealt specifically with cultural property.\textsuperscript{55} Nor was a similar provision inserted in the subsequent Treaty of Lausanne. Nevertheless, the basic principles contained in the Treaty of Sèvres became an important precedent for Allied governments after the Second World War when they addressed the restitution of cultural property removed from groups persecuted by the Axis forces.

4. Peace through division

Most recently, peace agreements have facilitated the establishment of new states. By loosening prior staunch resistance by the international community to the emergence of states outside the colonial context, this development permits comparison with models in international law-making sanctioned during the inter-war period. Examples sanctioned by peace processes include the Kosovar declaration of independence in 2008 and the southern Sudan referendum and subsequent secession in 2011. Whilst it is too early to assess the full implications of these processes and events for the international community and international law, it appears that notionally they may broaden the discourses arising in respect of peace agreements covering intra-state conflicts concerning rule of law, governance, constitutionalism and human rights within states, and outward to states as units within the international community – potentially recalibrating the international legal order beyond purely statist approaches.

\textsuperscript{53} Art.144, Treaty of Sèvres.
\textsuperscript{54} Art.144, Treaty of Sèvres.
\textsuperscript{55} Hollander, \textit{supra} note 19, pp.32-34.
This shift is exemplified in provisions covering cultural heritage in peace agreements concerning new states. The international community’s response to the ethnic and religious conflict and its legacy in Kosovo is an important contemporary example. As a negotiated settlement between Serbia and Kosovo was not possible, the UN Special Envoy endorsed Kosovar independence subject to the new state’s acceptance of various obligations. These obligations covered cultural rights and cultural heritage of various communities, to be overseen by an international monitor. While Serbia was to undertake to return cultural objects removed from Kosovar territory.\textsuperscript{56} The substance and rationale for these provisions is strikingly similar to those in peace agreements establishing new states after World War I.\textsuperscript{57} The UN Comprehensive Proposal states they are to promote ‘a spirit of tolerance, dialogue and support reconciliation between the Communities’.\textsuperscript{58}

Many of the principles now being demanded by the international community in the context of new states have their roots in the post-1919 peace treaties and requirements for membership of new States into the League of Nations.

A. Post World War I peace treaty with Austria and state succession

Post-World War I peace treaties covering Central and Eastern Europe dealt with restitution of cultural property on the basis of State succession and the principles of territoriality and reciprocity and in the context of the creation of new states. The treaty arrangements regulated the relations between predecessor and successor States following the dismantling of the Austro-Hungarian Empire and the dissolution of the Hapsburg monarchy. The provisions were fuelled by the ambitions of new States to re-create, or more often create anew, a national culture to bolster the legitimacy of these States as nations and the integration of ceded territories.\textsuperscript{59} The treaty provisions seemed to signal the ascendency of the idea of national cultural patrimony and the claims of successor States. However, in practice during the inter-war period, these claims were sacrificed for the ‘higher’ interests of science and art. This privileging, of these museums and their collections, had been foreshadowed with the earlier codification of International Law covering the rules of war and the protection of cultural property.

1. Competing arguments of predecessor and successor states

Austria, as the de facto predecessor State, resisted the dismantling of Viennese collections arguing that its claims should not be restricted to only cultural objects of Austrian origin.

\textsuperscript{56} Hollander, \textit{supra} note 35, pp.32-34.
\textsuperscript{57} Vrdoljak, \textit{supra} note 9, p.73.
\textsuperscript{59} The elliptical nature of ‘country of origin’ as the basis of restitution claims troubled some jurists: Visscher, \textit{supra} note 2, pp.836-37. These principles, and their contestation, were reiterated in subsequent treaties including the Vienna Convention on Succession of States in respect of State Property, Archives and Debts Vienna, 7 April 1983, not in force, UN Doc.A./CONF.117/4, and (1983) 22 ILM 306; and Agreement on Succession Issues between the former Yugoslav States and Annexes A to G, 29 June 2001, (2002) 41 ILM 3.
Furthermore, it maintained that such cultural objects were an integral part of historic (imperial) collections forming part of its national cultural heritage.\textsuperscript{60} It argued that the integrity of existing collections should not be disturbed because they were of immense scientific and artistic value. They were, it maintained, ‘the spiritual possession of all those untold thousands who lay claim … to culture, and … transcending all national boundaries’.\textsuperscript{61}

This universalising (cultural heritage of humanity) and objectifying (arts and sciences) of the role of Austrian collections strove to depoliticise the place of these cultural materials in its own national patrimony and devalue rival claims to the cultural objects. This predecessor State maintained that the collections must remain in the imperial capital for two reasons: (i) the more ‘advanced’ predecessor State was the natural guardian of this legacy for all peoples; and (ii) the superior economic and technical strength of this State meant that it was better able to care for the objects.

The successor States of the former Austro-Hungarian Empire argued that the same objects formed an essential part of their national cultural patrimony. For them, the peace treaty provisions facilitated the reconstitution of the national cultural heritage of communities affected by territorial changes following the dissolution of the empire.\textsuperscript{62} Successor States refuted the suggestion that universal collections would be dismantled, noting their claims were modest and necessary for the administration of ceded territories.\textsuperscript{63} These States maintained the measures were a small step in righting a historic wrong, that is, the reversing of the past centralising policies that had transported their cultural treasures to imperial Viennese collections.

\section*{2. Enforcement framework and guiding principles}

The Treaty of Peace between the Allied and Associated Powers and Austria of 1919 (Treaty of Saint-Germain) governed the redistribution of cultural property and archives between various successor States following the dissolution of the Austro-Hungarian empire.\textsuperscript{64} Like the Treaty of Versailles’ reparations provisions it too provided for the creation of a Reparation Commission. Its structure was modelled on the Versailles Treaty template.\textsuperscript{65} The Hapsburg monarchs had pursued an aggressive policy of centralising cultural treasures and archives from all corners of their realm in institutions in the imperial capital, Vienna. These post-war ‘peace’ efforts to return equitably cultural materials to ceding States following the

\textsuperscript{60} Treue, \textit{supra} note 24, pp.223-24.


\textsuperscript{62} De Visscher, \textit{supra} note 2, p.830; and W. W. Kowalski, Repatriation of Cultural Property Following a Cession of Territory or Dissolution of Multinational States, (2001) 6 \textit{Art Antiquity and Law} 139 at 143.


\textsuperscript{64} Arts.191-196 and Annex I-VI, Treaty of Peace between the Allied and Associated Powers and Austria together with Protocol and Declarations, St Germain-en-Laye, 10 September 1919, in force 8 November 1921, UKTS No.11 (1919); Cmd 400 (1919); \textit{British and Foreign State Papers}, vol.112, p.317; (1920) 14 (supp.) \textit{American Journal of International Law} 1 at 77.

\textsuperscript{65} Part VIII: Reparation, Section I: General Provisions, Article 179 and Annex II, Treaty of Saint-Germain. The provision also permitted delegates from Greece, Poland, Romania, and Czechoslovakia, also.
collapse of the empire, are important early precedents for restitution claims in peace agreements sanctioning new states – or peace through division. With rival national narratives to sustain there was inevitable disputation between the predecessor State and successor States over the same cultural objects and archives. The treaty provided that the dispute would be resolved an arbitral commission.

The scheme for the redistribution of archival and historical material between predecessor and successor States under the Treaty of Saint-Germain favoured the principle of territoriality (Articles 192 and 193). Under the oversight of the Reparations Commission, Austria was to return ‘all records, documents, objects of antiquity and of art, and all scientific and bibliographical material taken away from the invaded territories, whether they belong to the State or to provincial, communal, charitable or ecclesiastical administrations or other public … institutions’ since 1914.66 The relevant period was extended to ten years prior for records, documents and historical materials in the possession of public institutions which have ‘direct bearing on the history’ of the ceded territory and from 1861 in the case of Italy.67 The new states or existing states which had acquired territory from the former monarchy was required to reciprocally return materials located on their territory dating back no more than twenty years which had a ‘direct bearing on the history or administration of Austria. The territorial link possibly related to a portion of or one group of people in the successor State, yet, the right of restitution to the cultural object was afforded to the relevant State, not to that group. Similar and more specific provision was made in respect of cultural objects forming part of the royal collections by Article 196, discussed below.

The symbolic significance of the possession of these cultural objects for both national identities rendered their return to ceded territories from the imperial collection particularly problematic. The Treaty of Saint-Germain addressed the restitution of cultural objects: in respect of specific objects (Article 195); and by a general right to negotiate (Article 196).

Article 195 (and Annexes II-IV) provided an adjudication and enforcement procedure to resolve claims by various successor States to specific manuscripts and objects. Within a year of the Treaty of Saint Germain coming into force, the Reparation Commission would appoint a Committee of three jurists to examine how objects in Austria’s possession were removed by the relevant ruler in Italy, Belgium, Poland or Czechoslovakia. If the Committee found that objects were removed contrary to the rights of these territories, the Reparation Commission would order restitution and the parties would abide by its decision. Only Belgium and Czechoslovakia utilised this procedure which in effect amounted to an international arbitration.

The main issue raised the claims brought before the Committee of Three Jurists, pursuant to Article 195, was whether cultural objects purchased by a reigning Hapsburg monarch became

---

66 Article 192 also provided that the Commission would apply Article 208 where applicable which provided that ‘any building or other property situated in the respective territories transferred to the States referred to in the first paragraph whose principal value lies in its historic interest and associations, and which formerly belonged to [certain territories], may, subject to the approval of the Reparation Commission, be transferred to the Government entitled thereto without payment.’

67 Article 193, Treaty of Saint Germain.
their personal property absolutely and could therefore be removed permanently from their place of origin. The claimant States argued that the objects formed part of their public domain and should revert to them upon the dissolution of the empire. Austria argued that the ceding States had no legal claim to recovery because the objects formed part of the personal property of the Hapsburg monarch to which they had succeeded.

The Committee in all three cases found for Austria and refused to pass ‘the verdict of history’ on the government of the Hapsburgs. Even though the dispute was between two States, the Committee resolved the claims by reviving internal constitutional arrangements between a sovereign and its subjects. Accordingly Austria, as the designated ‘predecessor’ State, obtained various accoutrements of empire including imperial collections without the possession of any corresponding territories. The Committee categorically rejected the Czechoslovak argument that it should ‘right a historic wrong’ by reversing the centralising policies of the Hapsburg monarchy which for centuries had removed cultural heritage from all corners of its empire. It also refused to ‘be guided by justice, equity and good faith’, maintaining it had no authority to deviate from established juridical methods. By adopting this strategy, the Committee ignored the unequal relations between the parties that had enabled the transaction to occur at all. This inequality was reaffirmed with its privileging of the law of the predecessor state.

The Treaty of Saint-Germain also granted successor States a general right to negotiate the restitution of cultural objects from imperial collections, which they claim as part of their national cultural patrimony, guided by the principles of territoriality and reciprocity. Article 196 recognised that ‘object[s] of artistic, archaeological, scientific or historic character forming part of the [imperial] collections’ could ‘form part of the intellectual patrimony of the ceded districts’ and ‘may be returned to their districts of origin’. It also placed a freeze on the disposal of former imperial collections by the predecessor State for a period of twenty years after the dissolution of the empire this ensured accessibility and preservation of these objects and archives for nationals of the successor States.

Despite the potentially far-reaching consequences Article 196 for the re-allocation of archives and cultural property, it is generally agreed that its application had little practical effect on the

---


70 It found that the principle that ‘a country which is an integral part of a composite State has a right, in case the State should be partitioned, to claim the property acquired with the aid of the local revenues of the said country,’ was not recognised in International Law nor could it be implied from the peace treaties: De Visscher supra note 2, p.832; and O. supra note 58127.

71 De Visscher, supra note 2, at p.832; and O. supra note 63, at p.126
For example, while the Italo-Austrian Treaty of 1920 amicably resolved Italian claims under Article 196 by recognising that the ‘juridical and historic status of those objects was of special character’ and distinguishable from the claims of other States. Furthermore, Italy ‘recognised the advisability of preventing, in the higher, general interest of civilisation, the dispersion of the historic, artistic, and archaeological collections of Austria which in their entirety constitute an esthetic and historic entity, indivisible and celebrated’. Yet, Austria obtained an unfettered title with no restrictions preventing it from dispersing the collections if it so wished.

The Treaty of Peace between the Allied and Associated Powers and Hungary of 1920 (Treaty of Trianon) confronted issues raised by restitution claims made by two (or more) successor States on former imperial collections. Article 177 reaffirmed Hungary’s right to negotiate the division of these collections on the same terms as other successor States under Article 196 of the Treaty of Saint-Germain. Hungary persistently challenged the notion of territorial link as the trigger for selecting and returning public records and cultural objects to ceded territories. It advocated the application of the principle of nationality so that objects and archives relevant to the Hungarian people should be returned regardless of the territory of post-war Hungary. In the end, the territoriality principle long contested by Hungary survived. It also ceded to Austrian demands for an acceptance of the inviolability of the Viennese collections.

### B. Post World War I peace treaty with Turkey and state succession

As explained earlier, the first Treaty of Peace with Turkey of 1920 provided for protection of minorities and restitution of their property. The treaty also redefined relations between Turkey, successor States and mandating powers following the dismantling of the Ottoman

---

72 De Visscher, supra note 2 at p.834; Treue, supra note 24, at p.231
73 Article 4, Italo-Austrian Treaty, in Visscher, supra note 2, pp.834-35. The treaty finalised Italian claims pursuant to Articles191-196 of the Treaty of Saint-Germain, without recourse to adjudication.
74 Italy also agreed to ‘energetically oppose’ the claims of other States which if accepted would ‘prejudice … the integrity of the Austrian collections, which must be preserved in the interests of science’ (Article9).
75 Burnett, supra note 15, vol.1, pp.333, 345-347, 349; Kowalski, supra note 10, p.146
77 Burnett, supra note 15, vol.1, pp.345-46, Doc.739
78 With the exception of objects specifically of Hungarian origin or character, Austria agreed to the relinquishment of a limited number of works of art to improve existing Hungarian collections of historic or artistic interest: Agreement between Austria and Hungary, Venice, 27 November 1932, 162 LNTS 396. See H. Tietze, L’accord Austro-Hongrois sur la réparation des collections de la maison des Habsbourg (1933) 23-24 Mouseion 92-97.
79 De Visscher, supra note 2, pp.836-37. Hungary was granted ‘privileged rights’ of access to collections of ‘common cultural interest’ (Article 4): Kowalski, supra note 10, p.148.
The restitution provisions in this peace treaty varied from those contained in the treaties covering the dismantling of the Austro-Hungarian empire. These variations arose because the treaty arrangements did not strictly involve State succession but ‘colonial’ succession — the transfer of authority from one colonial occupier to another.\(^\text{81}\) For example, Article 420 of the Treaty of Sèvres addressed restitution of archives and cultural property which belonged not only to the Allied Powers and their nationals but included ‘companies and associations of every description controlled by such nationals’.\(^\text{82}\) The place and conditions of return were not to be resolved by the Reparation Commission, but were ‘laid down by the Governments to which they are to be restored’.\(^\text{83}\) In addition, under Article 422 the Turkish government was required to return relevant objects to ceded territories and if they had passed into private ownership ‘it would take the necessary steps by expropriation or otherwise to enable it to fulfil [this] obligation’.

The Treaty of Sèvres most starkly departed from other Paris peace treaties by requiring that mandated territories pass domestic legislation controlling archaeological sites and the export of archaeological materials (Article 421 and Annex).\(^\text{84}\) The role of the mandating power and its relations with other powers came to the fore in the proposed scheme which regulated access and control of excavation sites and the ‘equitable’ division of archaeological finds.\(^\text{85}\) Article 421, and annex, exposed the competing interests concerning the protection of cultural objects and sites in the mandated territories. On the one hand, the mandating power had a duty to the international community to ensure free and equal access to archaeological ‘resources’ which would feed the universal collections of the metropolitan capitals. On the other hand, it also had a duty to the peoples of the mandated territories to protect their cultural objects and sites. While the Treaty of Sèvres was never ratified, its proposed legislative model covering archaeological sites and finds was incorporated into the domestic laws of several states in the Middle East including, for example, Palestine.\(^\text{86}\)

\(^{80}\) Arts.420-425, Treaty of Peace with Turkey, Sèvres, 10 August 1920, not ratified, Cmd 964 (1920); British and Foreign State Papers, vol.113, p.652; and (1921) 15(supp.) American Journal of International Law 179.

\(^{81}\) Arts.424-425, Treaty of Sèvres provided for the transfer of archives and records based on the principle of territoriality, with reciprocity applying only to the provision covering Wakfs, localised religious communities in areas ceded from Turkey. This class of property rights has long been recognised in Muslim countries: C. Phillipson, Termination of War and Treaties of Peace, (London: E. P. Dutton and Co., 1916) p. 319.

\(^{82}\) Ibid.

\(^{83}\) See Art.184, Treaty of St Germain; and Art.168, Treaty of Trianon.


\(^{85}\) Art.421, Annex, Treaty of Sèvres, points 6 to 8. Points 1 to 5 provided the framework for the regulation of transactions of antiquities by the Department of Antiquities.

\(^{86}\) Section 7, Palestine Antiquities Ordinance 1921. See Art.21, British Mandate for Palestine, LN, LNOJ (August 1922) 3\(^{rd}\) Year, No.8, Pt.II, pp.1007ff; Hill 1936: 270; and O’Keefe and Prott, supra note 71, p.49, §234.
5. Conclusion

An abiding legacy of these post-World War I peace treaties is that they formulated and implemented principles which remain current in contemporary international law for the protection of cultural property. These obligations and the remedies consequent on their breach covered the law of armed conflict and international humanitarian law, human rights and minorities, and state succession and recognition of new states. In addition, these peace treaties bolstered such obligations through the articulation of mechanisms for enforcement and the resolution of disputes including reparations commissions, arbitral commissions, and judicial tribunals. This fostered an environment which promoted the nascent efforts toward the formulation of specialist multilateral instruments for the restitution of cultural objects which were illicit removed from their country of origin which would be realised half a century later with the 1970 UNESCO Convention, and the protection of cultural property during armed conflict and belligerent occupation contained in the 1954 Hague Convention and its Protocols. However unlike these later day conventions, the earlier inter-war draft instruments prepared by the League of Nations on repatriation of cultural objects contained provisions concerning arbitration and referral to the Permanent Court of International Justice, the precursor to the International Court of Justice.87

It is also important to recall that these inter-war initiatives were contained in peace agreements. At a time when the international community, through organisations like the United Nations and regional organisations like the European Union and Organization of American States, is devoting increased resources to ensuring sustainable and long lasting peace in regions scarred by conflict it is timely that the role of culture and cultural heritage toward the attainment of this aim be properly examined. A re-assessment of the provisions covering cultural heritage (and cultural rights) contained in the extensive network of post-World War I peace agreements is a vital step along this path.


88 Article 7 of the Draft International Convention on the Repatriation of Objects of Artistic, Historical or Scientific Interest Which Have been Lost or Stolen or Unlawfully Alienated or Exported (First draft, 1933) provided:

Should any dispute arise between the High Contracting Party as to the interpretation or application of the present Convention, and should it be impossible to reach a satisfactory solution of such dispute through diplomacy, it should be settled in accordance with the provision in force between the Parties with reference to the settlement of International disputes.

Should no such provisions exist between the Parties to the dispute, the latter shall be submitted to an arbitral or judicial procedure. Failing agreement upon the choice of some other tribunal, the Parties shall, at the request of any one of them, submit the dispute to the Permanent Court of International Justice if they are all parties to the Protocol …of if they are not all Parties to the Protocol, they shall submit the dispute to a Court of Arbitration constituted in accordance with the Hague Convention of 1907 for the Peaceful Settlement of International Disputes.

Replicated in the 1936 draft in Article 18 and Article 14 in the 1939 Draft which was not adopted because of the outbreak of war. Drafts reproduced in De Visscher, supra note 2, Annexes.