

2017

South-South Cooperation on the Return of Cultural Property: The Case of South America

Alice Lopes Fabris

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SOUTH-SOUTH COOPERATION ON THE RETURN OF CULTURAL PROPERTY: THE CASE OF SOUTH AMERICA

*Alice Lopes Fabris**

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I. INTRODUCTION

The return of cultural property occurs for various reasons: (1) to fulfill a legal obligation;¹ (2) to demonstrate a spirit of cooperation;² and (3) to facilitate negotiations.³ Some argue that, among those

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1. One example of cultural-property restitution that arose in light of a legal obligation involves Italy and Ethiopia. In 1937, Mussolini seized an obelisk from Ethiopia following its annexation by Italy during World War II. In the 1947 peace treaty signed by Italy, it was agreed that Italy should restitute the obelisk in eighteen months. This obligation was restated in the agreement of 1956 between the two States and in a declaration signed on March 4, 1997. The obelisk was returned to Ethiopia in 2005. See Raphael Contel et al., *Obélisque d'Axoum—Italie et Ethiopie*, ARTHEMIS (Mar. 2012), <https://plone.unige.ch/art-adr/cases-affaires/obelisque-d2019axoum-2013-italie-et-ethiopie> [<https://perma.cc/KBC9-YR4Y>]. A similar dispute between Italy and Libya concerned the *Venus of Cyrene*, which was removed from Libya during the Italian annexation. Nearly four decades after Libyan independence, on December 24, 1951, the government of Libya asked for the return of the object. A Joint Communiqué of 1998 and an agreement in 2002 established the restitution of the *Venus*. This restitution was argued before the Italian Court, which ruled that Italy had a legal obligation to restitute it. The statue was restituted in 2008. See Alessandro Chechi et al., *Venus of Cyrene—Italy and Libya*, ARTHEMIS (Jan. 2012), <https://plone.unige.ch/art-adr/cases-affaires/venus-of-cyrene-2013-italy-and-libya> [<https://perma.cc/4CPM-NTJK>].
 2. One example of the return of cultural property motivated by good faith is the restitution of four mummies to Chile by a private person through the intermediary of the Musée d'éthnographie de Genève. In 2007, the museum was approached by a private person who wanted to sell a collection of human remains. After the museum rejected it, the collector offered to donate the collection instead. The museum then tried to form a dialogue between the collector and the Peruvian and Ecuadorian Embassies. Chilean specialists identified four mummies dating to 5000 B.C. that had historical importance. The museum organized the conservation and return of the objects. See Raphael Contel et al., *Quatre Momie—Chili et Personne Privée*, ARTHEMIS (Jan. 2012), <https://plone.unige.ch/art-adr/cases-affaires/quatre-momies-2013-chili-et-personne-privée> [<https://perma.cc/5WFF-U9GC>]. Another example is the voluntary donation made by a Swedish resident in Panama of 54 cultural objects that belonged to his late wife to Colombia. See *Una Donación Voluntaria Devuelve a Colombia 54 Piezas de Patrimonio Histórico*, EFETUR (Jul. 18, 2016), <http://viajes.efetur.com/noticia/una-donacion-voluntaria-devuelve-a-colombia-54-piezas-de-patrimonio-historico/> [<https://perma.cc/8XT7-J7MJ>].
 3. A negotiation between France to Korea illustrates how cultural property restitutions can be used as bargaining tools. In 1993, the former French President François Mitterrand promised to return 287 manuscripts found in the *Bibliothèque Nationale de France* (BNF) to Korea in exchange for a contract to build high-speed trains in Korea. The materials had been taken in 1866 by nine French missionaries, given to the BNF, and then forgotten until 1991, when a Korean researcher found them. This promise to return the

reasons, demands for restitution of cultural property to origin countries have been made as acts of reprisal or revenge.⁴

Most of the demands for restitution of cultural property are made from the so-called “south” countries to the “north” countries.⁵ According to some art dealers: “South American States, [like] Mexico (*sic*)⁶ or Peru, search systematically to eradicate the market of archeological objects.”⁷ Some have perceived this fact as an act of reprisal or revenge for historical injustices or even to gain political advantage, and this reasoning has been used to justify the refusal to return cultural property.⁸ Members of the art market, mostly located in north countries, also complain about the lack of policies, enforcement, and surveillance by the south countries in the fight against illicit trafficking of cultural property, trying to shift the protection responsibility to the countries of origin.⁹

manuscripts was fulfilled 17 years later by the former President Nicolas Sarkozy. See Michel Guerrin & Arnaud Leparmentier, *La France Accepte de Rendre à la Corée les 287 Manuscrits de la Discorde*, LE MONDE (Nov. 12, 2016), http://www.lemonde.fr/culture/article/2010/11/12/la-france-accepte-de-rendre-a-la-coree-les-287-manuscrits-de-la-discorde_1439125_3246.html [<https://perma.cc/28L9-JYYZ>]; see also Raphael Contel et al., *Manuscrits Coréens—France et Corée du Sud*, ARTHEMIS (June 2012), <https://plone.unige.ch/art-adr/cases-affaires/affaire-manuscrits-coreens-2013-france-et-coree-du-sud-1> [<https://perma.cc/PR9X-7LKC>] (discussing the terms of the France-Korea contract negotiation).

4. See Kristen N. Quarles, *Give It Back or Get Out: Cultural Property “Battles,” Egypt, and the Musée du Louvre* 17, <https://museumstudies.columbian.gwu.edu/sites/museumstudies.columbian.gwu.edu/files/downloads/GiveitBackorGetOut.pdf> [<https://perma.cc/38XN-C4L3>] (questioning the motives behind Egypt’s request for the repatriation of cultural property) (last visited Dec. 29, 2016).
5. The meanings of “north” and “south” are subject to debate. However, for the purposes of this article, “north countries” refers to developed countries and “south countries” to developing ones.
6. Mexico isn’t a South American State.
7. Béatrice De Rochebouet, *Voyage Initiatique en Art Précolombien*, LE FIGARO (Mar. 20, 2016), available at <http://www.lefigaro.fr/culture/encheres/2016/03/20/03016-20160320ARTFIG00089-voyage-initiatique-en-art-precolombien.php> [<https://perma.cc/QLJ7-L9FE>].
8. Quarles, *supra* note 4.
9. The International Association of Dealers in Ancient Art expressed this reasoning in the UNESCO Art Market Round Table on March 30, 2016. See *Webcast of the Round Table—The Movement of Cultural Property in 2016: Regulation, International Cooperation and Professional Diligence for the Protection of Cultural Heritage*, UNESCO (Mar. 30, 2016), www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/meetings/art-market-round-table [<https://perma.cc/9H3U-XKUV>]

As one of the world's main criminal financial activities, the illicit trade of cultural property ranks behind only the illicit trafficking of weapons and drugs.¹⁰ In South America, these types of trafficking are often linked to each other, and therefore to the countries' security policy.¹¹

Often defined as the removal of cultural objects in violation of the law, acts of illicit cultural property trafficking depend largely on the applicable national and international law. Although a case-by-case analysis is usually required, several practices are universally considered to be illicit trafficking of cultural property: thefts from places of conservation; illegal archeological excavations; illicit export and import of cultural assets; illegal ownership transfer of cultural property; and producing, using, or trading forged documents related to cultural property.¹²

The theft of cultural objects is recurrent among South American countries due to their rich archeological sites,¹³ since it is estimated that many of them have not yet been identified.¹⁴

(discussing criticisms the International Association of Dealers in Ancient Art has levied against repatriation of cultural property).

10. *40 years of Fighting the Illicit Trafficking of Cultural Goods*, UNESCO (Mar. 10, 2011), http://www.unesco.org/new/en/media-services/single-view/news/40_years_of_fighting_the_illicit_trafficking_of_cultural_goo/ [<https://perma.cc/N33B-STNL>].
11. Walter Alva, *The Destruction, Looting and Traffic of the Archaeological Heritage of Peru*, TRAFFICKING CULTURE 94 (June 16, 2016), available at <http://traffickingculture.org/wp-content/uploads/2013/02/Alva-2001.pdf> [<https://perma.cc/ER2G-8ECH>]. This article will not address the link between illicit trafficking of cultural property and terrorism as established by the United Nations Security Council Resolutions 2199 (2015), adopted in February 15, 2016, and 2253 (2015), adopted in December 17, 2015, since this issue mainly concerns Syria, Lybia, Yemen, Iraq, and neighboring countries. See Vincent Negri, *Cultural Heritage Through the Prism of Resolution 2199 (2015) of the Security Council*, UNESCO 1 (Mar. 25, 2015), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Study_Negri_RES2199_01.pdf [<https://perma.cc/CCH5-MVUE>] (discussing the application of Resolution 2199 to States impacted by ISIS, and why Resolution 2199 is not very relevant to the issue of cultural-property trafficking in South American States).
12. 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 Convention].
13. Maria Luz Endere, *Provenance for Cultural Objects: Several Difficulties and Some Lines of Actions: The Issue in Latin American Countries*, UNESCO (Mar. 30, 2016), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Provenance_of_cultural_objects_The_issue_in_Latin_Americ.pdf [<https://perma.cc/M86M-A8LA>].
14. *Id.*

In South America, countries can be classified as countries of origin and transit countries. The former, also called source countries, are States where most of the cultural objects came from.¹⁵ The latter are countries where ancient cultural materials pass through as “laundered” objects until they arrive in market States, where they will be sold.¹⁶

When a cultural object is removed from its place of origin without proper archeological study, the source country loses important pieces of its local history and identity, while the world at large loses valuable knowledge about this culture.¹⁷ The fight against illicit trafficking of cultural property is therefore a priority for several South American countries and regional organizations, notably MERCOSUR¹⁸ and UNASUR.¹⁹ Members of both organizations have undertaken several actions to combat illegal trafficking, such as updating legislation, forming committees and specialized police forces, and creating capacity-building programs. These actions have brought results, as demonstrated by the restitution of thousands of stolen cultural.

This article challenges the notion that “south” countries fail to protect cultural property. Instead, it demonstrates that south countries have strong policies for the return of cultural property and against trafficking. This article will first analyze the international and regional policy frameworks, as well as bilateral agreements regarding the protection of cultural property against illicit trafficking. The second part of this article examines actions taken by the South American States for the return of cultural property. Finally, this article presents case studies of cultural property restituted among South American countries.

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15. John H. Merryman, *The Retention of Cultural Property*, in THINKING ABOUT THE ELGIN MARBLES: CRITICAL ESSAYS ON CULTURAL PROPERTY, ART AND LAW 122, 124 (2000).
 16. At the UNESCO Art Market Round Table, Jean-Robert Gisler explains different forensic measures that dealers use. See *The Movement of Cultural Property in 2016: Regulation, International Cooperation and Professional Diligence for the Protection of Cultural Heritage*, UNESCO (Mar. 30, 2016), www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/meetings/art-market-round-table [https://perma.cc/6KWY-Z7C7] (discussing methods of forensic examination used by dealers).
 17. See *id.* (discussing the negative consequences of illegally removing a cultural artifact from its place of origin).
 18. MERCOSUR, an acronym of Mercado Comum do Sul, or Common Market of the South, is a South American regional economic organization. *Mercosur*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/Mercosur> [https://perma.cc/R29A-693R] (last visited Apr. 1, 2017).
 19. UNASUR is the Union of South American Nations, modeled after the European Union. UNASUR, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/UNASUR> [https://perma.cc/3D7P-JBHM] (last visited Apr. 1, 2017).

II. LEGAL INSTRUMENTS ON THE FIGHT AGAINST ILLICIT TRAFFICKING OF CULTURAL PROPERTY

Concerns about pillage and the removal of cultural objects from their country of origin are not recent. The first legal document to prohibit the practice of pillage is the 1899 Hague Regulation on Laws and Customs of War on Land.²⁰ The first legal instrument to deal exclusively with the illicit traffic of cultural property, however, is more recent and has been debated since this aftermath of World War I.

This section analyzes the treaties applicable to the South American States regarding the cultural-property traffic, namely the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter “1970 Convention”) and 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (hereinafter “1995 UNIDROIT Convention”). This section also examines the relevant regional and bilateral treaties.

A. 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

The concern for stopping the illicit trafficking of cultural property emerged in the League of Nations, immediately after World War I.²¹ The first treaty on the matter was drafted by the *Office international des Musées* and submitted to the League, which made attempts to solve the issue of distinguishing between private and public property – a main concern of States.²² This attempt to adopt a Convention to fight against illicit traffic came to an end with the beginning of World War II.²³

In 1964, UNESCO established a committee of experts to draft a Convention outlawing the illicit trafficking of cultural property.²⁴ It was only in 1970, however, that the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1970 Convention, was adopted.

20. Convention with Respect to the Laws and Customs of War on Land art. 28, July 29, 1899, 32 Stat. 1803.

21. PATRICK J. O’KEEFE & LYNDEL V. PROTT, CULTURAL HERITAGE CONVENTIONS AND OTHER INSTRUMENTS: A COMPENDIUM 64 (2011).

22. *Id.*

23. *Id.*

24. *Id.*

This Convention has three major axes: preventive measures,²⁵ restitution provisions,²⁶ and international cooperation.²⁷ However, it

25. 1970 Convention, *supra* note 12, art. 5:

Article 5: To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

(a) contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;

(b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;

(c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops . . .) required to ensure the preservation and presentation of cultural property;

(d) organizing the supervision of archaeological excavations, ensuring the preservation in situ of certain cultural property, and protecting certain areas reserved for future archaeological research;

(e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;

(f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;

(g) seeing that appropriate publicity is given to the disappearance of any items of cultural property.

26. 1970 Convention, *supra* note 12, art. 7:

Article 7: The States Parties to this Convention undertake:

(a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

(b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that

establishes several general principles to be adopted by States,²⁸ which need to be implemented by their national laws. In this sense, the 1970 Convention emphasizes cooperation.²⁹ Moreover, this Convention has a limited application, since it only applies to relations between States and does not have a retroactive clause.³⁰ Today, the Convention has been ratified by 132 States,³¹ yet even broader acceptance is needed.

the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

27. 1970 Convention, *supra* note 12, art. 9:

Article 9: Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

28. O'KEEFE & PROTT, *supra* note 21, at 112.

29. PATRICK J. O'KEEFE, COMMENTARY ON THE UNESCO 1970 CONVENTION ON ILLICIT TRAFFIC 130 (2000).

30. See Lyndel V. Prott, *UNESCO and UNIDROIT: a Partnership against Trafficking in Cultural Objects*, UNIDROIT, <http://www.unidroit.org/english/conventions/1995culturalproperty/articles/s70-prott-1996-e.pdf> [<https://perma.cc/LQR9-H8SH>] (noting that the language of the Convention does not explicitly state that it applies retroactively).

31. *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Paris, 14 November 1970*, U.N. EDUC. SCI. & CULTURAL ORG., <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha#1> [<https://perma.cc/8KKK-HSW3>] (last visited Jul. 16, 2017) (listing the 132 States that have ratified the 1970 Convention: Afghanistan (2005); Albania (2002); Algeria (1974); Angola (1991); Argentina (1973); Armenia (1993); Australia (1989); Austria (2015); Azerbaijan (1999); Bahamas (1997); Bahrain (2014); Bangladesh (1987); Barbados (2002); Belarus (1988); Belgium (2009); Belize (1990); Benin (2017); Bhutan (2002); Bolivia (Plurinational State of) (1976); Bosnia and Herzegovina (1993); Brazil (1973); Bulgaria (1971); Burkina Faso (1987); Cambodia (1972); Cameroon (1972); Canada (1978); Central African Republic (1972); Chad (2008); Chile (2014); China (1989); Colombia (1988); Costa Rica (1996); Côte d'Ivoire (1990); Croatia (1992); Cuba (1980); Cyprus (1979); Czech Republic (1993); Democratic People's Republic of Korea (1983); Democratic Republic of the Congo (1974); Denmark (2003); Dominican Republic (1973); Ecuador (1971);

The Convention also created the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation. This Committee acts when international conventions cannot be applied to promote the restitution of cultural property and it applies to:

any cultural property which has a fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO and which has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation.³²

The only case concerning South American countries was resolved in 1983, when, with the support of the Committee, Ecuador received over 12,000 pre-Columbian objects from Italy after seven years of litigation.³³

Egypt (1973); El Salvador (1978); Equatorial Guinea (2010); Estonia (1995); Finland (1999); France (1997); Gabon (2003); Georgia (1992); Germany (2007); Ghana (2016); Greece (1981); Grenada (1992); Guatemala (1985); Guinea (1979); Haiti (2010); Honduras (1979); Hungary (1978); Iceland (2004); India (1977); Iran (Islamic Republic of) (1975); Iraq (1973); Italy (1978); Japan (2002); Jordan (1974); Kazakhstan (2012); Kuwait (1972); Kyrgyzstan (1995); Lao People's Democratic Republic (2015); Lebanon (1992); Lesotho (2013); Libya (1973); Lithuania (1998); Luxembourg (2015); Madagascar (1989); Mali (1987); Mauritania (1977); Mauritius (1978); Mexico (1972); Mongolia (1991); Montenegro (2007); Morocco (2003); Myanmar (2013); Nepal (1976); Netherlands (2009); New Zealand (2007); Nicaragua (1977); Niger (1972); Nigeria (1972); Norway (2007); Oman (1978); Pakistan (1981); Palestine (2012); Panama (1973); Paraguay (2004); Peru (1979); Poland (1974); Portugal (1985); Qatar (1977); Republic of Korea (1983); Republic of Moldova (2007); Romania (1993); Russian Federation (1988); Rwanda (2001); Saudi Arabia (1976); Senegal (1984); Serbia (2001); Seychelles (2004); Slovakia (1993); Slovenia (1992); South Africa (2003); Spain (1986); Sri Lanka (1981); Swaziland (2012); Sweden (2003); Switzerland (2003); Syrian Arab Republic (1975); Tajikistan (1992); The former Yugoslav Republic of Macedonia (1997); Tunisia (1975); Turkey (1981); Ukraine (1988); United Kingdom of Great Britain and Northern Ireland (2002); United Republic of Tanzania (1977); United States of America (1983); Uruguay (1977); Uzbekistan (1996); Venezuela (Bolivarian Republic of) (2005); Vietnam (2005); Zambia (1985); Zimbabwe (2006)).

32. Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation art. 4, Nov. 28 1978.

33. *Return or Restitution Cases*, UNESCO, <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/return-or-restitution-cases/> [https://perma.cc/VQY3-PV8F] (last visited Jan. 5, 2016).

B. 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

In 1983, a possible review of the 1970 Convention was considered by UNESCO to close loopholes identified in several national laws. A need to harmonize national laws concerning the prevention of illicit trafficking was particularly evident.³⁴ Due to the growing number of parties to the Convention, however, a decision was taken to draft a new Convention to complement the latter.

The main points to be addressed in the new text, which became the Convention on Stolen or Illegally Exported Cultural Objects, or UNIDROIT Convention, centered on the principle of good faith of the acquirer and prescription, which fall within subjects of private law. In this sense, the UNIDROIT Convention, drafted and adopted to complement the 1970 Convention, establishes a minimum body of private rules.³⁵

The UNIDROIT Convention defines the obligation of due diligence of acquirers,³⁶ permits compensation for good-faith acquirers, and establishes a statute of limitations to the right to demand restitution of cultural property. Moreover, it seeks harmonization between national laws and defines mechanisms for the restitution of cultural property.

But, the scope of this Convention's application is different than that of the 1970 Convention. For example, its provisions have "been interpreted as restricting the obligation of return only to objects inventoried in institutions."³⁷ Moreover, it covers only objects that have been withdrawn contrary to the source country's "law regulating the export of cultural objects for the purpose of protecting cultural heritage,"³⁸ and only objects that were stolen.³⁹ Only 40 States have

34. See LYNDAL PROT, COMMENTARY ON THE UNIDROIT CONVENTION ON STOLEN AND ILLEGALLY EXPORTED CULTURAL OBJECTS 26 (1997) [hereinafter COMMENTARY] (describing how the Convention aims to remedy past issues stemming from the lack of uniformity among state laws).

35. *Id.*, at p. 26-7.

36. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects art. 4(4), June 24, 1995 [hereinafter UNIDROIT Convention]:

In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.

37. PROT, COMMENTARY, *supra* note 34, at 15.

38. PROT, COMMENTARY, *supra* note 34, at 24.

39. PROT, COMMENTARY, *supra* note 34, at 27.

ratified the UNIDROIT Convention and most of the market states did not.⁴⁰

C. 1972 San Salvador Convention

The Organization of American States (hereinafter “OAS”) also adopted a treaty to prevent illicit trafficking of cultural property, called the Convention on the Protection of the Archeological, Historical, and Artistic Heritage of the American Nations (hereinafter “San Salvador Convention”). Vividly opposed by the U.S., this Convention aims to strengthen the 1970 Convention in the region of Latin America⁴¹ and it is considered *lex specialis* between its States Parties in relation to the 1970 Convention.

The main provision of this Convention regarding the restitution of cultural property is article 11, which establishes procedural rules for cultural property return requests, which should be accomplished primarily through diplomatic channels. When a country first identifies illicitly exported cultural property, it must report it to the State where the cultural object was stolen so that the latter can take measures toward its recovery and return. The provision requires the request to be accompanied by proof of the unlawful removal, which will be analyzed by the destination country.⁴² The Convention also allows a State to come before a domestic court to demand the stolen artifact, as

40. *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995)—States*, UNIDROIT, <http://www.unidroit.org/status-cp> [<https://perma.cc/A854-D2T3>] (last visited Jul. 16, 2017) (listing 40 States Parties to the Convention: Afghanistan (2006); Algeria (2015); Angola (2014); Argentina (2002); Azerbaijan (2003); Bolivia (1999); Bosnia and Herzegovina (2017); Brazil (1999); Burkina Faso (signed on 1995); Cambodia (2003); China (1998); Colombia (2012); Côte d’Ivoire (signed on 1995); Croatia (2001); Cyprus (2004); Denmark (2011); Ecuador (1998); El Salvador (2000); Finland (1999); France (signed on 1995); The former Yugoslav Republic of Macedonia (2014); Gabon (2004); Georgia (signed on 1995); Greece (2008); Guinea (signed on 1995); Guatemala (2004); Honduras (2014); Hungary (1998); Iran (2005); Italy (2000); Lao People’s Democratic Republic (2017); Lithuania (1998); Netherlands (signed on 1996); New Zealand (2007); Nigeria (2006); Norway (2002); Pakistan (signed on 1996); Panama (2009); Paraguay (1998); Peru (1998); Portugal (2003); Romania (1998); Russian Federation (signed on 1996); Senegal (signed on 1996); Slovakia (2003); Slovenia (2004); Spain (2002); Sweden (2011); Switzerland (signed on 1996); Tunisia (2017); Zambia (signed on 1995)).

41. Jorge Sánchez Cordero, *La Construcción de un Nuevo Orden Cultural Internacional*, *Boletín Mexicano de Derecho Comparado*, REDALYC 385–407, 394–95 (2008), <http://www.redalyc.org/articulo.oa?id=42712112> [<https://perma.cc/2DZF-NYYU>].

42. Convention on the Protection of the Archeological, Historical, and Artistic Heritage of the American Nations art. 11, Jun. 16, 1976.

well as to hold those responsible for the unlawful removal accountable.⁴³ This Convention is in force and has been ratified only by 12 States.⁴⁴

D. Regional Organizations

The fight against illicit trafficking of cultural property also ranks among the priorities of South American regional organizations, created to encourage integration among South American States and, in this sense, create regional mechanisms to fight the illegal art trade.

1. MERCOSUR

Created in 1991, MERCOSUR is a regional organization between Argentina, Brazil, Paraguay, Uruguay and Venezuela.⁴⁵ Bolivia is in the process of being formally admitted, but for the purposes of this paper, it will be considered as an associate State of MERCOSUR. Along with Bolivia, MERCOSUR includes Chile, Colombia, Ecuador, Guyana, Peru, and Suriname as associate members.⁴⁶

The fight against illicit trafficking of cultural property is one of MERCOSUR's priorities.⁴⁷ States have found that UNESCO did not respond effectively enough to the challenges in this matter faced by South American countries, and, as a result, MERCOSUR was urged to develop a regional policy to fight trafficking.⁴⁸

In 2012, an ad hoc committee was created to evaluate the illicit trafficking of cultural property among MERCOSUR States.⁴⁹ This

43. *Id.*

44. *Signatories and Ratifications*, DEPT. OF L., OAS, <http://www.oas.org/juridico/english/signs/c-16.html> [<https://perma.cc/UC79-T7EW>] (last visited Jan. 5, 2017) (listing the States: Argentina (2002); Bolivia (2003); Chile (signed on 1978); Costa Rica (1980); Ecuador (1978); El Salvador (1980); Guatemala (1979); Haiti (1983); Honduras (1983); Nicaragua (1980); Panama (1978); Paraguay (2006); Peru (1980)).

45. *What is MERCOSUR?*, MERCOSUR, <http://www.mercosur.int/innovaportal/v/3862/4/innova.front/en-pocas-palabras> [<https://perma.cc/B84R-HXL8>] (last visited Jan. 5, 2017).

46. *Countries of MERCOSUR*, MERCOSUR, <http://www.mercosur.int/innovaportal/v/7823/1/innova.front/paises-del-mercocur> [<https://perma.cc/5ABD-RNWQ>] (last visited Jan. 5, 2017).

47. *Mitigar con Acciones Concretas el Tráfico Ilícito de Bienes Culturales, Tema de Reunión Interinstitucional*, CULTURA (Oct. 20, 2015), <http://www.cultura.gov.py/lang/gu/2015/10/mitigar-con-acciones-concretas-el-traffic-ilicito-de-bienes-culturales-tema-de-reunion-interinstitucional/> [<https://perma.cc/7GLH-2ZN2>].

48. *Reunion CPC. Ata VII*, MERCOSUR (2015) available at http://portal.iphan.gov.br/uploads/ckfinder/arquivos/Ata_VII_reuniao_cpc_MERCOSUR_espanhol.pdf.

49. *Id.*

committee proposed the creation of an international database on stolen cultural objects for MERCOSUR members, as well as the creation of specialized police forces in this field. Both measures were subsequently endorsed by MERCOSUR's Commission of Cultural Heritage.⁵⁰

The resulting Declaration of Buenos Aires, established in November 2014, outlines priorities for combatting the illicit cultural-property trade, including the creation of cultural property inventories, providing training for border guards, and establishing sanctions for culprits of illicit trafficking.⁵¹

2. UNASUR

UNASUR is an international organization created in 2008 by Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela, and it is one of the most promising organizations in the region.⁵² On September 4, 2015, the organization approved an instrument similar to the MERCOSUR's Declaration of Buenos Aires, called the UNASUR Declaration on Illicit Trafficking of Cultural Property and Cultural Heritage (*Declaración de Tráfico Ilícito de Bienes Culturales y Patrimoniales del UNASUR*).⁵³ The instrument establishes a working group to identify good practices to be applied by South American States to prevent illicit traffic.⁵⁴

On April 23, 2016, UNASUR signed a new declaration, called the Declaration of the Ordinary Meeting of the Council of Ministers of Foreign Affairs (*Declaración de la reunión ordinaria del consejo de ministras y ministros de relaciones exteriores de UNASUR*).⁵⁵ This instrument recognized the need to advance the fight against the illicit trafficking of cultural property. Along with other actions taken by South American regional organizations, the Declaration demonstrates a willingness to marshal energy and resources to fight against the illicit

50. *X Reunión de la Comisó del Patrimonio Cultural del MERCOSUR (CPC)*, MERCOSUR, ACTA N° 01/14 (Nov. 2014) <http://www.mercosurcultural.org/attachments/article/102/x-reunion-de-la-comision-de-patrimonio-cultural.pdf>. [<https://perma.cc/HQS7-EG2B>].

51. *Id.*

52. *WHO ARE WE?* UNASUR, <http://www.unasursg.org/en/node/177> [<https://perma.cc/M7SX-G7BC>] (last visited Feb. 27, 2017).

53. *Mitigar con acciones concretas el Tráfico Ilícito de Bienes culturales, tema de reunión interinstitucional*, CULTURA PARAGUAY (Sept. 10, 2015), <http://www.cultura.gov.py/2015/10/mitigar-con-acciones-concretas-el-trafico-ilicito-de-bienes-culturales-tema-de-reunion-interinstitucional/> [<https://perma.cc/LFT2-G4TS>].

54. *Id.*

55. UNASUR, *Declaration of the Ordinary Meeting of the Council of Ministers of Foreign Affairs*, at 11, (Apr. 23, 2016), <http://www.unasursg.org/en/node/668> [<https://perma.cc/6D8J-P5NJ>].

antiquities trade, as well as promote the return of stolen cultural objects.

E. Bilateral Agreements

Some countries, such as Mexico, prefer to convene bilateral agreements to avoid having to appear directly before a foreign domestic court in a dispute, as required under the cultural property Conventions.⁵⁶ Bilateral agreements also establish a faster and less expensive avenue for the restitution of cultural property and fighting illicit traffic.

The following South American States that have bilateral agreements:

	Argentina	Brazil	Paraguay	Uruguay	Venezuela	Bolivia	Chile	Peru	Colombia	Ecuador	Guyana	Suriname
Argentina			X					X	X	X		
Brazil						X		X		X		
Paraguay						X			X	X		
Uruguay						X		X	X	X		
Venezuela										X		
Bolivia								X	X	X		
Chile								X		X		
Peru									X	X		
Colombia										X		
Ecuador												
Guyana												
Suriname												

*Table: Bilateral agreements between South American States*⁵⁷

56. Sánchez Cordero, *supra* note 41.

57. These bilateral agreement are cited in the National Reports of States regarding the implementation of the 1970 UNESCO Convention: U.N. Education, Scientific, and Cultural Organization [UNESCO], Rep. of Bolivia on the Implementation of the Convention Concerning Measures to Prohibit and Prevent Importation, Export and the Transfer of Illegal Property of Cultural Properties, (2015), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Rapport_Bolivie.pdf [<https://perma.cc/UY3H-T3N4>]; U.N. Education, Scientific, and Cultural Organization [UNESCO], Rep. by Member State

1. Chile and Peru

Before Chile ratified the 1970 Convention, it entered into a bilateral agreement with Peru called the *Convenio sobre Protección y Restitución de Bienes Culturales, entre el Gobierno de Chile y el Gobierno del Perú*.⁵⁸ This *Convenio* complements a previous one from 1978.⁵⁹ It aims to create a procedure for the protection and restitution of illegally imported cultural property and the settlement of disputes by an arbitral tribunal.⁶⁰ It also limits the definition of cultural property to the one identified in the domestic legislation of each State.⁶¹ Moreover, it allows a State to demand restitution based on other agreements or Conventions to which the States are parties.⁶²

2. Colombia and Ecuador

The bilateral agreement between Colombia and Ecuador has been the object of a judgment by the Superior Court of Colombia on whether the agreement accords with the Colombian constitution. Article 2 of the *Convenio entre las Repúblicas de Colombia y del Ecuador para la*

Chile on the Application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, (2015); U.N. Education, Scientific, and Cultural Organization [UNESCO], Rep. by Member State Columbia on the Application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, (2015), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/REPORT_COLOMBIA.pdf [<https://perma.cc/Q5CN-55AX>]; U.N. Education, Scientific, and Cultural Organization [UNESCO], Rep. by Member State Ecuador on the Application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, (2015), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/REPORT_ECUADOR.pdf [<https://perma.cc/YH86-JLB8>]; see *Legislación para la protección del patrimonio, REDLIST AMERICA LATINA*, <http://archives.icom.museum/redlist/LatinAmerica/spanish/legislation.html> [<https://perma.cc/Y5TP-SXV9>] (last visited Feb. 27, 2017) (listing national legislations, bilateral agreements, and international conventions that protect cultural heritage among North American and South American countries).

58. BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE, *Convenio sobre Protección y Restitución de Bienes Culturales, Chile y Perú. Análisis jurídico* (2012), [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/521B927EE98F8B9F05257B4E007901C9/\\$FILE/2012629143239289_CONVENIO_SOBR_E_PROTECCION_RESTITUCION_BIENES_CULTURALES_CHILE_Y_PERU.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/521B927EE98F8B9F05257B4E007901C9/$FILE/2012629143239289_CONVENIO_SOBR_E_PROTECCION_RESTITUCION_BIENES_CULTURALES_CHILE_Y_PERU.pdf) [<https://perma.cc/ZV9R-B723>].

59. *Id.*, at 11.

60. *Id.*, at 4.

61. *Id.*, at 6.

62. *Id.*, at 5.

recuperación y devolución de bienes culturales robados was one of the provisions analyzed by the Court. This article creates the procedure restituting an illicitly exported cultural object. It obligates each State to report a suspiciously imported cultural object to the country of origin, which will conduct an investigation about the object's provenance. The latter State must exchange information about the cultural object in question for the appropriate measures to be undertaken by the first State.⁶³ The request for restitution of the cultural object should be made by diplomatic channels.⁶⁴

The Colombian Court held that the main objective of this agreement is to protect cultural property by mutual cooperation between both countries and that this goal is in conformity with the Colombia Constitution.⁶⁵ As for the procedure established by the agreement, the Court found that the mutual cooperation that both States should undertake to fight illicit trafficking of cultural property respects the principles of sovereignty of States, as well as the equity and reciprocity that should orient Columbia's external affairs.⁶⁶

III. CASES

Several cultural objects have been returned or restituted to their country of origin due to the cooperation between South American countries and the application of bilateral agreements. In this section examines some of the countries' practices.

A. Cases of Restitution of Cultural Property

Restitution of cultural property occurs when the latter is returned after being removed from its country of origin by unlawful means. This type of return is normally done in accordance with a legal obligation, the application a bilateral agreement or a treaty.

In this section, the mechanisms put in place to retribute cultural objects from Chile and Argentina, both considered transit countries, will be studied as well as the institutions created to protect and help the restitution of cultural property to Ecuador and Peru, both considered countries of origin.

63. Agreement for the Recovery and Return of Stolen Cultural Property, Ecuador-Colombia, December 17, 1996, at art. 2(1), <http://corteconstitucional.gov.co/relatoria/2001/C-091-01.htm> [<https://perma.cc/9UVC-USZP>].

64. *Id.* at art. 2(3).

65. *Id.*

66. *Id.*

1. Chile

As a country of transit, Chile is used by traffickers to take stolen cultural property out of South America. Even though Chile did not ratify the 1970 Convention until 2014, the country took several steps to prevent illicit trafficking of cultural property during the second half of the twentieth century by forming several treaties on the preservation of cultural property with several neighboring countries.

The customs of Chile works closely with experts of the Archeological Department of the *Universidad de Tarapacá* to identify cultural property illicitly imported to the State.⁶⁷ From this partnership, several cultural objects were restituted to their country of origin.⁶⁸

In 2007 and 2008, 96 cultural objects seized by Chilean customs were identified by experts as belonging to the cultural heritage of Peru and then restituted via the *Convenio de Intercambio Cultural entre el Gobierno de la República del Perú y la República de Chile, suscrito el 5 de mayo de 1978*.⁶⁹ This a similar event occurred in 2010, when Chile returned 169 cultural objects that belong to the Chancay,⁷⁰ Mocha,⁷¹ and Chimú⁷² cultures to Peru.⁷³

Article 20 of this bilateral treaty established that each State will obey the respective national law concerning the protection of cultural

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67. *Aduanas devuelve piezas arqueológicas precolombinas a Perú*, ADUANAS CHILE (Jul. 2, 2007), <http://www.aduana.cl/aduana/site/artic/20070227/pags/20070227005609.html> [https://perma.cc/CR6X-MM9X].
68. *See, eg., Chile devuelve a Perú piezas arqueológicas incautadas a una casa de remate*, EL MOSTRADOR (May 27, 2015), <http://www.elmostrador.cl/cultura/2015/05/27/chile-devuelve-a-peru-piezas-arqueologicas-incautadas-a-una-casa-de-remate/> [https://perma.cc/T77J-LMXM].
69. *Id.*; *Convenio de Intercambio Cultural, Chile-Peru*, May 5, 1978, N° 584, <http://www.leychile.cl/Navegar?idNorma=14426>.
70. The Chancay lived in South America from 900 BCE until 1470 CE. Objects made by the Chacay include human-like figures, known as clichomilcos. *See* Beth Shook, *Five Ancient Andean Objects not to Miss*, BLANTON BLOG (Aug. 11, 2014), <http://sites.utexas.edu/blanton/tag/between-mountains-and-sea-arts-of-the-ancient-andes> [https://perma.cc/2B5H-2FTE].
71. The Moche lived in South America from 100 to 800 BCE. They “often drew upon local fauna, particularly marina life, to depict supernatural beings in a highly narrative and naturalistic style.” *See id.*
72. The Chimú lived in the Andes from 900 to 1470 CE. Their objects are characterized by a naturalistic style and often represent marine life. *See id.*
73. RADIO ONE, CHILE DEVUELVE AL PER BIENES PERTENECIENTES A PATRIMONIO CULTURAL (2010), <http://www.radiouno.pe/noticias/14081/chile-devuelve-al-peru-bienes-pertenecientes-patrimonio-cultural> [https://perma.cc/8KFP-W6EH].

property, especially laws on cultural property exports. If illegally exported cultural objects are imported, both countries will facilitate their return.⁷⁴

Chile's non-ratification of the 1970 UNESCO Convention, however, had slowed down the process of restitution of illicitly imported cultural property. For instance, it took 10 years for Chile to return 115 archeological objects to Ecuador, seized in an auction house in 2001.⁷⁵ According to Claudio Gómez, director of the *Museo de Historia Natural* of Chile, the Convention enables States to resolve such cases through administrative channels instead of judicial processes, used in the aforementioned case.⁷⁶

Chile ratified the 1970 Convention in 2014 for several reasons: to raise awareness about cultural-property protections in Chile, to add Chile to the international effort against trafficking, to avoid the proliferation of illicit traffic in the country, and to obtain the assistance of UNESCO in this area.⁷⁷

2. Argentina

Argentina, often characterized as a transit country, also intensified its border control to prevent illicit trafficking of cultural property. In 2007, a new cooperation with INTERPOL, Argentinean customs seized a total of 20,000 illicitly imported cultural objects.⁷⁸

In 2016, the biggest restitution yet was made by Argentina to Peru, concerning 4,150 cultural objects seized in 2005 during an investigation of an importation. Argentinian courts found the archaeological relics to be part of Peru's cultural heritage and returned them.⁷⁹

74. Convenio de Intercambio Cultural, *supra* note 69, at art. 20; *see also Devuelve Chile a Peru 74 piezas arqueológicas*, EL HISPANO (May 28, 2015), <http://elhispanonewspaper.com/devuelve-chile-a-peru-74-piezas-arqueologicas/> [<https://perma.cc/VR5D-2E4F>] (describing how, in 2015, the Chilean government seized and returned 74 cultural objects belonging to the *Colección Villalobos*, which includes objects from Ecuadorian coastal cultures).

75. Rodrigo Alcarón, *Después de 14 años, Chile devuelve casi 200 piezas arqueológicas a Perú y Ecuador*, UCHILE NEWSPAPER (May 25, 2015), <http://radio.uchile.cl/2015/05/25/despues-de-14-anos-chile-devuelve-casi-200-piezas-arqueologicas-a-peru-y-ecuador/> [<https://perma.cc/EQR3-RCDL>]

76. *Id.*

77. CONSEJO DE MONUMENTOS NACIONALES DE CHILE, LA LUCHA CONTRA EL TRÁFICO ILÍCITO DE BIENES CULTURALES (María Isabel Seguel ed., 2013).

78. *Argentina devuelve 4150 bienes culturales a nuestro país* (Feb. 9, 2016, 4:30 PM), <http://rpp.pe/cultura/mas-cultura/argentina-devuelve-4150-bienes-culturales-a-nuestro-pais-noticia-936761> [<https://perma.cc/4H8K-NPAW>] [hereinafter *Radio Programas de Perú*].

79. *Justicia argentina devuelve 4,150 bienes culturales a nuestro país*, MINISTERIO DE CULTURA DE PERÚ (Feb. 9, 2016), <http://www.cultura.gob.pe/es/comunicacion/noticia/justicia->

During this same operation, 439 cultural objects belonging to Ecuador were bought by a tourist.⁸⁰ The artifacts seized by Argentinian customs and later restituted to Ecuador included objects belonging to the Valdivia,⁸¹ Guagala⁸² and Tolita⁸³ cultures. According to the Embassy of Ecuador, these restitutions demonstrate the successful mechanisms put in place by both countries to reinforce cooperation on the fight against illicit trafficking.⁸⁴ On December 9, 2015, both countries signed a bilateral agreement to strengthen this cooperation.⁸⁵

argentinadevuelve-4150-bienes-culturales-nuestro-pais
[<https://perma.cc/S737-YCEQ>].

80. *Argentina devuelve cientos de piezas arqueológicas a Ecuador*, TERRA, (Jan. 15, 2016), <https://entretenimiento.terra.com.co/cultura/argentina-devuelve-cientos-de-piezas-arqueologicas-a-ecuador,d970e9214ea774888624538b6b175571phwb311v.html> [<https://perma.cc/2BN5-EPF6>]; the question of illicit traffic made by tourists was already addressed by UNESCO. In 2015, the Secretariat of the 1970 Convention made a partnership with Lonely Planet to alert tourists against involuntary illicit trafficking of cultural property. *See* UNESCO and the Lonely Planet: Do not Pack Other People's Cultural Heritage in Your Luggage, <http://en.unesco.org/news/unesco-and-lonely-planet-do-not-pack-other-people-s-cultural-heritage-your-luggage> [<https://perma.cc/PY4Y-AHRE>] (describing why UNESCO joined forces with the tourism industry to raise awareness among tourists about the need to protect cultural heritage).
81. The Valdivia culture lived in the Andes coast between 440 BCE and 1450 CE. Most of their objects are made from ceramic. Although "Venus figures" are the culture's best-known artifacts, they also created zoomorphic and anthropomorphic figures. DONNA YATES, VALDIVIA FIGURINES (2012), <http://traffickingculture.org/encyclopedia/case-studies/valdivia-figurines-2/> [<https://perma.cc/F7B4-C9BF>].
82. The Guagala culture, which lived in South America from 500 BCE until 500 CE, created complex, realistic figures using an advanced metallurgic technique. *See Guagala*, MUSEO CHILENO DE ARTE PRÉCOLOMBIANO, <http://www.precolombino.cl/en/culturas-americanas/culturas-precolombinas/intermedia/guangala/#/arte/> [<https://perma.cc/838K-ZBAU>] (last visited Feb. 28, 2017).
83. The Tolita culture lived in contemporary Colombia and Ecuador between 500 BCE and 500 CE. The objects made by the Tolitas include mythical figures that are half-human, half-animal. The Tolitas are the first-known culture to use platinum. *See Tolita*, MUSEO CHILENO DE ARTE PRÉCOLOMBIANO, <http://www.precolombino.cl/en/culturas-americanas/culturas-precolombinas/intermedia/la-tolita/> [<https://perma.cc/C4JX-L67S>] (last visited Feb. 28, 2017).
84. *Argentina devuelve a Ecuador más de 439 piezas arqueológicas*, ANDES, <http://www.andes.info.ec/es/noticias/argentina-devuelve-ecuador-mas-439-piezas-arqueologicas.html> [<https://perma.cc/HTJ7-WSDD>] (last visited Feb. 28, 2017).
85. *Id.*

3. Ecuador

Since 2007, Ecuador has maintained a strong policy against the illicit trafficking of cultural property. Between 2010 and 2015, 12,000 cultural objects have been returned to Ecuador, including 4,998 that were recovered due to operations conducted abroad. Those objects came from Italy, Argentina, Spain, Egypt, Chile, Denmark, Norway, and others. In 2016, five more objects will be returned from Peru, Italy and Germany.⁸⁶ To help preserve the cultural identity of Ecuadorians, the objects returned will be inventoried and then displayed in national museums.⁸⁷

Ecuador also has a strong policy favoring the restitution of cultural property. In 2015, it returned a statue of *Santa Ana Triple* to Columbia that had been stolen in 1985 from Tunja, Boyacá.⁸⁸ The statue was found in the National Museum of Ecuador and inventoried by the Ecuadorian Ministry of Culture and Heritage before it was reclaimed by the Colombian Franciscan community.⁸⁹ Once the theft of the object from Colombia was proven, Ecuador promptly agreed to the restitution. This was not the first restitution made by Ecuador to Colombia. In 2010, seven cultural objects were returned after being seized in an operation led by the *Unidad de Delitos Contra el Patrimonio Cultural*, a special police unit dedicated to crimes against cultural heritage.⁹⁰

Colombia has also returned cultural objects to Ecuador. In 2009, two masterpieces by one of the most important Ecuadorian painters, Eduardo Kingman, were found in Bogotá. The *San Pedro y San Paulo* and *Las Manos de Dios*, painted in 1948 and 1945, respectively, illustrate the pain and degrading treatment suffered by Ecuadorian indigenous peoples.⁹¹ Those masterworks were stolen from Quito,

86. *Ecuador prevé repatriar al menos cinco lotes de bienes patrimoniales en 2016*, ECUADOR HERITAGE (Feb. 21, 2016), <http://www.efe.com/efe/america/cultura/ecuador-preve-repatriar-al-menos-cinco-lotes-de-bienes-patrimoniales-en-2016/20000009-2845937> [<https://perma.cc/7WND-64FZ>].

87. *Id.*

88. *La escultura 'Santa Ana triple,' robada hace 30 años en Colombia, fue hallada en Quito*, EL COMERICO (Jun. 24, 2015), <http://www.elcomercio.com/actualidad/escultura-robo-colombia-quito-trafico.html> [<https://perma.cc/E77G-VYQH>].

89. Restituyese A La Republica De Colombia La Escultura Sata Ana Triple 2015, No. DM-2015-042, art. 4-5, ¶¶ 4-5 (Ecuador).

90. *Ecuador entrega a Colombia bienes culturales patrimoniales incautados en Quito*, MINISTERIO DE RELACIONES EXTERIONES Y MOVILIDAD HUMANA, <http://www.cancilleria.gob.ec/ecuador-entrega-a-colombia-bienes-culturales-patrimoniales-incautados-en-quito/> [<https://perma.cc/U62E-8Y97>].

91. *Colombia devuelve a Ecuador dos lienzos de su patrimonio cultural*, EFE (Oct. 6, 2009),

Ecuador's capital, and were found in an illicit sale in Bogotá.⁹² Since they were considered to be Ecuadorian cultural heritage, they were returned to their country of origin in accordance with the 1996 treaty between Peru and Colombia.⁹³

4. Peru

Since 2007, the Peruvian government has intensified its efforts to prevent illicit trafficking of cultural property. It has recovered over 2,000 objects from museums and private collectors from several countries, including Colombia, Argentina, and Chile.⁹⁴

One of the actions taken by the government was the diffusion of the "Red List" of Peruvian antiquities at risk, which was later incorporated by several Latin American countries.⁹⁵ These lists describe the objects that are vulnerable to looters and therefore help customs officers, police, and collectors to identify objects that could have an illicit provenance.⁹⁶

Moreover, Peru published tourist guides informing visitors about its restrictions on importation and exportation of cultural goods.⁹⁷ The Peruvian government has concluded over 30 bilateral agreements to protect and restitute cultural property.

B. Cases of Return of Cultural Property

The return of cultural property constitutes the devolution of cultural property in accordance with a moral obligation to return it to its country of origin. States request such returns to preserve the integrity of their cultural heritage and so that its population can enjoy part of its history.

http://www.soitu.es/soitu/2009/10/07/info/1254875449_681263.html
[<https://perma.cc/VN29-ZETR>].

92. *Colombia entregara a Ecuador lienzos de Kingman, que son patrimonio cultural*, EMOL (Oct. 7, 2009), <http://www.emol.com/noticias/internacional/2009/10/07/379265/colombia-devuelve-a-ecuador-dos-lienzos-de-su-patrimonio-cultural.html> [<https://perma.cc/H4S8-6VYH>].

93. *Id.*

94. *See Repatinations*, PERU MINISTERIO DE CULTURA, <http://www.cultura.gob.pe/es/defensapatrimonio/recuperaciones/repatriaciones> [<https://perma.cc/KMA3-4WEW>].

95. *Id.*

96. *Campana "El Peru contra el trafico Illicito de bienes culturales,"* PERU MINISTERIO DE CULTURA, <http://www.cultura.gob.pe/es/defensapatrimonio/recuperaciones/campanas> [<https://perma.cc/UZ8B-BA82>].

97. *Id.*

1. Argentina and Paraguay

Since the 140th anniversary of the War of the Triple Alliance, also known as the Paraguayan War (1864–1870),⁹⁸ the government of Paraguay has asked for the return of several objects seized during the conflict, from cannons to furniture. This conflict pitted Paraguay against Argentina, Brazil, and Uruguay in the bloodiest Latin American conflict, which started as a boundary and tariff dispute but ended with hundreds of thousands of deaths.⁹⁹

In 2014, Argentina returned a set of furniture that belonged to the former Paraguayan president Francisco Solano López,¹⁰⁰ as a historical repatriation.¹⁰¹ These objects, considered spoils of war, were exposed in the Historical Museum of *Entre Ríos* “*Martiniano Leguizamón*.” The objects were donated to the museum by Juana Dorila Iraizoz de Lanús, widow of Anarcasis Lanús, who acquired them in an auction sale.¹⁰² The Argentinean government said that it returned the furniture since it has an obligation to return objects to their place of origin.¹⁰³

2. Chile and Peru

In 2007, Chile has returned 3,788 books removed from National Library of Lima, Peru, during the Pacific War of 1879–1884 between Chile and allies Peru and Bolivia.¹⁰⁴ In 1881, the Chilean army occupied Lima and pillaged the library.¹⁰⁵ The books were found decades later in

98. *War of the Triple Alliance*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/War-of-the-Triple-Alliance> [<https://perma.cc/NR6F-VJLM>] (last visited Nov. 5, 2016).

99. *Id.*

100. *Oficial: Cristina y Urribarri viajaron a Paraguay a devolver muebles*, PERFIL (Dec. 8, 2012), http://www.perfil.com/politica/oficial-cristina-y-urribarri-viajaron-a-paraguay-a-devolver-muebles-0812-0054.phtml?utm_source=redir_url_legacy [<https://perma.cc/4P4M-LEKS>].

101. *Id.*

102. Dino Cappelli, *Cristina Kirchner devolvera botines de la Guerra Grande a Paraguay*, EL MUNDO (May 16, 2014), <http://www.elmundo.es/america/2014/05/16/537631faca474160188b4577.html> [<https://perma.cc/7E8U-TALC>].

103. *Oficial*, PERFIL, *supra* note 100.

104. *Declaración Oficial: Chile Devuelve Libros a Peru*, Biblioteca Nacional de Chile (Nov. 6, 2007), <http://www.memoriachilena.cl/602/w3-article-122650.html> [<https://perma.cc/JT7F-UYR5>].

105. *War of the Pacific*, ENCYCLOPEDIA BRITANNICA), <https://www.britannica.com/event/War-of-the-Pacific> [<https://perma.cc/4UM2-7LG3>]; Dan Collens, *Chile returns looted Peru books*, BBC NEWS (Nov. 7, 2007), <http://news.bbc.co.uk/2/hi/americas/7082436.stm> [<https://perma.cc/2A3V-K88S>] (last visited Nov. 5, 2016).

the Chilean National Library, which described the return as a “great gesture of peace.”¹⁰⁶ The Chilean government also recognized the books as Peruvian property, removed from Lima as spoils of war, since a Chilean congressman stated that the removal was pillage against Peru.¹⁰⁷

Peru recognized the return as an act of good will by the Chilean government. Moreover, the director of the Chilean National Library stated that “all people have the right to conserve their memory, and with this return, the knowledge and cultural practices [of the Peruvian nationals] can be passed on to the next generation.”¹⁰⁸

3. Brazil and Paraguay

In 2010, the Paraguayan vice-president asked Brazil to return the “El Cristiano” cannon, a piece of artillery taken from Paraguay by the Brazilian armed forces during the Paraguayan War,¹⁰⁹ arguing that the canon is an important instrument for the healing process of the Paraguayan people.¹¹⁰ The former President of Brazil, Luiz Inácio Lula da Silva, agreed with the restitution. Brazilian legislation, however, imposed barriers on the devolution of the cannon.

The Brazilian Constitution establishes that federal entities must protect the country’s cultural property, preventing cultural objects like the cannon from leaving Brazil permanently.¹¹¹ However, the constitutional protection that prevents the removal of cultural property from Brazilian territory can be changed, if there is public interest to do so, by a presidential decree.¹¹² Some scholars oppose the cannon’s return to Paraguay, arguing that it is Brazilian cultural heritage and that it

106. See *Chile/Peru: diplomacia de los libros*, BBC (Mar. 30, 2007), http://news.bbc.co.uk/hi/spanish/misc/newsid_6510000/6510819.stm [https://perma.cc/VM82-TG2D].

107. *Id.*

108. Press Release, Biblioteca Nacional del Peru, Gobierno Chileno devuelve libros a Biblioteca Nacional del Peru (Nov. 2007).

109. Andres Colma, *La devolucion del canon Cristiano destata polemica*, *Ultimahora* (Mar. 16, 2010), <http://www.ultimahora.com/la-devolucion-del-canon-cristiano-desata-polemica-n304970.html> [https://perma.cc/WCX7-FD6P].

110. Isabel Fleck, *Paraguai exige do Brasil a volta do “Cristao”, trazido como trofeu de Guerra*, *FOLHA DE S.PAULO* (April 18, 2013), <http://www1.folha.uol.com.br/mundo/2013/04/1264506-paraguai-exige-do-brasil-a-volta-do-cristao-trazido-como-trofeu-de-guerra.shtml> [https://perma.cc/4EUN-LUNU].

111. Constituicao da Republica Federativa do Brasil Oct. 5, 1998, chapter III, sec. II.

112. *Id.* at chapter I, sec. II, art. IV.

should not leave the country.¹¹³ For now, the cannon remains on view at the National Museum in Rio de Janeiro.

IV. CONCLUSION

The concern with restoring cultural objects to their place of origin is constantly present in the foreign policy of South American States. The demands to return stolen cultural objects are made to all States, regardless the potential financial or political gain that can be obtained from these demands. This demonstrates a genuine concern for their national cultural heritage. Moreover, the willingness to return cultural objects to others States when the former are found in the latter's territory shows a concern with restoring all cultural property to their country of origin and restoring national treasures.

South American States have intensified their policy to fight against illicit trafficking of cultural property and to promote the return of cultural objects to their place of origin. One can observe that the policy employed by these States has two main strategies: the creation of national mechanisms to prevent the illicit trafficking of cultural property and strengthen international cooperation in the exchange of information and establishing bilateral mechanisms to facilitate the return of stolen cultural objects.

Those actions demonstrate that the fight against this traffic cannot be unilateral, i.e., all States must implement a policy to prevent the illicit import and export of cultural property. The exchange of information on illicit trafficking as well as the intense control of borders are effective actions against this scourge and have made possible several cases of return of cultural items. In this sense, the State practice of South American States demonstrates a strong concern and policy on the fight against illicit trafficking of cultural property. These results are only possible thanks to a strong international cooperation. The reluctance of market countries to strengthen this cooperation and to open a dialogue with source countries can mitigate this fight, since the reach of their actions also depends on the willingness to exchange information and promote a capable custom on transit and destination States.

Moreover, the spirit of cooperation and mutual respect of different cultures among States also promotes the return of cultural property removed from their country of origin as spoils of war. These actions promote peace and friendly relations among States.

113. Fleck, *supra* note 110.