

Cultural Identity, Human Rights, and Repatriation of Cultural Heritage of Indigenous Peoples

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LOOTING CULTURAL HERITAGE HAS BEEN a common practice since ancient times, especially in situations of military occupation and colonization. Pillage of cultural objects was already widespread in Greek and Roman civilizations and has continued through to contemporary times.¹ One of the most unfortunate examples of this is Napoleon's theft of an inestimable number of pieces of art and archaeology—including the Rosetta Stone—from Italy, Egypt, and Germany in the late eighteenth and early nineteenth centuries.² Other instances include the well-known removal of the Parthenon Marbles from the Acropolis of Athens by British Ambassador Lord Elgin from 1801 to 1812; the many thousands of artworks plundered by the Nazis in occupied countries during World War II; the looting of irreplaceable artifacts of Sumerian, Akkadian, Babylonian, Assyrian, and Arab art from the National Museum of Baghdad in April 2003 after the entry of U.S. forces in the city; and the “industrial scale” plundering of Syrian and Iraqi heritage perpetrated by ISIL, which is still ongoing at the time of this writing.³

Theft of cultural heritage opens a deep wound that often can only be healed through repatriation of the heritage concerned to its country of origin. Cultural

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heritage is valuable to a community's economic success—through tourism, for example—but especially as an essential part of a people's pride, self-esteem, and identity. In many cases heritage bears a spiritual connection with communities that greatly transcends its artistic, archaeological, monetary, and aesthetic value. This is even more true for communities that hold a deep level of spirituality, particularly indigenous peoples. These peoples, although scattered throughout all areas of the world and representing a myriad of different specific communities, share the same conception of life and spiritual affairs, characterized by

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holisticism, a deep interconnection with nature, and a feeling of belonging to Mother Earth. The term "indigenous peoples" is not used to merely mean communities autochthonous to a given area, but rather to associate human groups sharing the same holistic vision of life and

cultural model.⁴ Consequently, for virtually all indigenous communities in the world, all beings—either animate or inanimate—are deeply interconnected with each other and share the same soul and spirit, which are grounded in the land where those peoples live, composing a whole that is given life by the spirits who created the world. Each piece of indigenous peoples' cultural heritage is therefore not a simple object, but instead a part of that whole which, like any other component, is essential for the good order of life and—inasmuch as it is connected with deities and other mystical beings—is infused with a profound connotation of spirituality.

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THE SIGNIFICANCE OF INDIGENOUS PEOPLES' CULTURAL HERITAGE

As just explained, cultural heritage represents an essential part of the cultural identity of most indigenous peoples, who hold with their heritage a spiritual—more than material—relationship. Given the holistic perspective characterizing indigenous peoples' conception of life—according to which cosmic order is guaranteed through living in harmony with nature and all other existing beings—their cultural heritage defines their distinctive identities as peoples. Depriving indigenous peoples of their cultural heritage, therefore, does not simply mean stealing their material property but also can involve mutilation of an element of their belief system essential to their existence. As a consequence, the loss of cultural heritage inhibits the transmission of a people's idiosyncratic identity to

future generations and infringes upon their internationally recognized human rights. The strict interconnection of cultural heritage and human rights—especially as far as indigenous peoples are concerned—has been repeatedly recognized and affirmed by every major international human rights monitoring body and is beyond question.⁵ Just as with any other element of indigenous peoples' rights, deprivation of their cultural heritage bears intergenerational implications, preventing future generations from the possibility of enjoying a life in harmony with all surrounding elements—nature, spirits, and the entire universe—until their heritage is recovered. For indigenous peoples, preserving their material and spiritual relationship with their own cultural heritage means safeguarding their lifestyle, their harmony with the universe, and their dignity as distinctive peoples. It follows that, when an indigenous community is deprived of its own cultural heritage, the good order of its world is disrupted to the point of threatening its survival in cultural and even physical terms. Indeed, as emphasized by the Inter-American Court of Human Rights (with specific reference to human remains), loss of cultural heritage or disruption of cultural traditions is usually perceived by indigenous peoples as “a profound moral transgression, which... leads to a number of ‘spiritually-caused illnesses’ that become manifest as actual physical maladies and can potentially affect the entire natural lineage...[determining a situation which] will persist through generations.”⁶

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The considerations just developed assume additional significance in light of the extension of the concept of indigenous peoples' cultural heritage. As emphasized by Victoria Tauli-Corpuz, the UN Special Rapporteur on the Rights of Indigenous Peoples:

Heritage is everything that defines [indigenous people's] distinct identities as peoples...It includes...traditional knowledge...language, cultural expressions...; scientific, agricultural, technical, and ecological knowledge and the skills required to implement this knowledge and technologies...human genetic material and ancestral human remains... natural features in [indigenous] territories and landscapes, biodiversity... and the various diverse ecosystems which [indigenous peoples] have nurtured and sustained...sacred sites, sites of historical significance, and burial sites. [Indigenous peoples have the] responsibility...to safeguard, develop and protect [their own] heritage from misuse and misappropriation, so it could be passed on to the future generations... The dismemberment of [indigenous peoples'] rights and the way [their] heritage is broken up, folklorised and wrenched away from the territories and resources to which it was intrinsically linked is a major threat to its continuing existence.⁷

For indigenous peoples, the deprivation of an element of their collective and individual existence means the loss of their cultural heritage. The latter includes not only the looting of tangible objects or human remains, but also the taking of lands, natural resources, and the denial of the possibility for indigenous peoples to practice their cultural traditions, such as hunting and fishing, sacred rituals, or traditional medicine. Any such wrong suffered by indigenous peoples affects their cultural heritage, but different wrongs require different forms of redress. In this respect, it is evident that repatriation only works for tangible movable objects, including products of traditional craftsmanship, religious items, or human remains, among others. For the purposes of the present article, the concept of “indigenous peoples’ cultural heritage” will be restricted to movable tangible elements of cultural heritage.

LOOTING INDIGENOUS PEOPLES’ CULTURAL HERITAGE: A LONG HISTORY OF PREVARICATION

Instances of looting indigenous peoples’ cultural heritage have consistently increased since the seventeenth century. In particular, many of the trading posts established by Europeans in North America to trade with Native American communities started to loot their cultural objects and human remains beginning in the seventeenth century, transferring them to Europe for the benefit of museums and private collections.⁸ For instance, the Hudson’s Bay Company, established in London in 1670, collected a significant amount of indigenous objects for the Industrial Museum of Scotland (the present National Museum of Scotland), which are today scattered throughout collections in the United Kingdom.⁹

In the nineteenth century, prominent scientists and anthropologists, including Charles Darwin and Theodor Waitz, started collecting indigenous artifacts because such objects were considered useful for their anthropological research.¹⁰ During the latter half of the century, beginning around 1870, collecting cultural objects belonging to people who were considered exotic and bizarre became a flourishing business, and thousands of indigenous objects were taken from all around the world and transferred to the West to fill museums and private collections through the art market.¹¹ This practice remained very common for several decades, involving any kind of cultural object of indigenous origin, including sacred, ceremonial, and funerary objects—even human remains. Throughout the nineteenth century, for example, a massive quantity of *Mokomokai*—mummified heads of Māori people decorated by traditional facial *Tā Moko* tattoo-

ing—was taken from New Zealand and transferred to museums and private collections.¹² Similarly, during the late nineteenth and early twentieth centuries, large collections of Aboriginal Australians' human remains were gathered "as part of a scientific curiosity about different cultures and notions about racial superiority fuelled by then social Darwinism."¹³ Thousands of such objects were transferred to European museums

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or scientific institutions, while others became part of collections of Australia's major natural history museums.¹⁴ Another famous example from this period concerns the Sioux Ghost Dance shirts, taken from the dead bodies of some of the Sioux massacred by the U.S. Army at Wounded Knee on 29 December 1890 and subsequently displayed at the Smithsonian's National Museum of Natural History. The museum obtained a total of 29 objects taken from the bodies of the Sioux killed at Wounded Knee, including their shirts.¹⁵ All of these objects, for the reasons explained above, were and continue to be of special significance to the communities concerned. The Sioux Ghost Dance shirts, for instance, are considered sacred clothing to be worn during the Ghost Dance, which was intended to reunite the community with the spirits of the dead, obtain protection from the latter, and bring peace, unity, and prosperity to several Native American tribes.

Many other examples could be presented to reinforce the argument illustrated above. In summary, the practice of looting indigenous peoples' cultural heritage has reached a "hemorrhagic level" in the past few centuries. Consistent with what has been mentioned prior, the use of a blood-related term is more than a mere metaphor. As previously explained, for indigenous peoples, their cultural heritage is the blood running through the veins of their communities, allowing for the survival and transmission of their cultural identities to future generations. Therefore, repatriation of their cultural artifacts is an essential prerequisite for preserving their identities and distinctiveness as cultural communities.

INDIGENOUS PEOPLES' STRUGGLE TO RECOVER THEIR LOST HERITAGE

In recent decades, indigenous peoples' struggle to regain possession of their cultural artifacts, which represent their spiritual and cultural heritage, has been

increasingly supported by international law, in the context of which a general awareness has developed concerning the need to return these objects. This awareness has arisen thanks to the fact that states and other relevant international actors have become conscious of the unique significance held by indigenous communities' cultural objects, not so much in terms of property ownership, but rather by reason of their spiritual and cultural value.

Consequently, some international legal provisions exist that provide for either the right of indigenous peoples to preserve their material and spiritual connection with their own cultural heritage or their right for the cultural property illegitimately taken from them to be repatriated. For instance, Article 5(3)(d) of the International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects, adopted in 1995, establishes that the court or other competent authority of the state party from which return of an illegally exported cultural object is requested must order such a return if the removal of that object has significantly impaired "the traditional or ritual use of the object by a tribal or indigenous community."¹⁶

Similarly, Principle 21 of the Principles & Guidelines for the Protection of the Heritage of Indigenous People, also adopted in 1995, requests that governments and international organizations "assist indigenous peoples and communities in recovering control and possession of their moveable cultural property and other heritage."¹⁷ It further provides that human remains and associated funeral objects "must be returned to their descendants and territories in a culturally appropriate manner, as determined by the indigenous peoples concerned."¹⁸ Additionally, Principle 22 stresses that movable cultural objects "should be returned wherever possible to [their] traditional owners, particularly if shown to be of significant cultural, religious or historical value to them."¹⁹

The most comprehensive existing legal instrument concerning indigenous peoples' rights is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted on 13 September 2007 by an affirmative vote of 143 states in the UN General Assembly.²⁰ The four countries which had originally voted against the UNDRIP—Australia, Canada, New Zealand, and the United States—and the abstaining countries, Colombia and Samoa, officially endorsed the Declaration by 2010. These countries' endorsements were accompanied by the solemn commitment to fulfill the provisions included in the UNDRIP. For example, on 16 December 2010 President Obama, in reiterating the U.S. government's support for the Declaration—previously announced in April of the same year—clarified that "what matters far more than words—what matters far more than any resolution or declaration—are actions to match those words."²¹

Similarly, in May 2016, Canadian Prime Minister Justin Trudeau declared the commitment of the Canadian government to “fully adopt and implement the [UNDRIP].”²² This outcome was the result of a developing awareness within the international community that ensuring full realization of indigenous peoples’ rights is a legal and moral imperative that states are bound to honor. The global recognition of the UNDRIP and acceptance of its provisions attribute to it a notable weight in the context of international law on indigenous peoples’ rights; this applies, among others, to the rules concerning protection and repatriation of indigenous peoples’ cultural heritage.

A number of provisions included in the UNDRIP pertain to cultural heritage. First, Article 11 provides for the right of indigenous peoples “to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.” This right is accompanied by the duty of states to

provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.²³

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Second, Article 12 affirms the right of indigenous peoples to, inter alia, “maintain, protect, and have access in privacy to their religious and cultural sites;... to the use and control of their ceremonial objects; and... to the repatriation of their human remains.”²⁴ This article also commits states to “seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.”²⁵ Third, Article 31 establishes that indigenous peoples

have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.²⁶

Last but not least, in establishing that “indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture,” as well as that states must “provide effective mechanisms for prevention of, and redress for... [any] action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities,” Article 8 of UNDRIP is also of significance, though indirectly.²⁷

Of course, the creation of legal provisions only represents the first step in the affirmation of rights, and these laws must be accompanied by proper and effective implementation. In recent times, an extensive practice of repatriation of indigenous peoples’ cultural heritage has developed. One notable example is the previously mentioned case of the Māori Mokomokai, hundreds of which—following the Karanga Aotearoa Repatriation Programme, launched in 2003 by the Museum of New Zealand Te Papa Tongarewa in cooperation with the government—have been repatriated to New Zealand by a number of countries (including Australia, France, the United Kingdom, and other European states). The masks are either to be returned to their relatives or, when their relatives are unknown, to be displayed by the Te Papa museum itself.²⁸ Other examples include the return, in 1988 and 1998, of the Sioux Ghost Dance shirts to the descendants of the victims of the 1890 Wounded Knee massacre; the return of 846 secret/sacred objects and 42 sets of human remains from several Australian museums—coordinated and managed by the national Museum’s Repatriation section—to Aboriginal communities living in various parts of Australia; the repatriation, by June 2005, of all known human remains belonging to ancestors of the Haida Nation (an indigenous community living in the Pacific Northwest of North America) which were previously held in museums and institutions across North America; the return, in May 2007, of 17 Aboriginal mortal remains to Tasmania, Australia, by the Natural History Museum in London; and the return, in September 2015, of five *epa* (wooden panels) to the people of Taranaki iwi Te Ātiawa and Ngāti Rāhiri hapū, in New Zealand, from which they were looted in 1971 (the *epa* are now housed at the local Puke Ariki Museum).²⁹

The general statistics concerning the United States, provided by the U.S. National Park Service, are also noteworthy: since the passing of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990, the repatriation of Native American human remains and other cultural property has included 50,518 individual human remains; 1,185,948 associated funerary objects; 219,956 unassociated funerary objects; 4,914 sacred objects; 8,118 objects of cultural patrimony; and 1,624 objects that are both sacred and patrimonial.³⁰ Efforts to ensure repatriation of indigenous peoples’ cultural heritage are also

carried out at the bilateral level. In 2003, for instance, a joint statement was released by the prime ministers of the United Kingdom and Australia, whereby they agreed to “increase efforts to repatriate human remains to Australian indigenous communities;” recognized “the special connection that indigenous peoples have with ancestral remains;” endorsed “the repatriation of indigenous human remains wherever possible and appropriate from both public and private collections;” and commended the British institutions which had already negotiated agreements with Aboriginal communities for the repatriation of remains.³¹

While these examples show the fulfillment of indigenous peoples’ rights to their cultural heritage, the broader picture is not entirely positive. Indeed, repatriation—though increasingly commonplace—is far from consistently practiced. Recently, several attempts by indigenous communities to regain cultural properties essential to their identity have been unsuccessful. For example, in April 2013, a French court held that selling *Katsina* “friends” (ritual objects considered particularly sacred by the members of the Hopi Native American tribe) at an auction in Paris was fully legitimate because “the claim that Hopi cultural patrimony is exclusively their property has no legal basis according to French law.”³² This incident is not isolated, and other indigenous peoples’ sacred objects have been sold at French auctions against the protests of Native American tribes.

Museums and other cultural institutions, especially in Europe, are also reluctant to return indigenous artifacts. For instance, while the struggle of the Haida Nation to recover ancestral human remains held in museums and institutions across North America was quite successful, it has failed to recover similar remains held by European institutions.³³ Similarly, according to the “Cultural Property: Return and Illicit Trade” report released in 2000 by the English Working Group on Human Remains, out of 33 requests from indigenous peoples to repatriate cultural property from museums and other institutions located in England, only seven had been accepted, five were pending, and 20 had been rejected at the time of the publication of the report.³⁴

The creation of legal provisions only represents the first step in the affirmation of rights, and these laws must be accompanied by proper and effective implementation.

IMPROVING THE EFFECTIVENESS OF THE REPATRIATION PROCESS: PROBLEMS REMAINING AND STEPS TO BE TAKEN

The ethical and legal foundations of repatriation have gained traction in the international community over the past few years. These foundations concern the necessity to repatriate cultural heritage of which indigenous peoples have been deprived in the far or near past. This imperative is rendered particularly urgent, not for reasons of “ownership” of the heritage concerned, but rather for the spiritual and cultural significance it bears as a vehicle for ensuring the preservation and transmission to future generations of indigenous peoples’ cultural identity. Repatriating indigenous peoples’ cultural heritage is therefore mainly a matter of (cultural) human rights, as the preservation of such heritage by indigenous communities represents an essential condition for the proper realization of their internationally recognized human rights. As is usually the case with human rights, however, the distance between what is declared on paper and what happens in the real world remains relatively vast. In fact, as previously mentioned, the response by competent bodies and institutions in several countries to indigenous peoples’ repatriation claims has been far from satisfactory.

Well-defined problems explain many of those unsatisfied claims. In particular, most situations in which indigenous communities claim repatriation of their cultural heritage encompass different interests that in turn involve different title holders, and all of these interests are protected by domestic and/or international law. These interests may include—in addition to that of the indigenous community concerned to have its own heritage repatriated—property rights over the heritage at stake by a private owner or museum, or the interest of the latter to keep its collections intact. Indeed, it has been noted that “many European institutions remain apprehensive about the process [of repatriation], to some extent because there is a sense of pride and national identity tied up in housing these collections.”³⁵ More pragmatically, sometimes museums and similar institutions fear that acceptance of even only one claim of repatriation advanced by an indigenous community might open a Pandora’s box of other similar claims, potentially eroding important parts of their collections.

As a result, museums are reluctant to accept any such claims and, even when evidence supports repatriation, they proceed slowly and cautiously. This is exemplified by a recent case concerning the British Museum in London, which has negotiated since mid-2015 with the Dja Dja Wurrung Aboriginal community in Victoria, Australia, over the possible repatriation of three bark artifacts and a few other objects (out of the about 6,000 Aboriginal Australian items

included in its collections) taken from the community in the 1850s. While the community hopes that this will be a first step toward permanent repatriation of the properties concerned, the museum has so far only agreed to a temporary exhibition to be held in Dja Dja Wurrung country in 2017.³⁶

Economic interests, especially those of private owners and auction houses, may also encourage a negative attitude toward repatriation, since large amounts of money are at stake. For instance, in 2005, at an auction of Native American, pre-Columbian, and tribal art held in San Francisco, more than \$2.8 million was spent. Among the objects sold to bidders was a polychrome Paiute basket produced in 1929 that went for \$336,250, while a nineteenth century Tlingit's shaman rattle was sold for \$149,250.³⁷

Even the public interest of the state to preserve a part of its own national cultural heritage as considered by domestic law, which according to certain domestic legislation may well include cultural property of indigenous origin held by the state for some time, may play an important role in encroaching on repatriation efforts. A national authority may be reluctant to accept what it considers a loss of part of its national heritage. For example, in October 2007, the Administrative Tribunal of Rouen in France blocked the decision of the municipal National History Museum to repatriate a Māori Mokomokai to New Zealand, based on the argument that such a decision, if implemented, would produce an unjustified damage to French cultural heritage.³⁸ Fortunately, however, this verdict was later nullified by the French National Assembly in 2010, with the adoption of a law ordering repatriation to New Zealand of all Mokomokai existing in France.³⁹

Last but not least, a well-established interest of the international community as a whole to enjoy the heritage concerned may be claimed, especially when repatriation would lead to disappearance of the item from the public eye—as frequently happens with human remains, which are usually buried once returned to the communities concerned. This interest is today the object of protection by international law, which considers cultural heritage as included among *res communes omnium* (goods to

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be protected in the interest of all humanity). This is made clear by some of the most important international conventions in the field of cultural heritage. For instance, the preamble of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict affirms that “damage to cultural property belonging to any

people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world,” as well as that “the preservation of the cultural heritage is of great importance for all peoples of the world and... it is important that this heritage should receive international protection.”⁴⁰ Similarly, the preamble of the 1972 World Heritage Convention stresses that “deterioration or disappearance of any item of the cultural... heritage constitutes a harmful impoverishment of the heritage of all the nations of the world.”⁴¹

When a court or another competent body has to face a situation in which all or part of said interests are contextually in conflict with one another, the interests of indigenous peoples to repatriation should be considered as prevailing over the others. Repatriation is essential for the recovery of the spiritual integrity and cultural identity of an indigenous community. It is also critical *a fortiori* for ensuring that its members enjoy internationally recognized human rights, in consideration of the strict interconnection existing between cultural heritage and human rights, as explained above.⁴² It is certainly possible, however, that the competent authority considers other competing rights predominant, especially when its intellectual and legal formation is influenced by cultural parameters typical of the Western world (e.g., the idea of the “sanctity” of individual private property rights) often accompanied by a lack of proper understanding of the collective significance of cultural heritage for indigenous peoples.

CONCLUSION

Numerous problems still undermine the repatriation of indigenous peoples’ cultural heritage, but there is plenty that can be done to mitigate the negative influence of these problems. States should, *inter alia*, increase compliance with existing legal rules regulating the issue in discussion, particularly the 1995 UNIDROIT Convention and the relevant provisions of the UNDRIP. Also, the amount and/or quality of relevant legislation should be improved at the domestic level, following the example of NAGPRA in the United States. At the level of both competent authorities and civil society, it is important to raise awareness of the decisive importance of repatriation of indigenous peoples’ cultural heritage for the preservation of cultural identity of the communities concerned, as well as for the enjoyment of fundamental human rights by both the affected communities as collectives and their members as individuals. Importantly, in terms of “operational” strategies, indigenous peoples should not be left alone in their struggle for recovering their lost heritage. Recent practice has shown that repa-

triation claims initiated and/or assisted by museums or governments are much more likely to be successful than those managed by indigenous communities alone. Evidence of this is provided, with respect to the former, by the previously mentioned Karanga Aotearoa Repatriation Programme, launched in 2003 by the Museum of New Zealand Te Papa Tongarewa. The latter, meanwhile, is epitomized by the case of the Australian government, which from 2000 to 2012 was able to repatriate over 1,000 human remains to indigenous peoples.⁴³

Repatriation of indigenous peoples' cultural heritage is today an imperative. It is a matter of cultural identity, human rights, and ultimately even the physical survival of the peoples concerned.

In general terms, the main problem to overcome in translating these recommendations into outcomes is that most of them necessarily require active cooperation by governments, which generally are quite reluctant to put into practice measures resulting in encroachment upon their sovereignty or the detriment of their national interests. Also, it is inevitable that the level of compliance by states with international rules safeguarding indigenous peoples' cultural heritage be very heterogeneous, as happens with international law in general, because—generally speaking—the degree of willingness by governments to comply with international law varies greatly. This is a reality characterizing virtually all rules of international law, including those concerning the protection of indigenous peoples' cultural heritage. This said, however, much can be done to speed up the process leading states to fully comply with said rules. Again, civil society, at all levels, should help indigenous peoples in their struggle to recover their own cultural heritage through constantly pressuring governments and giving international visibility to the violations of their international obligations. States would then be persuaded to comply with such obligations in order to avoid the shame resulting from such visibility. Furthermore, a bottom-top approach—involving the promotion of public awareness among common people of the importance of repatriating cultural heritage to indigenous peoples, to be subsequently transfused to rulers—might represent a formidable weapon to achieve the goal of allowing indigenous peoples to recover their lost cultural heritage.

As previously emphasized, repatriation of indigenous peoples' cultural heritage is today an imperative for all members of the international community. It is a matter of cultural identity, human rights, and ultimately even physical survival of the peoples concerned. This is the reason why said imperative, beyond its

legal characterization, is of markedly ethical character. It follows that all relevant actors have a moral duty to comply with it, a duty which is even more stringent than the corresponding legal obligation existing under international law. 

NOTES

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13. Marylin C. Truscott, “Repatriation of Indigenous cultural property” (paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage, Canberra).
14. *Ibid.*
15. Russell Thornton, “Repatriation as Healing the Trauma of History,” in *Witnesses to History – Documents and Writings on the Return of Cultural Objects*, ed. Lyndel V. Prott (Paris: UNESCO, 2009), 239.
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17. UN General Assembly, “Principles and Guidelines for the Protection of the Heritage of Indigenous People,” June 21, 1995.
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20. UN General Assembly, Resolution No. 61/295, September 13, 2007.
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25. *Ibid.*, para. 2.
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27. UN General Assembly, "Rome Statute of the International Criminal Court," article 8.
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