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## Who Owns the Scythian Gold? The Legal and Moral Implications of Ukraine and Crimea's Cultural Dispute

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# Who Owns the Scythian Gold? The Legal and Moral Implications of Ukraine and Crimea's Cultural Dispute

Maria Nudelman

## Abstract

This Note analyzes respective legal arguments that Ukraine and the Crimean museums can make to prove ownership of the objects. Part I establishes several elements key to the subsequent discussion, including the political and historical background of this dispute, the relevant laws on a national and international level, and the role of ethics and morality in the field of cultural heritage laws generally. Part II will consider relevant cultural heritage case studies, including treaties that divided cultural property after countries broke apart, the Thailand-Cambodian border dispute and the temple of Preah Vihear, and cases involving Soviet nationalized art. Past case studies can provide examples of how countries solved cultural heritage disputes that contained similar elements to this Ukraine-Crimea dispute. Finally, Part III analyzes the legal arguments that are available to both Ukraine and the Crimean museums within the context of the Ukrainian laws, international conventions, and case studies discussed in Parts I and II. This Note argues that although the artifacts should be returned to the Crimean museums for moral reasons, the law as it stands does not support this position.

**KEYWORDS:** Ukraine, Crimean, Museum, Thailand-Cambodian boarder dispute, dispute, international law, international conventions

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*Maria Nudelman\**

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## INTRODUCTION

The current political conflict in Ukraine has caused an unusual cultural heritage problem that has been difficult to solve both legally and diplomatically.<sup>1</sup> In February 2014, the Allard Pierson Museum in the Netherlands premiered an exhibit called “Crimea: Gold and Secrets of the Black Sea.”<sup>2</sup> The exhibit included Scythian art objects from five Ukrainian museums—four of which are in Crimea.<sup>3</sup> Ukraine had never before lent out so many Crimean treasures to an international exhibit.<sup>4</sup> That same month, as a result of the Euromaidan revolution, Russia sent troops into Crimea, a referendum was held,

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1. See generally Paul Sonne, *Scythian Gold Caught in Ukraine Dispute ‘Crimea: Gold and Secrets from the Black Sea,’ Exhibit on Display in Amsterdam*, WALL ST. J. (Apr. 28, 2014), <http://www.wsj.com/articles/SB1000142405270230415720457947111226424466> (noting that the Allard Pierson Museum, which displayed the Crimean exhibit says it plans to return the objects according to their “legal ownership”); Benjamin Durr, *‘Cold war’ over Crimean Gold*, AL JAZEERA (Aug. 24, 2014), <http://www.aljazeera.com/indepth/features/2014/08/war-over-crimean-gold-proxy-ukraine-russia-amersterdam-201482392137799800.html> (describing the art conflict as a proxy fight amid the ongoing crisis between Russia and the West); *Culture Wars in Ukraine: History Lessons*, ECONOMIST (Apr. 19, 2014), <http://www.economist.com/news/europe/21601043-conflict-ukraine-spreads-its-museums-history-lessons> [hereinafter *Culture Wars*] (noting that whether the gold returns to Crimea or to Kiev, each side will accuse the Dutch of pilfering); Toby Sterling, *Dutch Doubt Where to Return Crimean Gold*, AP (Apr. 4, 2014), <http://bigstory.ap.org/article/dutch-doubt-where-return-crimean-gold> (reporting that the Allard Pierson Museum has enlisted experts from the University of Amsterdam and the Dutch Foreign Ministry for advice on where to return the cultural heritage); Lydia Epp Schmidt, *Four Museums in Crimea Fear Losing Hundreds of Precious Artifacts*, ARTNET NEWS (Mar. 28, 2014), <http://news.artnet.com/in-brief/four-museums-in-crimea-fear-losing-hundreds-of-precious-artifacts-7792> (arguing that the art objects are technically part of the “national state fund” of Ukraine but have long been held in Crimea).

2. Sterling, *supra* note 1 (observing that a major theme of the exhibition is Crimea’s history of frequent conquests by different peoples and cultures); Sonne, *supra* note 1 (reporting that the exhibit was the largest ever modern exhibit of Crimea’s ancient treasures abroad).

3. Schmidt, *supra* note 1 (reporting that curators from the Crimean museums are worried they will never get the items back); Sterling, *supra* note 1 (same).

4. *Culture Wars*, *supra* note 1 (reporting that the exhibit included a Scythian gold helmet from 400 BC, pottery from Greek colonizers and a lacquered Chinese box that came along the Silk Road); *Dutch Museum Caught in Fallout from Crimea Conflict*, IRISH TIMES, (Mar. 29, 2014), <http://www.irishtimes.com/news/world/europe/dutch-museum-caught-in-fallout-from-crimea-conflict-1.1742176> (quoting the Allard Pierson Museum as saying that the exhibit cast new light on the Scythians, Goths and Huns, “for centuries dismissed as little more than barbarians”).

and Crimea seceded from Ukraine and was annexed by Russia.<sup>5</sup> In the Netherlands, the exhibit was scheduled to end in May, and both Ukraine and Russia claimed ownership over the loaned art objects.<sup>6</sup> The Allard Pierson Museum found itself in a difficult political and legal situation, unsure of where to return the art objects in dispute.<sup>7</sup> The museum decided to hold onto the art until a legal solution could be found.<sup>8</sup> On November 19, 2014, the four Crimean museums filed a lawsuit in Amsterdam against the Allard Pierson Museum, claiming that the art objects should be returned to the institutions with the strongest cultural heritage ties.<sup>9</sup>

The main legal issue in this dispute will be proving rightful ownership.<sup>10</sup> Ukraine claims to be the rightful owners of the cultural heritage artifacts because the Ministry of Culture signed the contracts

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5. Sonne, *supra* note 1 (explaining that after the museums loaned the art objects to the Allard Pierson museum in the Netherlands, Ukraine underwent political protests and a change in government; Russia sent troops into Crimea; Crimea held a referendum to secede from Ukraine and join Russia; and Russia annexed Crimea in March 2014); Durr, *supra* note 1 (same). For a definition of “Euromaidan,” see *infra* note 37 and accompanying text.

6. Durr, *supra* note 1 (noting that the art conflict further complicates Netherlands relationship with Russia); *Allard Pierson Museum Holding Artifacts Claimed by Both Russia and Ukraine*, COMMITTEE FOR CULTURAL POLICY, (Aug. 23, 2014) [hereinafter *Allard Pierson Museum*] <http://committeeforculturalpolicy.org/allard-pierson-museum-holding-artifacts-claimed-by-both-russia-and-ukraine/>.

7. See generally Sonne, *supra* note 1 (quoting the Allard Pierson Museum saying that it plans to return the objects according to their “legal ownership”); *Culture Wars*, *supra* note 1 (observing that whether the gold returns to Crimea or to Kiev, each side will accuse the Dutch of pilfering); Irvina Matviyishyn, *Should Loaned Treasures go to Kyiv or Crimea*, KYIVPOST (Oct. 9, 2014), <https://www.kyivpost.com/content/kyiv/should-loaned-treasures-go-to-kyiv-or-crimea-367543.html> (same).

8. See *supra* note 7 and accompanying text (referring to the Allard Pierson museum’s decision to keep the objects until a legal or diplomatic solution was found).

9. Henri Neuendorf, *Crimean Gold Dispute Culminates in Lawsuit*, ARTNET NEWS (Nov. 28, 2014), <http://news.artnet.com/in-brief/crimean-gold-dispute-culminates-in-lawsuit-183777> (adding that “the objects on display must be returned to where they were discovered and where they were preserved . . . and that is the museums of Crimea.”); *Crimean Museums File Lawsuit Over Scythian Gold Collection*, SPUTNIK NEWS (Nov. 25, 2013), <http://sputniknews.com/society/20141126/1015190459.html> (reporting that the four Crimean museums consist of the Central Tavrida Museum, the Kerch Historical and Cultural Preserve, the Bakhchisarai Historical and Cultural Preserve and the Tauric Chersonese National Preserve). Negotiations may still be underway to arrive at an out-of-court agreement, but as of February 2015, the parties could not reach a solution. *Id.*

10. *Culture Wars*, *supra* note 1 (describing the complexity of the dispute where the Netherlands does not recognize Russia’s annexation of Crimea but the Allard Pierson Museum signed loan agreements with both the Ukrainian government and the individual Crimean museums); Sonne, *supra* note 1 (same).

with the Allard Pierson Museum and approved the exhibit abroad.<sup>11</sup> Ukraine's Culture Minister labeled the situation "of national security for the Ukrainian government's cultural possessions."<sup>12</sup> The Allard Pierson Museum, however, also signed contracts with the individual Crimean museums, which are now part of the Russian Federation.<sup>13</sup> The Museum seems to have a duty to Ukraine and the Crimean museums.<sup>14</sup> The legal situation is further complicated because the majority of the world and the United Nations do not recognize Russia's annexation of Crimea.<sup>15</sup>

Arguments regarding where the art objects should be returned go to both extremes. For example, Inge van der Vlies, a professor at the University of Amsterdam, argues that there is an ethical case for returning the objects to Crimea.<sup>16</sup> However, because the Dutch government does not recognize Russia's annexation of Crimea, it cannot return the objects to the Crimean museums due to its legal and political obligations to Ukraine.<sup>17</sup>

This Note analyzes respective legal arguments that Ukraine and the Crimean museums can make to prove ownership of the objects. Part I establishes several elements key to the subsequent discussion, including the political and historical background of this dispute, the relevant laws on a national and international level, and the role of

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11. Durr, *supra* note 1 (reporting that according to Ukraine, returning the art objects to Crimea would mean that they end up in Russian hands); *Culture Wars*, *supra* note 1 (same). Unfortunately, this Note will not be able to analyze any loan agreements made between the parties in this dispute. No legal documents have been made public as of May, 2015.

12. Sonne, *supra* note 1 (arguing that the items belong to Ukraine rather than Russia).

13. Durr, *supra* note 1 (determining that the contracts with the museums are the basis to determine where the gold has to be returned); *Culture Wars*, *supra* note 1 (same).

14. *Culture Wars*, *supra* note 1 (contemplating rightful ownership as the Allard Pierson Museum has signed loan agreements with both the Ukrainian government and the individual Crimean museums); Durr, *supra* note 1 (same).

15. Territorial Integrity of Ukraine, G.A. Res. 68 A, U.N. Doc. A/RES/68/262 (Apr. 1, 2014). The Resolution states:

Calls upon all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status.

*Id.*

16. *Culture Wars*, *supra* note 1 (noting that there is no guarantee that Russia will not take the art pieces as soon as they arrive back to Crimea).

17. Neuendorf, *supra* note 9 (showing that the Allard Pierson Museum agreed to "abide by a ruling by a qualified judge or arbitrator, or further agreement between the parties"); Durr, *supra*, note 1 (explaining that this art conflict is just an example of a bigger "cold conflict" between Russia, Ukraine and the West).

ethics and morality in the field of cultural heritage laws generally. Part II will consider relevant cultural heritage case studies, including treaties that divided cultural property after countries broke apart, the Thailand-Cambodian border dispute and the temple of Preah Vihear, and cases involving Soviet nationalized art. Past case studies can provide examples of how countries solved cultural heritage disputes that contained similar elements to this Ukraine-Crimea dispute. Finally, Part III analyzes the legal arguments that are available to both Ukraine and the Crimean museums within the context of the Ukrainian laws, international conventions, and case studies discussed in Parts I and II. This Note argues that although the artifacts should be returned to the Crimean museums for moral reasons, the law as it stands does not support this position.

*I. FACTUAL AND LEGAL BACKGROUND: THE EVOLUTION OF  
THE CRIMEA DISPUTE AND THE CULTURAL HERITAGE LAWS  
INVOLVED IN THIS CONFLICT*

Part I discusses the historical background to the current conflict, as well as the laws and international treaties that could come into question as the Amsterdam court tries to solve the dispute between Ukraine and the museums in Crimea. Part I.A briefly outlines the history of Crimea and its relationship with Ukraine and Russia, the revolution in Ukraine that led to Russia's annexation of Crimea, and the ensuing cultural heritage dispute. Part I.B introduces the international treaties and the cultural heritage laws relevant to the dispute. Part I.C considers the role morality plays in cultural heritage law.

*A. Factual Background*

1. Relevant History of Crimea

Understanding the political and territorial history of Crimea sheds light on the complications of this dispute.<sup>18</sup> Crimea has been colonized, invaded, and settled by many groups since the beginning of its history, including by the ancient Greeks, groups of Eurasian nomads called the Scythians, Turkic speaking Tatars, and the

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18. This Note will only succinctly outline the moments in Crimea's history as it goes back and forth between nations. The Author acknowledges that Crimea's history is much more intricate and complex.

Ottomans.<sup>19</sup> Catherine the Great of Imperial Russia defeated the Ottomans and formally annexed Crimea in 1783.<sup>20</sup> Under the USSR, Crimea was an autonomous Soviet Socialist Republic (“SSR”) until 1945, when it became a province of the Russian Soviet Federative Socialist Republic.<sup>21</sup> In 1954, Crimea became a province of the Ukrainian SSR.<sup>22</sup> After the breakup of the USSR, Crimea became part of Ukraine as the Autonomous Republic of Crimea and Sevastopol City.<sup>23</sup> During the 1990s, Crimea had a contentious relationship with Ukraine: during that time period Crimea issued declarations of independence, referendums, and Crimean constitutions.<sup>24</sup> Since the breakup of the USSR, Ukraine has been split ethnically, linguistically, and politically, into two—the Ukrainian speaking, European-leaning western half and the Russian speaking, Kremlin-leaning eastern half.<sup>25</sup> This situation often set ethnic Ukrainians against ethnic

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19. Doris Wydra, *The Crimea Conundrum: The Tug of War Between Russia and Ukraine on the Questions of Autonomy and Self Determination*, 10 INT’L J. MINORITY & GROUP RTS. 111, 112 (2003) (“The peninsula has always been a homeland for numerous peoples, such as the Scythians, the Greeks and the Tatars.”); *Facts You Need To Know About Crimea And Why it is in Turmoil*, RT NEWS (Feb. 27, 2014), <http://rt.com/news/crimea-facts-protests-politics-945/> (describing how the Crimean peninsula has been colonized and conquered by historic empires and nomadic tribes).

20. M. S. Anderson, *The Great Powers and the Russian Annexation of the Crimea, 1783-4*, 37 THE SLAVONIC & E. EUR. REV. 17, 18 (1958); ALAN W. FISHER, THE RUSSIAN ANNEXATION OF THE CRIMEA, 1772-1783, 135 (1970) (detailing that in April 1783, Catherine the Great signed a manifesto declaring the annexation of Crimea by Russia).

21. See Wydra, *supra* note 19 at 113 (linking the transfer to the mass deportation of Tatars mainly to Uzbekistan in 1944); GWENDOLYN SASSE, THE CRIMEA QUESTION: IDENTITY, TRANSITION, AND CONFLICT, 95 (1972) (noting that Crimea became an oblast within the Russian SFSR on June 30, 1945).

22. See Sasse, *supra* note 21, at 95 (clarifying that the transfer of Crimea was seen as a “gift” to the Ukrainian SSR to commemorate the 300th anniversary of the Pereiaslav Treaty, when Ukraine unified with Russia in 1654); Wydra, *supra* note 19, at 113 (same).

23. See Wydra, *supra* note 19, at 115 (referring to November 1990 treaty between Ukraine and the Russian Federation and the CIS Agreement); Adam Taylor, *To Understand Crimea, Take a Look Back at its Complicated History*, WASH. POST (Feb. 27, 2014), <http://www.washingtonpost.com/blogs/worldviews/wp/2014/02/27/to-understand-crimea-take-a-look-back-at-its-complicated-history/> (noting that when Ukraine held a referendum on independence in December 1991, 54% of Crimean voters favored independence from Russia).

24. See Wydra, *supra* note 19, at 114-20 (discussing the various ways that Crimea has tried to gain independence after the breakup of the Soviet Union and its contentious relationship with Ukraine); Alessandra Stanley, *Crimea Is Waging a War of Nerves With Ukraine*, N.Y. TIMES, (May 30, 1994), <http://www.nytimes.com/1994/05/30/world/crimea-is-waging-a-war-of-nerve-with-ukraine.html> (describing Crimea’s attempt to gain independence from Ukraine in the early 1990s).

25. See Max Biedermann, *Ukraine: Between Scylla and Charybdis*, 40 N.C. J. INT’L L. & COM. REG. 230 (discussing Ukrainians’ political differences while exploring the implications that joining either the European Union or the Eurasian Customs Union will have for Ukraine);

Russians in deciding elections and in shaping Ukraine's relationship with Russia and the European Union.<sup>26</sup> In 1997, Russia signed a "friendship treaty" with Ukraine that allowed Russia to keep its military bases and naval fleet in Crimea in exchange for forgiving Ukraine's debt to Russia.<sup>27</sup> Russia has continued to view its presence in Crimea as an important defensive assurance against the North Atlantic Treaty Organization's ("NATO") expansion.<sup>28</sup> Russia, Ukraine, and Crimea have a long interconnected history that colors contemporary regional politics and culture in ways that complicate the legal dispute discussed in this Note.

## 2. Description of the Current Political Crisis

The current political crisis in Ukraine began in November 2013 when President Yanukovich abandoned the Deep and Comprehensive Free Trade Area ("DCFTA") agreement that would have significantly expanded economic ties between the European Union and Ukraine.<sup>29</sup> Instead of strengthening ties with the European Union, President

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R.L.G., *Johnson: Is There a Single Ukraine?*, *ECONOMIST* (Feb. 5, 2014), <http://www.economist.com/blogs/prospero/2014/02/linguistic-divides> (commenting that the west and north are predominantly Ukrainian-speaking, while the east and south are primarily Russian speaking).

26. See Biedermann, *supra* note 25, at 230 (referring to the current conflict in Ukraine as former President Yanukovich was elected by a majority of votes from the pro-Russian population in the east while the current President Petro Poroshenko is a "pro-European billionaire" who won with low voter turnout, especially among the pro-Russian voters in the eastern half of Ukraine); R.L.G., *supra* note 25 (asking if modern Ukraine is truly one nation).

27. Treaty Between the Russian Federation and Ukraine on Friendship, Cooperation and Partnership, Russ.-Ukr., May 31, 1997, U.N. Doc. A/52/174 ("The agreements that have been signed create conditions for the normal operation of the Russian Black Sea fleet and its lease of the main base in Sevastopol for 20 years. The agreements will help strengthen security and stability in the region.").

28. Michael Specter, *Setting Past Aside, Russia and Ukraine Sign Friendship Treaty*, *N.Y. TIMES* (June 1, 1997), <http://www.nytimes.com/1997/06/01/world/setting-past-aside-russia-and-ukraine-sign-friendship-treaty.html> (arguing that Russia signed the friendship treaty with Ukraine to bolster its defenses in the wake of NATO expansion eastward); John J. Mearsheimer, *Why the Ukraine Crisis Is the West's Fault: The Liberal Delusions That Provoked Putin*, *FOREIGN AFFAIRS* (Sept./Oct. 2014), <http://www.foreignaffairs.com/articles/141769/john-j-mearsheimer/why-the-ukraine-crisis-is-the-west-s-fault> (noting that "since the mid-1990s, Russian leaders have adamantly opposed NATO enlargement, and in recent years, they have made it clear that they would not stand by while their strategically important neighbor turned into a Western bastion").

29. *Ukraine Crisis: Timeline*, *BBC NEWS* (Nov. 13, 2014), <http://www.bbc.com/news/world-middle-east-26248275> (claiming that Ukraine chose to seek closer ties with Russia instead); Mearsheimer, *supra* note 28 (describing the economic agreement as "triple package of policies" which included NATO enlargement, EU expansion, and democracy promotion).

Yanukovych signed an agreement with Russia, which included terms such as lowered gas prices and US\$15 billion in investments.<sup>30</sup> Competing theories exist as to why Yanukovych declined the deal.<sup>31</sup> Some political commentators argue that Yanukovych was using the prospect of the DCFTA as leverage to get a better agreement from the Russians.<sup>32</sup> Other commentators say that the European Union should not have insisted that Yulia Timoshenko, a former prime minister and Yanukovych's political rival, be freed from jail.<sup>33</sup> Some commentators further say that the deal should have included a provision for Ukraine's eventual membership into the European Union.<sup>34</sup> Another theory is that the partnership between Ukraine and the European Union was misconceived by Russia as a gateway for NATO's influence to reach further into Eastern Europe.<sup>35</sup> After the deal with the European Union fell through, thousands of Ukrainians began to protest in Kiev against President Yanukovych and the

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30. Damien McElroy, *Ukraine Receives Half Price Gas and \$15 Billion to Stick with Russia*, TELEGRAPH (Dec. 17, 2013), <http://www.telegraph.co.uk/news> (critiquing the deal as coming at the expense of closer ties with the European Union); Daryna Krasnolutska, Olga Tanas & Ilya Arkhipov, *Ukraine Getting \$15 Billion From Russia Raises Questions*, BLOOMBERG (Dec. 17, 2013), <http://www.bloomberg.com/news/articles/2013-12-17/russia-commits-15-billion-to-ukraine-bonds-as-gas-price-reduced> (questioning Yanukovych's motives).

31. *Keep the Door Open*, ECONOMIST (Feb. 8, 2014), <http://www.economist.com/news/europe/21595957-how-europe-nearly-lost-ukraine-but-may-yet-regain-it-keep-door-open> (describing the situation as a bidding war with Russia); Biedermann, *supra* note 25 (considering the varying theories on why Yanukovych did not sign the deal with the European Union).

32. *Keep the Door Open*, *supra* note 31 (asserting that Yanukovych played the European Union like fools); *Putin's Gambit: How the EU Lost Ukraine*, SPIEGEL ONLINE, (Nov. 15, 2013), [hereinafter *Putin's Gambit*] <http://www.spiegel.de/international/europe/how-the-eu-lost-to-russia-in-negotiations-over-ukraine-trade-deal-a-935476.html> (stating that Yanukovych kept all options open until the end, so as to get the best possible deal).

33. *Keep the Door Open*, *supra* note 31 (clarifying that Timoshenko was jailed by Yanukovych himself); *Putin's Gambit*, *supra* note 32 (noting that Yanukovych was unwilling to release his former rival, and the parliament in Kiev failed to approve a bill that would have secured her release).

34. *Keep the Door Open*, *supra* note 31 (arguing that the deal failed because it lacked membership into the European Union); Hilary Appel, *EU Accession and the Ukraine Crisis*, OPEN DEMOCRACY (Sept. 25, 2014), <https://www.opendemocracy.net/od-russia/hilary-appel/eu-accession-and-ukraine-crisis> ("The EU's unwillingness to offer a membership prospect has often been lost in the vast coverage of recent events.").

35. *Keep the Door Open*, *supra* note 31 (blaming the failure of the European Union deal on NATO expansion); Mearsheimer, *supra* note 28 (arguing that in the eyes of Russian leaders, "EU expansion is a stalking horse for NATO expansion").

Ukrainian government.<sup>36</sup> The demonstrations turned violent, with clashes between the “Euromaidan” protesters and the police.<sup>37</sup> On February 21, 2014, Yanukovich signed a European-brokered deal with the leaders of the protest movement, who called for new presidential elections at the end of the year.<sup>38</sup> Despite the agreement, protests continued because many demanded Yanukovich’s immediate resignation.<sup>39</sup> Yanukovich eventually fled Kiev, with the protesters taking over the government buildings.<sup>40</sup>

In February, Russia sent troops in military uniforms but without any labels or insignia into Crimea and took over the airport and government buildings.<sup>41</sup> A referendum was held in Crimea on March 16, 2014 to rejoin Russia or return to the 1992 Constitution.<sup>42</sup> Crimea

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36. *Ukraine Crisis*, *supra* note 29 (reporting that 100,000 people attended a demonstration in Kiev); Oksana Grytenko, *Ukrainian Protesters Flood Kiev After President Pulls out of EU Deal*, THE GUARDIAN (Nov. 24, 2013), <http://www.theguardian.com/world/2013/nov/24/ukraine-protesters-yanukovich-aborts-eu-deal-russia> (same).

37. *Ukraine Crisis*, *supra* note 29 (reporting that the clashes between protesters and police became more violent after the Ukrainian parliament passed anti-protest laws that were later repealed). The movement gets the name Euromaidan because the protesters began in Maidan Nezalezhnosti (“Independence Square”) in Kiev. See Jim Heintz, *Ukraine’s Euromaidan: What’s in a Name?*, YAHOO! NEWS (Dec. 2, 2013, 4:49 AM) <http://news.yahoo.com/ukraines-euromaidan-whats-name-090717845.html>.

38. *Ukraine Crisis*, *supra* note 29 (noting that the deal soon became redundant); *Why is Ukraine in turmoil?* BBC NEWS (Feb. 22, 2014), <http://www.bbc.com/news/world-europe-25182823> (explaining that the clashes between protesters and police became more violent after the Ukrainian parliament passed anti-protest laws that were later repealed).

39. *Why is Ukraine in Turmoil?*, *supra* note 38 (reporting that protesters became angry over amnesty for imprisoned protesters); Andrew Higgins & Andrew E. Kramer, *Ukraine has Deal, but both Russia and Protestors are Wary*, NY TIMES (Feb. 21, 2014), [http://www.nytimes.com/2014/02/22/world/europe/ukraine.html?\\_r=0](http://www.nytimes.com/2014/02/22/world/europe/ukraine.html?_r=0) (describing the dissatisfaction of protesters).

40. *Ukraine Crisis*, *supra* note 29 (commenting that Protesters took control of presidential administration buildings); Sam Frizell, *Ukraine Protestors Seize Kiev as President Flees*, TIME (Feb. 22, 2014), <http://world.time.com/2014/02/22/ukraines-president-flees-protestors-capture-kiev/> (describing how President Viktor Yanukovich fled Kiev just hours after signing a European Union-sponsored peace deal).

41. *Ukraine Crisis*, *supra* note 29 (characterizing the troops as unidentified gunmen); Mark Mackinnon, *Globe in Ukraine: Russian-backed Fighters Restrict Access to Crimean City*, GLOBE & MAIL, (last updated May. 12 2014, 12:35 PM) <http://www.theglobeandmail.com/news/world/tension-in-crimea-as-pro-russia-and-pro-ukraine-groups-stage-competing-rallies/article17110382/#dashboard/follows/?cmpId=tgc> (same); *Putin Admits Russian Forces were Deployed to Crimea*, REUTERS, (Apr 17, 2014 9:51 AM BST) <http://uk.reuters.com/article/2014/04/17/russia-putin-crimea-IdUKL6N0N921H20140417> (reporting on Putin’s admission of deployment of troops in Crimea).

42. *Ukraine Crisis*, *supra* note 29 (specifying that the referendum vote was considered a sham by the West); *Crimea referendum: Voters Back Russia Union*, BBC (Mar. 16, 2014), <http://www.bbc.com/news/world-europe-26606097> (same).

reported that 95.5% of voters chose to rejoin Russia.<sup>43</sup> The United States and the European Union maintain that the referendum was illegal and illegitimate.<sup>44</sup>

Debate has ensued over the proper classification of the crisis in Ukraine.<sup>45</sup> Despite the fact that there were Russian troops on Ukrainian territory—a fact that Vladimir Putin has admitted<sup>46</sup>—the international community has been reluctant to label the situation an international armed conflict because of the lack of “armed hostilities between two or more governments” during the occupation of Crimea.<sup>47</sup> The International Committee of the Red Cross has described the events in Eastern Ukraine as a “non-international armed conflict.”<sup>48</sup> US observers commented that Russian forces had operational control in Crimea and blockaded Ukrainian naval and

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43. *Ukraine Crisis*, *supra* note 29 (citing organizers of the referendum); *Crimea Referendum*, *supra* note 42 (same).

44. *Ukraine Crisis*, *supra* note 29 (reporting that The European Union and United States impose travel bans and asset freezes on several officials from Russia and Ukraine over the Crimea referendum); *Crimea Officially Moves to Join Russia*, ALJAZEERA (Mar. 17, 2014), <http://www.aljazeera.com/news/europe/2014/03/cremea-russia-20143179915762292.html> (reporting that the European Union said the referendum was “illegal and illegitimate” and its outcome would not be recognized. President Barack Obama told Russian President Vladimir Putin that Crimea’s vote to secede from Ukraine and join Russia “would never be recognized” by the United States).

45. Andrew Higgins, *On Ukraine, the West Sidesteps a Fraught Term*, NY TIMES (Sept. 4, 2014), [http://www.nytimes.com/2014/09/05/world/europe/in-west-fine-line-on-labeling-ukraine-crisis.html?\\_r=0](http://www.nytimes.com/2014/09/05/world/europe/in-west-fine-line-on-labeling-ukraine-crisis.html?_r=0) (contemplating that calling the situation in Ukraine an invasion will put pressure on the United States to intervene militarily); Mark Gollom, *Ukraine crisis: Why the U.S. Avoids Calling Russia’s Actions an ‘Invasion,’* CBS, (Sept. 1, 2014), <http://www.cbc.ca/news/world/ukraine-crisis-why-the-u-s-avoids-calling-russia-s-actions-an-invasion-1.2750469> (discussing why The United States avoids calling Russia’s actions in Ukraine an invasion).

46. Brett Logiurato, *Putin Finally Admits to Sending Troops to Crimea*, BUSINESS INSIDER (Apr. 17, 2014), <http://www.businessinsider.com/putin-admits-troops-crimea-2014-4#ixzz3bJ0vi1uI> (emphasizing that this is the first time that Putin has admitted such involvement by Russia in Ukraine); *Putin Admits Russian Forces Were Deployed in Crimea*, *supra* note 41 (same).

47. *Eastern Ukraine: Questions and Answers about the Laws of War*, HUMAN RIGHTS WATCH, (Sept. 11, 2014), <http://www.hrw.org/news/2014/09/11/eastern-ukraine-questions-and-answers-about-laws-war> (explaining that Russian troops in Crimea triggered the international law on occupation).

48. *Red Cross Admits Ukraine is in a State of Civil War*, ITAR-TASS (July 23, 2014), <http://en.itar-tass.com/world/742051> (defining events as a civil war); Tom Miles, *Ukraine War Crimes Trials: A Step Closer After Red Cross Assessment*, REUTERS (Jul. 22, 2014), <http://www.reuters.com/article/2014/07/22/us-ukraine-crisis-warcrimes-IDUSKBN0FR0V920140722> (same).

military access.<sup>49</sup> Additionally, while Russian forces were in Crimea prior to the referendum vote, the forces oversaw the disarming of military installations in the area and begun issuing new naturalization documents to Ukrainian citizens in Crimea.<sup>50</sup> Such actions indicated that Russian forces exercised actual authority in Crimea.<sup>51</sup> The back-and-forth nature of Crimea's territorial history with Russia and Ukraine is important to understanding the current political crisis in Ukraine and why Russia wanted to quickly secure the area after Ukraine chose a pro-European Union government.<sup>52</sup>

### 3. Discussion of the Cultural Heritage Conflict

Once the news broke that both the Crimean museums and the Ukrainian Ministry of Culture requested the loaned art objects from the Allard Pierson Museum, the Crimean museums issued a press release explaining why the objects should be returned to them.<sup>53</sup> They explained that the objects in the dispute can be traced back a thousand years B.C. to civilizations that lived on the Crimean Peninsula.<sup>54</sup> Moreover, the items always have been kept and studied on the

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49. Zoe Niesel, *Collateral Damage: Protecting Cultural Heritage in Crimea and Eastern Ukraine*, THE COMMON L., WAKE FOREST L. REV., (2014), <http://wakeforestlawreview.com/2014/08/collateral-damage-protecting-cultural-heritage-in-crimea-and-eastern-ukraine/> (arguing that the situation in Crimea should be labeled an occupation); Marie-Louise Gumuchian et al., *Ukraine Mobilizes Troops After Russia's "Declaration of War"*, CNN (Mar. 3, 2014), <http://www.cnn.com/2014/03/02/world/europe/ukraine-politics/> (same).

50. See Niesel, *supra* note 49 (indicating that Russian troops have actual authority in Crimea); Natalia Antelava, *The Creeping Annexation of Crimea*, NEW YORKER (Mar. 5, 2014), <http://www.newyorker.com/online/blogs/newsdesk/2014/03/the-creeping-annexation-of-crimea.html> (outlining the events before the referendum).

51. See Niesel, *supra* note 50 (referring to the troops blockading Ukrainian naval and military access); Antelava, *supra* note 51 (citing the troops' control of the government buildings).

52. See generally Mark Kramer, *Why Russia Intervenes*, PERSPECTIVES ON PEACE AND SECURITY, August 2014, <http://perspectives.carnegie.org/us-russia/russia-intervenes/> (analyzing theories on why Russia intervened after the Euromaidan revolution); Mearsheimer, *supra* note 28 (contending that Crimea also made for an easy target because ethnic Russians compose roughly 60 percent of its population); Michael McFaul, Stephen Sestanovich & John J. Mearsheimer, *Faulty Powers: Who Started the Ukraine Crisis?*, FOREIGN AFFAIRS, (Nov./Dec. 2014), <http://www.foreignaffairs.com/articles/142260/michael-mcfaul-stephen-sestanovich-john-j-mearsheimer/faulty-powers> (challenging Mearsheimer's argument that Russia has annexed Crimea and intervened in eastern Ukraine in response to NATO expansion).

53. See Press Release, Statement Made by the Crimean Musea Regarding the Exhibition Crimea. The Golden Island in the Black Sea, (Oct. 15, 2014), <http://www.kerch-museum.com/ru/news/press-reliz0.html> (declaring the Crimean museums as legal owners of the art objects).

54. *Id.* (emphasizing Crimea's particular history).

territory where they were found by the Crimean museums.<sup>55</sup> The museums consider the art objects to be the cultural heritage of Crimea.<sup>56</sup>

The Crimean Peninsula itself belonged to different states over the last one hundred years . . . . No matter to what state the Crimean Peninsula has belonged, the Crimean archeological findings have always been safeguarded and studied solely by the Crimean Museum . . . . The loss of archeological findings will impoverish the collection . . . . The loss of these exhibits means for us both the loss of items of world importance and the loss of archeological heritage constituting the core of the cultural code of our people.<sup>57</sup>

There is an enormous potential for loss, both cultural and financial, should the objects not be returned to the Crimean museums.<sup>58</sup> For example, the Tavrida Central Museum in the city of Simferopol loaned 132 artifacts, with an insured value of US\$217,000, to the Allard Pierson Museum.<sup>59</sup> Andrey Malgin, the museum's director, explained that, as is customary with loan collections, the museum has concluded a contract with the Allard Pierson Museum with the condition that the artifacts must be returned to the museum.<sup>60</sup> The items, however, are property of both the museum and the State, he said.<sup>61</sup> Commenting on the lawsuit, Malgin maintained that the objects must return to the place where they were discovered and preserved, which is the museum in Crimea.<sup>62</sup> Also, the integrity of a collection frequently is put forward as a reason for the repatriation of cultural heritage.<sup>63</sup> Integrity of a collection usually is

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55. *Id.* (invoking the preservation of information argument).

56. *Id.* (describing the museums as unique research centers employing real experts in the Crimean ancient history).

57. *Id.* (emphasizing the tie between the art objects and the Crimean people).

58. Durr, *supra* note 1 (referencing the above Tavrida Central Museum example); *Allard Pierson Museum*, *supra* note 6 (same).

59. *See supra* note 58 and accompanying text.

60. Durr, *supra* note 1 (arguing that “museum property is primary and more fundamental than the property of the state.”).

61. *Id.*

62. Neuendorf, *supra* note 9 (discussing the lawsuit filed by the Crimean Museums in the Dutch court).

63. *See* BEAT SCHÖNENBERGER, THE RESTITUTION OF CULTURAL ASSETS: CAUSES OF ACTION, OBSTACLES TO RESTITUTION, DEVELOPMENTS 49-50 (2009) (discussing how the integrity of an object can be used for or against restitution); IRINI A. STAMATOUDI, CULTURAL PROPERTY LAW AND RESTITUTION: A COMMENTARY TO INTERNATIONAL CONVENTIONS AND EUROPEAN UNION LAW 252 (2011) (same).

cited when the value of a piece is dependent on cross-referencing with other items in the collection.<sup>64</sup> Furthermore, keeping a collection together is important for academic research and documentation as the items can be studied together and referenced to demonstrate how the collection was put together.<sup>65</sup>

However, the loan agreements—as they have been portrayed in the news seem to favor Ukraine.<sup>66</sup> Larisa Sedikova, deputy director of the Crimean museum Chersonesos, an ancient Greek city and a United Nations Educational, Scientific, and Cultural Organization (“UNESCO”) heritage site in Sevastopol, stated that the contract for the exhibition stipulates that the objects should return to Ukraine in the event of a force majeure.<sup>67</sup> “But we do not consider this a force majeure,” she stated, noting that Chersonesos faces no threat of damage.<sup>68</sup> Rather, Ukraine and UNESCO are mostly worried that Russia plans on taking cultural heritage located in the Crimea and moving them to State museums in Moscow and St. Petersburg.<sup>69</sup> They have warned Russia to safeguard “Ukraine’s” cultural heritage.<sup>70</sup> The Russian State Hermitage Museum in St. Petersburg even issued a statement on the matter:

In the light of reports in a number of mass media on the alleged willingness of Russians museum directorates to take hold of the Crimean arts values that are currently exhibited in Europe, the State Hermitage Museum would like to make it clear that the concern the Association of Russian Museums and the Hermitage experts have expressed over the destiny of treasures from the Crimean museums does not mean in any way that either the State

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64. SCHÖNENBERGER *supra* note 63, at 49-50 (clarifying that this facilitates educational research); STAMATOUDI, *supra* note 63, at 252 n.121 (asserting that the whole of the object and its cultural environment is better than the part).

65. SCHÖNENBERGER, *supra* note 63, at 49-50 (arguing that the integrity of a collection may be imperative for the future academic research); STAMATOUDI, *supra* note 63, at 29 (same).

66. Durr, *supra* note 1 (arguing that the Allard Pierson Museum has to fulfill its obligations vis-a-vis Ukraine first and foremost); *Culture Wars*, *supra* note 1 (same).

67. Sonne, *supra* note 1 (quoting Ms. Sedikova as saying “It’s important that [the art items] are not stolen from us”).

68. *Id.*

69. Follow up by UNESCO of the Situation in the Autonomous Republic of Crimea, U.N. Doc. 194 EX/32 (Apr. 3, 2014), available at <http://unesdoc.unesco.org/images/0022/002272/227294e.pdf> (noting that the “reported massive transfer of priceless cultural objects from Crimean museums to the Russian capital is alarming”).

70. *Id.* (reminding Russia of its obligations under international cultural heritage law).

Hermitage Museum or any other Russian museums have claims to the Crimean museum collections.<sup>71</sup>

Notably, Russia appears to be making efforts to work with the Crimean museums and archeologists to stop the smuggling of cultural heritage artifacts from ancient sites.<sup>72</sup> Consequently, the Crimean museums could point to the unstable situation in Ukraine to argue that the art objects would be safer and better preserved in Crimea with the support of Russia.<sup>73</sup> While the political and cultural history of the area is important to understanding why this dispute came about, the international treaties and domestic cultural heritage laws are important in considering how this dispute may be resolved.

### B. *Legal Underpinnings*

Depending on the scope of the given convention, international cultural heritage treaties can be applied to both inter-state and private disputes, or even just to consider the general principles derived therein.<sup>74</sup> The international conventions have been important to the repatriation of cultural heritage objects because they provide a consistent and coherent framework to deal with the disputes.<sup>75</sup> Even if

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71. *Dutch Foreign Ministry is in Two Minds about Crimean Scythian Gold*, TASS (Apr. 3, 2014), <http://tass.ru/en/world/726513> (quoting a statement from the State Hermitage museum).

72. See Sophia Kishkovsky, *Crimea's Looted Treasure on the Political Agenda*, THE ART NEWSPAPER (Apr. 24, 2014), <http://www.theartnewspaper.com/articles/Crimeas-looted-treasure-on-the-political-agenda/32394> (describing the efforts Russia is taking to deal with looting of art objects in Crimea); see also, *Kakie kul'turnye ob'ekty poterjaet Ukraina vmeste s Krymom* (What cultural objects will Ukraine lose with the Crimea), THE INSIDER (Mar. 25, 2014), <http://www.theinsider.ua/rus/art/kakie-kulturnye-obekty-poteryaet-ukraina-vmeste-s-krymom> (discussing how museum directors in Crimea feel about working with the Russian Ministry of Culture and the uncertain future of the cultural heritage located in Crimea).

73. Mark Mackinnon, *Ukrainian Staff Working Unpaid in History Museum to Preserve Culture*, GLOBE & MAIL (Nov. 7, 2014), <http://www.theglobeandmail.com/arts/ukrainian-staff-working-unpaid-in-history-museum-to-preserve-culture/article21504462/> (interviewing museum workers on their opinions about dealing with Russia instead of Ukraine). Russia has emphasized their dedication to preserving the cultural heritage in Ukraine while besmirching Ukraine's lack of support to the cause. "During the last decade, the Ministry of Culture of Ukraine . . . allocated no funds to the implementation of Reserve functions, including the preservation of cultural heritage. Moreover, the Ukrainian Government adopted no programs for the development of the Reserve." U.N. Doc. 194 EX/32, *supra* note 69.

74. STAMATOUDI, *supra* note 63, at 189 (clarifying that cultural property claims are usually international claims); cf. SCHÖNENBERGER, *supra* note 63, at 56 (noting that legal instruments not based in private law can also facilitate the restitution of cultural assets).

75. See M. Vicien-Milburn, A. Garcia Marquez & A. Fouchard Papaesfstratiou, *UNESCO's Role in the Restitution of Disputes on the Recovery of Cultural Property*, 10

the Dutch court does not apply the below international conventions, it may refer to the internationally accepted guidelines in trying to resolve the art conflict.<sup>76</sup>

### 1. The Hague Convention and Protocol

The Convention for the Protection of Cultural Property in the Event of Armed Conflict (“The Hague Convention”) marked the first time that the international community successfully drafted a framework to protect the world’s cultural property.<sup>77</sup> Following the devastating impact of World War II on cultural heritage, The Hague Convention reconvened in 1954 for the purpose of reestablishing principles for the protection of cultural property during an armed conflict.<sup>78</sup>

The Hague Convention applies to “partial or total occupation of the territory” of a Member State, even if there is “no armed resistance.”<sup>79</sup> The signing parties “undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any act of vandalism directed against, cultural property” in time of war.<sup>80</sup> A country that occupies a Member State’s territory, wholly or in part, is obliged to assist the occupied

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TRANSNAT’L DISP. MGMT. 2 (2013) (arguing that UNESCO’s “standard-setting activity in the fight against the illicit traffic of cultural goods has contributed to the harmonization of the legal framework for disputes on the recovery of cultural property”); *see also* STAMATOUDI, *supra* note 63, at 178 (describing the role that international organizations have had in creating consensus and agreement with international conventions).

76. *See supra* note 74 and accompanying text.

77. John B. Gordon, *The UNESCO Convention on the Illicit Movement of Art Treasures*, 12 HARV. INT’L. L.J. 537, 538 (1971) (citing B. HOLLANDER, *THE INTERNATIONAL LAW OF ART* 24 (1959)); Gao Sheng, *International Protection of Cultural Property: Some Preliminary Issues and the Role Of International Conventions*, 12 S.Y.B.I.L. 57, 62-63 (2008) (noting that the Hague convention was the first time the term “cultural property” was used).

78. *See* PATTY GERSTENBLITH, *ART, CULTURAL HERITAGE, AND THE LAW: CASES AND MATERIALS* 475 (3d ed. 2012) (explaining that the United States only ratified the Hague Convention after the fall of the Soviet Union because it was concerned that it would be prevented from attacking the Kremlin, a historical monument); Gordon, *supra* note 77, at 538 (noting that the convention did not apply to non-military situations and left a gap in the protection of cultural heritage).

79. Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, May 14, 1954, 249 U.N.T.S. 240, art. 18, ¶ 2 [hereinafter Hague Convention] (“Recognizing that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction . . .”).

80. *Id.* art. 4, ¶ 3.

country with the protection of its own cultural patrimony.<sup>81</sup> This clause is especially important to the dispute at issue, as Russia is seen by Ukraine as an occupying power in Crimea.<sup>82</sup> The Hague Convention applies in the event of a declared war or any other armed conflict between two or more Member States, “even if the state of war is not recognized by” the countries involved.<sup>83</sup> Again, this applies to the current situation as Russia does not see itself as an occupying party but considers Crimea completely within the Russian Federation.<sup>84</sup> The annexed Protocol to the Hague Convention further emphasizes that each Member State has an obligation to prevent the exportation of cultural property from a territory under its occupation during an armed conflict, and to confiscate and return “cultural property imported into its territory either directly or indirectly from an occupied territory.”<sup>85</sup>

The Hague Convention and the annexed Protocol have been signed and ratified by all of the parties involved in this conflict—the Netherlands, Russia, and Ukraine.<sup>86</sup> Ukraine takes the position that Crimea is occupied by Russia and, consequently, it may argue in court that the 1954 Hague Convention applies.<sup>87</sup> If the Dutch court decides to apply the Hague Convention, it likely will decide to return the objects to Ukraine instead of Crimea in order to protect the art objects from occupation and possible exportation into Russia.<sup>88</sup>

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81. *Id.* art. 18, ¶ 1.

82. Law of Ukraine No. 1207-VII of April 15, 2014 On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine (with changes set forth by the Law No 1237-VII of May 6, 2014) [hereinafter Ukraine’s Law on Occupied Crimea], available at <http://mfa.gov.ua/en/news-feeds/foreign-offices-news/23095-law-of-ukraine-no-1207-vii-of-15-april-2014-on-securing-the-rights-and-freedoms-of-citizens-and-the-legal-regimeon-the-temporarily-occupied-territory-of-ukraine-with-changes-set-forth-by-the-law-no-1237-vii-of-6-may-2014> (declaring that the presence of units and armed forces in the territory of Ukraine is an occupation of the sovereign state of Ukraine).

83. Hague Convention, *supra* note 79, ¶ 1.

84. *Ukraine Crisis*, *supra* note 29 (referring to the referendum vote); *Treaty to Accept Crimea, Sevastopol to Russian Federation Signed*, RT NEWS (Mar. 18, 2014), <http://rt.com/news/putin-include-crimea-sevastopol-russia-578/> (same).

85. Hague Convention, *supra* note 79.

86. *See id.*

87. *ICOM Ukraine*, FACEBOOK, (Apr. 2, 2014) <https://www.facebook.com/icom.ukraine/posts/730118943675428> (last visited Apr. 21, 2015) (issuing a statement on the Ukraine ICOM Committee Facebook page stating that Ukraine has lost all access and ability to manage the Crimean culture heritage objects and museums).

88. Hague Convention, *supra* note 79, art. 4, ¶ 3.

## 2. The 1970 UNESCO Convention

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“the UNESCO Convention”) provides an international framework for nations to work together to stop illicit trafficking and promote the restitution of cultural heritage.<sup>89</sup> The Convention was adopted in November 1970 by the 16th General Conference of UNESCO.<sup>90</sup> It aims to attain a minimum level of uniform protection for cultural heritage and mutual cooperation and solidarity for the cause among the Member States.<sup>91</sup>

The UNESCO Convention broadly defines cultural objects that Member States should protect by focusing on history, archeology, art, science, and literature, but allows each State to designate what constitutes cultural property and what should be protected.<sup>92</sup> It also covers the protection of property in case of war or occupation.<sup>93</sup> Article 11 of the 1970 Convention states that any cultural property that has been exported or transferred arising directly or indirectly from an occupation will be considered “illicit.”<sup>94</sup> Article 13 requires State parties to prevent transfers of ownership of cultural property likely to promote the illicit import or export of that property.<sup>95</sup> Article

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89. Vicien-Milburn, *supra* note 75, at 2 (clarifying that the 1970 UNESCO Convention also encourages the restitution of cultural property); 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, arts. 7b, 9 [hereinafter 1970 UNESCO Convention] (obliging Contracting Countries to prohibit the importation of cultural property stolen from a museum or monument in another Member State, and allows Contracting Countries whose cultural heritage is in danger to ask other Member States for help in protecting the affected heritage).

90. PATRICK J. O’KEEFE, COMMENTARY ON THE UNESCO 1970 CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY 1 (2d ed. 2007) (explaining that seventy-seven States voted in favor of adoption, one against, and eight States abstained); Gordon, *supra* note 77, at 540 (commenting that as of March 10, 1971, no country had ratified or acceded to the convention).

91. STAMATOUDI, *supra* note 63, at 33 (specifying that the UNESCO Convention is not a self-executing legal instrument); see 1970 UNESCO Convention, *supra* note 89, Preamble (“Considering that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation.”).

92. See O’KEEFE, *supra* note 90, at 37 (arguing that the text of Article 1 shows that each State has the right to decide what is important for its own national cultural heritage); Vicien-Milburn, *supra* note 75, at 2 n.19 (same); see also 1970 UNESCO Convention, *supra* note 89, art. 1.

93. See 1970 UNESCO Convention, *supra* note 89, art. 11.

94. See *id.*

95. See *id.* art. 13.

13 also requires States to recognize the right of each signatory of the UNESCO Convention to declare cultural property as “inalienable” and to assist in the recovery of such property in cases where it has been illegally exported.<sup>96</sup> The UNESCO Convention does not define what kinds of transfers are likely to promote illicit traffic.<sup>97</sup> States can, therefore, use their own legal systems to decide how to prevent transfers of ownership that will promote illicit traffic.<sup>98</sup> The text of Article 15 allows Member States to make bilateral agreements to deal with cultural heritage disputes, stating that international agreements already in effect are not to be disturbed by the 1970 Convention.<sup>99</sup> The use of diplomatic or settlement agreements is also an alternative way of supplementing the UNESCO Convention or other cultural heritage treaties by providing solutions which may be appropriate to a specific region or conflict but which could not be “universalized.”<sup>100</sup>

The UNESCO Convention generally emphasizes the Nation-State.<sup>101</sup> It highlights the protection of the national cultural heritage of the country of origin.<sup>102</sup> Russia, Ukraine, and the Netherlands have also signed the UNESCO Convention.<sup>103</sup> The UNESCO Convention’s emphasis on the rights of Nation-States strengthens Ukraine’s argument because Crimea is not a Nation-State, and therefore, cannot

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96. *See id.*

97. *See id.*

98. *See id.* art. 15 (“Nothing in this Convention shall prevent State Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned.”); O’KEEFE, *supra* note 90, at 89 (noting that agreements already in existence are not affected by the coming into force of the 1970 UNESCO Convention).

99. *See* 1970 UNESCO Convention, *supra* note 89, art. 15; O’KEEFE, *supra* note 90, at 89 (clarifying that Article 15 does not permit a State to refuse to implement the 1970 UNESCO Convention unless a bilateral agreement is signed).

100. *See* O’KEEFE, *supra* note 90, at 89 (explaining that bilateral agreements are supplementary to the Convention, but not a substitute); Gordon, *supra* note 77, at 552 (exploring the treaty signed between the United States and Mexico in July, 1970 to combat the smuggling of colonial and pre Colombian artifacts as an example).

101. *See* John Henry Merryman, *Two Ways of Thinking about Cultural Property*, 80 AM. J. INT’L L. 846 (arguing that the 1970 UNESCO Convention emphasizes the interests of States in its preamble and throughout); STAMATOUDI, *supra* note 63, at 216 (referencing the protection of the cultural heritage of the country of origin—the first principle of the Convention).

102. *See supra* note 101 and accompanying text (describing the emphasis of the Nation State in the 1970 UNESCO Convention).

103. *See* 1970 UNESCO Convention, *supra* note 89.

claim any rights to the artifacts under the UNESCO Convention.<sup>104</sup> Further, the 1970 Convention lacks in that it only provides a framework of principles that Member States can follow in disputes, but does not provide any rights that Member States could raise during adjudications.<sup>105</sup> It also does not deal with certain applicable issues including cultural heritage issues in territories that have been integrated into a former colonizing or occupying State, or disputes involving the return of cultural property from museums in the capital of a country that has split apart.<sup>106</sup> UNESCO commissioned the International Institute for the Unification of Private Law (“UNIDROIT”) to draft an agreement that would supplement the 1970 Convention.<sup>107</sup>

### 3. The 1995 UNIDROIT Convention

The 1995 UNIDROIT Convention aimed to harmonize the laws of participating countries regarding claims for the return of stolen or illegally exported cultural property.<sup>108</sup> Unfortunately, only a few countries have ratified this convention.<sup>109</sup> Article 5 of the Convention states:

A cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration, under a permit issued according to its law regulating its export for the purpose of protecting its cultural

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104. See *supra* note 101 and accompanying text (supporting Ukraine’s position in the dispute).

105. See O’KEEFE, *supra* note 90, at 13 (noting that the 1970 Convention has to operate within the framework of other laws and international treaties); Vicien-Milburn, *supra* note 75, at 10 (same).

106. See O’KEEFE, *supra* note 90, at 80-81 (citing examples such as former States from the Soviet Union, former States of Yugoslavia, Eritrea, and Bangladesh); cf. 1970 UNESCO Convention, *supra* note 89, art. 12 (lacking language that resolves disputes between territories or States that have split apart from Member States).

107. See O’KEEFE, *supra* note 90, at 13 (explaining that the 1970 UNESCO Convention did not address private law matters like the *bona fide* purchaser for example); Xi Lian, *A Contemporary Observation on International Protection of Cultural Property*, 4 CONTEMP. READINGS L. & SOC. JUST. 855, 860 (2012) (same).

108. See O’KEEFE, *supra* note 90, at 13 (arguing that the UNIDROIT Convention compliments the UNESCO Convention by giving individuals the right to sue directly in a foreign court); Lian, *supra* note 107, at 860 (same).

109. See *Status*, UNIDROIT, available at <http://www.unidroit.org/status-cp> (last visited Mar. 30, 2015).

heritage and not returned in accordance with the terms of that permit shall be deemed to have been illegally exported.<sup>110</sup>

In order for its return, the requesting State must show that the removal of the object significantly impairs the physical preservation of the object, the object's integrity, the preservation of information of the object, or that the object is of important cultural significance to the requesting State.<sup>111</sup>

Both Ukraine and the Crimean museums could have used Article 5 from the UNIDROIT Convention for their arguments. However, Ukraine has not signed the UNIDROIT Convention.<sup>112</sup> Russia and the Netherlands have signed it, but neither country has ratified nor implemented it, making it unlikely that UNIDROIT will be used in this dispute. International laws and conventions created to protect and facilitate the return of cultural heritage are not always adequate.<sup>113</sup> While they can provide a framework for how cultural heritage should be protected and what principles should apply, they sometimes fall short for legal arguments.<sup>114</sup> Many States are not parties to these conventions, leaving cultural heritage claims outside of the scope of the international framework.<sup>115</sup>

#### 4. National Cultural Heritage Laws

In the Netherlands, the Cultural Property Return from Occupied Territory Act of 2007 ("2007 Cultural Property Act") and the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act ("2009

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110. See UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 I.L.M. 1322, art. 5, ¶ 2.

111. *Id.* art. 5, ¶ 3.

112. See *supra* note 110 and accompanying text (referencing the text of the UNIDROIT Convention).

113. Marie Cornu & Marc-André Renold, *New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution*, 17 INT'L J. CULT. PROP. 1, 2 (2010) (noting that French courts find legal grounds to justify the country's refusal to adhere to its obligations under an international convention); Vicien-Milburn *supra* note 75, at 5 (explaining that the conventions do not apply retroactively).

114. Vicien-Milburn, *supra* note 75, at 5 (noting that many States have not ratified the conventions); Cornu & Renold, *supra* note 113, at 2 (same).

115. See ALESSANDRO CHECHI, PLURALITY AND COORDINATION OF DISPUTE SETTLEMENT METHODS, ENFORCING INTERNATIONAL CULTURAL HERITAGE LAW 184 (Francesco Francioni & James Gordley eds., 2013) (observing that international conventions are not systematically recognized or enforced in countries); Vicien-Milburn, *supra* note 75, at 5 (same).

Implementation Act”) provide a legal framework for the protection of cultural heritage.<sup>116</sup> By passing these acts, the Netherlands undertook the responsibilities of preserving its own national heritage and cooperating with the international community to protect the cultural property of the Member States to the 1970 Convention.<sup>117</sup>

The 2007 Cultural Property Act was created to help repatriate cultural property that was removed from a State during an armed conflict.<sup>118</sup> The Implementation Act deals with cultural goods that were removed from a Member States’ territory in violation of a law protecting its national heritage.<sup>119</sup> It was created to coincide with the 2007 Cultural Property Act, so that a country asking for the return of a cultural heritage object can begin a lawsuit in the Netherlands instead of having to go to the International Court of Justice (“ICJ”).<sup>120</sup> The Netherlands will respect each Member State’s definition of cultural heritage as long as it complies with the texts of the Conventions.<sup>121</sup> Once a return proceeding is commenced, it is up to the authorities of the requesting State to show that the disputed objects are protected under its own laws.<sup>122</sup> The Netherlands Supreme Court has held that, in a matter of choice of law, or in reconciling the laws of different legal jurisdictions, such as sovereign States, the

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116. See generally Marja Van Hesse, *The Implementation of the 1970 UNESCO Convention in the Netherlands: A Legal and Practical Approach*, 42 *CAMBRIAN L. REV.* 33, 34 n.4 (2011) (explaining that the laws contain rules on the taking into custody of cultural property from an occupied territory during an armed conflict and for the initiation of proceedings for the return of such property); Cultural Property Originating from Occupied Territory (Return) Act [hereinafter 2007 Cultural Property Act], available at <http://www.eui.eu/Projects/InternationalArtHeritageLaw/Netherlands.aspx>; 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act 2009 [hereinafter 2009 Implementation Act], available at <http://www.eui.eu/Projects/InternationalArtHeritageLaw/Netherlands.aspx>.

117. See *supra* note 116 and accompanying text (referring to laws passed by the Netherlands to implement the 1970 UNESCO Convention).

118. See Van Hesse, *supra* note 116, at 39 (describing the differences between the two Netherlands acts). See generally 2007 Cultural Property Act, *supra* note 116.

119. See Van Hesse, *supra* note 116, at 39 (specifying that the Act complies with the 1970 UNESCO Convention). See generally 2009 Implementation Act, *supra* note 116.

120. See Van Hesse, *supra* note 116, at 39 (reasoning that the acts were designed to work jointly in the situation of a cultural heritage dispute); *cf.* 2007 Cultural Property Act, *supra* note 116; 2009 Implementation Act, *supra* note 116.

121. See Van Hesse, *supra* note 116, at 40 (noting that the Conventions purposefully created a broad definition of cultural heritage); *cf.* 2007 Cultural Property Act, *supra* note 116; 2009 Implementation Act, *supra* note 116.

122. See Van Hesse, *supra* note 116, at 40 (implying that each State will have the opportunity to defend its own cultural heritage because of the broadness of the definition); *cf.* 2007 Cultural Property Act, *supra* note 116; 2009 Implementation Act, *supra* note 116.

Dutch court would apply another State's law if it was the most appropriate law for the conflict.<sup>123</sup> The law of the country where the issue or conflict took place will take precedence, and if the conflict took place in more than one country, the law of the jurisdiction with the closest link to the issue or conflict applies.<sup>124</sup> As a result, Ukraine may argue that the Netherlands should apply its national cultural heritage laws created to protect the cultural heritage located within the territory of Ukraine because it is the State where the conflict took place.<sup>125</sup>

The Law of Ukraine on Protection of Cultural Heritage states that archeological monuments, including movable objects, are the State's property.<sup>126</sup> The objects must be included in the Museum fund of Ukraine, registered with the Ministry of Culture, and preserved in accordance with Ukrainian legislation.<sup>127</sup> Ukraine also has a law that specifically protects archeological heritage.<sup>128</sup> The law defines archeological heritage as "the system of archeological monuments and shared territories, being under State protection, and also moveable cultural values (archeological items), that comes from the objects of the archeological heritage."<sup>129</sup> Article 18 of the law states that any objects found as a result of archeological research, movable and immovable objects, are State property.<sup>130</sup> On April 15, 2014, the Ukrainian Parliament adopted the law "On Ensuring Protection of the Rights and Freedoms of Citizens and Legal Regime on the Temporarily Occupied Territory of Ukraine" ("Ukraine's Law on Occupied Crimea").<sup>131</sup> The law states that the Russian Federation is

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123. See HR, February 23, 1996, NJ 1997, 276, available at [http://ec.europa.eu/civiljustice/applicable\\_law/applicable\\_law\\_net\\_en.htm](http://ec.europa.eu/civiljustice/applicable_law/applicable_law_net_en.htm) (illustrating that there are no statutory regulations in respect to applying another country's laws).

124. See *id.* (referencing the management of the affairs of another).

125. The Law of Ukraine on Protection of Cultural Heritage, Preamble in Law version N 2245-IV (2245-15) of December 16, 2014 [hereinafter Ukraine's Cultural Heritage Law], available at [http://www.unesco.org/culture/natlaws/media/pdf/ukraine/ua\\_law\\_protection\\_cultural\\_heritage\\_engtof.pdf](http://www.unesco.org/culture/natlaws/media/pdf/ukraine/ua_law_protection_cultural_heritage_engtof.pdf); The Law of Ukraine, On Protection of Archeological Heritage, VVR, 2004 [hereinafter Ukraine's Archeological Heritage Law], available at [http://www.unesco.org/culture/natlaws/media/pdf/ukraine/ua\\_law\\_protection\\_archaeological\\_heritage\\_engtof.pdf](http://www.unesco.org/culture/natlaws/media/pdf/ukraine/ua_law_protection_archaeological_heritage_engtof.pdf).

126. See Ukraine's Cultural Heritage Law, *supra* note 125.

127. See *id.*

128. See Ukraine's Archeological Heritage Law, *supra* note 125.

129. See *id.*

130. See *id.*

131. See Ukraine's Law on Occupied Crimea, *supra* note 82; Olexander Martinenko et al., *Ukraine Creates a Special Legal Regime in the Crimea*, KYIV POST (May 6, 2014),

liable for any damage caused in connection with the military intervention in the Crimea, including to legal entities, persona, and cultural heritage located in the Crimean territory.<sup>132</sup>

According to Ukraine's cultural heritage laws, cultural heritage and archeological objects located in Ukraine are, first and foremost, State property.<sup>133</sup> Moreover, by passing the Law on Occupied Crimea, Ukraine has officially indicated that it considers Crimea to be temporarily occupied rather than permanently annexed, and will hold Russia responsible for any damage to Ukraine's cultural heritage.<sup>134</sup> In court, Ukraine may use national laws such as the Law on Occupied Crimea to argue that the art objects in dispute are actually Ukrainian cultural heritage and should be kept out of occupying forces' hands.<sup>135</sup>

### *C. How Ethics and Morals Fit Into the Discussion*

Ethics and morality play a strong role in cultural heritage law and preservation.<sup>136</sup> Cultural heritage preservation laws were passed internationally and by States because there is a mutual interest in the information and enjoyment of cultural artifacts.<sup>137</sup> The public interest is served by the preservation, protection, and study of cultural objects; and the damage, distortion, and suppression of cultural heritage are unethical.<sup>138</sup> Morality plays a strong role in the argument of cultural nationalism and the idea that objects should be returned to their

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<http://www.kyivpost.com/content/company-news/ukraine-creates-a-special-legal-regime-in-the-crimea-346501.html> (outlining the Law on Occupied Crimea).

132. See *supra* note 131 and accompanying text.

133. See Ukraine's Cultural Heritage Law, *supra* note 125.

134. See Ukraine's Law on Occupied Crimea, *supra* note 82.

135. See Ukraine's Cultural Heritage Laws, *supra* note 125; see Ukraine's Law on Occupied Crimea, *supra* note 82.

136. See generally JOHN HENRY MERRYMAN, "CULTURAL PROPERTY ETHICS" THINKING ABOUT THE ELGIN MARBLES, CRITICAL ESSAYS ON CULTURAL PROPERTY, ART AND LAW 286 (defining ethics to mean action according to moral principles). Cf. CHECHI, *supra* note 115, at 203 (describing international public policy as a set of principles that can overcome rules and agreements because of broad consensus).

137. See CULTURAL PROPERTY ETHICS, *supra* note 136, at 287 (assuming that readers agree with this proposition); cf. CHECHI, *supra* note 115, at 203 (arguing that international public policy was promulgated under the creation of the international cultural heritage conventions).

138. See CULTURAL PROPERTY ETHICS, *supra* note 136, at 287 (arguing that this self-interest expresses an ethical principle that should bind others); see also The 1970 UNESCO Convention, *supra* note 89, Preamble ("Considering that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations.").

countries of origin because such objects are national icons, are necessary for collections that are representative of a culture, or are essential to the rituals or beliefs of current cultures.<sup>139</sup>

There are also object-centered ethical concerns.<sup>140</sup> An object's integrity, preservation, or information could be at the center for the moral argument to repatriate it, or, on the other hand, could limit its movement.<sup>141</sup> This art dispute is right at the center of the two ethical frameworks. The Crimean museums have made the argument that it is essential to return the objects to Crimea for the objects' and collections' integrity and informational preservation.<sup>142</sup> Ukraine, however, argues that this dispute is simply part of the larger question of Ukraine's State sovereignty and cultural independence.<sup>143</sup>

## II. *CASE STUDIES OF PAST CULTURAL HERITAGE DISPUTES*

Cultural heritage disputes in the past can demonstrate principles and trends that courts have emphasized or upheld and could apply to the current dispute. Part II considers international treaties that included the division of objects of cultural heritage before the emergence of international cultural heritage conventions. Next, Part II examines the situation with the Preah Vihear temple in Southeast Asia and how a cultural heritage dispute was decided "legally" but did not resolve the issues involved. Finally, Part II reviews two cases that involved the Soviet Union's nationalization decrees of art and how other countries chose to recognize and uphold the laws.

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139. See *CULTURAL PROPERTY ETHICS*, *supra* note 136, at 294 (creating the elements of an ethical decision structure). See generally *Two Ways of Thinking about Cultural Property*, *supra* note 101 (explaining the difference between the theories of cultural nationalism and internationalism in the context of cultural heritage).

140. See *CULTURAL PROPERTY ETHICS*, *supra* note 136, at 291 (arguing that aside from cultural nationalism, object centered concerns may create questions of ethics); see also The UNIDROIT Convention, *supra* note 110, art. 5, ¶ 3 (recognizing the importance of the preservation and integrity of the art object in dispute).

141. See *CULTURAL PROPERTY ETHICS*, *supra* note 136, at 291 (asking if some objects may be too fragile or delicate that movement exposes them to unacceptable risk); STAMATOUDI, *supra* note 63, at 252 (arguing that cultural law should be applied with the preservation and integrity of the art object in mind).

142. See Press Release, *supra* note 53 and accompanying text.

143. See *supra* note 12 and accompanying text (referencing the argument for returning the disputed art objects to Ukraine).

*A. Treaties Dividing Cultural Heritage*

Before the formation of UNESCO and the protection of cultural heritage conventions, many cultural heritage disputes were solved diplomatically and usually involved political compromises.<sup>144</sup> Peace treaties were used to distribute the cultural heritage objects after the dissolution of multi-national States in Europe.<sup>145</sup> However, there are conceptual similarities between the peace treaties and what was later adopted by the conventions, including the importance of State ownership and territorial ties to the objects in dispute.<sup>146</sup>

The issue of repatriation of cultural property on a large scale was first addressed in the unification of Italy.<sup>147</sup> The Austro-Hungarian Empire ceded the city of Venice, and the Austro-Italian Treaty of 1866 included articles that allowed Venice to claim ownership over certain artwork.<sup>148</sup> This treaty was one of the first attempts to deal with the issue of cultural heritage repatriation that occurs because of

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144. See generally Wojciech W. Kowalski, *Repatriation Of Cultural Property Following A Cession Of Territory Or Dissolution of Multinational States*, 6 ART, ANTIQUITY & L. 139, 161 (2001) (examining cultural heritage repatriation issues following the cession of territory or the dissolution of multinational States). See, e.g., ANA FILIPA VRDOLJAK, ENFORCEMENT OF RESTITUTION OF CULTURAL HERITAGE THROUGH PEACE AGREEMENTS, ENFORCING INTERNATIONAL CULTURAL HERITAGE LAW 33 (Francesco Francioni & James Gordley eds., 2013) (arguing that post-First World War Treaties created principles that remain in current international laws for the protection of cultural heritage); Andrzej Jakubowski, *National Museums in the Context of State Succession: The Negotiation of Difficult Pasts in the Post-Cold War Reality*, in NATIONAL MUSEUMS AND THE NEGOTIATION OF DIFFICULT PASTS 19 (Dominique Poulot, José María Lanzarote Guiral & Felicity Bodenstien eds., 2013), available at <http://www.ep.liu.se/ecp/082/ecp12082.pdf> (explaining that the allocation and distribution of national cultural treasures in cases of state succession have since the end of World War I have been essentially based on the territorial origin of artworks and the cultural significance of such items for new nation-states).

145. See *supra* note 144 and accompanying text (examining the peace treaties that attempted to apportion cultural heritage after disputes).

146. See VRDOLJAK, *supra* note 144, at 22 (arguing that peace agreements have been especially important in the formulation of international protection of cultural heritage from the early 20th century to the present); Kowalski, *supra* note 144, at 163 (same).

147. See Kowalski, *supra* note 144, at 140 (explaining that the Austro-Hungarian Empire was forced to cede several Italian territories, including the former Republic of Venice; cf. Treaty of Peace between Austria-Hungary and Italy, signed at Vienna, 3 October 1866, 133 Consol. T.S. 209).

148. See Kowalski, *supra* note 144, at 140 (observing that the Italians initiated attempts to repossess all works of art, historical objects and archives which at the time of the Habsburg reign had been removed from Italy); cf. VRDOLJAK, *supra* note 144, at 32 (claiming that the provisions were fueled by the ambitions of the new States and territories to recreate a national culture).

border changes in Europe.<sup>149</sup> The cultural heritage objects were divided based on their territorial links with the new State claiming ownership and principles of reciprocity to lessen acrimony during the process.<sup>150</sup> For example, under the Austro-Italian Treaty, the Italian party repossessed cultural property that had important connections to the ceded territory, Venice.<sup>151</sup> The treaty also specified that Austria retained ownership titles, which could be found in the archives and specifically pertained to the Austrian territory.<sup>152</sup> One of the most difficult cases in assigning cultural heritage rights arising out of the Austro-Italian treaty was Raphael's *Madonna*; the painting was kept in Florence but was claimed by the Austrian Archduke Ferdinand on the basis that the Grand Duke of Tuscany had ownership of the painting.<sup>153</sup> The issue was resolved when the parties agreed to allow the painting to stay in Florence, but it had to be marked the "Grand Duke's Madonna" in honor of Ferdinand.<sup>154</sup> The Austro-Italian case study is an example of the kinds of diplomatic solutions that came about prior to the contemporary cultural heritage treaties and illustrates how compromises are made when politics are intertwined with cultural heritage issues.<sup>155</sup>

Following World War I, cultural heritage division was also addressed in the St. Germain Treaty of 1919 between the Allies and Austria, and the Trianon Treaty of 1920 signed by the Allies and

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149. See Kowalski, *supra* note 144, at 140 (examining the process of Italy's claims as it has been formally incorporated into the empire); cf. VRDOLJAK, *supra* note 144, at 32 (noting that the treaty provisions signaled the idea of national cultural patrimony and the claims of successor States).

150. See Kowalski, *supra* note 144, at 141 (emphasizing the restoration of the historical integrity of Venice); VRDOLJAK, *supra* note 144, at 32 (affirming that the restitution of cultural property was based on territoriality and State succession).

151. See Kowalski, *supra* note 144, at 141 (including a number of great Italian works of art); see also VRDOLJAK, *supra* note 144, at 33 (maintaining that the new States and territories saw the repatriation of culture heritage as a small step in righting a historic wrong).

152. See Kowalski, *supra* note 144, at 141 (specifying the principle of reciprocity); cf. VRDOLJAK, *supra* note 144, at 32 (pointing out that Austria, as the predecessor state resisted the dismantling of the Viennese collection).

153. See Kowalski, *supra* note 144, at 141-42 (clarifying that the Duke's claims were based on his former honour as the Grand Duke of Tuscany); cf. VRDOLJAK, *supra* note 144, at 32 (discussing Austria's position that the cultural objects were part of imperial collections forming part of its national heritage).

154. See *supra* note 153 and accompanying text.

155. See Kowalski, *supra* note 144, at 142 (suggesting that alternative solutions may be better than forcing judgment on ownership); Jakubowski, *supra* note 144, at 23 (recognizing that cultural cooperation and protection of cultural heritage serve as efficient tools in post-conflict reconciliation and stabilization of States and their boundaries).

Hungary.<sup>156</sup> The treaties contained provisions for the repatriation of cultural property tied to the ceased territory, if the claimed objects had been removed from that territory at the stipulated time before the war.<sup>157</sup> Both treaties stated that:

[A]ll artistic, archaeological, scientific or historic objects which are part of the collections formerly belonging to the Government or Crown of the Austro-Hungarian Monarchy—unless decreed otherwise, Austria as well as Hungary acknowledge to enter into negotiations aimed at amicable agreement with the States concerned and at their request, on the basis of which all the said parts, objects and documents which belong to the cultural heritage (*patrimoine intellectuel*) of the said States shall on the principle of reciprocity be returned to their respective State of origin.<sup>158</sup>

These territorial repatriation clauses were adopted in an attempt to restore the integrity of the cultural heritage of territories or States that recovered lost lands or developed new State systems under the treaties.<sup>159</sup> In article 195 of the Treaty of St. Germain, the treaty created an adjudication procedure to resolve cultural heritage claims by various successor States to be overseen by the Reparations Commission.<sup>160</sup> The Reparations Commission appointed a committee to examine how objects in Austria's possession were removed from Italy, Belgium, Poland, or Czechoslovakia.<sup>161</sup> The committee mostly dealt with claims for cultural objects purchased by a reigning Hapsburg monarch.<sup>162</sup>

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156. See Kowalski, *supra* note 144, at 142 nn.7, 8 (citing the mentioned treaties); VRDOLJAK, *supra* note 144, at 33 (addressing that the Treaty of St. Germain created a Repatriation Committee).

157. Kowalski, *supra* note 144, at 143 (describing repatriation based on territoriality); *cf.* VRDOLJAK, *supra* note 144, at 33 (affirming that the Treaty of Saint-Germain favored the principle of territoriality).

158. Kowalski, *supra* note 144, at 145 (quoting Article 196 of the St Germain treaty and Article 177 of the Trianon Treaty).

159. See VRDOLJAK, *supra* note 144, at 32 (claiming that the redistribution of cultural property was an attempt for new States and territories to recreate, or create for the first time, a national culture); Kowalski, *supra* note 144, at 145 (same).

160. See VRDOLJAK, *supra* note 144, at 34 (clarifying that the procedure would resolve claims by various successor States); Treaty of Peace between Allied and Associated Power and Austria, signed at Saint-Germain-en-Laye on September 10, 1919, 226 Consol. T.S. 8, art. 195 [hereinafter "The Treaty of St. Germain"] (specifying that Italy and Austria agree to accept the decisions of the Committee).

161. The Treaty of St. Germain, *supra* note 160, art. 195 (stating that the Committee was to examine how the art objects were "carried off" from the claiming State or territory).

162. *Id.* (specifying the House of Hapsburg and other Houses reigning in Italy).

The repatriation cases involving the Hapsburg monarch, however, always went in favor of the monarch over the claimant State.<sup>163</sup> Claimant States would argue that the objects were part of their “public domain” and should be returned upon the dissolution of the empire.<sup>164</sup> Austria argued that the States could not have a legal claim over the objects because they became the “personal property of the Hapsburg monarch” when they were purchased.<sup>165</sup> In all the cases dealing with the Hapsburg monarch, Austria’s personal property rights claim won over the “public domain” argument.<sup>166</sup>

The Committee categorically rejected the Czechoslovak argument that it should ‘right a historic wrong’ by reversing the centralizing policies of the Hapsburg monarchy which for centuries had removed cultural heritage from all corners of its empire. It also refused to ‘be guided by justice, equity[,] and good faith[,]’ maintaining it had no authority to deviate from established judicial methods.<sup>167</sup>

Hungary also protested the “territorial link” in repatriation cases as the trigger for selecting and returning certain objects to ceded territories.<sup>168</sup> It advocated for the principle of nationality so that the Hungarian people could claim their cultural heritage “regardless of the territory of post-war Hungary.”<sup>169</sup>

The Treaty of Peace with Italy, signed in 1947, included clauses concerning territorial concessions in favor of new borders, including border corrections for the benefit of France, certain territories ceded to Yugoslavia, or several islands conveyed to Greece.<sup>170</sup> Appendix

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163. See VRDOLJAK, *supra* note 144, at 35 (explaining that even though claims were between two States, the Committee would rely on predecessor State constitutional arrangements); Kowalski, *supra* note 144 at, 144 (musing that very few claims were submitted and the Committee did not find the grounds to uphold them).

164. See VRDOLJAK, *supra* note 144, at 34-35 (describing the principle of territorial importance)

165. See VRDOLJAK, *supra* note 144, at 35 (emphasizing the principle of property).

166. See *supra* note 163 and accompanying text.

167. VRDOLJAK, *supra* note 144, at 35 (ignoring the unequal relations between the parties that had created the dispute in the first place).

168. VRDOLJAK, *supra* note 144, at 36 (referring to the Treaty of Trianon); Kowalski, *supra* note 144, at 145 (same).

169. See VRDOLJAK, *supra* note 144, at 36 (mentioning that the territorial principle remained supreme despite Hungary’s assertions).

170. See Kowalski, *supra* note 144, at 153 (explaining that the general principle of repatriation expressed in this treaty was based on the criterion of the ties of a given object to the cultural heritage of the ceded territory); Treaty of Peace with Italy, Paris, 10 February 1947, 61 Stat. 1245 (referencing the victory of the Allies).

XIV of the Treaty contained the following important repatriation clause, pursuant to which the Italian government was obliged to hand over to the above-mentioned successor States: “[A]ll objects of artistic, historic[,] or archeological value belonging to the cultural heritage of the ceased territory, which, at the time of Italian rule, had been removed from the said territory without any compensation and are in the possession of the Italian government or Italian public institutions.”<sup>171</sup>

The general “principle of repatriation” expressed in this clause is based on the ties the claimed object had to the cultural heritage of the ceded territory.<sup>172</sup>

As the above case studies demonstrate, post-war efforts to return cultural heritage to ceding states and their emphasis on territoriality are important precedents for contemporary cultural property law.<sup>173</sup> The common theme to be drawn from the above discussion on international agreements is that they all adopted the principle of territorial ties.<sup>174</sup> The territorial criteria were used primarily for practical reasons so claims would provide the correct documentation as proof.<sup>175</sup> This similar principle would later be emphasized by the international UNESCO conventions created to protect cultural property and create a mechanism to allow Nation-States to initiate repatriation claims.<sup>176</sup>

With differing national narratives, there were inevitable arguments between the Predecessor State and Successor State over the same property.<sup>177</sup> As the following case demonstrates, despite the

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171. See Kowalski, *supra* note 144, at 153.

172. See *id.* (citing the case of Yugoslavia as the above clause was even extended to include objects that were removed after World War I.).

173. See *supra* 146 and accompanying text (discussing the use of territorial links in cultural heritage distribution).

174. See Kowalski, *supra* note 144, at 163 (applying the principle of territorial ties and appurtenance to the “patrimoine intellectuel”); see also VRDOLJAK, *supra* note 157, at 38 (expounding on how post-war efforts “fostered an environment . . . for the restitution of cultural objects which were illicitly removed from their country of origin”).

175. See Kowalski, *supra* note 144, at 164 (acknowledging that in the absence of documentation, a more general criterion of appurtenance to the “*patrimoine intellectuel*” of a given nationis employed); cf. Jakubowski, *supra* note 144, at 23 (asserting that the principle of territoriality could provide conveniently predictable solutions but cannot be consistently applied to all the scenarios).

176. See *supra* notes 102, 105 and accompanying text (introducing the UNESCO conventions).

177. VRDOLJAK, *supra* note 144, at 34 (acknowledging that the symbolic significance of the possession of the disputed cultural objects for both national identities rendered them

principles and rules for cultural property repatriation set forth in laws and treaties, the reality of cultural property ownership can produce harsh results that only fuel animosity among countries or cultural groups.<sup>178</sup>

### B. *The Border Dispute Surrounding the Temple of Preah Vihear*

The Preah Vihear case shows the long-term damaging effects that a heritage dispute can have on countries when politics and territorial borders are emphasized over cultural significance.<sup>179</sup> Preah Vihear is an eleventh century Hindu Temple built on the border of Cambodia and Thailand.<sup>180</sup> Both Cambodia and Thailand claimed ownership over the temple and the surrounding area.<sup>181</sup> The ICJ was asked to decide the border dispute between the two countries.<sup>182</sup> In 1962, the ICJ came to its decision by looking at the 1904 boundary settlement between Thailand and France, as Cambodia was a French

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problematic); Jakubowski, *supra* note 144, at 23 (pointing out that the rights of successor states based on the territorial linkage were often challenged by the principle of their great importance to the intellectual patrimony and cultural identity of the predecessor state).

178. See generally Lucas Lixinski et al., *Identity Beyond Borders: International Cultural Heritage Law and the Temple of Preah Vihear Dispute*, 20 *ILSA Q.* 30 (2011) (concluding that the ICJ made a mistake by not considering culture and history when deciding the dispute over the Preah Vihear Temple); Monticha Pakdeekong, *Who Owns the Preah Vihear Temple? A Thai Position*, 2 *J. E. ASIA & INT'L L.* 229 (2009) (arguing that the Decision of the International Court of Justice on June 15, 1962, did not, as claimed by Cambodia in 1959, determine any land boundary between Thailand and Cambodia); Bora Touch, *Who Owns the Preah Vihear Temple? A Cambodian Position*, 2 *J. E. ASIA & INT'L L.* 205 (2009) (maintaining that the ICJ decision did determine a boundary between Thailand and Cambodia).

179. See *supra* note 178 and accompanying text (introducing the Preah Vihear case study).

180. See Lixinski et al., *supra* note 178, at 32 (describing that the Temple overlooks the Cambodian plains to the south, and Thailand to the north.); Pakdeekong, *supra* note 178, at 229 (noting that both Cambodians and Thais enjoyed the Temple for religious purposes, conducting trade, and it served as the centre between the high-Khmer and the low-Khmer communities).

181. See Lixinski et al., *supra* note 178, at 32 (referring to the 192 ICJ cases); Pakdeekong, *supra* note 178, at 230 (explaining that the dispute originated due to the ambiguous frontier line constituted by the provisions of the 1904 and 1907 Siam-France treaties).

182. See Lixinski et al., *supra* note 178, at 32 (analyzing the case as a textbook example of the application of the doctrines of acquiescence and estoppel because, according to the judgment of the ICJ, Thailand's lack of protest until the case was initiated in 1962 amounted to an endorsement of the boundary as set in the French treaties). See generally *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, [1962] *I.C.J. Rep.* 6 [hereinafter the Preah Vihear Case] (rejecting the objection of the Government of Thailand and finding that it had jurisdiction to adjudicate upon the dispute submitted to it on Oct. 6, 1959 by the Application of the Government of Cambodia).

protectorate.<sup>183</sup> The settlement included maps that were drawn by French geographers and gave the disputed area to Cambodia.<sup>184</sup> The ICJ found that because Thailand never protested the maps, they were still controlling and the disputed area belonged to Cambodia.<sup>185</sup> Despite this decision, between 1962 and 2011 there were recurrent violent protests and boundary disputes, even after the Thai government issued a statement reiterating its compliance with the ICJ judgment.<sup>186</sup>

The ICJ expressly dismissed the application of cultural heritage laws when making the 1962 judgment holding that, “[t]he Parties have also relied on other arguments of a physical, historical, religious and archeological character but the Court is unable to regard them as legally decisive.”<sup>187</sup> In a separate opinion, Judge Fitzmaurice further explained that the Treaty between France and Siam (now Thailand) must take precedence over any cultural or historical evidence.<sup>188</sup> Judge Fitzmaurice wrote: “[E]xtraneous factors which might have weighed . . . in making that settlement, and more particularly in determining how the line of the frontier was to run, can only have an incidental relevance in determining where today, as a matter of law, it does run.”<sup>189</sup>

The Preah Vihear situation suggests that the ICJ viewed history and culture as only secondary in determining ownership of the

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183. See Preah Vihear Case, *supra* note 182, at 19 (analyzing the 1904 Treaty).

184. See Lixinski et al., *supra* note 178, at 32 (including the map from the ICJ Judgment); Pakdeekong, *supra* note 178, at 231 (arguing that the Court did not rule that the map showed the frontier line between Thailand and Cambodia).

185. See Preah Vihear Case, *supra* note 182, at 22 (determining that the borders outlined on the map was communicated to the Thai members of the Mixed Commission).

186. See Lixinski et al., *supra* note 178, at 32 (explaining that the Thai population accused Cambodia and the ICJ of stealing the country’s territory and cultural landmark); Pakdeekong, *supra* note 178, at 233 (adding that the Thai government formally informed the UN Acting Secretary-General on July 6, 1962, that the government “desires to make an express reservation regarding whatever rights Thailand has, or may have in the future, to recover the Temple of [Preah Vihear] . . . and to register a protest against the decision of the International Court of Justice”).

187. See Lixinski et al., *supra* note 178, at 35 (internal quotation marks omitted) (quoting Case Concerning the Temple of Preah Vinher (Cambodia v. Thai.) 1962 I.C.J. 6, 13 (June 15) (Merits)).

188. Preah Vihear Case, *supra* note 182 (separate opinion of Judge Fitzmaurice), as quoted in Lixinski et al., *supra* note 178, at 35 (shedding light on why the Court dismissed evidence related to the historical, cultural and archaeological importance of the Temple).

189. See *id.* (declining to consider the importance of historical or cultural context).

temple.<sup>190</sup> The people of Thailand and Cambodia felt differently.<sup>191</sup> While decisive legal conclusions are important, some cultural heritage scholars believe that courts should consider, and cultural heritage law should reflect, the complications and nuances involved in disputes to try to come to a better solution for the people involved.<sup>192</sup>

Preah Vihear draws interesting parallels to the current dispute in Ukraine as both situations deal with a cultural heritage issues that emerged from a border dispute.<sup>193</sup> The ICJ emphasized the treaty and the legal documents to make a decision, but it did not necessarily solve the underlying issue or create the most ethical of conclusions.<sup>194</sup> The same result may repeat itself with the current art dispute between Ukraine and Crimea.

### *C. Soviet Union Case Studies*

Another example of the difficulties involved in a cultural repatriation lies in Russia's history with art property, which may set a negative precedent for Crimea's museums. Courts in England and France considered cases that dealt with the nationalization of private assets by the Soviet Union.<sup>195</sup> The outcome in both cases, as

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190. See Lixinski et al., *supra* note 178, at 35 (referring to the language of Judge Fitzmaurice); Preah Vihear Case, *supra* note 182 (separate opinion of Judge Fitzmaurice), 51-53 (saying that “for these factors to have any serious influence, it would at least be necessary that they should all point in the same direction, and furnish unambiguous indications”).

191. See Saing Soenthrith & Zsombor Peter, *Military Protests New Thai Fence Near Preah Vihear*, *CAMBODIA DAILY* (June 2, 2014), <https://www.cambodiadaily.com/archives/military-protests-new-thai-fence-near-preah-vihear-border-60141/> (reporting that Cambodia has accused the Thai army of erecting a new barbed wire fence on land near Preah Vihear temple, and has asked Thailand to tear it down); Ouch Sony & George Wright, *Preah Vihear Villagers Staying at Pagoda March to National Assembly*, *CAMBODIA DAILY* (Nov. 18, 2014), <https://www.cambodiadaily.com/news/preah-vihear-villagers-staying-at-pagoda-march-to-assembly-72512/> (claiming that soldiers dismantled houses and farms on the land surrounding Preah Vihear temple).

192. See Lixinski et al., *supra* note 178, at 35 (dismissing the reasoning used in the ICJ judgment the product of a different era); STAMATOUDI, *supra* note 63, at 252 (arguing that cultural property law should reflect certain ethical guiding principles like humanitarian considerations).

193. See *supra* note 1 and accompanying text (explaining that the Ukraine-Crimea art conflict occurred only after Russia annexed Crimea). Preah Vihear occurred due to a border dispute between Cambodia and Thailand. See *supra* note 178 and accompanying text (explaining the Preah Vihear dispute).

194. See Lixinski et al., *supra* note 178, at 35 (referring to the violence that occurred after the judgment); Soenthrith, *supra* note 191 (same).

195. See SCHÖNENBERGER, *supra* note 63, at 34 (describing the Princess Paley Olga v. Weisz case); Jane Graham, “From Russia” Without Love: Can The Shchukin Heirs Recover

illustrated below, was that seizures of private art were legal because of the “Act of State doctrine.”<sup>196</sup> This parallels the current situation with the art conflict where the Dutch court may not be able to rule in favor of the Crimean museums because they have to uphold the national laws of Ukraine.

In *Princess Paley Olga v. Weisz*, Princess Paley Olga, the widow of Russian Grand Duke Paul, who was arrested in 1918, was requisitioned and her valuable furniture and works of art were taken by the Soviet government.<sup>197</sup> The Soviet Union then sold some of her artwork.<sup>198</sup> Once she found out that her artwork was in England, she sued the new owner of the artworks, Weisz.<sup>199</sup> The reviewing English court considered a decree issued by the All-Russian Central Committee and the People’s Commissariat of March 18, 1923, under which all works of art and antiquities became the property of the State, as well as a decree signed by Lenin on March 5, 1921, according to which the property of citizens who have fled the Republic were now the property of the Russian Soviet Socialist Republic.<sup>200</sup> Both decrees were regarded as valid by the court because the confiscation of property by a foreign government recognized by the Crown could not be called into question.<sup>201</sup> In essence, the courts could not rule against the laws of a “recognized foreign power” in a case dealing with that country’s citizens.<sup>202</sup>

Similarly, in the *Shchukin* litigation, Irina Shchukina, the daughter of a famous Russian art collector and a descendent of

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*Their Ancestor’s Art Collection?*, 6 U. DENV. SPORTS & ENT. L.J. 65, 71 (2009) (recounting the Shchukina litigation).

196. See SCHÖNENBERGER, *supra* note 63, at 34 (explaining that the Act of State doctrine provides that courts of a country recognizing the legitimacy of a foreign government cannot overrule the laws of the same foreign government on the issue of property as long as the situation only deals with the other country’s citizens); cf. Graham, *supra* note 195, at 96-97 (emphasizing that the nationalization of a recognized government destroyed any personal titles people may have).

197. SCHÖNENBERGER, *supra* note 63, at 34 (recounting the personal history of the claimant); *Princess Paley Olga v. Weisz*, [1929] 1 K.B. 718 at 722-23 (Eng.) (same).

198. See *supra* note 197 and accompanying text (establishing the facts of the case).

199. SCHÖNENBERGER, *supra* note 63, at 34-35 (noting that Princess Paley also claimed compensation for damages); *Princess Paley*, *supra* note 197, at 722 (same).

200. SCHÖNENBERGER, *supra* note 63, at 35 (explaining the decrees signed by Lenin to nationalize important artwork); *Princess Paley*, *supra* note 197, at 722-23 (affirming that the paintings were in a State museum pursuant to the decrees).

201. SCHÖNENBERGER, *supra* note 63, at 35 (restating the Act of State doctrine); *Princess Paley*, *supra* note 197, at 723-24 (asserting the recognition of the Soviet government by France).

202. See *supra* note 196 (discussing the Act of State doctrine).

Morozov, another prominent art collector, lost both art collections to the Soviet Union by way of decrees in 1918.<sup>203</sup> Following the breakup of the Soviet Union, Schukina and Morozov made a claim for their lost artwork while some of the pieces were on loan from Russia in the Centre Pompidou in Paris.<sup>204</sup> A French court denied their claims because France accepts decrees of nationalization issued by recognized foreign governments, such as the Soviet Union, concerning their own territory and people.<sup>205</sup> These two cases illustrate that repatriation may be difficult in situations where the law is against the claimant.<sup>206</sup> If these same principles are applied to the Scythian gold on loan in the Netherlands, the Crimean museums may face similar difficulties as they will have to argue for cultural repatriation against Ukrainian laws and possibly international conventions.

The three case studies examined in Part II involve cultural heritage disputes that are different from the current dispute between Crimea and Ukraine.<sup>207</sup> However, they each contain similar elements and principles that prove to illustrate what arguments may prevail in the art dispute. The treaties that dealt with the breakup of States and State succession emphasized territoriality when dividing cultural property.<sup>208</sup> This principle was also used in the international conventions created to protect cultural heritage such as the 1954 Hague Convention and the UNESCO Conventions.<sup>209</sup> Second, courts may have to decide disputes based on the law (or a treaty) instead of

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203. SCHÖNENBERGER, *supra* note 63, at 35 (describing the facts of the Shchukina litigation); Graham, *supra* note 195, at 70 (highlighting that Ivan Morozov's home was to become a museum of Modern Western Art and would be opened to the public).

204. SCHÖNENBERGER, *supra* note 63, at 35 (clarifying that the paintings were on loan from the Pushkin and Hermitage museums in Russia); Graham, *supra* note 195, at 71 (same).

205. SCHÖNENBERGER, *supra* note 63, at 36 (citing the Act of State doctrine); Graham, *supra* note 195, at 71-72 (musing that the French government asked Madame Matisse to approach Irina Shchukin and make her promise that she would not try to institute another lawsuit if the paintings in question were displayed in Paris again).

206. SCHÖNENBERGER, *supra* note 63, at 35-36 (recounting that both individual parties lost to the decree of the government). *See generally Princess Paley*, *supra* note 197 (ruling based on the Act of State doctrine).

207. *See supra* note 1 and accompanying text (explaining the facts of the art dispute).

208. *See supra* note 144 and accompanying text (introducing the principle of territoriality in international treaties).

209. *See Two Ways of Thinking about Cultural Property*, *supra* note 101, at 845-46 (discussing the emphasis of the State in international cultural heritage conventions); STAMATOUDI, *supra* note 63, at 216 (same).

taking the cultural history into consideration.<sup>210</sup> While it is important that courts follow laws instead of personal morals, this does not always lead to the best result for the cultural heritage and the people affected by the decisions.<sup>211</sup> Finally, the cases dealing with Soviet Art nationalization illustrate that courts will not go against the laws of a recognized country like Ukraine, to satisfy a personal cultural heritage claim.<sup>212</sup>

### III. APPLYING INTERNATIONAL LAW AND PRECEDENTS TO THE CONFLICT

Unfortunately, this conflict may result in a battle between legal and moral principles where the moral arguments do not hold up.<sup>213</sup> By cultural heritage moral standards, including the physical preservation and integrity of the objects, the artifacts on loan should go back to where they originated, to the museums that have continuously preserved and studied them.<sup>214</sup> The Netherlands, however, has not recognized Russia's annexation of Crimea and must fulfill its obligations to Ukraine.<sup>215</sup> Part III first analyzes the applicability of the international cultural heritage conventions and national laws, and second draws important lessons from the case studies examined above.

Regardless of the label given to the crisis in Ukraine, the Hague Convention could still apply because Crimea was occupied by Russian troops.<sup>216</sup> Ukraine could argue that the Netherlands has a duty under the UNESCO Convention and the Hague Convention to keep the objects safe and out of the hands of the occupying hostile State.<sup>217</sup> The biggest problem for the Crimean museums is that the entire rest

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210. See *supra* note 178 and accompanying text (dismissing the historical, physical or archeological arguments).

211. See Soenthrith, *supra* note 191 (referring to the protests and altercations); Sony, *supra* note 191 (same).

212. See *supra* note 196 and accompanying text (discussing the Act of State doctrine).

213. *Dutch Foreign Ministry*, *supra* note 71, ¶ 10 (referring to the assessment of the dispute by the director of the State Hermitage Museum in St. Petersburg, Russia).

214. See *supra* note 136 and accompanying text (explaining the ethical principles involved in cultural heritage repatriation arguments).

215. Durr, *supra* note 1, ¶¶ 3, 4, 11 (discussing the Netherlands' obligation to Ukraine); Neuendorf, *supra* note 9 (same).

216. *Ukraine Crisis*, *supra* note 29, ¶¶ 4, 18 (describing the Russian unmarked troops); *Ukraine Creates a Special Legal Regime in Crimea*, *supra* note 131, ¶ 10.

217. See Hague Convention, *supra* note 79, art. 4, ¶ 3; 1970 UNESCO Convention, *supra* note 93, art. 11.

of the world does not recognize Russia's annexation of Crimea.<sup>218</sup> The Dutch Court may feel compelled politically to return the objects to Kiev instead of effectively handing them over to Russia.<sup>219</sup> Moreover, there is no precedent for courts to overrule the law of another recognized country for moral reasons alone.<sup>220</sup>

The cultural heritage case studies consistently show that courts and treaties favor and protect the cultural heritage of a State instead of the people.<sup>221</sup> Although at first glance it appears that the emphasis on territoriality in the treaties supported the return of the objects to Crimea, a deeper analysis reveals that such treaty provisions were used to emphasize State supremacy "even at the expense of the principle of protecting the integrity of important collections, together with the consistent application of reciprocity."<sup>222</sup> Because Crimea is not an independent territory and the Netherlands does not recognize Russia's annexation of Crimea, the emphasis on State supremacy may mean that Crimean museums will not be able to legally defend their arguments for the return of the art objects.<sup>223</sup> Unless the loan agreements clearly show that museum ownership overrules the State's claim to ownership, the Crimean museums do not have a good case.<sup>224</sup>

### CONCLUSION

Existing laws and the past examples examined in this Note do not create a hopeful situation for the Crimean museums. Although the Crimean museums make a strong moral argument for why the artifacts should go back to Crimea, there is little legal precedent that will support the museum's claim to the artifacts. The words of Dr. Mikhail Piotrovsky, the Director General of the State Hermitage Museum in St Petersburg, supports this Note's conclusions: "[f]rom

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218. See Territorial Integrity of Ukraine, *supra* note 15, at 2 (calling upon all States not to recognize Russia's annexation of Crimea).

219. See *supra* note 1 and accompanying text (discussing the complicated political nature of the art dispute).

220. See *supra* note 196 (discussing the Act of State doctrine).

221. See Lixinski, *supra* note 178, at 35 (discussing the ICJ's refusal to apply historical and archeological arguments to the Preah Vihear case); *supra* note 196 and accompanying text (defining the Act of State doctrine).

222. See Kowalski, *supra* note 144, at 145 (asserting that this was done to restore the integrity of the culture of the new State or territory).

223. See *supra* note 157 and accompanying text (regarding the emphasis on State supremacy and the principle of territoriality).

224. Durr, *supra* note 1, ¶¶ 3, 5, 10 (discussing the loan agreements between the Allard Pierson Museum, Ukraine, and the Crimean museums).

the ethical grounds, the exhibits should return to the museums where they have been kept for hundreds of years but from the legal angle of view, they may belong to the museum fund of the country, from the territory of which they were loaned.”<sup>225</sup> This outcome is unfortunate because it shows that international and domestic laws do not provide for the most moral result.

A possible solution is to find an alternative to a legal judgment. For example, the parties could agree to let the Netherlands keep the collections until the political situation is resolved. Another solution might be for the parties to allow the collections to continue traveling and touring museums abroad, furthering the goals of cultural cooperation and diplomacy, until a fair solution is agreed to by all involved. While a bilateral agreement is unlikely because of the current tumultuous relationship between Russia and Ukraine, an alternative solution will allow the parties to rise above the politicized nature of the dispute and work together to find a solution that protects the cultural heritage itself.

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225. *Dutch Foreign Ministry*, *supra* note 71, ¶ 11 (calling for a professional, ethical and legal discussion of the dispute).