

Cross-Border Protection of Cultural Property: Chinese Journal of Transnational Law, Vol. 3 Issue 1 (2026)

The Chinese Journal of Transnational Law released a landmark Special Issue titled “Cross-Border Protection of Cultural Property”. This issue brings together leading scholars from around the world to explore one of the most urgent challenges in international law today: how to better protect cultural heritages across borders in an increasingly complex global environment. Focusing on cutting-edge issues at the intersection of international law and private law concerning cultural heritage, this issue systematically examines the provenance of cultural property, mechanisms for cross-border restitution, the application of conflict of laws, and the balance of rights between states and individuals, thereby offering a multi-dimensional perspective and institutional insights to advance global cultural heritage governance. The full table of content can be found [here](#).

Editorial: Christa Roodt (Guest Editor), Fortifying the Cross-Border Protection and International Security of Cultural Property and Heritage,

The Editorial highlights a key concern: cultural objects are not just items of value – they embody memory, identity and history. When they are stolen, trafficked or removed, the loss goes far beyond the material. She points out that the key to strengthening the cross-border protection of cultural property lies in improving provenance verification mechanisms and enhancing transparency and traceability through the development of databases and digital tools. At the same time, the due diligence standards established by the 1995 UNIDROIT Convention and relevant EU directives require market participants to rigorously verify the ownership and provenance of cultural property prior to any transaction. However, due to differences in the application of national laws and institutional gaps in non-contracting states, cross-border disputes over cultural property still face numerous challenges. The Editorial further notes that, under the influence of conflict-of-laws rules and public policy exceptions, cultural property is not merely a legal object but may also become entangled in political and economic

narratives, highlighting the complexity and urgency of its cross-border protection.

Margaret F Cacot, Civil Forfeiture and Transnational Cultural Property Returns in the United States

This article will examine forfeiture of cultural property involved in transnational disputes. It will focus on the ever-growing body of civil forfeiture actions, or in rem actions, against objects of cultural heritage in the United States, where there has been a shift away from primarily relying on private litigation of cultural property disputes toward civil forfeiture actions brought by the federal government. It will examine how civil forfeiture has proven to be an effective procedural device for courts to adjudicate competing claims to property and to effectuate return to owners, particularly source nations. It will also explore how private international law elements pertain to these actions, such as the application or rejection of foreign national ownership laws in U.S. courts, as well as the possibility of enforcement of foreign transnational forfeiture orders (for example, Italy's transnational forfeiture order for the 'Getty Bronze' in California, the lawfulness of which was recently upheld by the European Court of Human Rights). It will examine the advantages and the downsides of the use of forfeiture as it relates to returns for international cultural heritage and discuss whether the end - that is, restitution to source nations - justifies the means.

Yehya Ikram Ibrahim Badr, Restitution of Stolen Foreign Cultural Property: Choice of Law & Justice

This article examines how choice of law rules shape outcomes in transnational disputes over stolen cultural property, between the country of origin and the good faith possessor of the property. It argues that concept of justice used in designing the choice of law rule used by the court has a deep impact on the design of the choice of law, and in consequence, the outcome of the dispute. The article examines three choice of law rules: The traditional lex situs rule, which promote predictability but often favours possessors and 'conflicts justice', the most significant relationship doctrine that aims at achieving 'substantive justice', which may better accommodate the interests of the state of origin but introduce uncertainty and may still favour good faith possessors through forum law bias, and the Belgian lex originis rule, arguing that it offers a more balanced model that combines legal certainty with substantive justice by structurally privileging the law of the country of origin while protecting good-faith possessors. The article

emphasizes that, regardless of the connecting factor used, the proving the state of origin's ownership remains a decisive issue that must not be overlooked.

Ruida Chen, Restitution of Cultural Property in China: In Search of a New Paradigm for Cross-Border Cultural Property Claims

The protection of cultural heritage is increasingly shifting towards favouring the return of cultural property to its people of origin. Evidence of this shift can be found in a more intentional distinction between cultural property rights on the one hand, and traditional rights in rem on the other; the strengthening of international cooperation; as well as the reconstruction of traditional doctrines. The shift can be seen in a series of changes in China's legislative and judicial developments, as well as international involvement in the resolution of cultural property disputes. The revised Cultural Relics Law of 2024 and the judicial opinions of Chinese courts indicate an attempt to ensure justice for people of origin. China's practice in global governance by promoting the restitution of protected public goods through international and institutional cooperation also deserves to be assessed. In consideration of China's role in achieving global justice for cultural property and heritage, these practices have been seen accelerating the paradigm shift, along with an innovative proposal for global solidarity, while the country is still confronting challenges as it is transitioning from that of a traditional source state to more nuanced roles in the global circulation and regulation of cultural property and heritage.

Mirosław M Sadowski, From Freedom to Return. Restitution and Repatriation of Cultural Objects After Subjugation: Battles, Brazil, and Beyond

When independence is regained, the matters of cultural heritage are oftentimes relegated to the background. While economic reparations are usually more easily enforceable, material ones in the form of cultural objects are typically forgotten, taking a number of years to enforce and requiring complex engagement involving political, diplomatic, publicity and, in certain instances, even illegal actions on behalf of the subjugated country. Thus, the purpose of this article is to take a closer look at such instances of return of cultural heritage, by particularly focusing on the relationship between the matters of return and the questions of identity and collective memory in this respect. In the first part of the article, the more introductory theoretical aspects of the return of cultural objects are analysed, with the author investigating why the return of cultural heritage

matters that much and how it may be organised more generally. The second part of the article is devoted specifically to the matters of restitution following armed conflict and in the cases of illicit trafficking. The analysis of various legal theoretical aspects of return of cultural heritage in such instances is illustrated on two case studies, the first related to the restitution of objects looted during World War II and the second to those illegally exported from the Araripe Basin in Brazil. Then, the third part focuses on the question of repatriation of cultural objects removed during the times of colonialism. The legal theoretical analysis is illustrated on two case studies, that of the Tupinambá case to Brazil and its broader impact, demonstrating the Indigenous peoples' relationship with heritage, and that of the Dundo Museum of Angola, which received objects repatriated thanks to the philanthropic efforts of a singular individual, showing how the lack of available legal solutions motivates innovative approaches to repatriation. Finally, the concluding part sums up the previous research and proposes a new framework for understanding the similarities and differences between restitution and repatriation.

Andreas Giorgallis, Restitution of Objects Unethically Acquired During the Colonial Era: The Intersections of Public and Private International Law

The restitution of colonial cultural objects has become the subject of increasing public and academic interest. However, all too often, the literature tends to focus on the public international law (PubIIL) aspects of the debate. With a few notable exceptions, the PubIIL and private international law (PIL) dimensions of the debate are rarely considered together. In conventional accounts, the two remain separate. Individually addressed, they only tell a fraction of the story. Against this background, and informed by growing discussions on both sides of the garden of international cultural heritage law, this article makes the case for a coordinated approach. It underlines how PubIIL and PIL have failed together but also how they could contribute positively to the restitution of colonial cultural objects in the future. This will be achieved by examining the renowned yet scarcely examined Ethiopian icon of Kwer'ata Re'esu (Christ with the Crown of Thorns). Thus, this article problematises the way in which the restitution of colonial cultural objects is conceptualised, contending that these objects do not belong exclusively to the realms of the public or private, national or international, but rather occupy a liminal space in-between these domains.

Andrzej Jakubowski, Collective and Individual Victims: Cultural Property, Justice

and the Politics of Restitution in Poland

The transition from authoritarianism to democracy in Central and Eastern Europe was not merely institutional, but a moral reckoning with totalitarian legacies. In Poland, this reckoning remains incomplete, as unresolved property restitution—compensation for cultural assets seized by Nazi Germany and nationalized after the Second World War—continues to shape public policy and identity. This article argues that Poland’s post-1989 heritage discourse instrumentalizes cultural loss and victimhood to consolidate domestic political agendas rather than to advance genuine cultural justice. Through an analysis of legal acts, policy instruments, and official statements, it demonstrates how the state constructs a collective narrative of national victimhood that often marginalizes individual experiences and their claims to the recovery of cultural loss. The absence of comprehensive restitution laws and Poland’s failure to honour Holocaust-related commitments expose this moral contradiction. Moreover, the victim narrative distorts heritage funding priorities, reinforcing state memory politics. The article calls for reframing heritage discourse towards accountability and inclusive restitution policies.

This issue also published two free contributions:

Xiansen Li, Yige Lu, *Developing International Investment Arbitration in China: From ICSID to Non-ICSID Investment Arbitration*

In the context of economic globalization, China’s investment cooperation with other countries has become increasingly dynamic, accompanied by a rising number of investment disputes involving both governments and investors. As an important means of resolving international investment disputes, investment arbitration plays a key role in safeguarding the rights and interests of investors and guaranteeing the stability of the investment environment. China is not only one of the most important global investment destinations but also a major exporter of capital, making its investment arbitration practices a focal point of global attention. This article examines the development path and specific strategies for advancing China’s investment arbitration framework. In practice, investment arbitration is primarily categorized into ICSID and non-ICSID arbitration, with notable differences in jurisdiction, procedure, supervision, and enforcement. This article argues that China should promote the development of non-ICSID arbitration while fully utilizing the existing ICSID investment

arbitration mechanism. However, the practice of non-ICSID arbitration in China currently faces challenges, including the uncertainty regarding arbitrability, difficulties in applying interim measures, and an incomplete enforcement mechanism. China should take the revision of the Arbitration Law as an opportunity, strengthen the alignment of international investment arbitration systems, accelerate the establishment of domestic investment arbitration norms, and improve judicial supervision mechanisms.

Yuran Shi, Regulation of Advanced Air Mobility: ICAO's Evolving Role in Aviation Safety and Beyond

Advanced Air Mobility (AAM) operations present significant regulatory challenges to the regulation of civil aviation. The International Civil Aviation Organization (ICAO) plays a central and active role in various types of cases of use of AAM. As regards domestic operations, ICAO should refrain from directly intervening in the regulation and instead focus on developing model policies and general principles. Concerning possible international operations, the ICAO may amend existing international air law to accommodate new technologies and operational features brought by AAM. This article analyses pertinent legal issues in various modes of AAM operations to examine how the ICAO can fulfil its responsibilities in ensuring the sustainable and safe development of civil aviation.