



## WHY IT IS SO IMPORTANT TO GIVE IMPORTANCE TO CULTURE?

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### I. INTRODUCTION

Culture is all-pervasive in spirit, thought, environment and communication. The significance of culture in the maintenance and continuance of our physical, mental and spiritual environment, though underplayed earlier, has been getting acknowledged in the past few decades. Of course, this well-being is part of the entire gamut of what we humans wish to maintain for our own lives and also to pass on to our future generations intact, underpinning the entire journey of the thought on sustainable development (SD). In fact, for some time now, the idea that culture should be formally recognized as the fourth pillar of SD and inform all public policies has been gaining currency. United Nations Educational, Scientific and Cultural Organization (UNESCO) recognizes that culture is who we are and what shapes our identity. It also acknowledges the role of culture through a majority of the Sustainable Development Goals (SDGs).<sup>1</sup> Hence it is inseparable from the three pillars with which the concept of SD started its journey- economic, social and environmental. It is now clear that culture is the “unofficial” fourth pillar of SD.<sup>2</sup>

Like SD, culture too is a multi-dimensional entity; with foundations in a multitude of paradigms from social sciences, law, socio-linguistics, sciences etc. With reference to law, culture is central to many of its principles; especially of international law (IL). These include precautionary principle, inter and intra-generational equity, common but differentiated responsibilities and many others. As Cocchi says “Cultural heritage is linked to humanity. It represents the symbolic continuity of a society beyond its contingent biological existence. Thus, the obligation to respect cultural heritage is closely bound with the obligation to respect human rights and to sanction its most serious breaches with individual criminal liability under international law.”<sup>3</sup>

In this article, the principle of intergenerational equity (IGE) will be highlighted and examined vis-à-vis culture. The thrust would be on demonstrating that IGE is a key element in conservation of culture/cultural heritage (CH). And in its train, it is envisaged that it would impact SD positively. It is certainly true that culture is a continuum from huge metal statues to Christmas dinner recipes; from palaces to techniques of building hut-roofs; from sowing patterns of seeds to sand-dunes spreading over miles; and everything else in this world-tangible and intangible. However, in the following sections, the focus is on the tangible CH which is in the form of cultural objects (CO) constituting archetypal symbols of the “parent” country or region under discussion. The thrust of the discussion would be on the role of return

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<sup>1</sup>Available at: <https://en.unesco.org/sdgs> (last visited on Nov. 25, 2018).

<sup>2</sup> Available at <https://en.unesco.org/new/en/culture/themes/culture-and-development/culture-for-sustainable-urban-development> (last visited on Nov. 25, 2018).

<sup>3</sup> Michela Cocchi, “Essay on Cultural Rights: The Protection of Culture as a Shared Interest in Humanity”, 1(1) *Cultural Heritage & Arts Review* 18-22 (Spring, 2010).

of these CO vis-à-vis IGE. A discussion of IGE involving intangible CH would be of a very different nature.

To this end, an attempt will be made to:

1. Analyze the importance of culture in the realms of human experience and SD.
2. Examine the principle of IGE in culture with special reference to restitution<sup>4</sup>/repatriation<sup>5</sup> of CH to the “parent” country.<sup>6</sup>

It is appropriate to mention that in this article, wherever found suitable, the single word “culture” is used in various contexts such as to denote culture, cultural heritage, cultural diversity, cultural objects, tangible culture, intangible culture, moveable culture, immoveable culture etc. However, wherever a precise or technical term has to be used; or whenever to use “culture” would be confusing, the exact terminology has been used.

## II. THE IMPORTANCE OF CULTURE FOR HUMANITY

The role of culture in human lives defies definition. Significant artifacts of tangible or intangible culture tie up the morale and psyche of an entire people who identify with it because it is not today or yesterday which is wrapped around it. The unconscious memories of the ancestors gone long past; stories never heard but only felt; and the hope of eternal continuity, all these and more are hidden away in an artifact. This has long been recognized and this is one of the reasons for targeting the language, museums, places of worship and places of recreation etc in times of war or other conflicts. Once you destroy a large number of moveable and immoveable cultural objects (CO), you damage the morale and psyche of an entire people, making it easier to subdue them. And once you trample away intangible CH like language and religious rituals, you may subsume their ethnic identity in just one or two generations. Another significant realization has been that a culture may be peculiar to a particular community or region but it plays its integral role in the fabric of the cultures of the entire world. Neither would be same without the presence of each other.

These realizations have long been reflected in the development of international law on the protection of different manifestations of culture and one very early reminder of this is “being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.”<sup>7</sup>

This is not to say that culture should be static and any change to it is a reprehensible human intervention. All manifestations of culture (and natural environment) including tangible and intangible, moveable and immoveable also undergo natural and unintentional human wear-and-tear. These have to be perceived as normal and desirable. After all, in order to survive, both culture and nature have to gather force from the present and emerge contemporaneous no matter how ancient they are. Notwithstanding this, sudden and

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<sup>4</sup> Restitution is done to an individual or community.

<sup>5</sup> Repatriation is the return done at the request of the government of a nation/state.

<sup>6</sup> The importance of culture in sustainable development as its fourth pillar was examined in detail by the author in an earlier conference paper: “Sustainable Development through Sustainable Principles: The Road to Rio+20 and Beyond” (Paper presented at the International Conference on “Contribution of International Environmental Law for Sustainable Development: Global and National Perspectives”, organized by the Faculty of Law, University of Delhi, 17-18 February 2012).

<sup>7</sup> Preamble; Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954.

unprecedented havocs are wrought and the loss is irretrievable. At such times, just a single reminder can also be of poignant value and help. Here one cannot but remember the phenomenon of the “Miracle Pine” the only one surviving the ravages of the 2011 tsunami from the 70000 trees lining the shore of Rikuzentakata city in Japan. Just looking at it gave the local people hope to live after the crushing emotional and economic losses during the tsunami. After it was discovered to be dying due to excessive salt water in its roots in 2012, it was restored artificially with a great deal of skill and money and was made the centerpiece of the memorial park.<sup>8</sup> Thus the “protection” of culture cannot be total or pristine. It is required only in terms of what is possible and realistic.

It goes without saying that the strong attachment of most people with their culture is not limited to its material and tangible manifestations. The intangible culture is equally important for our healthy identification with and pride in what we consider “our heritage.” In a very broad context, “our heritage” should and does occupy the entire gamut of cultural heritage, cultural diversity, cultural objects, tangible culture, intangible culture, moveable culture, immoveable culture etc. belonging to all peoples on this planet. However, in actual terms, the scope of most humans extends to the culture(s) he is born in and/or they live their lives out in. And this is what they would like to pass on to their children and the generations after that – in more or less the same form.

As an example, over millennia, significant CO have been removed from their places of origin as part of war-plunder, robbery for financial gains, love for their aesthetics on part of powerful persons, destruction by natural or man-made disasters and so on. In case they can be returned, the occasion becomes all the more elevated by the consciousness of this loss and retrieval. This is the quintessential crux of the demand for the return of the Parthenon Marbles to Greece.<sup>9</sup> After so many decades, it is still one of the most dramatic and vociferous debates in the return of historically acquired CO.

This reality of the human experience has been recognized over the past few decades and incorporated in the work of academia, policy-makers, ground-level workers; especially in the SD forum. Though coming into its own for some time earlier, conceptually SD was crystallized in the late 1980s, in *Brundtland Report*.<sup>10</sup> It emphasized that all should consume only their fair share and opt for low-consumption life-styles. It encourages a holistic value-system and above all, equity. Hence it can be said that SD has truly equitable foundations, by way of its three pillars. But it has been amply demonstrated over the decades that equity has not come about. It has been now theorized that this may be due to imposition of alien solutions on communities regardless of their culture and history. This is what makes the solutions unacceptable and hence unworkable. After all, the economic, social and environmental pillars of SD are necessarily so permeated by “how” and “why” people do (or do not do) certain things that culture is inseparable from them. It is only a matter of form that culture is now acknowledged as the fourth pillar of SD. In fact, culture may eventually be viewed as the primary pillar which single-handedly supports the other three. “Development interventions that are responsive to the cultural context and the particularities of a place and

<sup>8</sup> “The Fascinating Story of Rikuzentakata’s ‘Miracle Pine’ as its Iconic Symbol of Hope”, available at: [jpninfo.com/43201](http://jpninfo.com/43201) (last visited Nov. 8, 2018).

<sup>9</sup> A discussion of this well-known controversy will be taken up in a following section of this article.

<sup>10</sup> World Commission on Environment and Development, *Our Common Future* (Oxford University Press, 1987). Its popular name: *Brundtland Report*, derives from the name of the chairperson. Very famously, it defined SD as development that “meets the need of the present without compromising the ability of future generations to meet their own needs”, at ix. This definition has been criticized over years variously as being too vague, inadequate, anthropocentric etc. However, for want of a better definition, it is still the most commonly used one and forms the basis of many documents relating to SD.

community, and advance a human-centered approach to development, are most effective, and likely to yield sustainable, inclusive and equitable outcomes. Acknowledging and promoting respect for cultural diversity within a human right based approach, moreover, can facilitate inter-cultural dialogue, prevent conflicts and protect the rights of marginalized groups, within and between nations, thus creating optimal conditions for achieving development goals. Culture, understood this way, makes development more sustainable.”<sup>11</sup>

It follows that UNESCO also considers its work on cultural diversity and culture conventions as imperative for the implementation of the 2030 Agenda for Sustainable Development.<sup>12</sup> As another agency of the United Nations has said, “Cultural factors also influence lifestyles, individual behavior, consumption patterns, values related to environmental stewardship, and our interaction with the natural environment. Local and indigenous knowledge systems and environment management practices provide valuable insight and tools for tackling ecological challenges, preventing biodiversity loss, reducing land degradation, and mitigating the effects of climate change.”<sup>13</sup>

As Nurse had put it succinctly some time back, “Culture should be viewed not just as an additional pillar of sustainable development along with environmental, economic and social objectives because people’s identities, signifying systems, cosmologies and epistemic frameworks shape how the environment is viewed and lived in. Culture shapes what we mean by development and determines how people act in the world.”<sup>14</sup>

### III. INTERGENERATIONAL EQUITY AND CONSERVATION OF CULTURAL HERITAGE

#### *A. Intergenerational Equity as a Principle*

IGE has long been developing as a principle of international law and its import was acknowledged by law-makers, judiciary and jurisprudentialists. The 1972 Stockholm Declaration of the United Nations Conference on the Human Environment said “to defend and improve the human environment for present and future generations had become an imperative goal for the mankind.”<sup>15</sup> In his seminal article on environmental ethics “The Rights of Animals and Unborn Generations” the philosopher Joel Feinberg spoke of the standing of the present generation to speak on behalf of the future generations and represent future interests. He said, “The rights that the future generations certainly have against us are contingent rights, the interests that they are sure to have when they come into being (assuming of course that they will come into being) crying out for protection from invasions that can take place now.”<sup>16</sup>

IGE has been the subject of much legal and philosophical discourse and one of its best-known proponents, Prof. Edith Brown Weiss, has said, “Every generation receives a natural and cultural legacy in trust from its ancestors and holds it in trust for its descendants.

<sup>11</sup>UN System Task Team on the post-2015 UN Development Agenda, *Culture: a driver and an enabler of sustainable development (Thematic Think Piece)*(UNESCO, 2012), available at: [www.org/millenniumgoals/pdf/Think%20Pieces/2\\_culture.pdf](http://www.org/millenniumgoals/pdf/Think%20Pieces/2_culture.pdf) (last visited Nov. 8, 2018).

<sup>12</sup>Available at: <https://en.unesco.org/new/en/culture/themes/culture-sustainable-development> (last visited Nov. 8, 2018).

<sup>13</sup>*Supra* n. 12 at 4.

<sup>14</sup> Keith Nurse, “Culture as the Fourth Pillar of Sustainable Development” (2006), available at: <https://pdfs.semanticscholar.org/92da/e4886a02f1b27dd4131db5912aae6b7074f.pdf> (last visited Nov. 8, 2018).

<sup>15</sup>Available at: [www.un-documents.net/unchedec.htm](http://www.un-documents.net/unchedec.htm) (last visited Nov. 8, 2018).

<sup>16</sup> W. T. Blackstone (ed.), *Philosophy and Environmental Crisis* 66 (University of Georgia, 1974).

This trust imposes upon each generation the obligation to conserve the environment and natural and cultural resources for future generations. The trust also gives each generation the right to use and benefit from the natural and cultural legacy of its ancestors.”<sup>17</sup> By now, the principles of IGE are very clear, conservation of options which would ensure that the future generations would inherit a diverse and healthy world which would let them live life to the fullest; but this does not mean that we ignore the needs of the present generation. Second principle is that of conservation of quality for envisage able human functions. The third principle is that of conservation to access.<sup>18</sup>

Besides coming in its own as the focus element of SD, the principle of IGE was reinforced at the 1992 United Nations Conference on Environment and Development.<sup>19</sup> And then also ten years later in the World Summit on Sustainable Development, 2002 whose Resolution 1 (6) says, “From this continent, the cradle of humanity, we declare...our responsibility to one another, to the greater community of life and to our children.”<sup>20</sup>

And the judicial voice was not far behind. One of the strongest ones was of Judge Weeramantry who referred to IGE in *Denmark v. Norway* and specifically to “the concept of wise stewardship [of natural resources] [...] and their conservation for the benefit of future generations.”<sup>21</sup> The voice echoed a few years later in the case from Philippines, *Minors Oposa v. Secretary of the Department of Environment and Natural Resources*.<sup>22</sup> In this case 45 children, represented by their parents, along with Philippines Environmental Network Inc., claimed that their rights of using and enjoying natural resources were violated because of the degradation of tropical rainforests due to cutting down of the timber. They had sought from the Court that the cutting down should be stopped. The Supreme Court said that the minors, through their parents, could sue on behalf of future generations too, along with their own, in a class suit. This is because a healthy ecosystem of the future would depend on the practices of today. And every generation has this responsibility towards the next generation. Culture deserves no less than true IGE too.

### ***B. Intergenerational Equity in the Context of Culture***

<sup>17</sup> Edith Brown Weiss, “In Fairness to Future Generations”, 32(3) *Environment: Science and Policy for Sustainable Development* 6-31 (1990).

<sup>18</sup> Annika Oskarson, “Intergenerational equity – Protecting future generations through domestic action” (Master thesis, Faculty of Law, University of Lund) (Spring, 2009), available at: [lup.lub.lu.se/luur](http://lup.lub.lu.se/luur). download (last visited on Dec. 6, 2018) for an interesting discussion of the origins, ramifications and applications of the principle of intergenerational equity.

<sup>19</sup> Held in Rio de Janeiro on 3-14 June 1992; where more than 170 countries and thousands of participants gathered, to reaffirm their commitment to the Stockholm Declaration to protect the environment for present and future generations and to implement the goals of SD. The Principle 3 of The Rio Declaration on Environment and Development 1992 says that: “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”, available at: <https://www.jus.uio.no> (last visited on December 16, 2018); Article 3(1) of the United Nations Framework Convention on Climate Change states that: “Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities” (as reproduced in 9 May 1992 31 ILM 849); Preamble of the Convention on Biological Diversity whose Preamble also said: “Determined to conserve and sustainably use biological diversity for the benefit of present and future generations”, available at: <https://www.cbd.int/doc/legal/cbd-en.pdf> (last visited on Dec. 16, 2018).

<sup>20</sup> Available at: [www.un-documents.net](http://www.un-documents.net) (last visited on Dec. 16, 2018).

<sup>21</sup> See *Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen* [1993] Rep.3. Separate opinion of Justice Weeramantry at 174 as reported in: Marie-Claire Cordonier Segger & Ashfaq Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* 127-128 (Oxford University Press, New York, 2004).

<sup>22</sup> Reported in 33 ILM 173 (1994).



The World War II witnessed atrocities and violations of all conceivable human rights at an unprecedented scale. The post-war ambience reverberated with guilt and many collective resolutions. One of them was to prevent ruthless and reckless destruction of historical objects, buildings and landscapes which had survived for many centuries before the years of this war. These included symbols of religious, cultural and emotive significance. This was the genesis of the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954.<sup>23</sup> The contracting parties were determined to prevent the carnage they had witnessed just a few years back. It did not deal with IGE explicitly but its Preamble said, “Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world” and “Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection.” The recognition was certainly therein spirit even if not in emphatic, corporeal words – the recognition that cultures of all peoples of the world are equal, interdependent and their well-being is common responsibility of all.

One of the first explicit articulations of IGE in the contexts of culture and natural environment came with the UNESCO Convention Concerning the Protection of World Cultural and Natural Heritage, 1972.<sup>24</sup> Its importance was recognized as “...recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to...”<sup>25</sup> Thus, CH and natural heritage were viewed as being inalienable and of equal consequence. The Article 7 of the 1997 Declaration on the Responsibilities of the Present Generations towards the Future Generations said, “With due respect for human rights and fundamental freedoms, the present generations should take care to preserve the cultural diversity of the humankind. The present generations have the responsibility to identify, protect and safeguard the tangible and intangible cultural heritage and to transmit this common heritage to future generations.”<sup>26</sup> This idea was progressively fleshed out in each succeeding international convention on the protection of CH (formulated almost exclusively by the UNESCO).<sup>27</sup> The 2001 UNESCO Universal Declaration on Cultural Diversity says in its Article 1 “...In this sense it is the common heritage of humanity and should be recognized and affirmed for the benefit of the present and future generations.”<sup>28</sup> The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003<sup>29</sup> reiterated this and said “...This intangible cultural heritage transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity...”<sup>30</sup> And it was also echoed by the 2005 Convention on the

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<sup>23</sup> Hereinafter 1954 Convention.

<sup>24</sup> Hereinafter 1972 UNESCO Convention

<sup>25</sup> Art. 4.

<sup>26</sup> Available at: [portal.unesco.org](http://portal.unesco.org) (last visited on Dec. 16, 2018).

<sup>27</sup> The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects says in its Preamble: “Convinced of the fundamental importance of the protection of cultural heritage and of cultural exchanges for promoting understanding between peoples, and for dissemination of culture for the well-being of humanity and the progress of civilization”. See also, “UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects”, available at: <https://www.unidroit.org/> (last visited on Dec. 16, 2018).

<sup>28</sup> *Supra* note 26.

<sup>29</sup> *Ibid.*

<sup>30</sup> Art. 2(1). In its Preamble, it recognizes that the processes of globalization and social transformation, alongside the conditions they create for renewed dialogue among communities, also give rise, as does the phenomenon of intolerance, to grave threats of deterioration, disappearance and destruction of the intangible cultural heritage, in particular owing to a lack of resources for safeguarding such heritage

Value of Cultural Heritage for the Society (Faro Convention)<sup>31</sup> a few years later which said that a “heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generation.”<sup>32</sup>

These developments were not in isolation though. They reflected the contemporary burgeoning thought in other areas of international law. This emphasis on the diversity of CH was a reverberation of the holistic, ecosystemic approach to biodiversity-conservation evolving then. It cannot but remind one of the most socially and environmentally relevant documents of our times, namely the Earth Charter, 2001.<sup>33</sup> There are strong parallels. The Principle 4 of the Earth Charter affirms IGE in natural heritage and CH by way of saying that we have to secure earth’s bounty and beauty for present and future generations. We also have to transmit to future generations the values, traditions and institutions that support the long-term flourishing of human and ecological communities. Principle 12 (d) exhorts us to protect and restore outstanding places of cultural and spiritual significance. Both our natural heritage and the CH are viewed very eclectically. And it is not surprising that culture is now regarded as the touchstone of any development-initiative.

It is heartening to note that this evolution in thought didn’t just theorize about abstruse legal principles; they brought “real” people and problems to fore.<sup>34</sup> The Preamble of the 2011 Recommendation on the Historic Urban Landscape clearly enunciates, “Considering that historic urban areas are among the most abundant and diverse manifestations of our common cultural heritage, shaped by generations and constituting a key testimony to humankind’s endeavours and aspirations through space and time.”<sup>35</sup> Of course, when we talk of any heritage, one “good” implication is that we are glad to have inherited it, to have enjoyed its beneficence. Furthermore, we wish to pass it on to others coming in this world after us, in the same condition even if we have not been able to improve upon it.<sup>36</sup> Even if one generation has suffered deprivation of its CH, this loss and memory should inculcate all the more urgency to retrieve it for the future generations. This is why there is a need to restore the equilibrium which encompasses the vital need for IGE.

#### IV. INTERGENERATIONAL EQUITY AND THE CONSERVATION OF CULTURAL HERITAGE IN THE “PARENT” COUNTRY

The discussion in this section will be focused on restitution/repatriation of CO. In most countries of the world, the cultural world around us has changed and is changing rapidly, especially since the last century. There are two reasons for this. First is the much higher incidence of destruction and damage to CH due to long-persisting conflicts, tensions and terrorism in almost all regions of the world which have no respect for its preservation. Indeed, much of the time, both tangible and intangible CH is targeted. To add to this, the

<sup>31</sup>Available at: <https://www.coe.int/en/web/culture-and-heritage/faro-convention> (last visited on Dec. 16, 2018).

<sup>32</sup> Art. 2(b).

<sup>33</sup>Available at: <https://earthcharter.org> (last visited on Dec. 16, 2018).

<sup>34</sup>The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005. Hereinafter 2005 UNESCO Convention. It went even further and urged us to pass on the “cultural” world at least as we found it ourselves which is a direct reference to the importance of IGE. In the same vein, the Preamble of the United Nations Declaration on the Rights of Indigenous Peoples 2007 also said that: “Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment”, available at: <https://www.un.org/> (last visited on Dec. 16, 2018).

<sup>35</sup>*Supra* n. 26.

<sup>36</sup> Though it may not be possible for us to calculate the needs of the future inhabitants of this earth, it is reasonable to suppose that their needs are at least same as ours.

reach of the war-weapons developed in the past century is far larger and more accurate than ever – making it easier to precisely attack any desired target. Furthermore, the processes inherent in erstwhile colonization had facilitated the permissions to transfer huge amounts of cultural artifacts from the colonized country of origin to that of colonizers. Many of these have not yet been returned to the country of origin, causing an inequitable state. The second reason is that while increased globalization, consumerism and modernization have caused an increase in the knowledge about protection and preservation of CH, the same factors have also resulted in an acceleration of different kinds of losses in CH. These include stealing and/or illicit exports and imports of “attractive” cultural objects; migration and urbanization resulting in languishing traditions; continued retention of cultural objects taken away during occupation or colonization; unsustainable development patterns which negatively impact the maintenance of environmental and cultural integrity; and so on.

Talking of restoring the balance or equity, it has been pointed out earlier in this article that to be able to enjoy our right to our cultural heritage, we must be able to be “with” it. And whatever the reasons for not being with it, solutions should be accessible. Logically these solutions, more or less, would pertain to (1) bringing to a halt/modifying activity, harming it; (2) increasing maintenance as per need; (3) restitution in case of loss; and/or (4) replication/replacement in case of destruction. If we take the required and appropriate action, the balance would be restored and we would be on our way to IGE. But what are the dynamics of this desired balance? There are two ways of looking at this- the nationalist and the internationalist. The first would entail the perception that CH originates from a particular community or region, and has been its integral part. It has shaped the people living there into what they are today. As such, that heritage is most “at home” in that particular region. After all it is the so many types of CH and their so many “homes” which has resulted in the cultural diversity(CD) of the world. And this genuine and consistent CD has been recognized as being imperative for a healthy planetary environment.<sup>37</sup> The internationalist view would be that CH (of any region or people) is part of the common consciousness and heritage of the entire world. It should not be claimed by any one country as entirely its own peculiar property. It is the common concern of all humankind to whom it belongs collectively. This is why it does not matter where it is placed right now. Whether due to illegal export or to former colonization, if it is placed right now in the famous and well-established museums, it will be better taken care of too. In any case, the national boundaries are no longer the same as when a CO was taken away, so it is not clear which country it should be returned to; especially when two adjoining countries are separated only by formal borders and not by history and culture. Moreover, the CO was legally appropriated at the time, as per the prevailing law of the land, whether during conflict, colonization or foreign rule.

It is suggested here that the answer lies somewhere in between the nationalist and internationalist viewpoints. This is because our life is a heritage bequeathed to us by our parents. The world around is our heritage and always in-the-making. Most of us want to keep it the way it is and change it only to make it better. Over civilizations, forces have overwhelmed and shattered the world around us to pieces, only to build them up rather different. Human history is a saga of changes, adjustments, destructions, progress and nostalgias. Wars, natural disasters, economic patterns, industrialization, colonization, epidemics have come and gone, uprooted and left cumulative marks on each individual, communities and the land. Humans have survived all because we have held on and held close to us what was precious and vital for our life on this earth. Both tangible and intangible resources around us allow us to spring back to life and health. However, when we are deprived of these resources and remedies, survival becomes difficult and ultimately

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<sup>37</sup> This is the entire tenor of the 2005 UNESCO Convention.



impossible. The mainstay of these resources is the stability of the biotic environment and the socio-cultural milieu. Building of new huts; finding alternative sources of food; surviving loss of families and learning to live with other members of the community; finding succor in oral traditions when temples and books have been wiped out – can only happen if there has been maintained some environmental and cultural integrity which is familiar and continuous. As the Preamble of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970<sup>38</sup> says “...Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting...”

To counter this, it is generally said that the CO in question had been shifted outside their place of origin as per the law of the land. Hence there is no obligation for its repatriation. This may (at times) be technically correct. However, this technicality has to be juxtaposed with the realities that an occupied or colonized nation is/was hardly ever in the position of refusing to give up its cultural treasures to the conqueror or the sovereign. Most often, permission was not even required. Much more immediate concerns for preservation of life, family, property, livelihood, food took over. Moreover, the object may have been in the power of an erstwhile ruler who gave it up to the more powerful *de facto* ruler. Under duress, his/her personal circumstances and actions at a particular point of history cannot deprive people for posterity. In any case, to subject all aspects of return of CO to the general property-law – with its rules of transfer and possession and so on – is in itself a refusal to see the true significance of objects of cultural value. Equity is higher than such rules.

Coming to another point, the concern of the countries and/or the museums should also be taken into account. In case it is felt that the “parent” country may not be able to take care of the CO upon return from a state-of-the-art museum it is currently residing in, there is another solution besides refusing to return in altogether. Technical advice and other resources may be provided to the “parent” country for providing the appropriate and continuous protection. At the same time, there need not be empty glaring spaces left in the museums where the precious objects were placed for so many years. High-tech replicas should fill in those spaces and continue to enthrall and educate the millions of visitors they receive annually.

This was also the philosophy behind the Icelandic Manuscript’s return case where the issue of repatriation of cultural treasures had been taken up fully and beautifully. The Icelandic Manuscripts were vellum and also paper manuscripts of the medieval saga literature of Iceland. They were perceived to be symbols of Iceland’s oneness and cultural identity.<sup>39</sup> They were removed to Denmark in the 18<sup>th</sup> century while Iceland was Danish colony. After Iceland’s separation from Denmark in 1945, the former started making efforts to get them back. In the early 1950s, a group of academicians argued strongly against the return of the Manuscripts from Denmark on the grounds that they were not specifically Icelandic but “Old Nordic” and therefore a pan-Scandinavian treasure. It was only by accident that they were written in the Icelandic language. They ought to remain in Copenhagen, which is a renowned academic centre with all technical and institutional resources for making the Manuscripts available for scholarship. They also claimed that Iceland lacked all of the above and additionally, conservation-resources. But Iceland persisted in its demand for return. At last and against all of these arguments, the return was done

<sup>38</sup>*Supra* n. 26.

<sup>39</sup> For a detailed discussion of their history and the entire mechanism of their return to Iceland, refer to Jeanette Greenfield, *The Return of Cultural Treasures* 10-46 (Cambridge University Press, United Kingdom, 1989). Greenfield comments that this case serves as an international model for other cultural restitutions.

ceremoniously and voluntarily in 1971. This is a perfect illustration of moral obligations and the sense of natural justice overriding the legal obstacles in effecting the return of CP which was recognized as being of the utmost spiritual and cultural significance to the people (of Iceland).

But the nationalist view does not always prevail. The foremost example of the internationalist view is the plethora of arguments against the return of the Parthenon/Elgin Marbles from England to Greece. These Marbles were part of the Parthenon in Athens and now they are in the British Museum. It is not their mere beauty but their spiritual, religious and cultural connotations that led the Greek people to want them back in their country. This is despite the fact that they have been housed in the British Museum in England for decades. United Kingdom's position is that it is not against the principle of return as such but that only illegally acquired objects are returnable. They were acquired by Lord Elgin who was ambassador of the United Kingdom to the court of the Sublime Porte. The Marbles were taken from Athens which was under the occupation of Turkey at that time. The legality of the acquisition of the Marbles has been discussed *ad infinitum* and the real details have been clouded over time. But the true issue here is that regardless of the facts related to their acquisition, the Marbles must be returned as they belong to the Greek people. United Kingdom says that there is no reason to return them. But by the same logic, they need not be housed in the United Kingdom either since they are not part of its integral culture.<sup>40</sup> The debate is still on. There are similar issues around the returns of Rosetta Stone (to Egypt); Kohinoor diamond (to India);<sup>41</sup> Old Fisherman from Aphrodisias (to Turkey) – among many others.

A CO does not cease to be part of the collective historical heritage of humankind if it goes “home.” Its universality will not shift with its journey. Its well-being, care and conservation remain the concern and responsibility of the international community. Hence if a CO goes back to its place of origin, it would definitely serve the cause of IGE. Furthermore, as Scarabello has pointed out, the value of cultural heritage is not based on its value or exclusivity but on its importance for the rights and identities of the humans with whom it is associated.<sup>42</sup>

In this respect, it is heartening to hear about the striking moves in the recent decades to restore a group of COs to the families/heirs of the former owners. These comprise the cultural treasures which were forcibly taken by the German/Nazi authorities from their Jewish owners during the 1930's and 1940's.<sup>43</sup> Employing ingenious methods to effect these repatriations/restoration, the overriding consciousness is that a plunder needs to be “made

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<sup>40</sup> *Id.* at 47-105. See also, M. Chellani, "International Legal and Ethical Arguments for the Return of the Parthenon Marbles: A Critique." (The author was invited to present a paper at the Conference: "Repatriation of the Parthenon Sculptures: Historical, Cultural and Legal Aspects", held in Athens, Greece, jointly organized by the Cultural Horizons, the Centre of European Studies and Humanities and the University of Athens, under auspices of the Hellenic Ministry of Culture and UNESCO, in May 2000. The author could not travel but this paper was published in proceedings of Conference).

<sup>41</sup> Saby Ghoshray, “Repatriation of the Kohinoor Diamond: Expanding the Legal Paradigm for Cultural Heritage”, 31(3) *Fordham International Law Journal* 741-780 (February, 2008) for a scintillating discussion about the return of the Kohinoor diamond.

<sup>42</sup> See Caterina Scarabello, “The Human Dimension of Cultural Heritage: Are we Moving towards a Human Rights Based Approach to the Protection of Cultural Heritage?”, *available at*: [www.academia.edu/24738129/The\\_human\\_dimension\\_of\\_cultural\\_heritage\\_are\\_we\\_moving\\_towards\\_a\\_human\\_rights\\_approach\\_to\\_the\\_protection\\_of\\_cultural\\_heritage](http://www.academia.edu/24738129/The_human_dimension_of_cultural_heritage_are_we_moving_towards_a_human_rights_approach_to_the_protection_of_cultural_heritage) (last visited on Dec. 16, 2018).

<sup>43</sup> This was the primary motivation behind the framing of the 1954 Convention.

good.” And in many cases, these have been effected by private huge museums themselves.<sup>44</sup> Given the horrific circumstances surrounding the persecution of Jews during the period, the restoration could have been bitter-sweet.

## V. CONCLUSIONS AND FINAL COMMENTS

The discussion in this article has attempted to examine

1. The significance of culture for humanity in general; and by implication in SD.
2. How IGE works in the realms of culture.
3. How is IGE served by restitution/repatriation of CH to the “parent” country.<sup>45</sup>

It has been demonstrated that culture is inextricably bound up with human life and all its experiences. As such, the notion of any activity including SD cannot be devoid of a consideration of culture. Justice, in its ultimate form, lies in IGE. Hence “cultural justice” (CJ) may be said to be delivered when IGE is achieved. In one of the (selected) areas of CH, it was examined if repatriation/restitution of CO could play a part in this IGE and CJ? It is hoped that it has been established by the arguments of this paper that this role is both positive and imperative. But neither IGE nor the role of CH in human life is limited to CO. It is much more far-flung and is slowly but surely gaining ground.

In the opinion of the author, nothing sums up better all that has been said in this article than the words of Mr. Ertugrul Gunay, Turkey’s minister for culture (2007-2013), “Artifacts, just like people, animals or plants, have souls and historical memories. . . When they are repatriated to their countries, the balance of nature will be restored.”<sup>46</sup>

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<sup>44</sup> As a related example, the painting: “Deux Femmes Dans Un Jardin” by the classical painter, Renoir, was stolen by the Nazis from a bank vault in Paris in 1941. It had belonged to an art-collector Alfred Weinberger in pre-war Paris. After it had come to the Christie’s Gallery, New York in 2013, it was returned to Weinberger’s sole surviving heir Sylvie Sulitzer, his grand daughter. It was done in a ceremony at the Museum of Jewish Heritage in New York, United States of America, *available at*: <https://edition.cnn.com/style/article/nazi-renoir-stolen-art-trnd/index.html> (last visited on Nov. 16, 2018).

<sup>45</sup> *Supra* n. 6.

<sup>46</sup> *Available at*: <https://mic.com/articles/76321/9-priceless-artifacts-museums-should-return-to-their-home-countries#> (last visited on November 16, 2018).