[C]ultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights […]

UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, 17 October 2003

1. Introduction

Movable cultural heritage is not bounded nor shielded by national territorial borders. Applicable domestic laws are of limited import without the cooperation of other States and the international community. Despite a century of domestic legal protection of movable cultural heritage in many States, widespread non-compliance and lack of enforcement has been the norm rather than the exception. However, the tide is turning. States formerly reluctant to ratify cultural heritage treaties have done so, signaling their acceptance of the importance of multilateral action in this field. Enforcement of such laws is
viewed as part of the reinforcement of good governance, rule of law and human rights in the international and domestic spheres. This new found international cooperation has emerged within the context of developments in human rights law which have necessarily redefined and informed initiatives to combat the illicit traffic of cultural goods.

The protection of human rights and movable heritage has been steeped in the national realm and domestic laws. Yet, their effective protection and promotion cannot be confined to the State. The gradual articulation of the symbiosis between cultural heritage and human rights, particularly cultural rights, has led to efforts to further clarify the nature of the obligations owed by States (and non-State actors) in respect of protection of movable heritage, which have been bolstered by implementation and enforcement measures. It has also expanded the right-holder beyond the State – to individuals and groups.

This chapter seeks to outline recent developments in the human rights law and international law for the protection of cultural heritage which manifest this interrelation as it pertains to movable heritage. In the first part, I examine existing specialist conventions and treaty provisions covering movable cultural heritage during armed conflict, belligerent occupation and peacetime to outline the obligations of States and non-State entities. I consider how these instruments have evolved to make them amenable to human rights concerns. In the second half, I analyze the increasing interplay between human rights norms and efforts to combat damage, destruction and illicit transfer of movable heritage to highlight the expansion of right-holders beyond the State – to individuals and groups. This emerging synergy between cultural heritage and human rights law reinforces the enjoyment of a range of human rights, advances “social cohesion”, and reinforces enforcement mechanisms.

2. Specialist Cultural Heritage Instruments

The primary motivator of relevant international instruments during armed conflict and peacetime is the protection of cultural heritage of universal and national importance respectively. These treaties betray a bias toward the rights and obligations of States and international transfer of movable heritage. However, increasingly these seemingly divergent aims are bound by the importance of cultural heritage for individual and


5