



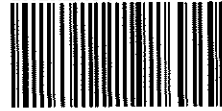
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Chaire UNESCO en droit international  
de la protection des biens culturels,  
Université de Genève

Geneva, October 22, 2023

## Review of the doctoral dissertation of Ms. Julia Stepnowska on

### **“The Value of Cultural Property: The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects as an Example of a Value-Based Approach to Cultural Property Restitution”**

As one of the appointed reviewers of Julia Stepnowska's doctoral dissertation, I would first like to stress my appreciation to the University of Gdansk (Faculty of Law and Administration) for having appointed me to this highly rewarding and interesting task.

My review will follow the following outline: (1) The topic and the contents of the PhD thesis; (2) Formal issues; (3) Bibliography; (4) Substantive issues and (5) Overall evaluation.

#### **(1) The topic and the contents of the PhD**

I would like to start by saying how interesting the topic is. Over the many publications I have read on the 1995 UNIDROIT Convention, very few go so far in their in-depth analysis of the values lying behind it and their effectiveness. This is clearly one of the main advantages of Ms. Stepnowska's work.

The outline in four chapters is clear and well balanced and the systematic of her reflections can be followed easily, thanks to the logical connection between the chapters and also to useful intermediary conclusions.

In the overall balance of the different chapters, one might consider that Chapter 1 on values and definitions is a bit too long and descriptive, especially the part 1.2 on “Value Summary” (39 pages with no intermediate sub-titles) and could be shortened – or cut down into separate sections - to create less imbalance with the rest of the thesis.

## **(2) Formal issues**

In general, the text is well written and clear. The English is good, although some errors remain to be corrected, such as “the argument **of**” instead of “the argument **from**”, which appears throughout the thesis (e.g. page 99, 129, etc.).

Sometimes the quotations are too long, with little accompanying explanations (e.g. pp 86 and 87). There are some repetitions (e.g. pages 83 and 112 on the pillars of the 1970 UNESCO Convention).

The reference system is surprising for me regarding a legal thesis: it might be traditional to have them directly in the text in Poland, but that is clearly not the convention in other countries where we use footnotes. The latter system is generally used in social sciences, but not in law.

Be that as it may, the references are in general too rare (see e.g. on pages 84 and 115) and very often unclear (no page indication).

## **(3) Bibliography**

The bibliography is mainly in English and Polish. I regret, even though it is understandable, that no reference is made to French literature, in particular because there is a topical comparative law dictionary which would be extremely useful to the developments made by Ms. Stepanowska, in particular her reference to the need of a comparative dictionary. See M. Cornu et al., *Dictionnaire comparé du droit du patrimoine culturel*, CNRS Editions, Paris, 2012 (the second edition, which will include Poland, will be published in early 2024).

#### (4) Substantive issues

As already said, the thesis is a very interesting way to put the UNIDROIT Convention in perspective and to show the main values behind it.

A few critical comments on some of the assertions made by Mrs. Stepanowska follow:

- Page 85: She asserts that the UNIDROIT Convention would not apply to nazi-looted art because in most cases the statute of limitations provided for by the Convention would have run. But the real reason, in my view, is that the UNIDROIT Convention is non-retroactive as a matter of principle and can therefore not apply to cases which took place long before its adoption.
- Page 103: I am not certain that the agreement between the Metropolitan Museum of New York and the Republic of Italy on the restitution of antiquities looted in Italy would fall under art. 13.2 of the UNIDROIT Convention, as this clause applies to agreements between States and not to agreements between private entities and States.
- Pages 110-112: This part commenting the cases which have applied the UNIDROIT Convention is very interesting and useful. But a more thorough review, as even suggested by the author, would be extremely useful, and it is regrettable that she doesn't do it. One example of an interesting case is the Swiss Supreme Court decision of 1997 (ATF 124 II 134), where the Court shows that the value of the UNIDROIT Convention is to be the basis of an international public policy in the fight against the illicit traffic in cultural goods. This decision has been translated in English by UNESCO (See *Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects*, L. Prott (Ed.), UNESCO Publishing, 2009, pp 34 -36.).
- P. 125 (Section 3.1, 1<sup>st</sup> paragraph): the author states that the value-based model purports to determine "...what values can prevail in a given dispute even if the law states otherwise" (I underline). In a system based on legality, such a statement must absolutely be explained and justified.

Chapter 4 of the thesis is, for me, an extremely interesting part of Ms. Stwpanowska's work. The cases she uses to illustrate her value-approach are pertinent and well analyzed. This gives a very good and practical overview of what was presented in the other chapters.

I note with some pride that many of the cases she uses are taken from the University of Geneva's ArThemis database!

**(5) Overall evaluation**

This thesis is of high standard and deserve, the research behind it is thorough and, in spite of the changes and the additions I suggest be made, I consider it to deserve a very high grade.

A handwritten signature in blue ink, appearing to read 'M. Renold', with a stylized flourish at the end.

Professor Marc-Andre Renold