

Special rules for cultural objects

Chapter I. Scope

Article 2(e). Definitions

‘Cultural object’ means a corporeal object that is classified or defined by a State, at the time of its removal from the territory of that State, as being among the national treasures possessing cultural, including religious, artistic, historic or archaeological value, under national legislation or administrative procedures.

The term ‘cultural object’ also includes a sacred or communally important corporeal object that is part of a generally recognised indigenous, tribal or other cultural community’s religious, traditional or ritual heritage at the time of its removal, irrespective of any classification or definition by a State.¹⁰

Chapter III. Special rules for the recovery of cultural objects

Article 9. General provision

Except as otherwise provided in this Chapter, the provisions of this Regulation apply to cultural objects which have been stolen or illegally removed.

Article 10. The law applicable to claims for the recovery of stolen or illegally removed cultural objects

1. A claim for the recovery of a stolen or illegally removed cultural object is governed, at the choice of the claimant, by the law of:

¹⁰ [For the purpose of this paragraph, an indigenous, tribal or other cultural community is considered generally recognised in particular if it is involved, directly or through representatives, in the activity of any body of the United Nations, in particular the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples or previously the Working Group on Indigenous Populations, or if it is a beneficiary or nominator of a beneficiary of funding from the United Nations, in particular the UN Voluntary Fund for Indigenous Populations].

(a) the State in which the object was located at the time of its theft or illegal removal from that State;

(b) the State in which the object was located at the time of the acquisition of possession by the defendant subsequent to the theft or illegal removal; or

(c) the State in which the object was located at the time of the filing of the action.

2. If the claimant is entitled to recover the object under the law applicable under paragraph 1, but that law does not provide for any reimbursement of funds spent in the acquisition of possession in good faith or for the necessary preservation of the object, the court seized may award the reimbursement of such funds reasonably spent.

3. For the purpose of this article, the place of acquisition of possession is the place in a State where the cultural object was delivered based on a legal relationship underlying the acquisition.

Article 11. Applicability of public law provisions

The public law character attributed to a provision of foreign law designated as applicable under this Chapter shall not prevent the application of that provision.

Chapter IV. Other provisions

Article 12. Overriding mandatory provisions

3. Without prejudice to paragraph (1), in relation to claims for the recovery of stolen or illegally removed cultural objects, the court seized may give effect to the overriding mandatory provisions adopted for the protection of the national treasures by a foreign State other than the one whose law governs under this Regulation, and with which the situation has a close connection.