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RESISTING CHRONONORMATIVE INTERNATIONAL LAW

Abstract: *This article argues that better engagement between international law and time requires us to unpack the contingent memories and imaginaries that underpin international legal regimes and processes. We as a field need to move away from thinking of time as static and linear. International Cultural Heritage Law (ICHL) is an ideal case study to think through these relationships, given the subfield's connection to identity and its relative openness to different epistemologies. This article assesses the work that time does in shaping international law, working through the three linear dimensions of time (past, present and future) to highlight the limits of international law, and in shaping the heuristics of these three linear dimensions. ICHL offers a pathway to simultaneously showcase the shortcomings of our international legal understandings of time (which I dub chrononormative), and to imagine different possibilities that better advance the human goals that should be the foundation and the goal of international legal norms and regimes.*

Keywords: time and international law, cultural heritage law, linearity, static time, intangible cultural heritage

INTRODUCTION

Time can be static when we take a snapshot of time, complete and knowable and beyond re-negotiation. Received wisdom in international law often assumes time to be static, or at least that international law works towards static time as a means of creating or ensuring stability.[1] Static time is inexorable, linear and con-

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[1] K.P. Van der Ploeg, *International Law Through Time: On Change and Facticity of International Law*, in: K.P. Van der Ploeg, L. Pasquet, L. Castellanos-Jankiewicz (eds.), *International Law and Time*, Springer, Cham: 2022, p. 325.

stant. International law profits from this view in order to make itself more stable. The default rule in international law is that treaties do not retroact, for instance. This baseline renders international rules more stable. It also means that situations that inform the negotiation of the treaty will not necessarily be affected by it, because they happened before the treaty entered into force. In this way, we render the past static and beyond the reach of international law, but the disputes that made a treaty possible do not go away. In this article, I seek to question the assumption of time's linearity in international law, and to show that our impulse towards static time in fact forces instability in international law.

In attempting to render the international legal order more stable for states, international lawmakers make decisions on the design and implementation of international legal rules that compromise certain commitments to memory and identity for non-state actors, such as sub-state communities and individuals. For those communities and individuals, international law organises their identities with a view to being effective for someone else, assuming a linear and stable relationship with time that I dub *chrononormative*.[2] Chrononormativity is the idea that time can be rendered static by an authorised capture of identity at a specific point (whether in the past, present or imagined future). This static version of time operates in a linear and ordered fashion that aims to be in some respects timeless. International law authorises and enforces narratives for (often Eurocentric) national projects that, by erasing contingencies for the sake of stability, creates sources of instability that arise when international law is deployed by communities and individuals to prosecute claims on the basis of memory and identity that are neither stable nor linear. As the law assumes time, it therefore ignores the co-production of law and time in ways that create a façade of stability which ultimately generates instability.

In other words, a normative idea of time serves the interests of those who create international law, but not necessarily those who international law is meant to serve. As we seek to select and authorise memory for the purposes of narrating international orders and the need for them, international law often turns to processes that identify markers of memory in order to crystallise those tensions and, in a way, render them static and open for capture for international law-making purposes. The capture of cultural heritage as a regulatory object is a choice path for selecting[3] and authorising[4] these memories in favour of alternately (and often simultaneously) cosmopolitan and nationalistic projects and narratives. Cultural heritage is in this

[2] I rely on insights from queer theory, as well as feminist and post-colonial thinking, to develop this concept. See a fuller discussion in Part II below.

[3] L. Lixinski, *Selecting Heritage: The Interplay of Art, Politics and Identity*, 22(1) European Journal of International Law 81 (2011).

[4] L. Smith, *Uses of Heritage*, Routledge, London: 2006.

sense a physical[5] or non-physical[6] manifestation of memory that builds into national projects of commemorating or decrying a past so as to shape the nation's identity. Cultural heritage is essential in the processes of nation-building, as it helps generate a relatively stable idea of a shared past that creates a platform for a society to come together at a certain (present) moment in time to make choices about its future.

Besides national impulses for protection, there have been significant international efforts to also safeguard cultural heritage, particularly since the end of the World War II. International cultural heritage law (ICHL) in this sense is also the process of selecting a manifestation of a memory as a collective cultural practice or artefact and attaching legal consequences to this selection. ICHL selects a practice or artefact from the past, in the present, with a view towards impacting a future. It reinforces and authorises the view of heritage practices as "the present select[ing] an inheritance from an imagined past for current use and decid[ing] what should be passed on to an imagined future."[7] As such, ICHL engages multiple dimensions of time. Because of ICHL's role in manipulating identity across different aspects of time, it presents a very fertile platform from which to discuss the relationship between time and international law. ICHL assumes chrononormative renderings of international law as relying on static snapshots of time in a linear fashion, and in fact enforces them to benefit a stable national identity that can lead to lasting peace through cultural understanding.

I refer to the three linear dimensions of time – past, present and future – to show how limiting and problematic they can be. Examining these three dimensions of time in relation to ICHL through specific case studies, I show that time does more analytical work in creating and perpetuating international legalities than we often acknowledge, and that this work is often pursued through the politics of memory. Instead of relying on static time to erase contingency in favour of a single controlled narrative of international legality, I wish to show that multiple timelines make for better international legal outcomes and identities for those individuals and groups whom international law aims or should aim to serve. I work on the premise that international law serves

[5] Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 (adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 240; Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (adopted 14 November 1970, entered into force 24 April 1972) 823 UNTS 231; Convention concerning the Protection of the World Cultural and Natural Heritage 1972 (adopted 23 November 1972, entered into force 15 December 1975) 1037 UNTS 151 (WHC); Convention on the Protection of the Underwater Cultural Heritage (adopted 2 November 2001, entered into force 2 January 2009), 2562 UNTS 3 (UCHC).

[6] Convention for Safeguarding of the Intangible Cultural Heritage 2003 (adopted 17 October 2003, entered into force 20 April 2006), 2368 UNTS 3 (ICHC).

[7] J.E. Tunbridge, G. Ashworth, *Dissonant Heritage: The Management of the Past as a Resource in Conflict*, J. Wiley, Chichester: 1996, p. 6.

human beings and communities, rather than states as abstract entities which are meant to represent human groupings, but often fail to do so. That fact that a primary objective of ICHL is to contain and narrate memory is an additional reason why it is ideally placed to study the relationships between time and international law.

I therefore argue that a stronger engagement between international law and time necessitates an unpacking of the contingent memories and imaginaries upon which international legal regimes in general are based and their contribution to perceived static time, as ICHL demonstrates. Unpacking these contingencies through an analysis of ICHL's engagement with time showcases how international legal regimes at large work to freeze time, often to the detriment of that which the law seeks to safeguard. It also further exposes the Eurocentric legacies of international law and the political and epistemic choices these legacies foreground and foreclose. In making a choice to freeze time for the sake of stability, international law can also in fact create instability. A critique of chrononormative international law exposes these shortcomings, and tells us that it is feasible (and, in fact, desirable) to pursue international legal ordering projects with multiple parallel visions of time, memory and identity operating simultaneously. This thicker engagement I propose can nurture the emancipatory potentials of international law that have thus far remained largely elusive, helping reimagine international law as a stronger catalyst for change, rather than an authoriser of the status quo. This argument matters because it exposes assumptions about the work that time performs for the social ordering function of international law, which is rather central to the law's overall mandate to society. It contributes to existing knowledge by foregrounding the work of identity in our analysis of the relationships between time and international law, as well as by reconciling the insights of queer,[8] feminist,[9] racial[10] and post-colonial[11] theories, which have for the most part eluded the intersection of time and international law. Bringing those insights to bear refocuses the work of international law on the individuals, communities and groups it aims to serve, rather than the service of legal structures for their own sake.

To be sure, I do not assume that all international law is always linear. But I do assume that it is often based on some sort of linear engagement with time as part

[8] For a recent collection of essays, many of which tackle time (and intersections with colonialism), *see* C. O'Hara, T.P. Paige (eds.), *Queer Engagements with International Law: Times, Spaces, Imaginings*, Routledge, Abingdon: 2025.

[9] *See* M. Hansel, *Feminist Time and an International Law of the Everyday*, in: S.H. Rimmer, K. Ogg (eds.), *Research Handbook on Feminist Engagement with International Law*, Edward Elgar Publishing, Cheltenham: 2019, p. 379.

[10] *But see e.g.* N. Tzouvala, *Invested in Whiteness: Zimbabwe, the von Pezold Arbitration, and the Question of Race in International Law*, 2 Journal of Law and Political Economy 226 (2022).

[11] B.S. Chimni, *The Past, Present and Future of International Law: A Critical Third World Approach*, 8(2) Melbourne Journal of International Law 499 (2007).

of the narratives of progress that underpin so much of international law.[12] Further, I do not assume that non-linear time holds all the answers, and is necessarily and intrinsically a liberating move. But I present non-linear time as largely liberating and emancipatory as a counterpoint, a mock-up of what international law could be or do if it were possible to think about time in more plural ways.[13] To present non-linear time, I rely on the voices of queer, feminist, post-colonial and race thinkers and advocates. Together, they mount a vigorous (and I suggest compelling) critique of Eurocentric or linear time.

In what follows, I use ICHL as a primary case study for the reasons I noted above, but I also intersperse examples from elsewhere in international law to demonstrate the analytical purchase of the arguments I weave on the basis of ICHL. I first unpack how chrononormativity relates to identity and primes it for capture by international law-making. The following three sections unpack the past, present and future dimensions of time in international law, noting instability-causing inconsistencies. The subsequent section engages further with the idea of stability through international law, and whether stability through synchronicity should be a desirable goal of justice-orientated international legal projects. Concluding remarks follow these sections.

1. CHRONONORMATIVE TIME AND IDENTITY

Time is a catalyst to turning a group of individuals into a society, a nation and a socioeconomic class by allowing for the reinforcement of social bonds, shaped at the service of a shared interest that is also identified over time.[14] This effect is what queer theorist Elizabeth Freeman calls "chrononormativity".[15] It assumes linear time (in that it progresses sequentially through past, present and future) and timelessness (a consequence of the static treatment of the past and present as an immutable snapshot that projects across the three sequential and linear dimensions) as a regulatory mechanism for identities.

Identities, on the other hand, are more malleable for individuals and groups. As such, they are "trafficked in signs of fractured time", in that they challenge the idea of time as linear, sequential or based on immutable or static snapshots of identity and memory.[16] Identities change, as do the political preferences associated with them, and therefore they undermine the possibility of static moments as the basis for deci-

[12] T. Skouteris, *The Notion of Progress in International Law Discourse*, TMC Asser Press, The Hague: 2010.

[13] On the use of non-linear time to reimagine international law in another context, *see* Tzouvala, *supra* note 10, pp. 231–236.

[14] E. Freeman, *Time Binds: Queer Temporalities, Queer Histories*, Duke University Press, Durham: 2010, p. 3.

[15] *Ibidem*.

[16] *Ibidem*, p. 7.

sion-making. This relationship with time is symptomatic of anachronisms that linger from past events, and even manifest as forms of arrested development of identity.[17] A similar effect happens with cultural heritage and its international legal regulation, to the extent that cultural heritage in the law is a form of lingering anachronistically in a past, and this anachronism justifies purportedly apolitical engagements with the past as history, or as truth, in ways that prevent changes to (national) identity or challenges to the dominant narratives on heritage. Since heritage, once listed following a legal process, is assumed to be listed forever, the meaning attributed to that heritage in the law is not susceptible to change, even if society itself changes.

Laurajane Smith has famously described these practices as "authorized heritage discourse", and they are well documented in heritage studies.[18] Authorized heritage discourse is the idea of cultural heritage being shaped by a set of practices and ideas that validate the political preferences of certain stakeholders to preserve heritage as static and immutable at the expense of the preferences of communities that create heritage and inevitably change it. To bring but one example of engagement with cultural heritage as history, think of the movements for removing Confederate monuments in the United States,[19] or other forms of rejecting contested racist monuments. While proponents call for removing these monuments as a way of renewing our engagement with the past,[20] those who seek to keep them in place use the law (heritage law, but also criminal law that prohibits disfigurement of public property in some instances) to shore up an argument about the immutable historical truth these monuments embody, and thus indirectly the collective identity they represent – and should, in their view, continue representing.[21] Proponents of their removal instead call for different identities to be foregrounded and considered. In other words, the law enables chrononormative engagements with identity to the extent that the law sees time, and the identities produced at one point in time, as rather static or immutable commitments to a certain past. With few exceptions (which I turn to below), the law sees this identity as safeguarding a specific (and often triumphant) past of the nation as a means to consolidate identity and the nation-state with it.

Cultural heritage, however, much like any type of identity-producing process, is not static. The heritage the law pursues and the heritage with which people en-

[17] *Ibidem*, p. 8.

[18] Smith, *supra* note 4.

[19] E.L. Thompson, *Smashing Statues: The Rise and Fall of America's Public Monuments*, W.W. Norton & Company, New York: 2022.

[20] *AHA Statement on Confederate Monuments*, American Historical Association, August 2017, available at: https://www.historians.org/news-and-advocacy/statements-and-resolutions-of-support-and-protest/aha-statement-on-confederate-monuments (accessed 30 June 2025).

[21] Thompson, *supra* note 19; L. Lixinski, *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice*, Cambridge University Press, Cambridge: 2021.

gage are often dissonant, in other words. While the law insists on freezing a certain snapshot for consumption and aggrandisement of an immutable heritage, critical heritage studies has long agreed that heritage only exists because of the way people relate to it, which is bound to change.

Cultural heritage is also not about a truth; it is the selection of an artefact of history to foreground one narrative and project it into the future. While this narrative of the past may be a slice of the truth, its projection onto the future may shift and lose its appropriateness. Just as cultural artefacts more generally, heritage embodies not only historical data, but also "the traces of bodies and knowledges implicit in their preservation."[22] These traces signal affective relationships with heritage which are inherently mutable,[23] as is memory in general,[24] and specifically the memories which heritage evokes.[25] In other words, cultural heritage is about myth-making.[26] Once we let go of the idea that heritage is about truth, and understand that it is about myths and "registers of [...] possibility",[27] this insight liberates us from being beholden to the past. This liberation allows us to also think about time in non-linear ways, changing the progression of time from past through present and towards the future. Heritage stops being about the past as a static snapshot that linearly progresses onto the present and the future. It allows us to pause and ponder the implications of how Confederate monuments, for instance, were generally erected not as direct responses to the end of the Civil War in the United States, but as rebukes to the gains of the Civil Rights movement a century later. This realisation is only possible by thinking about the past in cyclical, rather than linear, ways, and about how it is leveraged to pursue present political projects with an impact on the future. Heritage thus becomes visible as a selection process that can, for instance, actively start with a future in mind and then select a narrative about the past that actively prosecutes that desirable future.

To be fair, the staticity of heritage and identity has been queried within international law itself. The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, for instance, is very clear that this type of heritage "is constantly recreated."[28] This treaty is designed to safeguard living cultural heritage as social

[22] E. Madden, *The Queer Contemporary: Time and Temporality in Queer Writing*, in: P. Reynolds (ed.), *The New Irish Studies*, Cambridge University Press, Cambridge: 2020, p. 129.

[23] On affect and heritage, *see* L. Smith, M. Wetherell, G. Campbell (eds.), *Emotion, Affective Practices, and the Past in the Present*, Routledge, London: 2018.

[24] R.M. Van Dyke, *Durable Stones, Mutable Pasts: Bundled Memory in the Alsatian Community of Castroville, Texas*, 24 Journal of Archaeological Method and Theory 10 (2017).

[25] D.C. Harvey, *Heritage Pasts and Heritage Presents: Temporality, Meaning and the Scope of Heritage Studies*, 7(4) International Journal of Heritage Studies 319 (2001), p. 320.

[26] D. Lowenthal, *The Heritage Crusade and the Spoils of History*, Cambridge University Press, Cambridge: 1998.

[27] Madden, *supra* note 22, p. 131.

[28] Art. 2(1) ICHC.

practices, rituals and ways of seeing the world and the universe that belong to communities and only matter as heritage to the extent that this connection to the community is maintained. Because of the importance of maintaining an active connection to a community, the Convention's own definition of intangible heritage determines that this heritage is meant to change over time. But this treaty, despite being the latest heritage treaty under UNESCO and harbouring ambitions to re-imagine more broadly the relationship among law, cultural heritage and identity,[29] is yet to have that type of impact. The practices of international heritage law and management still insist primarily on static or immutable heritage under a strict conservation paradigm that closely follows authorized heritage discourse.[30]

Chrononormative identity (and the heritage that embodies it) is therefore largely static, even if it need not be so. Cultural heritage law, domestic and international, enables static time and heritage. Another effect of chrononormative identity, heritage and international law more broadly is its linearity, which is often tied to certain narratives of progress.[31]

Narratives of progress are pervasive and co-occurring in international law and political discourse. For instance, in political discourse, the movement of persons through migration, much like the movement of heritage artefacts in the trafficking of cultural objects, is often assumed "as a natural temporal shift from the past to the present, from an anachronic to a postmodern temporality, whereas counterflux [movement] often gets framed as a backward move in global time."[32] To use an example from elsewhere in international law, this assumption of progress is embodied in the law when it assumes that the movement of migrants is from poorer to wealthier countries, for instance, and that this movement is a burden on those wealthier countries, disregarding the contributions that those migrants make to the receiving countries through their identities.[33] In international cultural heritage law specifically, the inclination to privilege this direction of movement is exemplified in John Henry Merryman's argument in defence of the British Museum's retention of the Greek Parthenon Marbles and other similar movements of cultural heritage,

[29] J. Blake, L. Lixinski, *Conclusions: Tightropes of the Intangible Cultural Heritage Convention*, in: J. Blake, L. Lixinski (eds.), *The UNESCO 2003 Intangible Heritage Convention: A Commentary*, Oxford University Press, Oxford: 2020, p. 487.

[30] L. Lixinski, *International Heritage Law for Communities: Exclusion and Re-Imagination*, Oxford University Press, Oxford: 2019.

[31] *See generally* Skouteris, *supra* note 12.

[32] E. Ávila, *Decolonizing Queer Time: A Critique of Anachronism in Latin@ Writings*, 70(1) Ilha do Desterro 39 (2017), p. 39.

[33] P. Werbner, *Migration and Culture*, in: M.R. Rosenblum, D.J. Tichenor (eds.), *Oxford Handbook of the Politics of International Migration*, Oxford University Press, Oxford: 2012, pp. 221–230.

under the assumption that heritage will be best preserved, for the benefit of all of humanity, in those countries.[34]

The linearity of time assumes that "how one relates to the past, present, or future [...] has significant implications for how one delineates, instrumentalizes, and 'speaks' the political", and that "[s]truggles over the experience and organization of time" are central to law and politics.[35] Whether certain acts happened before or after the adoption of relevant international instruments, for instance, means the difference between the redress or tacit validation of those wrongful acts. Therefore, deciding on the validity of the law in terms of a "before and after" has clear implications for whether international law offers a solution or an endorsement of the harms experienced, most notably as a result of colonisation. Indeed, international law supports a structure of time that speaks to "first in Europe, then elsewhere",[36] the effect of which is to assume that those places where things happen differently from Europe operate in that way because they are behind, and moving inexorably towards Europe. In other words, linear chrononormative international law corresponds to a temporal analysis and endorsement of Eurocentrism. Chrononormative international law thus repels attempts at thinking of time using non-European epistemologies. It prevents Indigenous peoples, for instance, from claiming the return of human remains housed in museums around the world, supporting a Eurocentric claim that these remains were "collected" when there was no international law requiring restitution, and overlooking the fact that, for Indigenous communities, the harm of those ancestral remains being housed outside the purview of their communities is present and ongoing and affects the future of these communities.

To counter this position of critique, an alternative might be to further radicalise multiple temporalities.[37] To do so entails understanding that globalisation, as a homogenising force, also acts upon time, and that in effect "the spatial expansion of capitalist modernity, forcing what is different and separate together, synchronically", also cancels differences in historical times across places.[38] The same happens with international law, when analyses of time in international law assume international law as an inescapable universalising force.[39] There are different ways of seeing time,

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[34] J.H. Merryman, *Thinking about the Elgin Marbles*, 83 Michigan Law Review 1881 (1984–1985).

[35] S.M. Hawthorne, *At the Edge of Time: Postcolonial Temporalities in An Intimate Encounter*, 7(2) Journal of Africana Religions 291 (2019), p. 296.

[36] D. Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference*, Princeton University Press, Princeton: 2000, p. 8.

[37] S. Helgesson, *Radicalizing Temporal Difference: Anthropology, Postcolonial Theory, and Literary Time*, 53 History and Theory 545 (2014), p. 545.

[38] *Ibidem*, p. 548.

[39] C. Tomuschat, *The Relevance of Time in International Law*, 41 Polish Yearbook of International Law 9 (2021), pp. 10–11.

with different underling premises and contingencies.[40] The politics of memory operate to highlight many of these contingencies.[41] The politics of memory as an analytical starting point acknowledges that time operates across multiple contingencies that cannot be reduced to fairly straightforward historical methodological categories, and are instead continuously evolving in how they shape and lend meaning to human life and social and power relations.[42] This shift means admitting that, for instance, as our engagement with memory changes, the decision to safeguard a monument can also change. If one takes a Confederate statue, to return to the example discussed above, it can mean that the law not only does not forbid – but in fact encourages – changes to the Confederate statue, to alter the narrative around it so as to accommodate changing social values.

Cultural heritage, understood in non-static terms, showcases these tensions and their often difficult negotiation. The way heritage narrates the past is necessarily affected by certain contingencies of the moment when the past is told, as well as the contingencies of when heritage was created in that past and in the present. As such, heritage simultaneously oscillates between negotiating the past in the present and negotiating the present through the past. This understanding qualifies us to understand the historically contingent and embedded nature of heritage, and its role in the production of power, identity and authority in any given society.[43] In other words, "what counts as heritage changes all the time; it is no finished product pickled in amber but an ever-changing palimpsest."[44]

Our relationships to heritage are not based on any version of unique historical truth, even if we often choose or at least attempt to cast heritage as historical truth to stabilise political discourse in favour of certain narratives that we select in order to privilege purportedly universal narratives of humanity. Likewise, heritage is contingent upon shifting memories, particularly in transitioning societies like those engaging with difficult monuments indicated above. Further, overlapping narratives around the same cultural heritage item also suggest that the relevant time of that heritage item is asynchronous, and a single linear narrative enforces the triumph of colonialism. One example in ICHL is the Koh-i-Noor diamond currently adorning the British crown. This large diamond (whose name is Persian for "mountain of light"), once adorned the Mughal-made throne of a Sikh ruler in Punjab (who acquired it after wars in and against the Afghan Empire). It was

[40] G. Spivak, *A Critique of Postcolonial Reason,* Harvard University Press, Cambridge, MA: 1999, pp. 37–38.

[41] V. Vinitzky-Seroussi, *What Can Transitional Justice Take from Social Memory Studies?*, 25(1) Jerusalem Review of Legal Studies 212 (2022).

[42] Hegelsson, *supra* note 37, p. 557.

[43] Harvey, *supra* note 25, p. 321.

[44] D. Lowenthal, *Why Sanctions Seldom Work: Reflections on Cultural Property Internationalism*, 12 International Journal of Cultural Property 393 (2005), p. 395.

then removed during the sacking of the palace by the British East India Company, and taken to England as a spoil of war, where it was re-cut and set in a crown. The return of this diamond from the United Kingdom is now simultaneously claimed by India, Pakistan, Afghanistan and Iran, all of whom claim ancestral rights to the jewel.[45] ICHL does not engage with any of this history, simply assuming that the possessor when the relevant international instrument was adopted in the United Nations era is the lawful possessor. Moreover, this example shows us how ICHL tries to order time by projecting national statehood backwards – after all, none of these claimant countries (with the possible exception of Afghanistan) existed as such at the time the diamond was taken to London.

Like the theorisation of time critiques of which I outlined above, international law also for the most part assumes linear and static time and privileges and authorises it. Even if some scholars[46] acknowledge that there are other dimensions of time, for the most part "the conceptual structure of international law would often seem to be presented as essentially atemporal – temporally neutral."[47] Linear, static time better serves a desire for stability in (international) law,[48] and it is therefore those versions of time – with the identities and relationships to memory which they engender – that are best positioned to be captured by international legal processes, and therefore to become authorised time.

Some of these dynamics of capture and authorisation are evident in the operation of international heritage law. At the same time, however, ICHL holds some of the potential for critique and undoing of these same dynamics, given its more immediate aperture to memory and its malleability. The following three sections engage with these binaries, however imperfect binaries are, through how international cultural heritage law engages with the three dimensions of linear time: past, present and future.

2. THE PAST AS NON-JUSTICIABLE FACT

Chrononormative international law encapsulates and isolates the past. It assumes the past to be static and beyond (re-)negotiation. The effect of this assumption is to render the past non-justiciable, for the sake of legal stability and predictability. Chrononormative international law can make the past that informed the making of a legal rule simply

[45] W. Dalrymple, A. Anand, *Koh-i-Noor: The History of the World's Most Infamous Diamond*, Bloomsbury Publishing, London: 2017.

[46] K.P. Van der Ploeg, L. Pasquet, *The Multifaceted Notion of Time in International Law*, in: K.P. Van der Ploeg, L. Pasquet, L. Castellanos-Jankiewicz (eds.), *International Law and Time*, Springer, Cham: 2022, p. 1.

[47] *Ibidem*, p. 6.

[48] Van der Ploeg, *supra* note 1, p. 325.

part of a past that is beyond the reach of the (non-retroactive) rule. This is an approach in which law assumes time, ignoring how law and time co-produce each other.[49]

For international law, it means that for the most part international legal rules do not retroact, international institutions take into account the law at the moment of the juridical fact underlying a dispute (intertemporal law) and international legal obligations enter into force only after the passage of a certain amount of time.[50] While more pragmatic approaches may be available and more desirable to invite us to not automatically discard the past (such as the doctrine of continuing violation in international human rights law, which acknowledges that violations of international law have repercussions extending into the present and future that are in themselves violations of international law),[51] they can be discarded as potentially subjective or arbitrary.[52]

The shortcoming of the more formalistic approach to the past is to discount substantive justice and changes in society that keep international legal commitments relevant (such as changes in the appreciation of Confederate monuments to see them as racist). International human rights law, read anachronistically, can have that effect, even if it can also be charged with using timelessness as a means to stabilise and legitimise legal claims.[53] International human rights law, like other fields of international law, assumes that it operates divorced from contingencies of time to assert its moral authority and legitimacy and to defend itself from attacks based on a negative casting of "politicisation" as an undesirable goal of (certain areas of) international law.[54] This erasure of the past prompted by international law assumes a redeeming narrative of progress. However, as queer thinker Ed Madden has put it, citing Heather Love, "to turn away from the past 'to a present or future affirmation' [...] is to ignore the past as past, the integrity of that history, so that it becomes 'harder to see the persistence of the past in the present,' and the ways that historical injury 'continues to structure [...] experience in the present'."[55]

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[49] E. Grabham, S.M. Beynon-Jones, *Introduction*, in: S.M. Beynon-Jones, E. Grabham (eds.), *Law and Time*, Routledge, Abington: 2019, p. 1.

[50] E. Wyler, A. Whelan, *Lawyers as Creators of Law's Temporal Reality: A Pragmatic Approach to International Law*, in: K.P. Van der Ploeg, L. Pasquet, L. Castellanos-Jankiewicz (eds.), *International Law and Time*, Springer, Cham: 2022, pp. 42–45.

[51] P.A. Ormachea, *Moiwana Village: The Inter-American Court and the Continuing Violation Doctrine*, 19 Harvard Human Rights Journal 283 (2006).

[52] Wyler, Whelan, *supra* note 50, p. 46.

[53] F. Johns, *The Temporal Rivalries of Human Rights*, 23(1) Indiana Journal of Global Legal Studies 39 (2016), p. 44.

[54] *Ibidem*.

[55] Madden, *supra* note 22, p. 139 (citing H. Love, *Feeling Backward: Loss and the Politics of Queer History*, Harvard University Press, Cambridge, Massachusetts: 2007).

Different engagements with the past can be reparative, whether by centring identities and affect,[56] or by focussing on pragmatism to "restore a welcome priority of concrete justice over legal security and nonretroactivity as favoured by formalism."[57] This approach challenges linear time and renders it cyclical instead, in that past, present and future can coexist, and one can go, for instance, from future to past seamlessly and without having to (re)visit the present.[58] In other words, different engagements with the past can be less concerned with the negative effects of reopening those decisions in the past to a stable legal order, and more invested in the need to reopen those decisions as a precondition to a new desirable future. In the ICHL context, it may mean centring what the return of human remains to an Indigenous community means for the rights of Indigenous peoples in future, rather than for the stability of the ownership rights of encyclopaedic museums that hold them in storage facilities where they cannot be accessed by anyone other than museum staff.

In the specific realm of ICHL, it is worth mentioning that from an institutional law perspective, chrononormative international law enshrines a specific view of how to value heritage. The United Nations Educational, Scientific and Cultural Organization (UNESCO), which is responsible for the basic architecture of ICHL, was created only after the Second World War and was deeply informed by the Cold War in its standard-setting action.[59] Since its creation, it has engaged in prolific standard-setting in ICHL. One result of this activity is wider international protection of cultural heritage, which is the product of events that only happened since the second half of the 20th century.[60] This temporal focus means that heritage's role in shaping identity and power in events that preceded the creation of UNESCO is largely ignored, and that those statements about power and authority are taken for granted, as untampered historical narratives.[61]

Another consequence of UNESCO and its standard-setting activity appearing only after the Second World War has to do with the nature of international law, and international treaties in particular. It is a rule of international law that treaties do not retroact, unless they explicitly indicate so.[62] Thus, the new order

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[56] R. Wiegman, *The Times We're In: Queer Feminist Criticism and the Reparative "Turn"*, 15(1) Feminist Theory 4 (2014), p. 4.

[57] Wyler, Whelan, *supra* note 50, p. 449.

[58] *Ibidem*, p. 27.

[59] On the influence of the Cold War in other aspects of international lawmaking in relation to time, *see* V. Kattan, *Self-Determination as Ideology: The Cold War, the End of Empire, and the Making of the UN General Assembly Resolution 1514 (14 December 1960)*, in: K.P. Van der Ploeg, L. Pasquet, L. Castellanos-Jankiewicz (eds.), *International Law and Time*, Springer, Cham: 2022, p. 443.

[60] Harvey, *supra* note 25, p. 325.

[61] *Ibidem*.

[62] *See e.g.* the Vienna Convention on the Law of Treaties: "Article 28. Non-retroactivity of treaties. Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party

of heritage only applies to heritage's existence after a treaty enters into force. As Third World Approaches to International Law (TWAIL) scholars would suggest, doing so reinforces empire by rendering heritage beyond the reach of international legal dispute settlement.[63] The law cannot be a tool to renegotiate the meanings and uses of heritage in the past; it can only really impact the status quo at the moment the law enters into force. That is not to say that the law cannot change that meaning at all, but it must do so using legal categories that are only prospective-looking and that engage with the past in at best rudimentary and secondary ways. Consequently, the past becomes a sacred, pure truth against which heritage is tested, as opposed to being itself a contingent phenomenon. The power relationships of the past become established truths that can certify or deny the value of heritage, instead of being themselves fluid concepts that have often created, recreated and eliminated heritage.

The drafters of the 1970 UNESCO Convention on Cultural Objects initially wanted an instrument that could promote the return of cultural objects to their countries of origin. More specifically, the newly decolonised countries that pushed for and produced the initial draft of this instrument wanted their heritage and cultural artefacts returned. They wanted to use heritage as a means to contest the power relationships that colonialism created and made possible. They also wanted to use claims over heritage to project their collective identities into the past (and, tied to these identities, their statehood). But former colonial powers defeated this proposal at the negotiating table. Thus, the treaty that was ultimately approved is very explicit in that it does not apply to situations that happened before the treaty entered into force.[64] Thus, colonialism and its history are on some level legitimised by the law, which does not allow heritage to be used as a means to contest said history or its power relationships. The law protects and enshrines colonialism through heritage, alongside its identities and power relations.[65] TWAIL engagements with

in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party." While this provision does not apply directly to a number of UNESCO treaties (concluded before the entry into force of the Vienna Convention), it applies as a matter of customary international law.

[63] *See generally* A. Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, Cambridge: 2005.

[64] *See e.g.* Art. 7, which repeatedly refers to the application of the Convention only to situations that happen "after the entry into force of this Convention."

[65] For additional discussion of this matter, *see* A.F. Vrdoljak, *International Law, Museums, and the Return of Cultural Objects*, Cambridge University Press, Cambridge: 2006.

this state of affairs have uncovered the colonial legacies of ICHL[66] and, more recently, attempted to offer pathways for change via historical analysis.[67]

To counter this now common allegation in the field of ICHL, the Operational Directives to the 1970 Convention, which were not adopted until 2015, state that

> the Convention does not in any way legitimize any illicit transaction of whatever nature which has taken place before the entry into force of this Convention nor limit any right of a State or other person to make a claim under specific procedures or legal remedies available outside the framework of this Convention for the restitution or return of a cultural object stolen or illegally exported before the entry into force of this Convention.[68]

In other words, this document seeks to distance itself from the charge of legitimising the taking of cultural objects during colonialism, while at the same time admitting its impotence to address the issue in any meaningful way. In deferring to other "procedures or legal remedies", it seems to devolve (albeit not entirely) to domestic law, where the relationship to time can arguably be less linear, or at least has been scrutinised more frequently to positive effect.[69] Because international disputes for the return of cultural objects also involve domestic litigation (as a matter of private international law,[70] in particular), domestic law can be an important vector to resist chrononormative international law in such cases.

Effectively, however, the contested ownership of cultural heritage objects becomes unregulated and non-justiciable in international law, and domestic proceedings rely on rules about prescription or state immunity to move claims beyond the reach of the law. Disputes can still be resolved using diplomatic means and ethical protocols, and the existence of international legal commitments – even if inapplicable – often supports restitution, particularly in ethically sympathetic contexts like the return of Nazi-looted artefacts.[71] In the context of returning cultural objects

[66] *See e.g.* B. Goel, *"All Asiatic Vague Immensities": International Law, Colonialism and the Return of Cultural Artefacts,* TWAILR: Reflections No. 41/2022; and S.M. Spitra, *Civilisation, Protection, Restitution: A Critical History of International Cultural Heritage Law in the 19th and 20th Century*, 22(2) Journal of the History of International Law 329 (2020).

[67] L. Lixinski, *A Research Agenda for Cultural Heritage Law*, Edward Elgar Publishing, Cheltenham: 2024, pp. 121–147.

[68] Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970), C70/15/3.MSP/11 – Annex (March 2015), para. 102.

[69] T. Soave, *The Politics of Time in Domestic and International Lawmaking*, in: K.P. Van der Ploeg, L. Pasquet, L. Castellanos-Jankiewicz (eds.), *International Law and Time*, Springer, Cham: 2022, pp. 162–164.

[70] For a comprehensive discussion connecting public and private international law, *see* A. Chechi, *The Settlement of International Cultural Heritage Disputes*, Oxford University Press, Oxford: 2014.

[71] For a summary through the lens of a case study, *see* A. Chechi, *The Gurlitt Hoard: An Appraisal of the Role of International Law with Respect to Nazi-Looted Art*, 23(1) The Italian Yearbook of International Law 199 (2014).

looted by the Nazis or seized by colonial powers, the issue of the arbitrariness or subjectivity of restitution can arise as an argument against return, but these arguments have increasingly fallen to popular pressure for restitution in countries like France, Germany and the Netherlands, to name a few.[72]

More broadly, the example of ICHL shows that international law can have the effect of freezing time in an atemporal existence from which the only way out is forwards, tied to a narrative of progress that assumes synchronicity and its desirability. Lawmakers and legal decision-makers then wrap identities around a Eurocentric model of statehood, politics and overall international legal behaviour which is at the service of nation-states, rather than communities, and which conflates stability and staticity. That this Eurocentric model reinforces certain modes of power and wilfully excludes others seems to have little impact on how we perceive the past. But ICHL also shows that there are pathways, if relatively under-developed ones, to query that past and reopen these conversations. These pathways are grounded on more pragmatic engagements with the law and its temporalities that allow for substantive justice outcomes to be foregrounded at the expense of stability-orientated formal rules. The subjectivity of pragmatic responses to claims for the return of cultural objects, though still an issue, does not trump the growing international consensus in favour of substantive outcomes (like the return of cultural objects taken by Nazis) that international law helps cement.

3. THE PRESENT AS A MIDDLE POINT OF CONTINGENCY

Chrononormative international law, seen in the present, in many ways is the connector between the past and the future. It is the moment in which the lawmaker selects a past and wipes that slate clean (or at least parts of the slate), with a view to not disrupting the present too much and creating a similarly stable (and short-term) future. It is when international law "settles" any disputes over the Koh-i-Noor diamond by validating British possession. This negotiated present is one where a legal regime's contingencies manifest themselves most strongly, through legal imaginaries and political compromises, and are baked into the architecture of said regime. A chrononormative international law focussed on the present, therefore – far from being a moment of technical engagement with temporalities – is one where politics is most alive, and one which ostensibly resolves said politics, while having lasting impacts on the effects and effectiveness of international legal regimes.

[72] For a collection of essays, *see* the articles in 8(2) Santander Art and Culture Law Review (2022). These are described in the introduction by the special issue's editors – E. Campfens, S. Ranganathan, *Colonial Loot and Its Restitution: Current Developments and New Prospects for Law*, 8(2) Santander Art and Culture Law Review 12 (2022), pp. 12–13.

A focus on the present is pervasive across much of international law, as a means of crystallising and leveraging "tipping points", where one can perceive a change that is in fact incremental and largely continuous with the past. A key example in general international law is state succession, where the notion of "instantaneousness" seems to prevail over the gradual pace of change that reflects the reality of the dissolution and reemergence of statehood.[73] Related to state succession but with its own idiosyncrasies, peace agreements – another staple of general international law – show these tensions well, in that they are products of the achievable compromises in the present, while mediating between past and future.[74] The concerns of the present, dressed as change, in fact translate into calls for continuity with the past and a fear of radical ruptures. In doing so, international law ultimately works more conservatively, and the linear treatment of time contributes to the difficulties of the field in addressing the resolution of armed conflicts.[75]

The focus on the present also affects other large fields of international law, with the effect of reinforcing an appearance of stability that leaves broader projects unresolved to ultimately generate instability. One example is international human rights law. The field is often preoccupied with addressing human rights concerns "in real time" so as to be responsive to human rights violations and able to redress it. At the same time, focussing on the present as a single dimension of time allows the field to claim atemporality, which shores up its moral legitimacy. If the field is atemporal, it is not exposed to political contingencies, as the reasoning goes. This move, however, can make international human rights law disconnected from the political realities it is meant to change in the discharge of its emancipatory promise.[76] Whereas the objective of this attachment to the present is to stabilise and enhance the legitimacy of international human rights doctrine, the broader circulation of capital and ensuing circulation of human rights subjects and concerns has rendered this present-based stability untenable.[77]

The concerns with the present not only shore up legitimacy as a tool for effectiveness, as human rights law shows, but also, across all of international law, renders legal regimes viable in the first place. Viability in relation to uses of the present can happen in at least two interrelated ways: firstly, time counted in the present serves

[73] A. Garrido-Muñoz, *Of Relevant Dates and Political Processes: State Succession and the Dissolution of the Former Yugoslavia*, in: K.P. Van der Ploeg, L. Pasquet, L. Castellanos-Jankiewicz (eds.), *International Law and Time*, Springer, Cham: 2022, pp. 278–279.

[74] P. Kastner, *Peace Agreements between Rupture and Continuity: Mediating Time in International Law*, in: K.P. Van der Ploeg, L. Pasquet, L. Castellanos-Jankiewicz (eds.), *International Law and Time*, Springer, Cham: 2022, p. 407.

[75] *Ibidem*.

[76] Johns, *supra* note 53, pp. 39 and 44.

[77] *Ibidem*, p. 57.

as a definitional threshold for a regime to operate, and secondly, the ensuing issue of whether a regime is of interest to potential parties is connected to what they get from the regime (that is, the moment in the present when the state takes the decision to join a regime).

Firstly, in ICHL, the law often defines heritage as necessarily being of a certain age. That threshold can be an actual age requirement, such as 100 years for furniture or certain antiquities under the 1970 Convention,[78] or 100 years underwater for the Underwater Cultural Heritage Convention.[79] Or it can simply mean that many legal definitions of heritage require it to be intergenerational, or to be of importance for future generations of a given group, such as the ICHC's definition of intangible heritage as being "transmitted from generation to generation."[80] The latter definitional threshold is one that requires assessment in the present about whether there has been a past building enough momentum towards the present – specifically because it queries in the present whether culture has been practiced for long enough to be considered "heritage", and once that threshold is met it is the narration of the heritage in the present, with a view to the future, that matters. It shows how our use of culture reaches a tipping point after which it can be considered heritage, but one that is largely continuous with past engagements with those cultural forms.

The processes through which these instruments recognise and authorise heritage seem to create a unidirectional, linear relationship with time, in which heritage is (re)created by the act of international safeguarding. For instance, the World Heritage Convention, the flagship UNESCO instrument in this realm, only speaks of heritage's importance for future generations.[81] At the same time, however, it chooses a narrative in the present about why that heritage is valuable, in the terms set by the territorial state in its presentist social and political configuration, and endorsed by experts under the guise of atemporal neutrality. The contingencies of heritage at the moment the tradition was created seem to be ignored if they happened before the relevant international instrument became applicable (which happens nearly always, given the relative newness of these instruments, which have not been around for more than one or two generations).

Secondly, the time-based definitional threshold of heritage, which the Convention on the Protection of the Underwater Cultural Heritage (UCHC) uses, is also an incentive for regime engagement from the perspective of states parties. Australia is an example of a country that, after initially rejecting the treaty, is now considering ratifying it because WWI wrecks and the corpses they contain have reached the age

[78] Art. 1(k) of the 1970 Convention for furniture and Art. 1(e) for other collections.
[79] Art. 1.1.a UCHC.
[80] Art. 2.1 ICHC.
[81] Art. 4 WHC.

threshold to be protected by the UCHC regime. This legal development, at the behest of civil society representing war veterans, shows how a technical definitional question, often understood as largely separate from political and affective processes on the ground, in fact embodies contingencies that deny the idea of time as linear and progressive.[82]

On 24 August 2018 the Australian Parliament enacted the Underwater Cultural Heritage Act 2018 (Underwater Heritage Act), which came into effect on 1 July 2019, replacing the Historic Shipwrecks Act 1976 (Historic Shipwrecks Act). While it is not in itself a ratification of the UCHC (even if it may lead to it), the Australian government's explanation of the decision to adopt the new legislation states that the new legislation is based partly on "consideration of the requirements arising from the UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage."[83] It further states that the Act "is aligned with the UNESCO 2001 Convention, facilitating Australia to be part of the global community's response to illegal salvaging, looting and trafficking of underwater cultural heritage."[84]

Australia's renewed engagement with the UCHC privileges state vessels and what they contain. The legal regime of the UCHC reserves a special position for state vessels in favour of underwater heritage as time capsules of nation-building. In particular, a key concern with respect to these vessels is "to preserve the sanctity of the site and to ensure that any human remains are afforded appropriate treatment", bearing in mind that "these sites will represent the gravesites of those whose lives were lost in the service of their country."[85]

ICHL shows that an attachment to the present, rather than a claim to timeless legitimacy or a means to stabilise contested political objectives and to crystalise them into law, is simply another layer of contingency that clearly projects into the future (and, in some ways, depends on this projection). In doing so, it starkly shows that the present – as an "in-between" dimension of time, ephemerally caught between a past from which it seeks continuity and a future into which it projects the same continuity – can only make sense if leveraged against those dimensions. The present

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[82] For more details, *see* Lixinski, *supra* note 21.

[83] *Underwater Cultural Heritage Act 2018*, Australian Government, Department of Environment and Energy, 10 March 2002, available at: https://www.environment.gov.au/heritage/underwater-heritage/underwater-cultural-heritage-act (accessed 30 June 2025).

[84] *Ibidem*. *See also* the Second Reading Speech, which is key to understanding the purpose of legislation in Australia and an important interpretive tool under Australian Law. The speech discusses as a key policy motivation for the Act "Australia's consideration of ratification of the UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage." Underwater Cultural Heritage Bill 2018 – Second Reading (House of Representatives on 28 March 2018, Senate on 27 June 2018), available at: https://tinyurl.com/4pczbh6r (accessed 30 June 2025).

[85] S. Dromgoole, *Underwater Cultural Heritage and International Law*, Cambridge University Press, Cambridge: 2013, p. 134.

becomes devoid of autonomous possibilities, which undermines the possibility of action in international law for the sake of stability between past and future. The present still operates as a static snapshot of the past with which it is continuous, and international legal processes project that continuity into the future in trying to increase their legitimacy, at the cost of emancipatory possibilities. This configuration of the present calls the usefulness of linear time into question, as present shifts and timelessness proves unachievable.

4. THE FUTURE AS A NON-COMMITTAL COMMITMENT

Given the law's role of shaping social relations, it should be unsurprising that chrononormative international law would aim at the future. However, this commitment seems for the most part to be assumed (much like the law's general relationship with time), rather than explicit: "[i]t is for the future that law is made."[86] One effect of this assumption is to normalise chrononormative linearity and narratives of progress; another is to render future identities static. Both those factors neutralise or at least pre-empt certain forms of political engagement with international legal regimes. A chrononormative international law focussed on the future, in other words, stabilises identities in favour of unidirectional linearity towards a future whose apolitical character is assumed or desired. In aiming for an absence of politics, it foregrounds certain political commitments and attempts to eliminate others, and these unselected political projects continue to be sources of instability enabled, and in some ways necessitated, by a chrononormative future that commits to a project by default.

International law often falls short of addressing change as being brought about by the future because it misunderstands how individuals experience change personally and in their identity-forming social interactions.[87] This "inaccurate sense of how time passes" creates fictions which assume that legal doctrines and their interpretations are true at frozen moments in time and for perpetuity.[88] In other words, international law often assumes that identity is static and that the need for stability and predictability trumps changes in individuals' and peoples' engagement with international law. As identities and social, cultural and political commitments change, so inevitably does their commitment to international legal regimes, and therefore the entrenchment of these very regimes. In other words, if these regimes are static, they will invariably lose relevance and their drive to stabilise social rela-

[86] G. Messenger, *The Development of International Law, Perception, and the Problem of Time*, in: K.P. Van der Ploeg, L. Pasquet, L. Castellanos-Jankiewicz (eds.), *International Law and Time*, Springer, Cham: 2022, p. 351.

[87] *Ibidem*, p. 333.

[88] *Ibidem*, p. 336.

tions will be always temporary. In rejecting changes to identity, chrononormative international law focussed on the future thus falls short of its promise of stability, and in fact generates instability.

The dissonance, or asynchrony, between international legal sources that claim to be stable and timeless, and the pace of change in international affairs (and the world at large), underpins the problem of change in international law.[89] Conceptual work in other fields of international law uses the idea of social acceleration to describe similar effects. Social acceleration also challenges this notion of a stable chrononormative international law focussed on the future by showing that the confluence of capital, technological change and the contemporary nation-state does not fit a linear, predictable imaginary. In international environmental law,[90] for instance, social acceleration shows that linearity is incongruous and an obstacle to the development of resilience.[91]

ICHL too assumes a static future, bound to its linear connection to the past. With the exception of the ICHC, discussed above, ICHL sees heritage as immutable. The 1997 UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations[92] engages with the way the present relates to the future in ways that are relevant for our purposes, given its source. This Declaration reaffirms the importance of international human rights instruments in understanding the rights of future generations,[93] as well as the key role of environmental instruments.[94] Both environmental law and ICHL share this idea of choosing a present to imagine

[89] Van der Ploeg, *supra* note 1, p. 328.

[90] J. Ellis, *Change and Adaptation in International Environmental Law: The Challenge of Resilience*, in: K.P. Van der Ploeg, L. Pasquet, L. Castellanos-Jankiewicz (eds.), *International Law and Time*, Springer, Cham: 2022, p. 360.

[91] *Ibidem*, p. 375.

[92] Declaration on the Responsibilities of the Present Generations Towards Future Generations, 12 November 1997.

[93] Preamble: "Considering the provisions of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both adopted on 16 December 1966, and the Convention on the Rights of the Child, adopted on 20 November 1989, [... and] Stressing that full respect for human rights and ideals of democracy constitute an essential basis for the protection of the needs and interests of future generations." *See also* Art. 2: "Freedom of choice. It is important to make every effort to ensure, with due regard to human rights and fundamental freedoms, that future as well as present generations enjoy full freedom of choice as to their political, economic and social systems and are able to preserve their cultural and religious diversity."

[94] Preamble: "Recalling that the responsibilities of the present generations towards future generations have already been referred to in various instruments such as the Convention for the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of UNESCO on 16 November 1972, the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, adopted in Rio de Janeiro on 5 June 1992, the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development on 14 June 1992, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, and the United Nations General Assembly resolutions relating to the protection of the global climate for present and future generations adopted since 1990."

a future.[95] The World Heritage Convention is one of these environmental instruments, and the only heritage treaty explicitly mentioned in the Declaration (which was adopted before the ICHC).

The Declaration focusses on the relationship between the present and the future, without mentioning the role of the past. While that choice is understandable, it also sits uneasily with heritage, and it assumes a chrononormative stability that largely erases the past, in line with what I argued above. And the erasure of the past allows for the future to be assumed. For instance, the one provision in the Declaration that makes explicit reference to the role of heritage is restricted to urging recognition of the responsibility for identifying and safeguarding heritage, taking for granted that heritage will play a positive role for future generations and not engaging with its role in shaping the present through its past.[96] Therefore, in an instrument that tackles temporalities head-on, UNESCO steers away from engaging with the past and focusses instead on the present and future. But, in doing so, it also ignores the contingencies that determine the present,[97] and consequently the future.

ICHL does not anticipate the idea of loss of heritage, either, despite its productive potential.[98] Instead, it largely criminalises and punishes change (which it frames alternately as destruction,[99] damage[100] or loss).[101] Change is irreconcilable with the safeguarding function of ICHL, and in fact heritage that changes too much can lose the protection of ICHL. Those responses tend to frame heritage safeguarding as all or nothing – change is negative, and to be avoided. This position gets in the way of the adaptability of identity and disconnects those changes from the law that is meant to safeguard identities. In this regard, the example of change brought about by non-human action is illustrative of the shortcomings of seeing change to heritage as an irreconcilable event. ICHL is less responsive to climate

[95] In an environmental and feminist context, *see* B. Goldblatt, S. Hassim, *"Grass in the Cracks": Gender, Social Reproduction and Climate Justice in the Xolobeni Struggle*, in: C. Albertyn, M. Campbell, H. Alvair Grarcia, S. Fredman, M. Machado (eds.), *Feminist Frontiers in Climate Justice: Gender Equality, Climate Change and Rights*, Edward Elgar Publishing, Cheltenham: 2023, p. 260.

[96] Art. 7: "Cultural diversity and cultural heritage. With due respect for human rights and fundamental freedoms, the present generations should take care to preserve the cultural diversity of 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."

[97] For a collection of essays on contingency in international law, *see* I. Venzke, K.J. Heller (eds.), *Contingency in International Law: On the Possibility of Different Legal Histories*, Oxford University Press, Oxford: 2021.

[98] C. DeSilvey, R. Harrison, *Anticipating Loss: Rethinking Endangerment in Heritage Futures*, 26(1) International Journal of Heritage Studies 1 (2020), pp. 3–4.

[99] F. Lenzerini, *Intentional Destruction of Cultural Heritage*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford: 2020, p. 75.

[100] E. Novic, *Remedies*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford: 2020, p. 642.

[101] DeSilvey, Harrison, *supra* note 98.

change resulting directly from social acceleration and to the needs of mitigation. It engages little with other change-focussed frameworks such as disaster response law, as well.[102] Once individuals' and groups' relationships with identity and the heritage that embodies it are understood to be more malleable and subject to change, as the ICHC suggests, then the fable of chrononormative stability and its ensuing erasure of the malleability of identity can be challenged.

Elsewhere in international law, transitional justice frameworks, which align with the example of peace treaties in the previous subsection,[103] can also help challenge static futures. They showcase, as with climate change, that individuals' and peoples' relationships with the world around them are meant to shape a future, but also change in response to that future. Legal frameworks that attempt to capture those relationships and the identities that underpin them are bound to fail and become irrelevant if they do not accommodate for the possibility of those changes at a more granular level of identity. Doctrines such as fundamental change of circumstances in the general secondary rules of international law do not foreground identity-based relationships in the same way, nor do they allow for regimes to adapt; rather, they simply preclude wrongfulness and therefore exclude the regime's application. ICHL shows us that resilient international legal regimes need to resist the chrononormative impulse towards (a version of) stability and to better deal with change from the perspective of the identities of those whom international law seeks to help.

5. RESISTING CHRONOMORMATIVE INTERNATIONAL LAW

The three linear dimensions of time (past, present and future) fail even as a heuristic, in that there are too many spillovers to warrant a characterisation of time that assumes these three dimensions as separate categories. The chrononormative assumptions and effects of this linear and static understanding of time, as ICHL shows, do not function. ICHL does attempt to adhere to and enforce static and linear time, however, much like it attempts to enforce and authorise static identities. It does so in the name of a perceived need for stability. As the previous sections show, though, normative or factual instability is often the result of these normative commitments. Minority identities can be oppressed in the name of national identity projects, colonial restitution claims can get suspended or unresolved and ICHL can fail to engage productively with change and adaptation that keeps heritage alive and relevant for communities. Examples from other fields of international law – such as human rights, forced migration, environmental law and the law of

[102] G. Bartolini, *Cultural Heritage and Disasters*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford: 2020, p. 145.

[103] Kastner, *supra* note 74.

treaties – showcase how these tensions in ICHL resonate throughout international law more broadly.

Examining chrononormative international law underscores how in fact time is not linear, as the artificiality of the heuristic confirms. If chrononormative stability cannot be achieved, then we are better off embracing anti-synchronous, radical time to pursue justice. This anti-synchronous time is non-linear; it defaults to pragmatism as a proxy for substantive justice.[104] It presents "a circular, rather than sequential, view of time", based on a constant back-and-forth between law and reality.[105] It makes room for non-European epistemologies coming from queer, feminist and anti-colonial critiques of Eurocentrism, also helping entrench international norms at the local level.

The risk with this approach is that, in seeking to have law that is not in force trump law that is in force but is ineffective,[106] one can engender new forms of violence through (international) law, as international lawyers deploying queer theory teach us.[107] At times, as the 1970 Convention I discussed above shows in the context of colonial restitution, even the formality of hard-fought but ultimately less effective international treaties can be important to certain historically disadvantaged states, and these laws can still influence ethical outcomes that might not be captured by legal analysis.

Further, to the extent that pragmatism relies on the meaning given to a norm by a relevant community to ensure clarity,[108] the pressures of international legal structures that, allied with capitalism, have brought us to chrononormative international law may be too strong in providing those open-ended meanings. We might need a new imaginary that does away with the fiction of synchronicity and stability, where chrononormative international law is turned upside down and becomes anti-synchronicity. Pragmatic engagements may still be helpful,[109] as long as they do not default to old structures as the more present meaning for temporal querying.

In that respect, anti-synchronous time rejects chrononormative stability. While seemingly unstable at first, anti-synchronous time promotes better engagement with identity and rejects notions of linear progress that European international legal projects are centred on. It pluralises international lawmaking and rejects the discarding of the epistemologies of the Other. It can in fact produce better out-

[104] Wyler, Whelan, *supra* note 50, p. 27.

[105] *Ibidem*, p. 41.

[106] *Ibidem*.

[107] For a critique of the violence of international law, *see generally* V. Hamzić, *International Law as Violence: Competing Absences of the Other*, in: D. Otto (ed.), *Queering International Law: Possibilities, Alliances, Complicities, Risks*, Routledge, New York: 2018, p. 77.

[108] Wyler, Whelan, *supra* note 50, p. 45.

[109] *Ibidem*, p. 49.

comes for international lawmaking and can stabilise the legitimacy of international law, not as a tool for the perpetuation of power and racism or other forms of identity-based yet structural power imbalances, but as the terrain where one can find common ground for human experience that is not violent or colonial, that does not lock historically disadvantaged groups and states into passive victimhood and vulnerability. It can move us away from the linearity of "development-time" and its capitalist expansionist trappings.[110] Agency can be recentred because it is no longer measured against a static Eurocentric ideal. ICHL shows us how the porousness of time can be leveraged to understand and productively engage the malleability of time and identity. Despite its shortcomings, ICHL has much to teach international law more generally.

CONCLUDING REMARKS

Chrononormative international law uses static, linear time to regulate human activity towards stability. In doing so, however, it often engenders instability, as international cultural heritage law shows. The heuristics of linear time, alongside their constitutive effects, do not withstand closer scrutiny. ICHL, because of its predisposition to focus on identity, is an optimal battleground to highlight the incongruities of chrononormative international law, and to start exploring alternative, anti-synchronous ways of understanding international law's relationship with time. A thicker engagement with time via identity and a richer understanding of contingencies allow us to nurture the emancipatory potential of international law beyond the universalistic (read: Eurocentric) assumptions of how law and time interact. ICHL in particular offers us a window to perceive and untangle these challenges because of its close affinity to identity. We learn through ICHL that it is possible to embrace the changeability of international law's regulatory objects, and that in effect this change is necessary if international law is to serve peoples, rather than states as abstract entities and imperfect proxies for peoples.

The insights from ICHL also echo elsewhere in international law. International law's predisposition towards stability exists elsewhere, as the examples I discussed in this article show. The desire for stability is one that best serves a state-centric and Eurocentric international legal order. By refocussing international law's mission on the rights and emancipation of people, the role of memory – alongside its contingency, malleability and non-linearity – becomes more apparent, and international law's tendency to render memory and identity static can be problematised as more than an exception to an otherwise functioning legal order. Malleability can

[110] Goldblatt, Hassim, *supra* note 95, p. 266.

become the rule, rather than the exception, and can make anti-synchronocity the new baseline. Other modes of seeing, capturing and experiencing time can come to the foreground when they do not have to operate as carveouts to static linearity. We open ourselves to engage more pragmatically with substantive justice outcomes in a way that serves concrete populations, rather than abstract states and abstract expectations of unidimensional stability and order. Once upon a time, we made international law to service a static status quo. But our happily ever after depends on a radical reconfiguration of that relationship.