

## Cultural property v. cultural heritage: A “battle of concepts” in international law?

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### **The influence of domestic legal traditions in the elaboration of multilingual international conventions**

According to an established rule of customary international law, the destruction, pillage, looting or confiscation of works of art and other items of public or private cultural property in the course of armed conflicts must be considered unlawful. The illicit character of the above practices may be asserted at least since the codification of that rule in the Hague Convention respecting the Laws and Customs of War on Land, adopted and revised respectively by the First and Second Peace Conferences of 1899 and 1907, and in the 1907 Hague Convention concerning Bombardment by Naval Forces in Time of War.

Although the opening sentence appears clear and correct, doubt may arise as to the meaning of some concepts expressed and hence the scope of the protection granted by the relevant international law rules. The scope of international legal protection cannot be determined without defining the scope of application of those rules.

In legal doctrine, the difficulty of providing a sole and universally accepted definition of the interests and values protected has been encountered by a number of authors, who have emphasized the difference between the concept of “cultural property” and the broader concept of “cultural heritage”.<sup>1</sup>

It is well known that the first use of the term *cultural property* in an international legal context occurred in the 1954 Hague Convention for the Protection of *Cultural Property* in the Event of Armed Conflict,<sup>2</sup> followed some fifteen years later by the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of

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Ownership of *Cultural Property*.<sup>3</sup> The same approach is taken in the Second Protocol to the Hague Convention of 1954 for the Protection of *Cultural Property* in the Event of Armed Conflict, of 26 March 1999,<sup>4</sup> which applies to both international and non-international armed conflicts. Unlike the examples mentioned above, the more recent Unidroit Convention of 24 June 1995 relates to the slightly different concept of stolen or illegally exported "cultural objects",<sup>5</sup> although it is of interest to note that most legal writers, including some who directly participated in drafting that Convention, still use the term "cultural property" in their commentaries on it.<sup>6</sup>

Other legal instruments expressly refer to the concept of heritage, notably some international agreements executed under the auspices of the Council of Europe, such as the 1969 European Convention on the Protection of the Archaeological Heritage and the 1985 Convention for the Protection of the Architectural Heritage of Europe. It would be wrong, however, to think that the said choice of terminology reflects a theoretical approach specific to that international organization, for UNESCO — unlike its previous usage — refers to that same concept in the 1972 Convention concerning the Protection of the World *Cultural and Natural Heritage*.<sup>7</sup> It is

1 See Anna Przyborowska-Klimczak, "Les notions de 'biens culturels' et de 'patrimoine culturel mondial' dans le droit international", *Polish Yearbook of International Law*, Vol. XVIII, 1989-1990, p. 51; Lyndel Pratt and Patrick J. O'Keefe, "'Cultural heritage' or 'cultural property'?", *International Journal of Cultural Property*, Vol. 1, 1992, p. 307; Roger O'Keefe, "The meaning of 'cultural property' under the 1954 Hague Convention", *Netherlands International Law Review*, Vol. XLVI, 1999, p. 26; Janet Blake, "On defining the cultural heritage", *International and Comparative Law Quarterly*, Vol. 49, 2000, p. 61.

2 Emphasis added.

3 Emphasis added.

4 Emphasis added.

5 Emphasis added.

6 See, for instance, Kurt Siehr, "The Unidroit Draft Convention on the International Protection of Cultural Property", *International Journal of Cultural Property*, Vol. 1, 1992, p. 321; Riccardo Monaco, "Primo commento della Convenzione di Roma sui beni culturali rubati o illecitamente esportati", *Rivista di studi politici internazionali*, Vol. 62, 1995, p. 500; Marina Schneider, "La Convention Unidroit sur les biens culturels volés ou illicitement exportés", *Nouvelles de l'ICOM*, Vol. 49, 1995, p. 18; Vieira Loureiro, "A proteção internacional dos bens culturais: uma nova perspectiva", *Revista dos Tribunais*, 1995, p. 364; Ridha Fraoua, "Projet de Convention de l'Unidroit sur le retour international des biens culturels volés ou illicitement exportés", *Aktuelle Juristische Praxis*, 1995, p. 317; Pierre Lalive, "Une avancée du droit international: la Convention de Rome d'Unidroit sur les biens culturels volés ou illicitement exportés", *Revue de droit uniforme*, Vol. 1, 1996, p. 40; Manlio Frigo, "La convenzione dell'Unidroit sui beni culturali rubati o illecitamente esportati", *Rivista di diritto internazionale privato e processuale*, Vol. 32, 1996, p. 435; Manlio Frigo, *La circolazione internazionale dei beni culturali. Diritto internazionale, diritto comunitario, diritto interno*, Giuffrè, Milano, 2001.

7 Emphasis added.

found again in the wording of the more recent UNESCO Convention for the Protection of Underwater *Cultural Heritage* of 2 November 2001,<sup>8</sup> the UNESCO Convention for the Safeguarding of the Intangible *Cultural Heritage* and the UNESCO Declaration concerning the Intentional Destruction of *Cultural Heritage*, both of 17 October 2003.<sup>9</sup>

It is evident that the concept of cultural heritage, if compared to that of cultural property, is broader in scope, as it expresses a “form of inheritance to be kept in safekeeping and handed down to future generations”.<sup>10</sup> Conversely, the concept of cultural property is “inadequate and inappropriate for the range of matters covered by the concept of the cultural heritage”,<sup>11</sup> which includes, *inter alia*, the non-material cultural elements (like dance, folklore, etc.) more recently deemed entitled to legal protection at the international level. This can readily be seen from the text of Article 2 of the above Convention for the Safeguarding of the Intangible Cultural Heritage of 17 October 2002, which includes in the definition of “intangible cultural heritage” the practices, expressions, knowledge, skills — as well as the instruments, objects, artefacts and cultural spaces associated therewith — that communities, groups and in some cases individuals recognize as part of their cultural heritage.

Whatever the relevant legal regime of public or private ownership under domestic legislation may be, the protection of cultural property is clearly governed by the rules laid down in the aforesaid international agreements on the circulation of movables, i.e. works of art and objects of artistic, historic and archaeological interest. Such property can and indeed has been conceived as a sub-group within the notion of cultural heritage, the protection of cultural heritage being “capable of encompassing this [within its] much broader range of possible elements, including the intangibles”.<sup>12</sup> On the other hand, the “equivalent” of the term cultural property (e. g. *beni culturali*) certainly includes not only immovables but also intangibles and/or non-material elements, at least for the civil law countries.

Even though domestic law — which provided legal protection well before the adoption of international instruments — had frequent recourse in

<sup>8</sup> Emphasis added. See Roberta Garabello and Tullio Scovazzi (eds.), *The Protection of the Underwater Cultural Heritage: Before and after the 2001 Unesco Convention*, Martinus Nijhoff Publishers, Leiden, 2003.

<sup>9</sup> Emphasis added.

<sup>10</sup> See Blake, *op. cit.* (note 1), p. 83.

<sup>11</sup> See Prött and O’Keefe, *op. cit.* (note 1), p. 319.

<sup>12</sup> See Blake, *op. cit.* (note 1), p. 67.

the past to terms such as “monuments”, “objects”, “antiquities” or “sites”, the English usage of the term cultural property, conceived as an expression of and testimony to human creation, now has a wider and more significant application.

It must be stressed that in our domain the various language versions of the terms under consideration here constitute a major difficulty, as they often do not provide a correct translation of the same concept. Rather than a mere shortcoming arising from different language versions conveying the same concept, this becomes a more substantive matter of different legal concepts. This is particularly true when considered that the term cultural property is commonly translated into terms such as “biens culturels”, “beni culturali”, “bienes culturales”, “Kulturgut”, and “bens culturais”, which are not only the (apparent) equivalent of it in other languages, but may also have a slightly but significantly different legal meaning in the relevant domestic legal systems.

The same applies to the term cultural heritage: expressions such as “patrimoine culturel”, “patrimonio culturale” and “património cultural” do not convey exactly the same or an equivalent concept.

Consequently, one of the difficulties to be borne in mind when starting negotiations on the drafting of a bilingual international text authentic in both languages, such as English and French, is to ensure that the different language versions not only convey the same meaning but also — if not primarily — take into account and express the different legal traditions.

### **An example of misleading drafting: the various authentic texts of the EC Treaty<sup>13</sup>**

An example from international practice of how inaccurate drafting of the various authentic texts of a treaty may render the subject matter misleading can be drawn from the experience of the European Union.

With the exception of Article 151 of the EC Treaty, which is a general provision on cultural cooperation among the parties and which makes an

<sup>13</sup> Treaty on European Community. As it is known the Treaty establishing the European Economic Community was originally signed in Rome on 25 March 1957, entered into force on 1 January 1958 and subsequently amended by the Treaty on the European Union, signed in Maastricht on 7 February 1992 and entered into force on 1 November 1993 — which changed the name of the European Economic Community to simply the European Community — by the Treaty of Amsterdam, signed on 2 October 1997, entered into force on 1 May 1999 — which, *inter alia*, changed the numbering of the articles of the EC Treaty — and by the Treaty of Nice, signed on 26 February 2001 and entered into force on 1 February 2003.

indefinite reference to a “common cultural heritage” of the Member States, Article 30 is in fact the only provision in the Treaty expressly concerned with the circulation of works of art. It is important to note *i*) that Article 30 belongs to Part 3 (“Community policies”), Title 1 (“Free movement of goods”), Chapter 2 (“Prohibition of quantitative restrictions between member States”), of the EC Treaty, and *ii*) that Articles 28 and 29 specify the principles contained in Article 14 on the progressive establishment of the internal market and Article 23 on the customs union covering all trade in goods by stating two general rules, which stipulate that quantitative restrictions on both imports and exports as well as all measures having equivalent effect shall be prohibited.

It is absolutely clear that in such a context Article 30 is an escape clause vis-à-vis the above general principles and rules, for it states that: “The provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security, (...) the protection of national treasures possessing artistic, historic or archaeological value ...”.

In this regard a first interpretative problem, closely related to the meaning of Article 30 of the Treaty in the various authentic texts, may arise over the relevant derogations to the quantitative restrictions on the export, import and transit of goods, and the different consequences thereof for the powers granted to the Member States. For whereas, according to the Italian (Spanish, Portuguese) text of Article 30 of the Treaty, the provisions of Articles 28 and 29 (formerly Articles 34 and 30, before the entry into force of the Amsterdam Treaty) shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds – among others – of the protection of the “patrimonio artistico, storico o archeologico nazionale”, (“patrimonio artístico, histórico o arqueológico nacional”, “património nacional de valor artístico, histórico ou arqueológico”), other authentic texts (notably the English and the French texts) refer to the protection of “national treasures of artistic, historic or archaeological value” and to “trésors nationaux ayant une valeur artistique, historique ou archéologique”.<sup>14</sup>

In other words, it is clear that “national heritage” and “national treasures” evoke two different concepts. Consequently the Italian, Spanish, Portuguese texts appear *prima facie* to give the national authorities a broader

<sup>14</sup> Emphasis added. The German text of Article 30 of the EC Treaty is slightly different, as it refers to “Kultur[un]g[t] von künstlerischem, geschichtlichem oder archäologischem Wert”.

discretionary power in deciding on the categories of goods to be included in the national protective legislation, and more specifically on limitations to their movement, a power which seems much more restricted in other authentic language versions.

The fact that an international treaty authenticated in two or more languages may differ even significantly in the various authentic texts is certainly not surprising. This is confirmed by the existence of an ad hoc rule of interpretation in customary international law as codified by the 1969 Vienna Convention on the Law of Treaties. Article 33, paragraph 4, of that Convention stipulates that except where a treaty expressly provides, in case of divergence, for a particular text to prevail, "when a comparison of the authentic text discloses a difference of meaning which the application of articles 31 and 32 [the other relevant norms of the Convention] does not remove, the meaning which best reconciles the texts, *having regard to the object and purpose of the treaty*, shall be adopted".<sup>15</sup>

If Article 30 of the EC Treaty is interpreted in the light of this rule, the conclusion would almost certainly be that unlike the English and French texts, the Italian, Spanish and Portuguese texts do not strictly comply with the requirements of Article 33 of the Vienna Convention, in that Article 30 of the EC Treaty contains a limited number of derogations to the general rules laid down by Article 28 (former Article 30) prescribing the elimination of quantitative restrictions on imports and all measures having equivalent effects, and by Article 29 (former Article 34) prescribing the elimination of quantitative restrictions on exports and all measures having equivalent effects. In other words, Article 30 is a norm that derogates from the ordinary rules applicable, and therefore cannot be interpreted extensively without infringing both the normative scheme of the EC Treaty and the balance between obligations arising from the EC Treaty and prerogatives reserved for the Member States.

### **National heritage v. national treasures: the interpretative role of the European Court of Justice**

It could be objected that even assuming the above rules of interpretation do apply to the EC Treaty, under that treaty there is only one institution entitled to legitimately interpret its provisions, namely the European Court of Justice. According to established case-law, the Court has in fact largely adopted the same view as the Vienna Convention by stating that one language version of a multilingual text of Community law cannot alone take

<sup>15</sup> Emphasis added.

precedence over all other versions, since the uniform application of Community rules requires that they be interpreted in accordance with the actual intention of the person who drafted them and the objective pursued by that person, in particular in the light of the versions drawn up in all languages,<sup>16</sup> and secondly that the various language versions of a provision of Community law must be uniformly interpreted, and thus, in the case of divergence between those versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.<sup>17</sup>

In view of the general principle laid down by Article 23 (former Article 9) on the free movement of goods and the customs union upon which the Community is based, and of the above-mentioned Articles 28 and Article 29 of the EC Treaty expressly outlining the aim of eliminating obstacles to the free movement of goods, derogations such as those provided for by Article 30 of the Treaty only justify restrictions on imports, exports and transit of goods that come within the more restrictive terms of the English and the French texts. It unquestionably follows that, in the light of the object and purpose of the Treaty, an extension of the national prohibitions or restrictions to categories of objects that fall within the definition of “national heritage”, but not within the more restrictive notion of “national treasures”, would not be adequately justified.

It might perhaps be maintained that works of art and cultural objects could hardly be considered as goods within the meaning of the EC Treaty. In this regard the Court of Justice has stated that cultural objects are to be considered as goods, as provided for under Articles 28, 29 and 30 of the Treaty, as long as they can be evaluated from an economic point of view and can be commercialized. According to the Court, they must therefore be subject to the rules governing the common market, the sole exceptions and derogations being those provided for under the Treaty.<sup>18</sup>

<sup>16</sup> See, *inter alia*: Case 29/69, *Stauder* (1969) ECR 419, para. 3; Case C-219/95, *Ferriere Nord v. Commission* (1997), ECR I-4411, para. 15; Case C-268/99, *Aldona Malgorzata Jany and Oth. v. Staatssecretaris van Justitie* (2001), ECR, para. 47.

<sup>17</sup> See, *inter alia*: Case C-449/93, *Rockfon* (1995), ECR I-4291, para. 28; Case C-236/97, *Skatteministeriet v. Codan* (1998), ECR I-8679, para. 28; Case C-257/00, *Nani Givane v. Secretary of State for the Home Department* (2003), ECR, para. 37.

<sup>18</sup> See Case 7/68, *Commission v. Italy* (1968), ECR 562.

### **The EC approach is confirmed at the normative level, but the problem of interpretation of the EC Treaty's Article 30 is not resolved**

The Community also confirmed this approach in the more recent rules adopted to strengthen the protection of cultural property at a European level: both Regulation 3911/92 adopted by the Council of Ministers on the export of cultural goods and its Directive 93/7 on the return of cultural objects unlawfully removed from the territory of a Member State mainly refer their applicability to an annex detailing the categories of cultural objects that fall within the relevant scope of application.

The Regulation provides for uniform controls at the Community's external borders to prevent exports of cultural goods, which enable the competent (cultural and customs) authorities of the Member State from which the cultural goods are to be exported to a non-EC country to take the interests of the other Member State into account. As the European Commission says, "this is because, in the absence of such controls, abolishing checks at the physical borders within the Community would have meant that a national treasure unlawfully removed from a Member State could be presented at a customs office of another Member State and exported easily to a third country".<sup>19</sup> The Directive complements this preventive instrument by providing mechanisms and a procedure for returning national treasures unlawfully removed from the territory of a Member State. It is important to stress that while the aim of the Regulation is to avoid national treasures being taken out of the Community territory without controls, the Directive deals with the arrangements for restoring such treasures to the Member State of origin when they have been unlawfully removed from it.<sup>20</sup>

Turning to the scope of application, it should be noted that Regulation 3911/92 applies to the cultural goods listed in its Annex; the goods are divided into 14 categories, including archaeological objects, paintings, engravings, books, photographs, etc. The criteria for an article to qualify as a "cultural object", which vary according to the category, are the age (more than 100, 75 or 50 years, depending on the case) and the minimum financial

<sup>19</sup> See Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the implementation of Council Regulation/EEC n. 3911/92 on the export of cultural goods and Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State, (hereinafter *Report*), Brussels, 25.05.2000, COM (2000) 325, p. 3.

<sup>20</sup> *Ibid.*



value of the goods (from 0 Euro for certain cultural goods up to 150.000,00 for paintings.<sup>21</sup> Directive 93/7 covers cultural goods which — as they belong to the categories mentioned in its Annex (i.e. the same as those listed in the Annex to the Regulation) — are classified as national treasures possessing artistic, historical or archaeological value under the terms of the legislation or administrative procedures of the Member States. Except for public collections and inventories of ecclesiastical institutions, national treasures that are not “cultural goods” within the meaning of the Annex are excluded from the Directive and are thus governed by the national legislation of the Member States in accordance with the rules of the Treaty.<sup>22</sup>

The decision to make the minimum financial value a criterion in particular has been criticized for a number of reasons, which are very likely to be widely supported. On the other hand, even in cases where these two fundamental EC rules are applicable, Article 30 of the Treaty could not be excluded.<sup>23</sup> Article 1 of Regulation 3911/92 is quite clear in this respect when it states that the term “cultural goods” shall refer, for the purposes of the Regulation, to the items listed in the Annex “without prejudice to Member States’ powers under Article 30 (formerly 36) of the Treaty”.

In this respect the question is, once again, which Article 30 is to be applied?

### **The task of determining interests and values eligible for international protection**

The example cited above shows that, given the almost unavoidable linguistic differences in the authentic international texts and the resultant different legal implications, great attention should be given to the need to provide a precise definition of the interests protected by the relevant norm, should the occasion arise. Here it must be stressed that there is no universally shared definition of either “cultural heritage” (“patrimonio culturale”, “patrimoine culturel”) or of “cultural property” (“beni culturali”, “biens culturels”), as each multilateral agreement gives its own definition of those concepts in order to determine the specific scope of application of the relevant rules. However, the factual existence of multiple definitions at both the domestic

<sup>21</sup> The Annex to Directive 93/7 specifies that “The financial value is that of the object in the requested Member State”.

<sup>22</sup> See *Report*, p. 4.

<sup>23</sup> See Article 1 of Regulation 3911/92 and Article 1 of Directive 7/93.

and the international level does not rule out the possibility of determining those interests and values eligible for international legal protection.<sup>24</sup>

In this respect the concept of “property” — like its almost equivalent concepts of “bene”/“bien” — therefore appears to be a suitable substitute for a number of different terms such as “objects”, “monuments”, “movables”, etc., while the concept of “cultural” summarizes various qualifying criteria such as artistic, historical, archaeological, ethnographic, etc. Furthermore, the concepts of cultural property and of cultural heritage – at either the domestic or international level – may be regarded as equivalent, at least considering that both notions are incomplete and must rely upon other non-legal disciplines, such as history, art, archaeology, ethnography, etc., in order to determine more specifically their respective content. In our domain the existing international agreements and other legal instruments frequently establish diverse criteria to determine the (public) interest to be protected, the main ones being the time factor (such as the age of the property concerned, or a specific date or period), the importance or value of the property, and a precise enumeration (list) of the items protected.<sup>25</sup>

It may be of interest to recall that the concepts of cultural heritage and cultural property practically never appear simultaneously as complementary notions in the same legal text. This was, almost exceptionally, the case of the 1985 Draft European Convention on the Protection of the Underwater Cultural Heritage prepared by an ad hoc Committee of Experts and presented to the Committee of Ministers of the Council of Europe, which in Article 1, paragraph 1, stated that: “For the purposes of this Convention all remains and objects and any other traces of human existence (...) shall be considered as being part of the underwater cultural heritage, and are hereinafter referred to as ‘underwater cultural property’.”<sup>26</sup> Significantly, the final text of Article 1 of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage has dispensed with that draft and provides a completely different definition exclusively based on the concept of underwater cultural heritage.<sup>27</sup>

<sup>24</sup> See Manlio Frigo, *La protezione dei beni culturali nel diritto internazionale*, Giuffrè, Milan, 1986, p. 135.

<sup>25</sup> *Ibid.*, p. 26.

<sup>26</sup> See Council of Europe, Draft Convention on the Protection of the Underwater Cultural Heritage and Explanatory Report, DOC. CAHAQ(85)5, Strasbourg, 23 April 1985 and, for further details, Janet Blake, “The protection of the underwater cultural heritage”, in *International and Comparative Law Quarterly*, Vol. 45, 1996, p. 819.

<sup>27</sup> According to Article 1 of the Convention: “(a) ‘Underwater cultural heritage’ means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water periodically or continuously, for at least 100 years such as (...)”.

Indeed, in most cases the tendency is to use one or other of the two expressions, even though some consider that the use of both might be more appropriate since they would be strictly complementary. In their view, cultural heritage is an abstract and ideal concept whereas property is a more concrete one; and it is only through the protection of the material and concrete evidence of culture — i. e. property — that the main goal of protecting cultural heritage might be reached.<sup>28</sup>

It should be added, to cite a different point of view, that the concept of “cultural property”/“bien culturel” is not at all equivalent to that of “cultural heritage”/“patrimoine culturel”, when it is considered that the first concept should be completed by determining the existing factual and legal links with the second one. To provide legal protection for the cultural property concerned, it may be of great importance to ascertain the link with a specific community. This would require clarifying to which cultural heritage the property is assumed to belong. The question of whether the heritage is national or international not only brings with it the problem of determining the relevant applicable rules, but also entails in-depth study of a subject that would be far outside the scope of this short contribution.<sup>29</sup>

In any case it is not possible in our domain to invoke the principle of the common heritage of mankind, in terms of either cultural property or cultural heritage, and to apply the relevant legal regime. This conclusion is valid regardless of any references emphatically made thereto by some international conventions, such as the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, or the 1972 Paris Convention for the Protection of the World Cultural and Natural Heritage.<sup>30</sup> In such cases a substantive legal imprecision is concealed behind a perfect formal coincidence of the language versions of the various authentic texts concerned.

<sup>28</sup> See Vittorio Mainetti, “The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage: A commentary”, on file with author, p. 23.

<sup>29</sup> See John Henry Merryman, “Two ways of thinking about cultural property”, *American Journal of International Law*, Vol. 80, 1986, p. 831; *Ibid.*, “The Nation and the Object”, *International Journal of Cultural Property*, Vol. 3, 1994, p. 61.

<sup>30</sup> The preamble to the 1954 Hague Convention refers to the “cultural heritage of mankind/patrimoine culturel de l’humanité”, while the 1972 Paris Convention refers more specifically to the concept of “world heritage of mankind/patrimoine mondial de l’humanité”, raising the question whether the legal regime governing the common heritage of mankind is applicable in our domain. For a negative answer to this, see Frigo, *op. cit.* (note 24), p. 283.

## Résumé

### ***Biens culturels ou patrimoine culturel : un combat terminologique en droit international ?***

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La multiplicité des activités à l'échelle planétaire et, plus particulièrement, la prolifération de conventions internationales relatives à la coopération dans le domaine culturel, sous l'angle de la protection, ont montré la tendance à recourir, parfois indifféremment, à des concepts tels que « biens culturels » et « patrimoine culturel ». Toutefois, ces concepts ne sont pas tout à fait identiques, ni d'un point de vue terminologique ni d'un point de vue juridique. La tâche qui consiste à tracer des frontières précises entre le concept plus étroit et juridiquement défini de « bien » et l'autre, plus redondant, de « patrimoine » serait vraisemblablement plus facile si l'on pouvait utiliser les catégories juridiques élaborées par les systèmes nationaux de droit civil européens. Par contre, cette tâche devient relativement moins aisée du fait que les conventions internationales pertinentes font référence – dans les textes originaux en langue anglaise – aux concepts de « cultural property » et de « cultural heritage ». L'utilisation de cette terminologie pose effectivement des problèmes parce qu'il ne s'agit pas seulement d'un problème de traduction d'une langue dans une autre mais surtout parce qu'elle engendre une confrontation entre des traditions juridiques différentes à l'origine desdits concepts. Cet article a pour objet de relever quelques problèmes de compatibilité dus à la nécessité d'utiliser dans la pratique internationale des concepts qui ne sont pas parfaitement traduisibles dans une autre langue officielle, étant donné que les ordres juridiques concernés sont eux-mêmes différents.