



Forum: UNESCO Committee

Issue: The Question of the Restitution of World Heritage Artworks to their Original Countries

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'We all have a responsibility here – the dialogue between States, art market and law enforcement is the key.'

Dr Mechtild Rössler

Director of the UNESCO Heritage Centre at the Subsidiary Committee Meeting of States Parties to the 1970 UNESCO Convention

Introduction

The 1954 Hague Convention defines the term "cultural property" as movable or immovable property of great importance to the cultural heritage of every people. Adherents of cultural internationalism support the idea that everyone has an interest in the preservation and enjoyment of all cultural property wherever it is located, while cultural nationalists believe that a nation's cultural property belongs within the borders of the nation where it was created.

Should cultural property taken by a nation remain with that country or should it be returned to the place where it was created? Since 1990s, the world has witnessed an increasing number of disputes among countries all over the world over artworks heritage ownership, which often results in claims for repatriation. The circumstances in which the question of restitution of World Heritage Artworks to their original countries arises vary remarkably, from war looting or appropriation in times of colonization, illicit trafficking or unauthorized exportation and dealer transactions.

The problem of looted "cultural goods" that were plundered in wartime through acts of violence, confiscation, or apparently legal transactions occurred throughout the ages, but became more acute during the nineteenth and twentieth centuries. For example during World War II, cultural goods were looted on a massive scale never seen before. Wars, colonialism, missionary and archaeological expeditions and even legitimate trade in antiquities thus led to a situation in which many nations and victims of war find their

national and cultural heritage in foreign museums and private collections. Unfortunately, this issue remains part of human history even at the beginning of the twenty-first century.

UNESCO is therefore spreading public awareness on the issue, encouraging international cooperation among Member States as well as trying to find an effective way to protect artworks from the abominable and immoral actions by organized crime that risks damaging World Heritage artworks irremediably.

Definition of key terms

- **Artwork:** term that refers to all aesthetic physical items and illustrative, decorative works prepared for reproduction. Examples include sculpture, hand lettering, drawings, paintings, photographs;
- **Restitution:** it indicates the act of restoring or giving back something that was lost, stolen, taken away to its rightful owner;
- **Repatriation:** the return of art or cultural heritage, usually referring to ancient or looted art, to their country of origin or former owners (or their heirs). The disputed cultural property items are physical artifacts of a group or society that were taken from another group usually in an act of looting, whether in the context of imperialism, colonialism or war. The contested objects range widely from sculptures and paintings to monuments and human remains;
- **World Heritage:** 'heritage' indicates something handed down from the past as a tradition, which does not consist of money, but instead has an ethnographic, archaeological, historical or, in this case, artistic value. The term 'world' underlines that the importance of the heritage even transcend national boundaries;
- **Cultural property:** term that refers to physical items that are part of the cultural heritage of a group or society, such as historic buildings, works of art, archaeological sites, libraries and museums;
- **Looted art:** in reference to a particular work of art, this term implies that the artwork was taken illegally. Looted art has been a consequence of sacking during war, natural disaster and riot for centuries;
- **Source country:** a country that produces a high volume of valuable cultural property;
- **Market country:** a country that buys cultural property.

Background information

Historically, the issue has always existed throughout the world.

Colonization, war and the subsequent looting of defeated peoples has indeed been common practice since ancient times. Several countries were indeed used to fight in order to extend their territory and in many cases the consequences were the beginning of wars. When wars ended, the countries, which won the battle, not only conquered a new territory, but also took possession of all the works of art. For example, the stele of King Naram-Sin of Akkad, which is now displayed in the Louvre Museum in Paris, is one of the earliest works of art known to have been looted in war. Since the first centuries and during the Middle Ages, the practice of taking artworks continued by lots of empires and countries, such as Visigoths and Romans.

In the 18th century, many European countries were plundered by Napoleon who aimed at building a national museum in Paris, filled with the best art of Europe. After the looting of Europe by Napoleon, during the American Civil War, the Lieber Code (1863), signed by the US President Abraham Lincoln specifically authorized the country's armies to loot the enemy.

Throughout the 19th century, France, Britain and other European powers took artworks from conquered nations and add them to their own museums.

During the last century, theft and plunder continued on a grand scale reaching its most extreme position with Hitler planning to construct the cultural centre at Linz, filled with fine artworks looted from both public and private holdings throughout Europe and Russia; the looting began before World War II with the systematic persecution of Jews. Hitler also established the Einsatzstab Rosenberg as the official department in charge of "protecting" the art of other countries.

Unfortunately, art looting did not end after World War II. In the 1960s, destruction of ancient artistic properties was widespread in China. The end of the 1960 and the beginning of the 1970s was marked by an increasingly number of thefts particularly in the countries of the South. In the North, private collectors and official institutions were offered works of art of unidentified origin. This difficult situation led to the creation of the 1970 UNESCO Convention. During the 1970s war in Southeast Asia, both American troops and Southeast Asian troops were guilty of destruction of cultural patrimony. More recently in Kuwait, Iraq and Afghanistan, news accounts of looting have raised significant attention of the world. In the 1990s, Iraq invaded Kuwait and plundered the National Museum. During and after the U.S.-led invasion of Iraq, the unstable and chaotic conditions of the war allowed looting to happen and the National Museum of Antiquities of Iraq in Baghdad was unfortunately pillaged. Today, the phenomenon is still increasing, as demonstrated by the latest international alert by Greece, Ecuador, Bolivia, Peru, and Guatemala in May and August 2016.

Major players involved

- **European Union:** One of the goals of the European Union is to allow free trade in all goods within the internal market. Over the time, the EU realized that this principle had to be reconciled with that of protecting the cultural and artistic heritage of individual countries. To prevent the illegal movement of art from one country to another, the EU developed the following treats:
 - European Union Regulation on the Export of Cultural Goods (1992)
 - European Union Directive on the Return of Cultural Objects (1993)
- **Italy:** During the Napoleonic Wars, Italy was deprived of many artworks including the Laocoon, the Apollo Belvedere, the Medici Venus, and the Horses of San Marco. Although it has successfully fought several lawsuit that have resulted in repatriation of many artworks from wealthy museums and art collectors, including the Metropolitan Museum of Art in New York and the J.Paul Getty Museum in Los Angeles, Italy's battle to recover the artworks it says were looted from the country and sold to museums and art collectors around the world is still ongoing. Recently, in 2006, the Metropolitan Museum of Art finally recognized Italian ownership of the Euphronios Krater, looted from an Etruscan tomb.
- **Greece:** Probably the most famous example of the loss of artworks is indeed that of the Parthenon/Elgin Marbles taken by Thomas Bruce the 7th Earl of Elgin, the British ambassador to the Ottoman Empire from 1799-1803. The Marbles, which consist of portions of the frieze, metopes and pedimental sculptures of the Parthenon, as well as of sculptured slabs from the Athenian temple of Nike Apteros and of various antiquities from Attica and Hellas, were brought to Great Britain in 1816 and deposited in the British Museum where they still remain.
- **Great Britain:** As we said, some objects in the collection of the British Museum, most notably the Elgin Marbles from the Parthenon, are the objects of calls for restitution to their countries of origin. The Greek government has officially been demanding the return of the marbles since the 1980s, but the British Museum strongly defends its right to own and display the marbles, arguing that the latter were legally obtained according to the laws of the times.
- **France:** The Napoleonic conquests in Europe were followed by a big looting of the most beautiful artworks of conquered nations, which were brought to the Louvre Museum. Some of the looted works of art were returned after Napoleon's fall. However, many of them still remain in France and therefore are objects of controversy.

- **Switzerland-Egypt:** In June 2015, The Swiss Federal Office of Culture returned to the Egyptian Embassy in Bern a batch of 32 ancient cultural objects, dating back to the Pharaonic and Roman periods. Four of the returned items are extremely rare and of remarkable aesthetic quality: the bust of a king wearing a crown, a fragmented stele in honor of King Siptah depicting the patron goddess of Thebes from the era of the New Kingdom and two architectural fragments depicting scenes of worship dating back to the Roman period.
- **Germany-Iraq:** The President of the Prussian Cultural Heritage Foundation handed an inscription of the Babylonian King Nebukadnezar to the ambassador of the Republic of Iraq in Berlin. Germany also returned to the Republic of Iraq a Sumerian clay cuneiform tablet that dates back to 2049 B.C. and records the distribution of flour to the crew of a ship.
- **Germany- Greece:** In September 2006, through an amicable consensus, Germany returned a small piece of an ancient monument to the Greek Ministry of Culture. The fragment consists on a foot, carved from marble, which was taken nearly 200 years ago from the northern frieze. This is the first fragment from the Parthenon sculptures that returned to Greece since European collectors removed large sections from the building 200 years ago.
- **Germany:** One of the several examples of unsuccessful restitution happened in April 2010, when a German museum lost an action against Riven Flamenbaum to recover an ancient gold tablet, first taken in Portugal. After the Second World War, a survivor of Auschwitz encountered the tablet, which he may have purchased on the streets of postwar Berlin for some cigarettes. He took the tablet with him when he immigrated to New York. After his death, the German museum wanted it back, but USA did not agree.
- **Bulgaria:** Following a successful investigation led by the Specialized Prosecutor's Office in Bulgaria, in April 2015 the Archaeology Museum in Plovdiv recovered a Roman Thracian silver mask and helmet, which was stolen in 1995 following an armed robbery.
- **Denmark:** In April 2008, cultural relics illicitly exported to Denmark returned to China. The relics date back to the Xia Dynasty and the Ming Dynasty. The restitution of these objects demonstrates the resolution of the Chinese Government to recover objects that were smuggled out of the country.

- **Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP):**

In 1976, under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO), a committee of experts met in Venice and studied the question of the restitution or return of lost cultural property. They discussed about the necessity to create an international body in order to find ways that could facilitate bilateral negotiations between the concerned countries for the restitution of cultural property. Thus, two years later, a permanent intergovernmental body was created: the Intergovernmental Committee (ICPRCP). The 22 members of the Committee are elected from the UNESCO Member States and renewed by half at elections that take place every two years during the General Conference. The committee's main aims include:

- promoting exchanges of cultural property and multilateral and bilateral negotiations among Member States for the restitution of cultural property to its countries of origin
- promoting a public information campaign on the importance of the issue
- encouraging the establishment or reinforcement of museums or other institutions for the conservation of cultural property and the training of the necessary scientific and technical personnel.

- The 1995 UNIDROIT Convention: It is an independent intergovernmental organization with its headquarters in the Villa Aldobrandini in Rome, which aims at studying methods and needs for modernising, harmonising and coordinating both private and commercial law between States and groups of States.

The UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation and the UNIDROIT Governing Council and their respective Secretariats work together to protect cultural property. Such cooperation and coordination is of particular importance for the protection of archaeological objects

- In 1978, the **Fund of the International Committee** was created in order to enable the ICPRCP to function effectively. This Fund aims to support Member States in their efforts to pursue the return or restitution of cultural property and effectively fight illicit traffic in cultural property, particularly with regard to: the verification of cultural objects by experts, transportation, insurance costs, setting up of facilities to exhibit them in satisfactory conditions, and training of museum professionals in the originating countries of cultural objects. In March 2001, the Director General of UNESCO launched an appeal to all States and institutions to associate themselves with this global effort and contribute generously to the Fund in order to facilitate effective restitution of cultural property to its State of origin or its owner.

- In 2008, the **Association of Art Museum Directors** (AAMD) recognized the 1970 UNESCO Convention and urged its members to trace ownership history back to 1970 and purchase only antiquities that could be proven to have been legally exported after 1970 or removed from their native country before that date.

Other organizations that deal with problem of the Restitution of World Heritage Artworks to their Original Countries are:

- **INTERPOL**: It provides tools to facilitate the global exchange of information on crimes involving works of art, the details of the artworks and the criminals involved. It is useful as a central repository, providing analysis to identify emerging trends in art thefts such as the use of the Internet for selling works of dubious background.

- **ICCROM**: It is The International Centre for the Study of the Preservation and Restoration of Cultural Property and it is dedicated to the conservation of cultural heritage. It serves the international community, and represents 129 Member States.

- **OCBS**: It is the Central Office for the Fight against Trafficking of Cultural Property and it is competent in dealing with the theft and/or receipt of stolen property with an artistic or historical value that relates to cultural heritage, but also in terms of artwork counterfeits. It is responsible for carrying out preventative activities as well as, training and outreach, and cooperating with international organizations, such as UNESCO, and other police forces.

Relevant UN treaties

Adopted by UNESCO in 1970, the ***Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*** is the primary instrument addressing the international movement of cultural materials, the problem of illicit trade in antiquities and the strong incentive for pillage of archaeological sites. It requires its States Parties to take action in three main fields: it asks States Parties to take preventive measures in order to stop the illicit import and export of cultural property from their territory; it requires them to take appropriate steps to recover and return cultural property illicitly stolen from the territory of another State party to the Convention and imported into their territory after the entry into force of this Convention for both States concerned; it strives to set up an international cooperation framework to strengthen ties between States Parties to the Convention. In cases where cultural patrimony is in jeopardy from pillage, Article 9 provides a possibility for more specific undertakings such as a call for import and export controls. Most nations that have ratified the convention grant across-the-board recognition of other States Parties' export controls on cultural materials. The law is prospective only and requires implementing legislation by state parties. Initially, museums were not big supporters, because they wanted to insure the flow of antiquities. Principally, UNESCO works at the level of government administrations: governments are required to take action at the request of a State party to the convention to seize cultural property that has been stolen. They must also collaborate to prevent major crises in the protection of cultural heritage, such as those now occurring in Iraq and Afghanistan.

In 1995, UNIDROIT was asked by UNESCO to develop the ***Convention on Stolen or Illegally Exported Cultural Objects*** as a complementary instrument to the 1970 Convention. It states that all cultural property must be returned and covers all stolen cultural objects. The convention also attempts to clarify the extent to which importing countries are obliged to respect other countries' export-control laws. State Parties commit to a uniform treatment for restitution of stolen or illegally exported cultural objects and allow restitution claims to be processed directly through national courts. One advantage of this convention is that it is self-executing—it does not have to be implemented into national law.

Possible solutions

The UN and all Member States can do much more better than they actually have done so far, which is clearly not enough. Artworks, as an integral and irreplaceable part of the World Cultural Heritage, contribute to the education and culture of society and allow each of us to better understand the history of where we come from. This problem cannot therefore be underestimated. When it comes to such an important matter, the international collaboration among Member States and organizations is the best way to tackle the issue. More effective international agreements could be drafted. Restitution might also take the form of donation, but in this case we would be right to ask ourselves if that would indeed be the best option, as it implies that the donor is the rightful owner of the artwork, which the other party often refuses to acknowledge. Other suitable solutions to the issue could be the promotion of bilateral negotiations, the preparation of inventories of movable cultural property, the implementation of control by law enforcement and the foundation of specific court in order to judge illicit people properly and in this way stop illicit trafficking as well. Another possible solution could be the creation of a specific UN body, called UNCHPC (United Nation Cultural Heritage Protection Committee) with the task of controlling and organizing the relationships between countries who are involved in this issue and creating laws, which specify which kind of artworks and in which cases have to be returned to their home countries.

A further step to the solution of this problem could also be raising public awareness through educational campaigns, events and conferences in order to widespread understanding and acknowledgment of the issue. The restitution to a country of its cultural or artistic treasures contributes to the strengthening of international cooperation and to the preservation and flowering of universal cultural values through fruitful cooperation between countries.

Useful links:

Here you can find a short list of useful websites, which offers you a wide range of information related to the topic:

- <http://en.unesco.org/>
- <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/resolutions-adopted-by-the-united-nations-general-assembly-about-return-and-restitution-of-cultural-property/>

- <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/successful-restitutions-in-the-world/>
- <http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/1995-unidroit-convention/>
- <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/>
- <http://www.un.org/en/documents/index.html>
- <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/unesco-database-of-national-cultural-heritage-laws/>
- <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/>
- <https://itsartlaw.com/tag/unesco/>
- <https://www.ilsa.org/jessup/jessup17/Repatriation%20of%20Cultural%20Property.pdf>

Notes from the Chair:

I truly hope this report has clarified most of your doubts and I hope it will be useful to prepare our committee discussions. However, I would like to remind you that this is just a starting point. It is now your turn to find out more information about this topic and to read as many official documents and agreements about it as you can. Keep in mind that you are going to represent a country different from yours. This means you will be asked to convey opinion on someone else. I am sure you all will develop stimulating ideas in order to find out new and effective solutions to this important issue!

Have a productive research,

See you in Cividale!