

Committee: Social, Cultural and Humanitarian Committee (3rd GA)

Issue: The question of the repatriation of artifacts

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INTRODUCTION

The return of artifacts and antiquities to their countries of origin consists a crucial matter and the debate relating to the matter is extensively contested as opinions from both sides seem to be passionate about it and each country and organization tries to seek justice while actively supporting its point of view. With reference to opinions supporting the repatriation of cultural artifacts, it is believed that the repatriation of those artifacts could benefit in the greatest extent the countries of origin, but also act as a proper expression of justice. Completeness and wholeness are an extremely important element concerning the integrity of archaeological sites. Therefore, this is the reason why not only the individual pieces but also the artifacts which are located outside their countries of origin as a whole need to be returned and repatriated.

Although repatriation of cultural artifacts is admittedly a difficult procedure to conduct, in the past decades, a reasonable progress has been made, since after many countries of origin had agonized in order to achieve the repatriation of their national artifacts which have an uncertain legal status with a not-known provenance and are acquired after 1970, many museums as well as collectors have decided to cooperate with the countries of origin and participate in the repatriation of those cultural artifacts. On the other hand, the issue becomes more convoluted when the repatriation of the artifacts is exclusively based upon the claims of the country towards its cultural heritage and its right to wholeness of it. In the modern globalized community, according to the opponents of the repatriation of the cultural artifacts, it is considered highly positive for a museum to be able to offer a diverse range of art and educate the visitors upon different cultures. As a result, when the cultural property is located outside the country of origin, but the means through which the objects were claimed are legal, the repatriation requests consist "a denial to cultural exchange", according to James Cuno, president and CEO of the J. Paul Getty Trust. Besides, there are additional difficulties which create doubts on whether the artifacts should be returned to their countries of origin, such as the nations' ability to preserve them, the

environment in which those objects are going to be transported (regions with low financial capacity for taking care of the artifacts, conflict/war regions) and the eventuality that the nation of origin no longer exist and multiple countries claim these objects. As it can be understood, the question of repatriating national artifacts is a complex one and while trying to find solutions to it, it is of primary essentiality that cultural artifacts are being always treated with respect and that it is a common goal to all sides to preserve and protect the cultural heritage.



Figure 1: Part of the Elgin Marbles Collection at the British Museum

DEFINITION OF KEY TERMS

Repatriation

Art repatriation generally refers to the return of cultural objects to their country of origin. The Oxford English Dictionary defines “repatriate” as “to return again to one’s native country”.¹

Artifact

According to the Oxford Dictionary, an artifact is considered to be an object made by a human being, typically one of cultural or historical interest. Additionally, artifacts serve also as symbols for a culture as they have a special meaning and a distinctive rarity and beauty, even though they could be everyday or even modern objects such as, clothing,

¹ The OXFORD ENGLISH DICTIONARY, Vol. VIII 460 (1933).

pottery vessels, metal objects, tools, gadgets, Anne Frank's diary and the Wright brothers' biplane.

Cultural Property

The "Cultural property" of each country is a particular vague term and this is the reason why providing a definition to it is considered to be difficult. Therefore, very broad or considerably narrow definitions could possibly cause a number of problems, since by using a definition which does not cover the term fully, there is the risk of not protecting items that should differently be secured. A definition which is suitable enough for the term is the one provided in the context of the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954, which was conducted by the United Nations Educational, Scientific and Cultural Organization (UNESCO). The term "cultural property" refers, regardless of origin or ownership, to:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'²

BACKGROUND INFORMATION

Cultural Internationalism

The definition of internationalism according to the Oxford Dictionary reads as "the principle of cooperation among nations, for the promotion of their common good, sometimes as contrasted with nationalism, or devotion to the interests of a particular nation." According to the idea of cultural Internationalism the protection and enjoyment of

² Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 from UNESCO. <http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html>

all cultural property is a universal matter which concerns all citizens of the world, regardless of the location of the artifact or its cultural basis. Consequently, the items which consist the cultural property are a "possession" of the global community, and it is encouraged that the country with the best resources available and the most proper environment should retain the artifact and be responsible for the preservation of another country's cultural property with the intention of taking care of it while disposing the best means in order to preserve it.

With this in mind, items of cultural heritage which are located in other countries than the ones who were originally manufactured, such as Neffertiti's Bust and the Elgin Marbles, should continue to exist in the Neues Museum in Berlin and in the British Museum respectively, since in those museums they are ultimately protected. Furthermore, by being located in prominent museums, the artifacts are available for being admired and visited by the whole world. In a globalized community such as the one we reside in, museums should have a broad, encyclopedic role by promoting and exhibiting works of art- paintings, artifacts, music or dance-, which represent the diverse cultures from all around the world, in the greatest possible extend, always in accordance with law. In other words, it is advised that the cultural artifacts are not viewed through their political boundaries, but they participate in offering a more cosmopolitan point of view and a mutual, precise understanding of the culture in general.

However, nations all around the world tend to use their cultural property as a distinguishing feature among other countries, which goes hand in hand with the nation's historical and ethnic roots. The above mentioned factor usually consists an obstacle as far as the implementation of the principle of cultural internationalism is concerned. Finally, it should be mentioned that the 1954 Hague Convention represents the internationalist ideas concerning the management of cultural property.

Cultural Nationalism

According to the Stanford Encyclopedia of Philosophy, nationalism has two basic definitions: "(1) the attitude that the members of a nation have when they care about their national identity, and (2) the actions that the members of a nation take when seeking to achieve (or sustain) self-determination."³ "Cultural nationalism generally refers to ideas and practices that relate to the intended revival of a purported national community's culture."⁴ Based on this ideology, the cultural property of each country consists a source of power for

³ "Nationalism". Stanford Encyclopedia of Philosophy. 15 Dec. 2015.
<http://plato.stanford.edu/entries/nationalism/>

⁴ Carol A. Roehrenbeck. "Repatriation of Cultural Property. Who Owns the Past?". International Journal of Legal Information. 1 Jul. 2010. <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1216&context=ijli>

the nation and needs to be used as such while underlying the national interests, benefits, values, mentality and pride.

Moreover, it is supported that these artifacts should remain within the borders of the country where they were created and obtain a significant role “to cultural definition and expression, to shared identity and community”.⁵ Many countries choose to declare an ownership claim of all subsoil or underwater cultural property, which is located within the national boundaries, which may be either unknown or discovered, in order to protect their cultural artifacts. In the hope that by declaring the ownership claim their national artifacts could be preserved, those countries of origin reassure that the artifacts which were discovered will be hopefully protected since they will not be subjected to international commerce, which is admittedly often realized through exporting illegal excavated artifacts and works of art. Additionally, this way it is possible to discourage the undocumented digging and looting, which destroy the archaeological sites and reduce the historical and functional coherence of the cultural artifacts with their region of origin. Furthermore, the repatriation of artifacts is characterized as a complex procedure and the request for repatriating those objects has to have a strong legal basis and not be based on alleged accusations or facts. With regard to the artifacts which fall under the request of repatriation and have been excavated illegally, exported illegally and are considered by UNESCO as stolen property, it is usually considered that the above mentioned cultural property should be returned to its country of origin.

The request for the return of the items which consist the cultural property of each country is a conflict which concerns the identity of each nation and its fundamental right of promoting these items as an ensign of this identity, as well as the history and mentality of each nation. The repatriation of the cultural artifacts to their rightful owners, which usually in this case are countries, offers a great number of benefits for the “homelands” of these items. Briefly, by returning the artifacts to the countries where they were originally created, the cultural aspect of those countries becomes extremely evolved, as it is possible to safeguard the items, properly conserve them, benefit from the public frequentation in a financial point of view, enjoy the works of art in their functional and historical wholeness as they were originally created and satisfy the sentiments of pride and common history of the nation. Last but not least, the ownership claim of a country of origin could be a determinant factor in stopping the undocumented digging and the export of illegally obtained artifacts.

⁵ Raechel Anglin, Note, The World Heritage List: Bridging the Cultural Property Nationalism-Internationalism Divide, 20 YALE J.L.&HUMAN241, 242 (2008).

Art Crimes

Although a formal criminological definition for art crimes does not exist, art and cultural property crimes—which includes theft, fraud, looting, and trafficking across state and international lines—are “a looming criminal enterprise with estimated losses in the billions of dollars annually.”⁶ The illegal trafficking of cultural property is an extremely profitable underground black market. There are several reasons why committing a crime related to art nowadays is easier than ever before. First of all, the current situation of political instability, corruption and the easily changeable laws concerning the repatriation of cultural artifacts, which plagues some of the “source countries” of cultural property, encourages the illegal trafficking of those items. Additionally, the penetrable borders and the improved methods of transportation are another element which adds to the flourishing of the illegal trafficking. Items of cultural property are often stolen from museums, private collections, archaeological sites but also churches. Notably, churches, galleries and museums put themselves in a security disadvantage, since they are publicly open, in comparison with private collections, where a higher level of security can be attained. Unfortunately, from the objects that are taken from all the above-mentioned locations, only an estimated five to ten percent are ever recovered within a period which usually covers more than thirteen years. The commitment of crimes of such nature could be separated into two categories; the first circumstance is crimes of art which are committed during periods of war, military occupation or colonial rule and the second one is cultural property which is looted during periods of peace. The cultural property during these two circumstances is either plundered, taken by different capitulation agreements or looted, smuggled and illegally excavated in order to be promoted to the underground international market, where no respect is being shown to these objects and the eventuality of damage is always really high.

ITEMS	NUMBERS
Pictures	89,019
Sculpture	21,865
Silver	12,390
Stamps andSeals	383
Textiles	3,101
Timepieces	25,016
Vehicles	95
Arms andArmor	1,482
Books and Manuscripts	4,653

⁶ “Art Theft”, FBI <<https://www.fbi.gov/investigate/violent-crime/art-theft>>

Ceramics	10,668
Coins	860
Enamels	189
Furniture	8,197
Glass	1,801
Instruments	1,919
Jewelry	10,641
Lighting Appliances	2,334
Medals	984
Memorabilia, Toys, Models	1,279
Objects of Art	7,997
Misc.	257

Figure 2: Items that are registered on Art Loss Register (ALR)

Bona Fide Purchasers

“A bona fide purchaser or else a good faith purchaser is a purchaser who buys property of another without notice that some third person has a right to, or interest in, such property, and pays a full and fair price, at the time of such purchase, or before he/she has notice of the claim or interest of such other in the property, without having any suspicious circumstances to put him/her on inquiry.”⁷ Therefore, it is understandable that the people who are characterized as bona fide purchasers do not have any relevant clue for having doubts concerning the legitimacy of the items obtained. In other words, such purchasers should be protected in order not to deter sellers and buyers from participating in the legal trade, because of fear of prosecution for theft and loss of a great amount of money. For this reason, there is a regulation legislated by the UNESCO Convention, according to which items of cultural property can be returned in an exchange of payment or compensation, in order to protect those kind of purchasers. Although, this measure is suitable for the creation of a safer environment towards the purchasers, it could possibly cause a number of problems to the countries of origin, which do not have the financial capability for providing those kinds of compensations and as a result do not retain the cultural artifacts back.

On the other hand, in order for a possessor to be entitled to compensation, the bona fide purchaser must prove that he/she was not informed that the purchased item was stolen when the acquiring procedure took place, i.e. due diligence was implemented. The character of the parties, the price paid, whether a register was consulted, and if an export certificate existed are some important elements in the determination of whether a due diligence existed or not. Luckily for the countries which are financially limited, if the

⁷ Merritt v. Railroad Co., 12 Barb. (N. Y.) 005 and Spicer v. Waters, 05 Barb. (N. Y.) 231 and Cottrell, supranote 1, at 636

possessor is not in the position of proving the due diligence, the source nation has the right of regaining the item of cultural property without being obliged for paying a financial compensation.

Nazi-looted Art

During World War II, the Nazis looted systematically more than 600,000 works of art from Europe's national museums and mainly Jewish private owners, looting an estimated 20% of the art of Europe. The total of these actions is considered to be as one of the biggest robberies in history and until today the vast majority of those items are not recovered by their legitimate owners. After the end of the war, several efforts were made by the U.S and other allies, through the Safe-haven Program, in order to identify and detect those stolen objects and return the looted items back to their rightful owners. However, despite the fact that numerous items were never found, an additional obstacle was the fact that the forces which were accountable for the detection and return of the cultural objects which were looted during WWII, returned them to source countries, and not individuals. After that, several organizations were created, such as the Art Loss Register and the Holocaust Art Restitution Project, with the intention of creating databases of missing works and find the above mentioned items. In 1998, 44 nations agreed to the Washington Principles on Nazi-Confiscated Art, which stated 11 international legal guidelines for looted art restitution. At the present time, international efforts are still being made, with the aim of returning the items to their legitimate owners or their families.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

European Union

It is well-known that one of the primary goals of the European Union is to achieve a free trade of goods within the internal market, and a free movement of people as well as ideas regardless of the existing political borders in the EU. On the other hand, it should always be kept in mind that the cultural heritage of each country-member of the EU should be protected. Consequently, in order to prevent the illegal trafficking of art from one country to another, the EU enacted the following rules, "the European Union Regulation on the Export of Cultural Goods" and the "Export control in the European Union Directive on the Return of Cultural Objects". Moreover, it is well known that the EU is compromised by countries rich in history and cultural property like Greece and Italy. Many of those countries strive to reclaim their cultural property located in other countries, which many times are members of the EU as well. Consequently, legal cases may arise and disputes between the

countries of the Union may be created, with international organizations, such as UNESCO, trying to resolve the issue by providing bilateral settlements.

United States of America

The United States of America is characterized as a market country, as it actually buys culture in order to exhibit it in various museums which offer a broader cultural view. Besides the repatriation of items which consist a part of external diverse cultures and are located in museums of the United States, another significant problem that the US has to face is the management of indigenous native's Americans cultural artifacts. Although indigenous communities have recovered cultural artifacts within the legal structure of the Native American Graves Protection and Repatriation Act (NAGPRA), there was not a similar development concerning the cases of international repatriation. Another significant issue covers the requests for repatriation of cultural artifacts which belong to Latin American countries. The antiquities are located in several countries such as Brazil and Argentina, and are reclaimed from other Latin America countries such as Peru and Ecuador. The United States is one of over 115 states parties to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Middle East

Supporting the cultural internationalism and protecting the cultural artifacts by sending them to countries where they could be preserved has been a fierce passion for museum directors, historians, archeologists, and the international community along with numerous organizations. The reason for that is the systematical destruction of cultural property located in Middle East by the Islamic State (ISIS), who consider those items to be symbols of idolatry. Cases such as the one in Palmyra in Syria or the ancient Assyrian archaeological site of Nimrud in Iraq, where artifacts and archeological sites have been smashed and destroyed, lead UNESCO to describe the events as war crimes.

“They are not destroying our present life, or only taking the villages, churches, and homes, or erasing our future – they want to erase our culture, past and civilization,” said Habib Afram, the president of the Syrian League of Lebanon. As a result, those destructions have renewed the debate over the repatriation of antiquities. On the other hand, there have been several doubts concerning whether western museums, collectors and others try to safeguard and reassure the protection of these monuments by transferring them or denying to repatriate them or it is an attempt to exploit the current situation and turn this cultural nightmare to their own advantage.

Africa

Similar to the situation in the Middle East is the situation in Africa, as conflict zones such as the one in Mali or in Somalia threaten the integrity of cultural items or already have destroyed them. Collateral damage, smuggling, illegal trade and exploitation, which cultural artifacts are facing, have raised an international alert. At the same time, several countries have decided to use the antiquities as tools of diplomatic policy outside of armed conflict. An example of country which followed the above mentioned tactic is Nigeria, having a history of succeeding in repatriation.

Art Recovery International (ARI)

Art Recovery International is an organization which consists part of the Art Recovery Group ("ARG"). "Art Recovering International (ARI) is a full service which is activated mainly in the private sector, namely for private individuals, insurance companies, law firms, governments and law enforcement agencies, museums, art dealers and auction houses."⁸ Their goal is to develop strategies and advise their clients on how to identify, oversee, detect and recover legally and ethically, the stolen, lost and argued items of cultural property.

FBI Art Theft Program

This program is an initiative of the Federal Bureau of Investigation, which also includes the Art Crime Team. The above mentioned team is comprised of sixteen special agents who are responsible for recovering stolen items of art and cultural property in assigned geographic regions. Additionally, in order to conduct their investigations in the most efficient possible degree, the Bureau has operated the National Stolen Art File, a record which includes all the stolen artifacts from all around the world, which were reported to the FBI.

INTERPOL

INTERPOL (the International Criminal Police Organization) is another essential organization which addresses the criminal cases concerning cultural property and works towards the elimination of theft of cultural artifacts. As it is described as an organization which encourages the international police cooperation among the 190 member countries, Interpol disposes also a database of stolen work of arts and items of cultural property.

⁸ Art Recovery International website. <<http://artrecovery.com/>>

Art Loss Register (ALR)

The Art Loss Register is the largest private registry of lost and stolen items of art in the world. Their principal objectives are the registration of stolen items, the identification of them and their recovery.

TIMELINE OF EVENTS

Date	Description of Event
1954	The Convention for the Protection of Cultural Property in the Event of Armed Conflict
1970	UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
1995	UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

UN INVOLVEMENT: RELEVANT RESOLUTIONS, TREATIES AND EVENTS

UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was adopted by UNESCO in 1970 and is one of the most important conventions concerning the protection of cultural property on an international and bilateral level. It was understood that the illegal trafficking of the cultural artifacts was posing a threat to the perseverance of heritage. This convention establishes legal measures based on international cooperation, with the intention of preventing the illicit export and import of cultural goods, encourage the restriction of items to their countries of origin, as well as the trade of stolen items in the black market, while also proposing detailed solutions to the problem. Unfortunately, to this date only 125 member states have become parties of the Convention and a great number of countries have not ratified yet, as many of the measures which are provided, are seen as repellant for the market countries.

Convention for the Protection of Cultural Property in the Event of Armed Conflict

The Convention for the Protection of Cultural Property in the Event of Armed Conflict was created in 1954. The convention was enacted mainly by the alert of the massive

distraction of cultural artifacts during World War II. It concentrates on the protection of cultural property during periods of conflict and military occupation. A great number of measures were taken in the context of this convention, both concerning peacetime provisional safeguarding measures and measures planned to be implemented in the event of an armed conflict based on international cooperation and mutual commitment.

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was adopted in 1995 in Rome with the aim of complementing and expanding the UNESCO Convention. The UNIDROIT Convention addresses the illegal trade of cultural items, the theft of cultural artifacts and the illicit export of them. One of the most important proposals of this convention is the more intense protection of cultural artifacts, through the expansion of the cultural property definition and the legislation of more expanded rights upon the claiming and restitution of such items. Additionally, further measures were taken regarding the compensation of bona fide purchasers or possessors as well as the issue of repatriation of indigenous people's cultural heritage.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

In cooperation with either private or federal organizations each source country has tried to repatriate and regain their cultural items which are located within the borders of the country. In fact, the procedure of the repatriation of cultural artifacts is difficult to implement since the existence of numerous legal and ethical problems consists a considerable obstacle. Nowadays, most of the western museums tend to acknowledge the need for the return of items of cultural property back to their countries of origin, especially if found that the artifacts were taken under cruel circumstances. Such museums are the Cleveland Museum of Art, the Getty Institute, and the Honolulu Museum of Art etc. However, despite the efforts being made, especially by cultural "rich" countries such as Greece, Italy and Turkey, and even with the cooperation of the UN, many masterpieces remain away from their countries of origin, although the vast majority of the international community asks for their repatriation. Artifacts, which are numbered among those artifacts are the Elgin Marbles, The Louvre's Egyptian Frescos, Nefertiti's Bust, The Hottentot Venus, Ramses Mummy, Euphronios Krater, Priam's Treasure, Koh-I-Noor Diamond, Geronimo's Skull, Chinese Bronzes and many others. More specifically, in October 2014, lawyer Amal Clooney along with Mr. Robertson and David Hill, members and head of the International Association for the Reunification of the Parthenon Sculptures, stated and fought for the

return of the displayed artifacts in the British Museum. UNESCO has also taken action concerning the issue by asking the British government to enter mediation regarding the case, something which the United Kingdom has failed to do and, as a result, giving Greece the right to conduct legal proceedings against both the government and the museum. However, there are cases of repatriation which were effective such as the one in 2010, when Peru reached an agreement with the Peabody Museum at Yale University concerning Inca artifacts that had been the subject of dispute for nearly a century, or the planned return of sarcophagi from Israel to Egypt. It is apparent that these cases represent the meaning of cooperation between countries of conflicting ideologies via diplomatic settlements.

POSSIBLE SOLUTIONS

Since there are many matters which need to be addressed from a legal, ethical, historical and criminological point of view concerning the repatriation of cultural artifacts, the solutions required need to be manifold and practical. First of all, it is imperative to re-examine and address clearly the definition of cultural property creating one which will fully cover the significance of it and will aid the protection of artifacts. Furthermore, it is important to establish a balance concerning the main two ideologies, cultural internationalism and cultural nationalism, which are both supported from different countries and influence the way that each country tries to handle the issue. In addition, “the illegal trade of cultural property threatens not only the physical integrity of the items themselves, and the sites they came from, but also the cultural heritage of the affected nations.”⁹ Consequently, regulations have to be strengthened and controls need to be implemented, via means such as but not limited to: certification of origin, more severe control in Customhouses, consultancy of experts, a cohesive definition for the exportation and importation of cultural property, and stronger security methods and strategies towards the combat of the illegal trade of cultural property as well as theft. Moreover, it is fundamental to encourage international cooperation and mutual understanding between the source countries and the market countries, governments and individuals, federal and private institutions and organizations, in order to be able to find solutions which will satisfy, to the most possible extent, the interests of both parties. Additional legislation, realization of conventions, settled agreements or even trials are some of the measures which could be taken in order to face the issue properly and surpass the variety of ethical and legal dilemmas which influence the examined question.

⁹ John Alan Cohan, An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property (Part Two), 28 ENVIRONS ENVTL.L.&POL'Y.J. 1, 7 (2004)

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Graphs and Images

Figure 1: "Greece looks to UN for help reclaiming the Elgin Marbles". The Telegraph. 9 May 2016. <<http://www.telegraph.co.uk/news/2016/05/08/greece-looks-to-un-for-help-reclaiming-the-elgin-marbles/>>

Figure 2: Art Loss Register. <<http://www.artloss.com/>>