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Εθνικόν και Καποδιστριακόν
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**The Repatriation of Cultural Treasures as an
International Custom**

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Αυτή η εργασία είναι αφιερωμένη
στα Αγάλματα,
που, για τους Έλληνες,
έχουν ψυχή...

This study is dedicated
to the Statues,
which, for the Hellenes,
have a soul...

“...τό μὲν γάρ παραιεῖσθαι τῶν πολεμίων καὶ καταφθεῖρειν φρούρια λιμένας πόλεις ἄνδρας ναῦς καρπούς, τᾶλλα τὰ τούτοις παραπλήσια, δι’ ὧν τοὺς μὲν ὑπεναντίους ἀσθενεστέρους ἂν τις ποιήσαι, τὰ δὲ σφέτερα πράγματα καὶ τὰς ἐπιβολὰς δυναμικότερας, ταῦτα μὲν ἀναγκάζουσιν οἱ τοῦ πολέμου νόμοι καὶ τὰ τούτου δίκαια δρᾶν. Τό δὲ μήτε τοῖς ἰδίῳις πράγμασιν ἐπικουρίαν μέλλοντα μήδ’ ἡντινοῦν παρασκευάζειν μήτε τοῖς ἐχθροῖς ἐλάττωσιν πρός γε τόν ἐνεστώτα πόλεμον, ἐκ περιττοῦ καὶ ναοὺς ἅμα δὲ τούτοις ἀδριάντας καὶ πᾶσαν δὴ τὴν τοιαύτην κατασκευὴν λυμαίνεσθαι πῶς οὐκ ἂν εἴποι τις εἶναι τρόπου καὶ θυμοῦ λυττωντος ἔργον...”

Πολυβίου Ἱστοριῶν Πέμπτη 11, 3-5

For it is one thing to seize on and destroy the enemy's forts, harbours, cities, men, ships, crops and other things of a like nature, by depriving him of which we weaken him, while strengthening our own resources and furthering our plans: all these indeed are measures forced on us by the usages and laws of war. But to do wanton damage to temples, statues and all such works with absolutely no prospect of any resulting advantage in the war to our own cause or detriment to that of the enemy must be characterized as the work of a frenzied mind at the height of its fury.

Polybius - Histories V

Translated by W. R. PATON

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THE REPATRIATION OF CULTURAL TREASURES AS AN INTERNATIONAL CUSTOM

INTRODUCTION

In his *Plea for the Return of an Irreplaceable Cultural Heritage item to those who created it*, (7 June 1978)¹ the Director General of UNESCO, Amadou-Mahtar M'Bow stated *inter alia* that:

One of the most noble incarnations of a people's genius is its cultural heritage, built up over the centuries by the work of its architects, sculptors, painters, engravers, goldsmiths and all the creators of forms, who have contrived to give tangible expression to the many-sided beauty and uniqueness of that genius.

The vicissitudes of history have nevertheless robbed many peoples of a priceless portion of this inheritance in which their enduring identity finds its embodiment.

Architectural features, statues and friezes, monoliths, mosaics, pottery, enamels, masks and objects of jade, ivory and chased gold - in fact everything which has been taken away, from monuments to handicrafts - were more than decorations or ornamentation. They bore witness to a history, the history of a culture and of a nation whose spirit they perpetuated and renewed.

The peoples who were victims of this plunder, sometimes for hundreds of years, have not only been despoiled of irreplaceable masterpieces but also robbed of a memory which would doubtless have helped them to greater self-knowledge and would certainly have enabled others to understand them better...

The men and women of these countries have the right to recover these cultural assets which are part of their being...

These men and women who have been deprived of their cultural heritage therefore ask for the return of at least the art treasures which best represent their culture, which they feel are the most vital and whose absence causes them the greatest anguish.

This is a legitimate claim; and UNESCO, whose Constitution makes it responsible for the preservation and protection of the universal heritage of works of art and monuments of historic or scientific interest, is actively encouraging all that needs to be done to meet it...

Two thousand years ago, the Greek historian Polybius urged us to refrain from turning other nations' misfortunes into embellishments for our own countries. Today when all peoples are acknowledged to be equal in dignity, I am convinced that international solidarity can, on the contrary, contribute practically to the general happiness of mankind.

¹ http://www.unesco.org/culture/laws/pdf/PealforReturn_DG_1978.pdf

Recommended to the Director-General by the Venice Committee of Experts 1976 (Unesco Doc. SHC-76/CONF.615.5,3)

*The return of a work of art or record to the country which created it, enables a people to recover part of its memory and identity, and proves that the long dialogue between civilizations which shapes the history of the world is still continuing in an atmosphere of mutual respect between nations.*²

In the light of these fundamental principles, International Law on the Protection and Return of Cultural Treasures has been extremely developed, during the 20th Century, covering all the circumstances during which Cultural Heritage may be endangered, during armed conflict in general or in time of peace. A great number of Treaties have been concluded with a view to preventing the theft, illegal export and illicit trafficking of cultural treasures and their returning to their country of origin. At the same time, these principles of the protection of Cultural Heritage and the repatriation of Cultural Property, have already been crystallized and verbally expressed not only in a great number of multilateral Treaties, but also in numerous bilateral Agreements, in numerous national legislations, in the legislation of the European Union, in United Nations Security Council's Resolutions, in Resolutions of the United Nations General Assembly and of the Council of Europe, in Recommendations of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property, as well as in the Museums and Traders' Codes of Ethics. In addition to the above legal instruments, there are Court Decisions on the Return of Cultural Property as such as an extremely increasing number of cases of repatriation, either by using diplomatic or even voluntary means. It is obvious that the civilized world has set, for many decades, the Human Civilization in its immediate priorities, recognizing the fundamental role of Cultural Heritage, for the survival and the evolution of Humanity.³ Cultural Treasures have been victims of destruction and illicit trafficking during Wars and armed conflicts⁴, since the Antiquity – with most famous the looting of cultural

² That's the reason why in the MEMORANDUM ON THE PARTHENON MARBLES submitted by the Government of the Hellenic Republic to the House of Commons Select Committee on Culture, Media and Sport, on 9 March 2000, it is stated, that *The Parthenon is acknowledged universally not only as a unique monument in the history of architecture but also as the epitome of the contribution of the Greek spirit to the cultural heritage of mankind. The monument's uniqueness and the need to restore the unity of its sculptures make the return of the Parthenon Marbles housed in the British Museum imperative. ... the Parthenon, a monument of universal significance, can no longer remain dismembered. The reunification of the Parthenon Marbles in Athens, the city in which they were created, will ensure their reintegration in their historical, topographic, and cultural context, and will contribute to their fuller understanding and interpretation.* <http://www.culture.gr/DocLib/memorandum.pdf>

³ Vergou M., Protection of Cultural Property- International, European and Greek Law, Nomiko Vima 2016 p. 1058

⁴ In **Egypt**, archaeological sites of great importance have been looted. According to a declaration of Zahi Hawass, ancient tombs at Saqqara and Abusir, as well as deposits in Saqqara and at the University of Cairo were looted. At

property by Roman forces during the Roman conquest and the Sack of Constantinople by the Fourth Crusade -, up to the Napoleonic wars, the World Wars I and II, the invasion of Northern Cyprus, the Gulf War and the Syrian War. The most emblematic recent case is this of Palmyra. During the Turkish Occupation in Northern Cyprus, since the invasion of July-August 1974, a large number of religious and archaeological objects have been illegally exported and subsequently sold in art markets.⁵ According to the official elements of UNESCO⁶ “...*Together with the trafficking in drugs and arms, the black market of antiquities and culture constitutes one of the most persistent illegal trades in the world*”.⁷ Investigations on the illicit trafficking in

least nine artifacts were robbed from the National Museum of Cairo. In **Bangladesh** (1971) 2,000 Hindu temples were destroyed, or seriously damaged and 6,000 sculptures were exported by smugglers. In **Iraq**, during the operations against Saddam Hussein, around 15,000 artifacts were robbed from the Baghdad Museum. Seven thousand were recovered: 2,000 in the USA, 250 in Switzerland, 100 by Italian Carabinieri, 2,000 were stopped in Jordan, others in Beirut and Switzerland while in transit to New York. But the statue of Entemena, King of Lagash (2,450 BC) has not been recovered to date. The Magistrate of the State of Delaware (USA) has restituted 25 cuneiform slabs to Iraq, from where they had been robbed. They were found in July 2010 by an art dealer in California. See Information Kit produced by the Division of Public Information and the Culture Sector of UNESCO on the occasion of the 40th Anniversary of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, <http://unesdoc.unesco.org/images/0019/001916/191606E.pdf>, where there is also information about **Zaire and Afghanistan**.

⁵ Republic of Cyprus, Ministry of Foreign Affairs http://www.mfa.gov.cy/mfa/mfa2016.nsf/mfa16_en/mfa16_en?OpenDocument, Theresa Papademetriou, Cyprus: Destruction of Cultural Property in the Northern Part of Cyprus and Violations of International Law, April 2009, The Law Library of Congress, Global Legal Research Center, <https://www.loc.gov/law/help/cultural-property-destruction/cyprus-destruction-of-cultural-property.pdf>

The loss of a civilization, Destruction of cultural heritage in occupied Cyprus, Nicosia 2012, Original Research / Text: Lefkios Zaphiriou, Costas Nicolaides, Miltos Miltiadou, Marianna Mammidou, Van Coufoudakis, Editor: Miltos Miltiadou,

[http://www.mfa.gov.cy/mfa/embassies/embassy_stockholm.nsf/A64B1EE900605967C22578B90025C290/\\$file/Destruction%20of%20cultural%20heritage%20\(English%20version\).pdf](http://www.mfa.gov.cy/mfa/embassies/embassy_stockholm.nsf/A64B1EE900605967C22578B90025C290/$file/Destruction%20of%20cultural%20heritage%20(English%20version).pdf)

for the return of few of these looted treasures see below II.C.3

⁶ Information Kit, *Ibid* with further details

⁷Moreover “*The illicit trafficking of antiquities is estimated to be superior to US\$ 6 billion per year according to a research conducted by the United Kingdom’s House of Commons on July 2000. Ten years later, the UN report on transnational crimes calculated that the world traffic in cocaine reached US\$ 72 billion; arms 52; heroine 33; counterfeiting 9.8; and cybercrime 1.253.... Other estimates indicate that it amounts at least US\$ 2 billion per year. Other sources estimate that, in 1993, the global sales of cultural property, legitimate or not, reached the value of US\$ 39.3 billion. Today it would be around 60, with an increase of 50% in a decade and an “unprecedented growth” of offer on the Internet.*” The economic value of ceramics from Athens sold at Sotheby’s in New York in

masterpieces in the world, lead to the conclusion that 98 percent of the final market price of an object remains in the pocket of middlemen. From illegal excavation to final sale, the value of the most beautiful masterpieces increases 100 fold, a greater growth than that of drugs.⁸ As for the online purchases, it is estimated that 80 percent of the 100,000 antiquities available online at any given moment have no recorded provenance—which means they are probably looted or fake. According to the research, these objects have a combined total asking price of more than \$10 million. The ISIS looting across the Middle East in recent years, bringing a wave of illicit objects into the marketplace and the easy access to the antiquities through Facebook, WhatsApp, eBay, and Amazon, have contributed to the increase of fake and looted antiquities.⁹ Antiquity all over the world has suffered extended destruction. In numerous Countries, such as China, Italy, Turkey, Bulgaria, Former Czechoslovakia, Nigeria, Mali, Cambodia, USA, Bagladesh, Greece, the cultural treasures have to a great extent been looted, stolen, scattered, illegally exported.¹⁰

1998 for US\$ 1,200,000 decreased after the beginning of investigations in Italy. In 2001, their value declined to US\$ 450,000 and in 2009 it increased again to US\$ 600,000. Information kit, *Ibid*, fn 22

⁸ Information Kit, *Ibid*

⁹ According to Neil Brodie, a senior research fellow in Endangered Archaeology at the University of Oxford and after thorough investigation conducted by the *Wall Street Journal* into the surge in illicit antiquities bought and sold online, Lekakis G., Kontra news 18.11.2017, “80% of the antiquities available online are looted or fake” with the source mentioned: Wall Street Journal Artnet News 1.11.2017: <https://news.artnet.com/art-world/antiquities-sold-online-fake-1135832>

¹⁰ Information Kit, *Ibid*: Most **African** countries have lost 95% of their cultural property. As for **China** in 10 years, 30,000 artifacts were found by the customs of Shenzen. In **Italy**, in Cerveteri, 400 to 550 Etruscan tombs were looted after the end of World War II. In 1995, at the free port of Geneva, a stock belonging to the smuggler Medici contained 6,000 artifacts. A 58-page inventory of these artifacts was compiled. Medici has been condemned also for “complicity in the destruction of at least 200,000 archaeological sites”; and is also “suspected of looting 20,000 artifacts illegally excavated”. Talking about **Mayan Heritage**, at least 1,000 ceramic objects, worth more than US\$10 million, are illicitly excavated every month in the Mayan region of Central America. In 1970, an Italian dealer tried to export illegally 12,000 artifacts from Ecuador, where hundreds of sites were damaged. In Belize, a researcher points out that in some archaeological sites only 50 out of 200 people conducting excavations are official archaeologists. In **Turkey**, from 1993 to 1995 at least 17,500 investigations have been opened for looting of art. In 1992 alone, 5,000 icons disappeared from Bulgarian churches. In **former-Czechoslovakia** a third of churches were robbed in the 90s: 20,000 artifacts illicitly exported from the country every day; from 1993 to 1996, 3,580 thefts from churches and sacred places were reported, 1,250 from castles, 750 from museums, and 1,400 from private apartments. In **Nigeria**, during the 90s, over 400 artifacts have been stolen from museums and other institutions. The looting of cultural objects continues. In **Mali**, the African country with the largest number of archaeological sites after Egypt, a recent field study of an area of 125,000m² found 845 sites. 45% of them had been looted, 17% seriously damaged. In **Cambodia** since 1975, hundreds of Buddha statues near Angkor Wat have been mutilated, many of them decapitated. UNESCO estimates that such events happen once a day. In the United States, a survey

Most artifacts on the market nowadays have an illegal provenance, are undocumented and lack certification of provenance¹¹, and the same applies to many private collections containing looted objects, mostly in the US but also in London, St Petersburg and Berlin. According to researchers, in major collections 70 per cent of the objects are described “in a vague and insufficient” way.¹² Moreover, during the last years, antiquities are involved with Terrorism and organized crime.¹³ Cultural Treasures are being used to finance the operations of terrorist groups in Iraq and Syria, as recognized by the UN Security Council in its Resolutions 2199(2015), 2253(2015), 2322(2016), 2347(2017), 2368(2017), which condemn the destruction of Cultural Heritage in Iraq and Syria particularly by ISIL and ANF and stress the obligation of all Member States to prevent the trade of Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed, and to ensure their eventual safe return to the Iraqi and Syrian people. According to these Resolutions, *the return, restitution or repatriation of trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded cultural property*, must be ensured by use of international and domestic legal instruments.

Consequently the fundamental principles of the protection of every State’s Cultural Heritage, the States’ collaboration for preventing the illicit trafficking of cultural property and the repatriation of Cultural Property to its country or people of origin as a condition for the conservation of their integrity and of the cultural environment where they belong, have already been established.¹⁴ Especially with regard to the repatriation of the Parthenon Sculptures, the European Parliament adopted in 1998 a Declaration in favor of the Return of the Parthenon Marbles to Greece,

conducted in 1991 shows that in Nebraska 28% of sites of particular importance have been damaged by illegal excavators looking for fossils. From a collection of ancient manuscripts, from 750 AD to 1200 AD, only one remains in **Bangladesh**. The others are scattered around the world.

¹¹ Information Kit *Ibid*, according to which: “80% of Etruscan and Roman antiquities”. 31% of the total corpus of Apulian pots, more than 4,200 vases produced only in Apulia, From the 13,718 Apulian vases known to scholars, only 5.5% (753) were legally excavated by professional archaeologists. Only 13% of Attic red-figure pots attributed to the *Berlin painter* come from a relatively secure archaeological context. Well over 50% of the pots attributed to this painter come from illegal excavations.

¹² Information Kit *Ibid*, according to which for example, 62 per cent of the exhibited objects of the Ortiz collection came from an unknown origin.

¹³ A plane with illegal excavators from Mexico landed in Colorado, with 350 pounds of marijuana from Chiapas and pre-Columbian antiquities; in Guatemala and Belize secret planes have been discovered transporting cocaine and Mayan steles to Miami and other American cities. Information Kit, *ibid*

¹⁴ Stamatoudi I., Principles and Tendencies in the Law of Cultural Heritage, in Protection and Return of Cultural Objects Conference in the Amphitheater of the New Acropolis Museum (10.12.2010) about the Protection and Return of the Cultural Property, p. 149

UNESCO adopted in 1999 a recommendation that bilateral talks be initiated between Greece and the United Kingdom,¹⁵ the Intergovernmental Committee for Promoting the Return of Cultural Property (ICPRCP) during several sessions, in particular in 1989, 1991, 1994, 1996, 1999, 2010, 2011 and 2016 adopted Recommendations calling for an amicable settlement of the dispute.¹⁶ The adoption by the UN General Assembly on 9 December 2015, of Resolution 70/76 for the «*Return or restitution of cultural property to the countries of origin*» proves the universal consensus to the legality of this claim.

In conformity with the above, this study aims to prove, that long, general, constant and uniform State practice accepted as law, establishes the rule of the Return or Restitution of Cultural Property to its country of origin, as a norm of customary international law. Art.38(1)(b) of the International Court of Justice Statute defines international custom, as a “general practice accepted as law”.¹⁷ Customary Law consists of two elements, the material element and the psychological one.¹⁸ The International Court of Justice has firmly maintained that “in order to establish an international customary rule, it has to direct its attention to the practice and *opinio juris* of States”.¹⁹ Consequently relevant rules shall apply to the States that have not yet ratified the International Treaties.

¹⁵ See MEMORANDUM ON THE PARTHENON MARBLES submitted by the Government of the Hellenic Republic to the House of Commons Select Committee on Culture, Media and Sport, on 9 March 2000, <http://www.culture.gr/DocLib/memorandum.pdf>

see also Korca E. “The Framework of the Greek Request for Claiming the Parthenon Marbles”, in Protection and Return of Cultural Objects Conference in the Amphitheater of the New Acropolis Museum (10.12.2010) about the Protection and Return of the Cultural Property, p.230

¹⁶ UNESCO, Promote the Return or the Restitution of Cultural Property, information kit 2001, <http://unesdoc.unesco.org/images/0013/001394/139407eb.pdf>, see below IB1.

¹⁷ Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America) Merits, Judgment of 27 June 1986, para. 187. In para. 186 it is stated that “In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule.”

¹⁸ Pellet in Zimmermann, Statute of the International Court of Justice, Art38, para. 213-234

¹⁹ Pellet *ibid*, para. 213, fn 575.

I. REPATRIATION OF CULTURAL PROPERTY IN THE INTERNATIONAL FIELD

There are different forms and types of legal instruments regulating the protection and repatriation of cultural property. International treaties are completed and enlightened by soft law rules and guidelines adopted by international organs.

Treaties are relevant in determining the existence of customary international law because they help assess how States view certain rules of international law.²⁰ Moreover it is underlined that a treaty provision may reflect customary law, even though the treaty is not yet in force, provided that there is sufficiently similar practice, included by specially affected States, so that there is little likelihood of significant opposition to the rule in question.²¹ Treaties “*might be the most important and frequent aspect of practice*”.²² The International Court of Justice in the Continental Shelf case stated that: “*It is of course axiomatic that the material of customary international law is to be looked for primarily in the actual practice and opinio juris of States, even though multilateral conventions may have an important role to play in recording and defining rules deriving from custom, or indeed in developing them*”.²³ Thus it is recognised by the Court that Treaties may reflect pre-existing customary international law but may also lay the foundation for the development of new customs based on the norms contained in those treaties.

²⁰ International Committee of the Red Cross, Customary International Humanitarian Law, Impact of treaty Law, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_in, where it is also stated that “the ratification, interpretation and implementation of a treaty, including reservations and statements of interpretation made upon ratification, are included in the study. In the *North Sea Continental Shelf cases*, the International Court of Justice clearly considered the degree of ratification of a treaty to be relevant to the assessment of customary international law. In that case, the Court stated that “the number of ratifications and accessions so far secured [39] is, though respectable, hardly sufficient”, especially in a context where practice outside the treaty was contradictory. Conversely, in the *Nicaragua case*, the Court placed a great deal of weight, when assessing the customary status of the non-intervention rule, on the fact that the UN Charter was almost universally ratified and that relevant UN General Assembly resolutions had been widely approved, in particular Resolution 2625 (XXV) on friendly relations between States, which was adopted without a vote.”

²¹ ICJ, *Continental Shelf case, (Libyan Arab Jamahiriya v. Malta)*, Judgment, 3 June 1985, *ICJ Reports* 1985, p. 33, § 34. The number of claims to an exclusive economic zone had risen to 56, which included several specially affected States., see International Committee of the Red Cross, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_in_in, note 53

²² Pellet *ibid* para. 217 p. 816, where jurisdiction in note 588

²³ *Continental Shelf case, (Libyan Arab Jamahiriya v. Malta)*, Judgment, 3 June 1985, *ICJ Reports* 1985, para. 27 <http://www.icj-cij.org/files/case-related/68/068-19850603-JUD-01-00-EN.pdf>

In practice, the drafting of treaty norms helps to focus world legal opinion and has an undeniable influence on the subsequent behaviour and legal conviction of States.²⁴

According to the International Law Association's (ILA) Statement of Principles Applicable to the Formation of General Customary International Law²⁵, a multilateral treaty may codify existing customary international law (Principle 20) or contain specific provisions which do represent existing customary law (Principle 21). Multilateral treaties can provide the impulse or model for the formation of new customary rules through State practice (Principle 24) and multilateral treaties can assist in the "crystallization" of emerging rules of customary international law (Principle 26). Finally in exceptional cases, a multilateral treaty can possibly give rise to new customary rules (or to assist in their creation) "of its own impact", if it is widely adopted by States and it is the clear intention of the parties to create new customary law (Principle 27). Since, as stated by ILA in the above principles, there has been no presumption to these interactions, it is a question of examining the evidence in each case. In other words, the historic ("material") source of a customary rule can be provided by treaties, which can be, through State practice, the inspiration or model for the adoption of a new custom, and assist in the so-called "crystallisation" of an emerging custom. Moreover a new custom can be raised of "its own impact" if the rule concerned, is of a fundamentally norm-creating character and is widely adopted by States with a view to creating a new general legal obligation.²⁶

In the same spirit, soft law rules and guidelines serve to enlighten and complete the treaty rules.

A. RESPECT AND PROTECTION

In this chapter the international legal instruments regulating the protection and respect of cultural property either during Armed Conflict or in time of peace are exposed.

1. Protection of Cultural Property during Armed Conflict – International Humanitarian Law

The rules of protecting and respecting cultural property during armed conflicts, as much as of preventing the illicit export of cultural property from occupied territory and returning it to its

²⁴ International Committee of the Red Cross, Customary International Humanitarian Law, Impact of treaty Law, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_in

²⁵ ILA, Final Report of the Committee on the Formation of Customary (General) International Law, Statement of Principles Applicable to the Formation of General Customary International Law, Report of the Sixty-Ninth Conference, London, 2000, PART IV: THE ROLE OF TREATIES IN THE FORMATION OF CUSTOMARY INTERNATIONAL LAW, Principles 20–21, 24, 26 and 27, <https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/ILA%20Report%20on%20Formation%20of%20Customary%20International%20Law.pdf>

²⁶ International Committee of the Red Cross, Customary International Humanitarian Law, Introduction: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_in

country of origin, have already been established as norms of customary international law, binding *erga omnes*, against all states, even if a state is not party to an international humanitarian law instrument.²⁷ The International Committee of the Red Cross (ICRC), in a special Chapter 12 of the Rules of the International Humanitarian Customary Law, concerning Cultural Property; Pursuant to Rule 40 entitled “Respect for Cultural Property *Each party to the conflict must protect cultural property: A. All seizure of or destruction or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited. B. Any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited*”.²⁸

1.1. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907

The need to respect Cultural Property during the war was first recognised in the Hague Peace Conferences (1899 and 1907). According to the provisions of Convention (IV): -“*In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.*” (Art. 27). -“*An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.*” (Art. 53(1)). - “*The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.*” (Art. 56).

²⁷ International Committee of the Red Cross, *ibid*, Livada-Daskalopoulou F., International Criminal Court, From Nuremberg to Hague, p. 97, Theresa Papademetriou, Cyprus: Destruction of Cultural Property in the Northern Part of Cyprus and Violations of International Law, The Law Library of Congress, Global Legal Research Center, April 2009, p. 2 <https://www.loc.gov/law/help/cultural-property-destruction/cyprus-destruction-of-cultural-property.pdf>

²⁸ https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter12_rule40

Until 1954 the Hague Convention of 1907 was the only comprehensive multilateral international agreement in effect in Europe dealing with the protection of cultural property during wartime.²⁹ The provisions of the two Conventions on land warfare, like most of the substantive provisions of the Hague Conventions of 1899 and 1907, are considered as embodying rules of customary international law. As such they are also binding on States which are not formally parties to them.³⁰ As stated by the Nüremberg International Military Tribunal in 1946 with regard to the Hague Convention on land warfare of 1907: *"The rules of land warfare expressed in the Convention undoubtedly represented an advance over existing International Law at the time of their adoption ... but by 1939 these rules ... were recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war"*.³¹

The Hague Convention (IX) concerning Bombardment by Naval Forces in Time of War³² makes almost the same provisions about the prevention of the above actions³³, stating in Art. 5 that *"In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes..."*.

Before these Conventions the **Lieber Code (1863)**, also known as "Instructions for the Government of Armies of the United States in the Field" made similar provisions.³⁴

Although the Hague Conventions of 1907 don't specifically refer to the return of cultural property illegally removed from occupied territory, the provisions about the respect and protection of such treasures must be interpreted in this way, given that the return of cultural

²⁹ Lawrence M. Kaye "Laws in Force at the Dawn of World War II: International Conventions and National Laws," in *The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property*, ed. Elizabeth Simpson (New York: Harry N. Abrahams, Inc., 1997), 102

³⁰ International Committee of the Red Cross: <https://ihl-databases.icrc.org/ihl/INTRO/195>

³¹ Reprinted in AJIL, Vol. 41, 1947, pp. 248-249. The International Military Tribunal for the Far East expressed, in 1948, an identical view, see D.Schindler and J.Toman, *The Laws of Armed Conflicts*, Martinus Nihjoff Publisher, 1988, pp.69-93, in INTERNATIONAL COMMITTEE OF THE RED CROSS <https://ihl-databases.icrc.org/ihl/INTRO/195>

³² ICRC, <https://ihl-databases.icrc.org/ihl/INTRO/220?OpenDocument>

³³ Livada-Daskalopoulou F., *ibid*, p. 96

³⁴ Pursuant to Article 36 *"If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized or removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace. In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated or wantonly destroyed or injured."*

property is the only adequate means of restitution in case of such crimes. This is the reason why the next Hague Convention of 1954 and its Protocols made expressed requirements about the return of the cultural property to its land of origin.

1.2. Geneva Conventions of 1949 and the two Protocols adopted in 1977

Art. 53 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, about the “Protection of cultural objects and of places of worship”, stating that: “... *it is prohibited: (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; (b) to use such objects in support of the military effort; (c) to make such objects the object of reprisals.*” Under these provisions the protection of cultural property is considered as customary international law.³⁵

1.3. Rome Statute of the International Criminal Court (ICC) (entered into force on 1 July 2002) - Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY) - ILC Draft Code of Crimes against the Peace and Security of Mankind (1996)

According to the Rome Statute of International Criminal Court, the intentional destruction of cultural objects is considered to be a war crime and punished correspondingly. Art. 8(2) describes the actions considered as war crimes, while subparagraph (b) refers to “*Other serious violations of the laws and customs applicable in international armed conflict*”. According to subparagraph (b)(ix) as “*war crimes*” are considered *inter alia* “(ix) *Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives*”.

The basic elements of this crime are derived from the above stated (A1a) Articles Hague Regulations (1907). The ICC Statute specifies the prevention of attack against political objects and thus it introduces a *lex specialis* against the general prevention of attack against the aforesaid buildings. This prevention concerns the international as much as the internal (non international) armed conflicts.³⁶

Accordingly, in Article 3 of the ICTY Statute, defining “*Violations of the laws or customs of war*” it is stated that “*The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: ... (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; ..*”.

³⁵ see Livada-Daskalopoulou F., *ibid*, p. 97 and sub notes 601,602.

³⁶ Livada-Daskalopoulou F., *ibid* p. 96 and sub notes 601,602.

Obviously the prevention of actions against cultural property is considered to be a custom of war and such destruction is prohibited under customary law.³⁷

Pursuant to Article 20(e)(iv) of the 1996 ILC Draft Code of Crimes against the Peace and Security of Mankind, “*seizure of, destruction of or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and sciences*” is a war crime.³⁸

1.4. Council of the European Union Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes

The purpose of this Decision is to strengthen effective cooperation among the authorities in different Member States in the field of investigation and prosecution of people who have committed or participated in the commission of genocide, crimes against humanity or war crimes as defined in Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court of 17 July 1998 (Art. 1).³⁹

2. General Protection of Cultural Property

2.1. United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention for the protection of Cultural and National Heritage (Paris 1972)

According to the preamble of the Convention, the States Parties consider that deterioration or disappearance of any item belonging to cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world, and that protection of this heritage at a national level often remains incomplete because of the scale of the resources, which it requires and of the insufficient economic, scientific, and technological resources of the country where the property to be protected is situated.

Art. 4 establishes the duty of each State party to ensure the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, that belongs primarily to that State. To this end, each State Party owes to use the utmost of its own resources and, where appropriate, to ask for any international assistance and co-operation.

Art. 8 establishes within the United Nations Educational, Scientific and Cultural Organization an

³⁷ The Jurisdiction of this Court has a rather restrictive view on the protection of cultural property, see Livada-Daskalopoulou F., *ibid*, p. 97 and sub notes 612

³⁸ International Committee of Red Cross Practice Relating to Rule 40. Respect for Cultural Property
https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule40

³⁹ It is reminded that the destruction of cultural objects is punished under art. 8 of the Rome Statute International Criminal Court (see above 1.3)

Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called “the World Heritage Committee”. An inventory of property forming part of the cultural and natural heritage situated in its territory is going to be submitted to this Committee by each State Party, on the basis of which the “World Heritage List” will be established and updated every two years (Art.11). Art. 13 sets the procedure of receiving and studying requests for international assistance formulated by States Parties to this Convention with respect to property forming part of the cultural or natural heritage, situated in their territories. Until 5.9.2017 175 States have ratified or signed this Convention.⁴⁰

2.2. United Nations Convention on the Law of the Sea (UNCLOS) (1982)

This Convention establishes the duty of the States to protect the archaeological and historical objects found at sea and to cooperate for this purpose. Traffic in such objects must be controlled. For that purpose, the coastal State may, applying article 33, which refers to the contiguous zone⁴¹, presume that their removal from the seabed in the zone referred to in that article without its approval, would result in an infringement of the laws and regulations referred to in that article within its territory or territorial sea (Art. 303(1)(2). This rule stands without affecting the rights of identifiable owners, the law of salvage or other rules of admiralty, laws and practices with respect to cultural exchanges, and without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature(Art.303(3)(4). Thus the provisions of Art.303(4) creates a *de facto* archaeological zone, in which the coastal State exercises jurisdiction and not only limited rights of control.⁴²

As far as the cultural objects found in the seabed beyond 24 nautical miles the coastal State does not have jurisdiction, because its sovereign rights over the exclusive economic zone (EEZ) and the continental shelf do not include cultural objects. However in case that the coastal State has

⁴⁰ <http://www.unesco.org/eri/la/convention.asp?language=E&KO=17116>

⁴¹ According to the art. 33 UNCLOS, In the contiguous zone the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured

⁴² Ioannou K.-Strati A., Law of the Sea para 337 p.97, in Vergou M., p. 1066

established EEZ, the coastal State has the rights preserved in Art. 59 UNCLOS, since the archaeological and historical objects found at sea can be considered as residual rights.⁴³

In the Area which, together with its resources, constitutes a common heritage of mankind (Art. 136 UNCLOS), the objects of an archaeological and historical nature found, will be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin (Art. 149 UNCLOS).

Until 25.10.2017 157 States have signed this Convention and 168 have ratified it.⁴⁴

2.3. Convention on the protection of Underwater Cultural Heritage (2001)

Basic principles are set out for the protection of underwater cultural heritage and a detailed State cooperation system is provided, which includes widely recognized practical rules for the treatment and research of underwater cultural heritage. The Convention provides for the *in situ* preservation of underwater cultural heritage as first option and prohibits any Commercial Exploitation of the underwater cultural heritage as defined in Art. 1. According to the Preamble, the rules about the underwater cultural heritage are in conformity with international law and practice, including the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, the UNESCO Convention for the Protection of the World Cultural and Natural Heritage of 16 November 1972 and the United Nations Convention on the Law of the Sea of 10 December 1982.⁴⁵

Articles 7,8,9, 10,11 and 12 set rules about the way the State parties cooperate and exercise their sovereignty in internal waters, archipelagic waters and territorial sea, contiguous zone, exclusive

⁴³ Art. 59 UNCLOS: “In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.”

See Ioannou K.-Strati A., Law of the Sea para 338 p. 97, in Vergou M., *ibid* p. 1066

⁴⁴ https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en

⁴⁵ Thus these provisions must be interpreted as recognition of the interest of States Parties with cultural, archaeological or historical relations with the underwater cultural objects and not as limiting the jurisdiction of the coastal State in the archaeological zone, as defined in art. 303 UNCLOS, see Ioannou K.-Strati A., Law of the Sea para 350-356 pp100-101 referring to the relative Greek Declaration, made in the first Conference of the Parties (26-27.3.2009) where Greece took part as observer, in Vergou M., *ibid* p. 1068

economic zone, in the continental shelf and in the Area, in order to protect the underwater cultural heritage.

Until 26.10.2017 58 States have accepted or ratified this Convention.

2.4. Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 17 October 2003

The purpose of this Convention is the international cooperation and assistance for the safeguard and respect of the intangible cultural heritage of the communities, groups and individuals concerned (Art. 1), the importance of which as a main - spring of cultural diversity and a guarantee of sustainable development is underlined in the preamble. Among the purposes of the Convention are the raising of awareness at the local, national and international levels of the importance of the intangible cultural heritage, and the ensuring of mutual appreciation.

As “intangible cultural heritage” the Convention (Art.2(1) defines the “practices, representations, 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. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity”.⁴⁶ States Parties have the responsibility to take measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non formal education, as well as the revitalization of the various aspects of such heritage (Art.3(3). An Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage is established under Art.5.

Until 5.9.2017 175 States have accepted or ratified this Convention.

2.5. The ILO Indigenous and Tribal Peoples Convention, 1989

According to Art.2: “1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

⁴⁶ The ‘intangible cultural heritage’ is manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship (art.2(2)

2. Such action shall include measures for: ... (b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;”

It is worth noting that the **Foreign Affairs Council of the European Union adopted Conclusions on Indigenous peoples (15 May 2017)**, according to which the economic, social and cultural rights as well as the civil and political rights must be ensured.⁴⁷

2.6. The European Union Decision 2017/864 of the European Parliament and of the Council, of 17 May 2017 on a European Year of Cultural Heritage (2018)⁴⁸

Cultural heritage is central to the European Agenda for Culture and one of the four priorities for European cooperation on culture for the period 2015-2018, as set out in the current Work Plan for Culture, adopted by the Council and the Representatives of the Governments of the Member States, meeting within the Council, on 25 November 2014 (preamble (5)(6)). Thus the year 2018 is designated as the ‘European Year of Cultural Heritage’ (‘European Year’) (Art. 1 para.1).

3. Human Rights Protection

Human Rights Law is also applicable in the field of cultural property, mainly because every Nation’s cultural heritage forms its identity and thus its preservation is indispensable for the survival of the Nation’s history and memory. Human rights law has been included in order to support, strengthen and clarify the principles of international humanitarian and treaty law. The cultural heritage constitutes an element of the personality of every Nation as for every person, belonging to this Nation. Consequently the protection of cultural objects is, beyond any doubt, a matter of human rights, and the relevant legal instruments must be seen in the light of human rights law.

The UN Independent Expert on Cultural Rights, Ms Farida Shaheed, has noted that: “Access to and enjoyment of cultural heritage as a human right is a necessary and complementary approach to the preservation/safeguard of cultural heritage. Beyond preserving/safeguarding an object or a manifestation in itself, it obliges one to take into account the rights of individuals and communities in relation to such object or manifestation and, in particular, to connect cultural heritage with its source of production”.⁴⁹

The cultural heritage as a component of the cultural environment can be protected through an individual right to the protection of the cultural environment which derives from the cultural

⁴⁷ <http://www.consilium.europa.eu/en/press/press-releases/2017/05/15/fac-indigenous-people/>

⁴⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017D0864>

⁴⁹ Kevin Chamberlain and Ana Vrdoljak, Controls on the export of cultural objects and human rights, in Handbook on the law of cultural heritage and international trade, p. 532 fn.2 UN Doc.A/HRC/17/38, para.2

identity.⁵⁰ The idea that the right of the members of a community on the cultural heritage of this community constitutes a human right protected by Human Rights Law, has inspired the ILO Indigenous and Tribal Peoples Convention, 1989. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the General Assembly on Thursday, 13 September 2007, recognises in Art. 5 the right of the Indigenous peoples to maintain and strengthen their distinct political, legal, economic, social and cultural institutions. In addition Articles 11 and 12 recognise an autonomous *right to the repatriation of the Indigenous peoples' human remains*, while Article 31 establishes the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions as a recognised protected Human Right. The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Australia)⁵¹ also reflects the idea of the protection and maintenance of cultural heritage as a human right. The Native American Graves Protection and Repatriation Act (NAGPRA), 1990 (USA)⁵² is considered to be interpreted and applied in the light of the Human Rights Law on a domestic and international level.⁵³

3.1. Universal Declaration of Human Rights - Art. 27

“1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”

Under the provisions of article 1 of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, Faro, 27.10.2005⁵⁴, *rights relating to cultural heritage are inherent in the right to participate in cultural life, as defined in the Universal Declaration of Human Rights*. Moreover, as stated in the preamble of the Council of Europe Convention on Offences relating to Cultural Property, Nicosia, 19.05.2017, *State Parties are convinced that the diverse cultural property belonging to peoples constitutes a unique and important testimony of the culture and identity of such peoples, and forms their cultural heritage*. Consequently the protection of cultural treasures falls under the Scope of Human Rights Law.

⁵⁰ Voutsakis V., The right to the protection of the cultural heritage: operators, foundation, function, in *The Cultural Heritage and the Law*, p.158

⁵¹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/aatsihpa1984549/s3.html

⁵² <https://www.nps.gov/nagpra/mandates/25usc3001etseq.htm>,
see also <https://www.nps.gov/archeology/tools/laws/nagpra.htm>

⁵³ Grammatikaki-Alexiou A. The protection of Cultural Heritage from the scope of Human Rights, in *Protection and Return of Cultural Objects* p.49, Vergou M., *ibid* p. 1069

⁵⁴ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680083746>

3.2. International Covenant on Civil and Political Rights - Art. 1(1)

Art 1(1) states that: *“1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*

3.3. International Covenant on Economic, Social and Cultural Rights

According to the Art. 15 of this Covenant *“1. The States Parties to the present Covenant recognize the right of everyone: (a) to take part in cultural life;”* ...

3.4. European Convention of Human Rights (ECHR)

According to the Art. 8 of the ECHR: *“Right to respect for private and family life: 1. Everyone has the right to respect for his private and family life, his home and his correspondence”*. It has been claimed that *“As “minority identity” and “ethnic identity” are proper subjects of protection, it follows logically that “Cultural identity” is also protected under Article 8 ECHR”*.⁵⁵ To support this argument it is reminded that *“the European Court of Human Rights (ECtHR) has increasingly referred to other human rights instruments to assist it in the proper interpretation of the ECHR and to furnish evidence of present-day standards, when considering how to interpret the Convention as a ‘living instrument’.”* Thus a reference can be made to the right to self-determination, protected by virtue of Article 1(1) of the ICCPR, now recognized as a right which all people have under customary international law. This right indispensably includes the right of peoples to pursue their cultural development, which would include the right to pursue cultural identity, including the right to the return of cultural treasures which constitute an iconic symbol of a people’s cultural identity (such is the case of the Parthenon Sculptures). Accordingly, article 8 ECHR should be interpreted in such a way as to take account of the right of peoples to self-determination and all that this right entails.⁵⁶

There is no decision of the European Court of Human Rights (ECtHR) yet, on the content and shape of a State’s positive obligations under Article 8 to protect the Nations’ cultural sovereignty and right to self- determination and thus to return cultural property, nor any case in which national cultural identity has been endorsed as a distinct value safeguarded by Article 8. However, since the ECHR is a "living instrument"⁵⁷, the scope of this provision has been particularly widened, and, as a result, it includes the human personality in broad terms, as a human right protected by the Convention.⁵⁸ Consequently the cultural heritage, as an element of the human personality, is also protected.⁵⁹

⁵⁵ Geoffrey Robertson, Norman Palmer, Amal Clooney, *The Case for Return of the Parthenon Sculptures*, p.130

⁵⁶ Geoffrey Robertson, Norman Palmer, Amal Clooney, *The Case for Return of the Parthenon Sculptures*, p.131

⁵⁷ Geoffrey Robertson, Norman Palmer, Amal Clooney, *ibid*, p.132

⁵⁸ *Sudre Fr., Dr. européen et international des droits de l’ homme*, para. 289

3.5. Charter of Fundamental Rights of the European Union

Pursuant to Art. 7 of the Charter “*Everyone has the right to respect for his or her private and family life, home and communications.*” Given that the Cultural Heritage constitutes an element of the identity and the personality of every human being, as an individual and as a member of a community, it falls within the scope and the protection field of the provision above.⁶⁰

4. Council of Europe Treaties

Since 1954 the Council of Europe has through a great number of treaties regulated the protection of cultural treasures, which shows its constant and increasing concern about Cultural Heritage. The last one was signed on May 2017 in Nicosia, a place with special sensitivity on this theme due to the Northern Cyprus’ occupation since 1974 and to its proximity with the Middle East.

4.1. European Cultural Convention Paris, 19.12.1954⁶¹

In the preamble of this Convention the Council of Europe affirms its aim to achieve a greater unity between its members within the scope of *realizing the ideals and principles which are their common heritage*. Since not only bilateral cultural conventions among members of the Council but also common action designed to safeguard and encourage the development of European culture will contribute to the achievement of this goal, the Convention established the duty of each Contracting Party to safeguard and to encourage the development of its national contribution to the common cultural heritage of Europe (Art. 1) and to regard the objects of European cultural value placed under its control as integral parts of the common cultural heritage of Europe, to take appropriate measures to safeguard them and to ensure reasonable access thereto (Art. 5).

4.2. Convention for the Protection of the Architectural Heritage of Europe Granada, 3.10.1985

The purpose of this Convention is the reinforcement and promotion of policies for the conservation and enhancement of Europe's heritage, under conditions of European solidarity with regard to heritage conservation and practical co-operation among the Parties. The principle of "European co-ordination of conservation policies" including consultations regarding the thrust of the policies to be implemented is thus established.⁶²

⁵⁹ Moustaira E., Cultural Goods and Identity, lecture in the Legal Council of the State, Athens 29.3.2012, Vergou M., *ibid* 2016 p. 1071

⁶⁰ Moustaira E., *ibid*

⁶¹ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168006457e>

⁶² <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/121>

4.3. European Convention on Offences relating to Cultural Property, Delphi, 23.VI.1985⁶³.

This Convention has been replaced by the Council of Europe Convention on Offences relating to Cultural Property (Nicosia, 19.05.2017). In the Preamble the State Parties, aware of their common responsibility and solidarity in the protection of the European cultural heritage, express their conviction that the unity of European Nations is founded to a considerable extent in the existence of a European cultural heritage, which is of a great social and economic value and that the offences against that heritage must be ended and international standards to this end must be urgently adopted.

Under the provisions of Part IV entitled “Restitution of cultural property”, the Parties bear the obligation to return the *cultural property found on their territory, removed from the territory of another Party subsequent to an offence relating to cultural property committed in the territory of a Party* (Art.6), after relevant notification to the competent authorities under the provisions of the articles 7 and 8. Restitution of the property in question is however subject to the conditions laid down in the law of the requested Party (Art.8). There is no possibility for the requested Party to refuse the return of the cultural property in case that its proper rights are based to fiscal or customs offence committed in respect of that property (Art.5).

4.4. European Convention on the Protection of the Archaeological Heritage (Revised)

Valetta, 16.1.1992

In the preamble the State Parties acknowledge the serious threat against the European archaeological heritage, defined in article 1, because of the increasing number of major planning schemes, natural risks, clandestine or unscientific excavations and insufficient public awareness. The measures of protection are identified in the provisions of articles 2,3,4 and include the foundation of legal systems for the protection of the archaeological heritage, preservation of the archaeological heritage and guarantee of the scientific significance of archaeological research work, the implementation of measures for the physical protection of the archaeological heritage, making provision, among others for the conservation and maintenance of the archaeological heritage, preferably *in situ and* for appropriate storage places for archaeological remains which have been removed from their original location.

The Parties have to take measures against the illicit circulation of elements of the archaeological heritage (Art.10), concerning the information of their public authorities and scientific institutions, such as the information of competent authorities in the State of origin of any offer suspected of coming either from illicit excavations or unlawfully from official excavations; the

⁶³ <https://rm.coe.int/168007a085>

control on museums and similar institutions in order not to acquire elements of the archaeological heritage suspected of coming from uncontrolled finds or illicit excavations or unlawfully from official excavations; the restrict, as far as possible, by education, information, vigilance and co-operation of the transfer of elements of the archaeological heritage obtained from uncontrolled finds or illicit excavations or unlawfully from official excavations. The provisions of this Convention do not affect existing or future bilateral or multilateral treaties between Parties, concerning the illicit circulation of elements of the archaeological heritage or their restitution to the rightful owner (Art.11).

4.5. Council of Europe Framework Convention on the Value of Cultural Heritage for Society, Faro, 27.10.2005⁶⁴

Under the provisions of the article 1 of this Convention, *rights relating to cultural heritage are inherent in the right to participate in cultural life, as defined in the Universal Declaration of Human Rights*. Moreover it is stated that there is individual and collective responsibility towards cultural heritage. It is furthermore stressed that conservation of cultural heritage and its sustainable use have human development and quality of life as their goal. State parties agree to promote cultural heritage protection as a central factor in the mutually supporting objectives of sustainable development, cultural diversity and contemporary creativity (Art. 15e) and recognize the value of cultural heritage situated on territories under their jurisdiction, regardless of its origin (Art. 15f).

4.6. Council of Europe Convention on Offences relating to Cultural Property, Nicosia, 19.05.2017

This last Convention, emphasising on the criminal offences against Cultural Property and the regulation of criminal sanctions in this regard, repeats the principles already set, i.e. the aim of the Council of Europe to achieve a greater unity between its members and that the diverse cultural property belonging to peoples constitutes a unique and important testimony of the culture and identity of such peoples, and forms their cultural heritage. State Parties are concerned because of the aggravation of the offences related to cultural property to an increasing extent, leading to the destruction of the world's cultural heritage. The Member States are worried about the fact that unlawfully excavated and illicitly exported or imported cultural property is increasingly being sold in many different ways, including through antique shops and auction houses, and over the internet, and that organized crime is involved in the trafficking of cultural property; they are also concerned about the deliberate destruction of cultural heritage and the use

⁶⁴ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680083746>

of illicit trade of cultural property as a source of financing by terrorist groups (see preamble).

The purpose of the Convention is to prevent and combat the destruction and illicit trafficking of cultural property by providing for the criminalization of such acts (Art.1a) and by applying to the prevention, investigation and prosecution of the criminal offences related to movable and immovable cultural property (Art.2 para.1). The definitions are given in the paragraph 2 of Article 2. Provisions about the Substantive criminal law are set in Section II. As stated in the articles 3-11, the Parties are bound to adopt provisions in their domestic criminal law, according to which constitute criminal offences: theft and other forms of unlawful appropriation of movable cultural property, unlawful excavation and removal, illegal importation, illegal exportation, acquisition, placing on the market, falsification of documents, destruction and damage relating to movable cultural property, such as aiding or abetting and attempt to the commission of a criminal offence referred to in this Convention.

It is very important that article 13 sets out the liability of legal persons for criminal offences referred to in this Convention, when committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within that legal person. Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

A Follow-up mechanism, the Committee of the Parties, is established (Art.22), composed of representatives of the Parties to the Convention, which will be convened by the Secretary General of the Council of Europe, will adopt its own rules of procedure and will be assisted by the Secretariat of the Council of Europe in carrying out its functions. The Functions of the Committee of the Parties (Art.24) will be to monitor the implementation of this Convention, facilitate the collection, analysis and exchange of information, experience and good practice between States to improve their capacity to prevent and combat trafficking in cultural property. Moreover, where appropriate, the Committee will facilitate the effective use and implementation of this Convention, including the identification of any problems that may arise and the effects of any declaration or reservation made under this Convention; express an opinion on any question concerning the application of this Convention and facilitate the exchange of information on significant legal, policy or technological developments; make specific recommendations to Parties concerning the implementation of this Convention.

This convention doesn't make specific provisions about the return and restitution of illicitly traded cultural treasures, however, as stated in the explanatory of article 3: "39. It is also worth noting that if an object is considered stolen, international judicial cooperation in criminal matters may enable its return to the country where it was discovered. Additionally, from a private international law perspective, a foreign court having to deal with a claim for restitution, seeing

that the country where the object was discovered considers it as stolen on the basis of its patrimony law, will have little difficulty in returning it.” Moreover according to the explanatory of article 14, “93. The purpose and scope of the Convention is not to regulate any obligations of State Parties to hand over any seized property to a State that e.g. has requested to return stolen or illegally excavated cultural property. However, in Article 14 paragraph 4, the drafters considered it appropriate to call upon State Parties to apply, where appropriate, its criminal procedural law, other domestic law, or any relevant international treaties when deciding to hand-over of cultural property that has been seized for the purpose of criminal proceedings but is no longer needed for that purpose.”

B. REPATRIATION

The international legal instruments on the return and repatriation of cultural treasures are analysed hereinafter and are applied according to the circumstances of Armed Conflict or in time of Peace.

5. Repatriation of Cultural Property in the Event of Armed Conflict – International Humanitarian Law

5.1. Pursuant to Rule 41 of the ICRC Rules of the International Humanitarian Customary Law, entitled “Export and Return of Cultural Property in Occupied Territory” *The occupying power must prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities of the occupied territory*”.⁶⁵

5.2. Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 and the two Protocols adopted in 1954 and 1999

Art. 4(3) of the Convention commits contracting states to *undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.*

According to Art. I of the **First Protocol** to the Hague Convention of 1954, regulating the return of cultural property.

“1.1. Each High Contracting Party undertakes to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property as defined in Article I of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May, 1954.

2. Each High Contracting Party undertakes to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory. This shall either be effected automatically upon the importation of the property or, failing this, at the request of the authorities of that territory.

3. Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations.

⁶⁵ https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter12_rule41

Rules 38 and 39 of ICRC are also relevant to the Cultural Property preventing its damage unless they are military objectives and attack against it its use for military purposes unless imperatively required by military necessity

4. *The High Contracting Party whose obligation it was to prevent the exportation of cultural property from the territory occupied by it, shall pay an indemnity to the holders in good faith of any cultural property which has to be returned in accordance with the preceding paragraph II 5. Cultural property coming from the territory of a High Contracting Party and deposited by it in the territory of another High Contracting Party for the purpose of protecting such property against the dangers of an armed conflict, shall be returned by the latter, at the end of hostilities, to the competent authorities of the territory from which it came.*”

The **Second Protocol (1999)** applies in the event of an armed conflict not of an international character, occurring within the territory of one of the Parties (Art. 22(1). The Parties “*Considering that the rules governing the protection of cultural property in the event of armed conflict should reflect developments in international law*” are committed to “*...prohibit and prevent in relation to the occupied territory: a. any illicit export, other removal or transfer of ownership of cultural property; b. any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property; c. any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.*”

2. *Any archaeological excavation of, alteration to, or change of use of, cultural property in occupied territory shall, unless circumstances do not permit, be carried out in close co-operation with the competent national authorities of the occupied territory.*” (Art. 9(1)(2).

Under Art. 10 of this Protocol, the Parties are committed to grant enhanced protection to Cultural property that is cultural heritage of the greatest importance for humanity (a), or that is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection (b).

Until 12.9.2017, 129 States have ratified or accepted this Convention.⁶⁶

5.3. Treaty of Peace between the Allied and Associated Powers and Italy (1947)

Pursuant to the Art. 12 of this Treaty “*Italy shall restore to Yugoslavia all objects of artistic, historical, scientific, educational or religious character ... which, as the result of the Italian occupation, were removed between 4 November 1918 and 2 March 1924 from the territories ceded to Yugoslavia under the treaties signed in Rapallo on 12 November 1920 and in Rome on 27 January 1924.*” Under Art. 37 Italy was obliged to “*restore all works of art, religious objects, archives and objects of historical value belonging to Ethiopia or its nationals and removed from Ethiopia to Italy since 3 October 1935*”.

⁶⁶ <http://www.unesco.org/eri/la/convention.asp?KO=13637&language=E>

5.4. Convention on the Settlement of Matters Arising out of the War and the Occupation (1952)

Under Art. 1, para.1 of Chapter Five (“External Restitution”) of this Convention *“Upon the entry into force of the present Convention, the Federal Republic [of Germany] shall establish, staff and equip an administrative agency which shall ... search for, recover, and restitute jewellery, silverware and antique furniture ... and cultural property, if such articles or cultural property were, during the occupation of any territory, removed therefrom by the forces or authorities of Germany or its Allies or their individual members (whether or not pursuant to orders) after acquisition by duress (with or without violence), by larceny, by requisitioning or by other forms of dispossession by force.”*

5.5. Inter-Allied Declaration against Acts of Dispossession (London Declaration 1943)

Through this declaration the intention of the Allied governments is expressed to do their utmost to defeat the methods of dispossession practiced by the Governments, with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled. Accordingly, the governments making this Declaration and the French National Committee, reserve all their rights to declare invalid any transfers of, or dealing with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war, or which belong, or have belonged, to persons (including juridical persons) resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder or of transactions apparently legal in form, even when they purport to be voluntarily effected.⁶⁷

6. United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970)

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is the first one to set the rules against the illicit transfer of cultural treasures. This treaty crystallises the gradually developed, after the catastrophic two World Wars and the end of the colonisation, general thesis of humanity, that the cultural heritage of all nations must be respected and protected, and thus it cannot be object to illicit trafficking.

According to the preamble of the Convention, the UNESCO General Conference, having

⁶⁷ International Committee of Red Cross, International Customary Law Practice Relating to Rule 41. *ibid*

already adopted a similar Recommendation in 1954, considers cultural property as one of the basic elements of civilization and national culture, which must be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting. Thus *“it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export”*, while there is a moral obligation for every State to respect its own cultural heritage and that of all nations. These moral principles have a global effect, as they also adopt to private organisations, such as cultural institutions, museums, libraries and archives, which must also pay respect to the cultural heritage during the enactment of their private activities. UNESCO’s mission is, in part, the understanding between nations, and thus, the Organisation considers the illicit import, export and transfer of ownership of cultural property as an obstacle to that end.

The definition of “cultural property” is given in the Art. 1 of the Convention, while Art. 2 and 3 set the obligation of States to take measures against illicit trafficking of cultural property. According to the Art. 2 and 3: *“The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting there from. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.”* Article 3: *“The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.”*

Art. 4 provides that every State and nation has inalienable rights to its own cultural heritage, which includes *“(a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory; (b) cultural property found within the national territory; (c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property; (d) cultural property which has been the subject of a freely agreed exchange; (e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.”*

Articles 5, 6 and 7 set rules about the measures, including legislation, to be taken by each State

Party to this Convention, to protect the cultural heritage and to prohibit and prevent the illicit exportation of cultural property from their territory, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States, to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution. Furthermore State Parties are charged with the obligation, at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention.

Under the Convention, State Parties undertake the obligations to carry out the necessary concrete measures, including the control of exports and imports and international commerce, for the protection of any State Party's cultural patrimony, which is in jeopardy. The participation in a concerted international effort to determine pillage against the specific materials is obligatory, and so are, pending agreement, the provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State (Art.9).

The Convention makes also provision about the obligations of the States Parties towards antique dealers, subject to penal or administrative sanctions (Art. 10). States have to restrict -by education, information and vigilance-, the movement of cultural property illegally removed and must maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject (Art. 10(a). The Convention, finding it important to create and develop in the public mind the understanding of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports, makes provisions about the need to endeavour this goal by educational means (Art. 10(b).

About the export and transfer of ownership of cultural property, arising directly or indirectly from the occupation of a country by a foreign power, Art. 11 provides that these actions shall be regarded as illicit. This provision defines the illegality as a consequence of the possession without connecting it or even referring to national legislation.⁶⁸

States Parties are also responsible for the cultural heritage within the territories for the international relations of which they are responsible, and must take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in

⁶⁸ Jiri Toman, *La protection des biens culturels en cas de conflit arme*, p.387-388

such territories (Art.12).

Thus, under Art.13, the State Parties undertake the obligation: *(a) to prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property; (b) to ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner; (c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners. (d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.*

Until 25.8.2017 134 States have ratified or accepted this Convention.⁶⁹The Convention doesn't set a limitation period.⁷⁰

The States Parties' third meeting (Paris 18-20.5.2015), adopted, following Greece's initiative entitled "STOP ILLICIT TRAFFICKING", a Resolution about prohibiting the illegal transfer of cultural treasures. This Resolution underlines the political will of the States Parties to reinforce their efforts for the effective protection of cultural heritage, giving emphasis to the joined international efforts against illegal international trade of cultural treasures.⁷¹

The Fourth Meeting of States Parties held at UNESCO Headquarters in Paris from 15 to 16 May 2017, adopted Resolutions⁷², which welcomed the creation of the UNITWIN network on the "Protection of Cultural Property Against Illicit Trafficking in the MENA region (ProCult)". It is urgent that States Parties use the existing tools to strengthen measures against illicit trafficking of cultural property, in particular on the internet, and reinforce regional, national and international cooperation. States Parties are called to better promote the International Code of Ethics for Dealers in Cultural Property and are encouraged to create and maintain up-to-date national lists of auction houses and galleries as an integral part of national awareness-raising efforts. In RESOLUTION 4.MSP 9 the Meeting of States Parties recalls UN Security Council Resolutions 2199 and 2253 (2015). The adoption of the UN Security Council Resolution 2347 (2017) is welcomed, as it is the first resolution by the Security Council focusing only on the

⁶⁹ <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E>

⁷⁰ Pantos Pantos, claim possibilities and procedures under National, European and International Law, in the two-day Conference in the new Acropolis Museum (24-25.9.2008) about the Protection of the Cultural Objects from illicit trade and their claim, p. 87-91.

⁷¹ <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property>

⁷² http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/4MSPResolutions_EN.pdf

protection of cultural heritage, underlining the central role played by UNESCO in this field and emphasizing that in several cases there is a link between the destruction or the smuggling of cultural properties on the one hand, and threats to international peace and security, on the other hand. The obligation, for all States Parties, to urgently implement the provisions of United Nations Security Council Resolution 2199, in its paragraphs 15 to 17, and 2253 (paragraph 15) is underlined. It is urgent for the States Parties to align their national legislation with the relevant international legal framework. The mandate given to UNESCO by UN Security Council Resolution 2199 to facilitate the implementation of paragraph 17, which includes the safe return of illegally exported Iraqi and Syrian cultural property, is recalled. States Parties are invited to provide information regularly to the Secretariat on the implementation of UN Security Council Resolutions 2199, 2253 and 2347, including the list of artefacts, if possible with photos, seized within their territories originating in Syria and Iraq and regularly on the artefacts seized within their territories which originate in Libya, Yemen, Afghanistan, Mali or any other country facing an emergency situation. States Parties are encouraged to use existing practical tools which are at their disposal, such as the UNESCO Database on National Laws on Cultural Heritage, the ICOM Red Lists, the INTERPOL Database of Stolen Works of Art, and the WCO ARCHEO information exchange network in order to facilitate the actions of law enforcement agencies. Finally the growing problem of fake objects, forgeries as well as fake provenance is noticed with concern and States Parties are requested to increase their vigilance on these cases.

7. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 24 June 1995)

To achieve best effectiveness of the 1970 Convention, with international cooperation, UNESCO asked UNIDROIT, an independent intergovernmental organization harmonizing private and commercial law, to develop the Convention on Stolen or Illegally Exported Cultural Objects (1995). Uniform rules for restitution of stolen or illegally exported cultural objects are thus set, and now restitution claims can be processed directly through national courts. The UNIDROIT Convention covers all stolen cultural objects and stipulates that all cultural property must be returned.⁷³

According to the preamble, States Parties, recognising the fundamental importance of the protection of cultural heritage and of cultural exchanges for promoting understanding between peoples, and the dissemination of culture for the well-being of humanity and the progress of civilisation, aim at fighting against illicit trade in cultural objects by establishing common,

⁷³ <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1995-unidroit-convention/>

minimal legal rules for the restitution and return of cultural objects. Contracting States are conscious of the irreparable damage frequently caused both to these objects themselves and to the cultural heritage of national, tribal, indigenous or other communities, and also to the heritage of all peoples in particular by the pillage of archaeological sites and the resulting loss of irreplaceable archaeological, historical and scientific information.

The objective of this Convention is to improve the preservation and protection of the cultural heritage in the interest of all. States Parties emphasise that this Convention is mainly intended to facilitate the restitution and return of cultural objects. Thus, even if this Convention tries to facilitate restitution and return in some States, by means of any remedies, such as compensation, it is not obligatory that such remedies will be adopted by States.

According to Art. 1 the Convention applies to claims of an international character for the restitution and the return of stolen or illegally exported cultural objects, removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects. The scope of this Convention is to protect the States Parties' cultural heritage.

The Convention makes provisions about the stolen (Chapter II) and the illegally exported cultural objects (Chapter III).

The regulations of Chapter II, on the restitution of stolen cultural objects, establish the obligations of the possessor of a stolen cultural object to return it (Art. 3(1)). The Convention clarifies that for its purposes "stolen" is considered any cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained, when consistent with the law of the State where the excavation took place (Art.3(2)). Time limitations are set only about cultural objects other than those forming an integral part of an identified monument or archaeological site or belonging to a public collection (Art. 3(3)(4)). Art. 3(5) provides discretion, not obligation, to States Parties to set a time limitation of 75 years or such longer period as is provided in its law, which, if set, will cover also Contracting State's claims for restitution of a cultural object displaced from a monument, archaeological site or public collection.

Article 4 regulates the probable payment of fair and reasonable compensation to the possessor, the person who transferred the cultural object to the possessor, or any prior transferor, of a stolen cultural object required to return it, under the condition that he/she proves that he/she neither knew nor ought reasonably to have known that the object had been stolen and it exercised due diligence when acquiring the object (Art.4(1)(2)(3)). The due diligence of the possessor, who cannot be in a more favourable position than the person from whom he/she acquired the cultural object by inheritance or otherwise gratuitously (Art.4(5)), is estimated with regard to all the circumstances of the acquisition, including the character of the parties, the price paid, whether

the possessor consulted any reasonably accessible register of stolen cultural objects and any other relevant information and documentation, which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken under the circumstances (Art.4(4)).

Chapter III, regulating the return of cultural objects illegally exported, offers the possibility to any Contracting State to request the court or other competent authority of another Contracting State to order the return of a cultural object illegally exported from the territory of the requesting State (Art. 5(1). It is clarified that as illegally exported is considered a cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration, under a permit issued according to its law regulating its export for the purpose of protecting its cultural heritage and not returned in accordance with the terms of that permit (Art.5(2)). In order the court or other competent authority of the State addressed, to order the return of an illegally exported cultural object, the requesting State is bound to establish that the removal of the object from its territory significantly impairs one or more of the following interests: (a) the physical preservation of the object or of its context; (b) the integrity of a complex object; (c) the preservation of information of, for example, a scientific or historical character; (d) the traditional or ritual use of the object by a tribal or indigenous community, or that the object is of significant cultural importance for the requesting State (Art. 5(3). The contracting State making such request must provide such information of a factual or legal nature as may assist the court or other competent authority of the State addressed in determining whether the requirements of paragraphs 1 to 3 have been met (Art.5(4)). Time limitations are set in Art. 5(5). Payment of compensation to the possessor and the similar conditions and procedure are regulated in article 6. As regulated in the previous section, in order to be entitled of fair and reasonable compensation by the requesting State, the possessor, who shall not be in a more favourable position than the person from whom he/she acquired the cultural object by inheritance or otherwise gratuitously (Art. 6(5)), must prove that he neither knew nor ought reasonably to have known at the time of acquisition that the object had been illegally exported (Art.6(1)), with regard to the circumstances of the acquisition, including the absence of an export certificate required under the law of the requesting State (Art.6(2)).

The UNIDROIT Convention already constitutes a “cultural acquis”, because it sets the minimum of protection offered to the States Parties’ cultural treasures.⁷⁴

⁷⁴ Vrellis Sp., the UNIDROIT Convention on stolen or illegally exported cultural objects, lecture in the two-day Conference in the new Acropolis Museum (24-25.9.2008) about the Protection of the Cultural Objects from illicit trade and their claim, p. 97

Until 1.9.2017, 41 States have ratified or accepted this Convention.⁷⁵ Yet the basic “importing” States abstain: Germany, the United Kingdom and the United States of America are not among the States Parties. France signed in 24.6.1995 but not yet ratified it.

8. European Union Law

8.1. The Treaty on European Union (TEU) (Art. 3(3) and the Treaty on the Functioning of the European Union (TFEU) Art. 36 (ex Article 30 TEC) and 167 (ex Article 151 TEC)

Article 3(3) TEU states that the Union has *to respect its rich cultural and linguistic diversity, and ensure that Europe's cultural heritage is safeguarded and enhanced.*

Article 36 states that: *“The provisions of Articles 34 and 35 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 health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.”*

According to the provision of this article, and contrary to the principle of free circulation of goods, exports of cultural goods could be restricted on grounds of *“protection of national treasures possessing artistic, historic or archaeological value”*.

As stated in the preamble (2,3) of the Directive 2014/60/EU *“According to Article 36 TFEU, the relevant provisions on free movement of goods do not preclude prohibitions or restrictions on imports, exports or goods in transit, justified on grounds of the protection of national treasures possessing artistic, historic or archaeological value. Under the terms and within the limits of Article 36 TFEU, Member States retain the right to define their national treasures and to take the necessary measures to protect them”*.

The TFEU in Art. 167 – under the title “Culture”, establishes the principles of the European Union on the protection of Cultural Heritage:

“1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

⁷⁵ <http://www.unidroit.org/status-cp>

- *improvement of the knowledge and dissemination of the culture and history of the European peoples,*

- *conservation and safeguarding of cultural heritage of European significance,....*

3. *The Union and the Member States shall foster cooperation with third countries and the competent international organizations in the sphere of culture, in particular the Council of Europe.*”

These provisions, without directly referring to the return of cultural objects, they nonetheless clearly imply it, because respect, conservation and safeguarding of the cultural heritage such as the improvement of knowledge on European Culture and History, presuppose indispensably the return of cultural treasures to the people who created them, and their study in their proper environment.

8.2. Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, amended by Directive 96/100/EC of 17 February 1997 and Directive 96/100/EC of 5 June 2001

According to the Art. 2 of Directive 93/7/EEC “*Cultural objects which have been unlawfully removed from the territory of a Member State shall be returned in accordance with the procedure and in the circumstances provided for in this Directive.*”

Although the Directive confirms that it is for Member States to define their national treasures, its provisions and annex may be an interpretative aid where doubt exists.⁷⁶ The definition of the items falling within its scope is given in its annex, by referring to characteristics such as the ownership, age and value of the item. Directive 93/7/EEC was introduced in conjunction with the abolition of controls at national borders, although it only covers the restitution of goods already unlawfully exported and does not lay down any control measures intended to prevent such unlawful exports.⁷⁷ Member States consequently impose different restrictions on the export of antiques and other cultural artefacts, and those restrictions — as well as related administrative procedures, such as the completion of declaration forms and the provision of supporting documents — are generally considered to be justified under Article 36 TFEU.⁷⁸

⁷⁶ Guide to the application of Treaty provisions governing the free movement of goods, European Commission Enterprise and Industry, Prepared and drafted by Directorate C, Regulatory Policy, of the Enterprise and Industry DG, European Union, 2010, pp.27-28 file:///C:/Users/user/Downloads/new_guide_en.pdf

⁷⁷ *ibid*

⁷⁸ *ibid*

8.3. Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012

This Directive aims to expand and facilitate the return of cultural objects, in compare with the previous Directive 93/7/EEC. According to the preamble (9) its application “*should be extended to any cultural object classified or defined by a Member State under national legislation or administrative procedures as a national treasure possessing artistic, historic or archaeological value within the meaning of Article 36 TFEU. This Directive should thus cover objects of historical, paleontological, ethnographic, numismatic interest or scientific value, whether or not they form part of public or other collections or are single items, and whether they originate from regular or clandestine excavations, provided that they are classified or defined as national treasures. Furthermore, cultural objects classified or defined as national treasures should no longer have to belong to categories or comply with thresholds related to their age and/or financial value in order to qualify for return under this Directive.*”

Due to the diversity of national arrangements for protecting national treasures there is a need for cooperation and mutual understanding between Member States so that this Directive can be applied more effectively and uniformly (preamble (10),(11). It is stated that “*Member States should also facilitate the return of cultural objects to the Member State from whose territory those objects have been unlawfully removed regardless of the date of accession of that Member State, and should ensure that the return of such objects does not give rise to unreasonable costs*” (preamble (10). Therefore, the central authorities should be required to cooperate efficiently with each other and exchange of information relating to unlawfully removed cultural objects should be made through the use of the Internal Market Information System (‘IMI’) provided for by Regulation (EU) No 1024/2012 of the European Parliament and of the Council (preamble 11).⁷⁹

8.4. Council Regulations (EC) on the export of cultural goods

Regulation (EC) No 116/2009 on exports of cultural goods imposes uniform controls on the export of protected goods (preamble (3), Art. 1,2). However, these only apply to exports to non-member countries⁸⁰ (preamble (3), for which a licence issued by the competent Member State

⁷⁹ See also Vergou M., *ibid* p.1072

⁸⁰ Attempts by Member States to discourage the export of art treasures by the imposition of a tax have, however, not been deemed justifiable since such action constitutes a measure equivalent to a customs tax (Article 30 TFEU) in regard to which Article 36 TFEU cannot be invoked as a justification (Case 7/68 Commission v Italy [1968] ECR 423), in Guide to the application of Treaty provisions governing the free movement of goods, European

prior to the export is required (preamble (4)). The Member State concerned has the right to refuse export license, in case that the cultural goods in question are covered by its legislation protecting national treasures of artistic, historical or archaeological value (Art.2 para 2 subpara.4).

According to the **Council Regulation 3911/92 on the export of cultural goods**, already repealed by Art. 11 Regulation (EC) No 116/2009 of 18 December 2008, an export license valid throughout the Community, issued by the competent authorities of the Member States should be presented for the export of cultural goods covered by the Regulation. Member States concerned had the right to prohibit export of cultural goods, covered by their legislation protecting national treasures of artistic, historical or archaeological value.⁸¹

- **Commission Regulation (EC) 752/93 of 30 March 1993 for the implementation of Council Regulation 3911/92 on the export of cultural goods as amended by Commission Regulation (EC) 1526/98 of 16 July 1998 and Commission Regulation 656/2004 of 7 April 2004.** These Regulations lay down provisions about the documents needed for the export of cultural goods, according to a new model form conforming to the United Nations Layout Key for Trade Documents. The form should also be accompanied by explanatory notes to help interested parties to draw it up uniformly and correctly (preamble (2) of Commission Regulation 656/2004 of 7 April 2004).

9. Resolutions adopted by the United Nations Security Council about the Return and Restitution of Cultural Property

9.1. In paragraph 7 of **Resolution 1483** of 22 May 2003, the UN Security Council establishes the obligation of all Member States to take appropriate steps to *facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq. This goal can be achieved by the establishment of prohibition on trade in transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed.*

9.2. As stated in the preamble of the **Resolution 2056 (2012)** of 5 July 2012 on the situation in Mali, the UN Security Council *condemns strongly the desecration, damage and destruction of sites of holy, historic and cultural significance, especially but not exclusively those designated UNESCO World Heritage sites, including in the city of Timbuktu.* In the paragraph 16 it is

Commission Enterprise and Industry, Prepared and drafted by Directorate C, Regulatory Policy, of the Enterprise and Industry DG, European Union, 2010, pp. 27-28 file:///C:/Users/user/Downloads/new_guide_en.pdf

⁸¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l11017a&from=EN>

emphasized that attacks against buildings dedicated to religion or historic monuments *can constitute violations of international law which may fall under Additional Protocol II to the 1949 Geneva Conventions and the Rome Statute of the International Criminal Court*. All parties in Mali must immediately take appropriate steps to ensure the protection of Mali's World Heritage sites.

9.3. In paragraph 15 of its **Resolution 2199 (2015)** of 12 February 2015 about preventing terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages, and from receiving donations, the UN Security Council condemns the destruction of cultural heritage, particularly by ISIL and ANF, among other crimes committed in Iraq and Syria. It is stressed that these crimes are condemned whether such the destruction is incidental or deliberate, including targeted destruction of religious sites and objects. The Security Council is concerned about the fact that, with the income generating *from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida, finance and support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks* (para. 16). This Resolution establishes the obligation of the Member States to act appropriately *to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting crossborder trade in such items* (para. 17). Looted Cultural Treasures must be safely *returned* to the Iraqi and Syrian people and UNESCO and other international organizations are called upon, as appropriate, to assist in this return (para. 17).

9.4. The UN Security Council, in its **Resolution 2253 (2015)** of 17 December 2015, calls Member States to submit reports about the ISIL's or ANF's oil and antiquities trade activities. The reports to the Committee established pursuant to the Resolutions 1267(1999) and 1989(2011) must include interdictions in their territory of any oil, oil products, modular refineries, and related material being transferred to or from ISIL or ANF, and calls upon Member States to report also *such interdictions of antiquities, as well as the outcome of proceedings* brought against individuals and entities as a result of any such activity (para. 14,15).

9.5. Subsequently in the paragraph 12 of its **Resolution 2322 (2016)** of 12 December 2016 the UN Security Council stresses that such activities as trafficking in cultural property and related offences, that may benefit terrorist or terrorist groups, constitute a *serious crime in accordance with article 2 of the UN Convention against Transnational Organized Crime*. Thus States must, with the assistance of UNODC and in close cooperation with UNESCO and INTERPOL,

establish *broad law enforcement and judicial cooperation in preventing and combating all forms and aspects of trafficking in cultural property and related offences.*

9.6. In its **Resolution 2347 (2017)** adopted on 24 March 2017, the UN Security Council reaffirms, confirms and crystallises all its previous provisions about the prohibition of destruction of cultural heritage, the prohibition of its illicit trade, especially because the income of such trade is used to finance the operations of ISIL, Al-Nusra Front (ANF) and Al-Qaida, and the *obligation to return the looted cultural treasures in the place they were sited.* The UN Security Council stresses the condemnation of the unlawful destruction of cultural heritage, systematic campaigns of illegal excavation, and looting and pillage of cultural heritage, as well as of the *looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other sites, in the context of armed conflicts, notably by terrorist groups,* as much as of *any engagement* in direct or indirect trade involving ISIL, Al-Nusra Front (ANF) and all other individuals, groups, undertakings and entities associated with Al-Qaida (para. 1,2,3). The Security Council characterises such actions as war crimes, as in paragraph 4 it is stated that: *“Affirms that directing unlawful attacks against sites and buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments may constitute, under certain circumstances and pursuant to international law a war crime and that perpetrators of such attacks must be brought to justice”.* UN Security Council stresses Member States’ primary responsibility in protecting their cultural heritage and thus Member States are requested to take measures to prevent and counter the illicit trade and trafficking in cultural property. In this scope Member States must prohibit cross-border trade in such illicit items where there is reasonable suspicion that the items originate from a context of armed conflict, notably from terrorist groups, and which *lack clearly documented and certified provenance, thereby allowing for their eventual safe return.* Moreover they bear the obligation to urgently introduce effective national measures at the legislative and operational levels *to prevent and counter trafficking in cultural property and related offences, including by designating such activities that may benefit organized criminal groups, terrorists or terrorist groups, as a serious crime in accordance with article 2(b) of the UN Convention against Transnational Organized Crime.* Additionally, in an adequate association with UNODC, UNESCO and INTERPOL, they owe to adopt relevant legal provisions and enforce judicial cooperation and other possible measure in this aim (para. 5, 8, 9,11) as well as for *the return, restitution or repatriation of trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded cultural property (para. 12).* In paragraph 17 Member States are called, in order to prevent and counter trafficking of cultural property illegally appropriated and exported in the context of armed conflicts, notably by terrorist groups, to consider specific measures, in relation to such cultural property, among which

the introduction and improvement of cultural heritage's and properties' local and national inventory lists, the adoption of provisions about export and import, *including certification of provenance where appropriate, of cultural property*, the update the World Customs Organization (WCO) Harmonized System Nomenclature and Classification of Goods, the establishment of databases devoted to collect information on criminal activities related to cultural property and on illicitly excavated, exported, imported or traded, stolen, trafficked or missing cultural property, the use and contribution to the INTERPOL Database of Stolen Works of Art, UNESCO Database of National Cultural Heritage Laws, and WCO ARCHEO Platform, and relevant current national databases. *Museums, relevant business associations and antiquities market participants must be obliged to display provenance documentation, due diligence and to take all measures to prevent the trade of stolen or illegally traded cultural property.* Finally Member states bear the obligation, in cooperation with relevant UN entities and international actors, *to ensure the safe return of all listed items.*

9.7. Resolution 2368 (2017), adopted by the UN Security Council on 20 July 2017, repeating the above provisions, condemns the destruction of cultural heritage in Iraq and Syria particularly by ISIL and ANF, recalls its decision that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed and to ensure their eventual safe return to the Iraqi and Syrian people (preamble, para. 8). Additionally, as stated in paragraph 12, Member States bear the obligation to *request and provide cooperation in investigations, prosecutions, seizure and confiscation as well as the return, restitution or repatriation of trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded cultural property, and judicial proceedings, through appropriate channels and in accordance with domestic legal frameworks as well as with the United Nations Convention against Transnational Organized Crime and the Protocols thereto and relevant regional, sub regional and bilateral agreements.* It is proposed to the Member States to take preventive measures to safeguard their nationally owned cultural property and their other cultural property of national importance. Paragraph 17 repeats the measures owed to be taken as stated in similar paragraph 17 of the above mentioned Resolution 2347 (2017).

In both resolutions the UN Security Council *requests* the Analytical Support and Sanctions Monitoring Team of the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee to continue, within its existing mandate, to provide the Committee with relevant information regarding the illicit trade of cultural property (para. 21) and set a time limit for the submission of the Secretary-General's report *on the implementation of the present resolution before the end of the year.*

9.8. The UN Security Council once again condemns *the commission of acts by ISIL (Da'esh) involving murder, kidnapping, hostage-taking, suicide bombings, enslavement, sale into or otherwise forced marriage, trafficking in persons, rape, sexual slavery and other forms of sexual violence, recruitment and use of children, attacks on critical infrastructure, as well as its destruction of cultural heritage, including archaeological sites, and trafficking of cultural property*, in the preamble of its Resolution 2379 (2017), of 21 September 2017.

10. The United Nations General Assembly about the Return and Restitution of Cultural Property

UNESCO and the United Nations General Assembly are concerned with the issue of Return or Restitution of Cultural Property to the Country of Origin, as part of the Preservation and Further Development of Cultural Values.⁸²

10.1. International Guidelines and Resolutions

The General Assembly of the United Nations with its Resolution 69/196 of 18 December 2014 adopted the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences. The **Guideline 46** titled **“Return, restitution or repatriation”** calls upon States to undertake appropriate measures to recover trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded cultural property *for the purpose of their return, restitution or repatriation*. Furthermore the United Nations General Assembly has adopted a great number of resolutions from 18.12.1972 to 12.12.2012⁸³. The resolution **A/RES/70/76** of 9 December 2015, under the title **“Return or restitution of cultural property to the countries of origin”**, repeats the already crystallised basic principles of Return or Restitution of Cultural Property to the Country of Origin, recognizing the role of UNESCO in combating trafficking in cultural property, including

⁸² <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/>

⁸³ Resolutions 3026 A (XXVII) of 18 December 1972, 3148 (XXVIII) of 14 December 1973, 3187 (XXVIII) of 18 December 1973, 3391 (XXX) of 19 November 1975, 31/40 of 30 November 1976, 32/18 of 11 November 1977, 33/50 of 14 December 1978, 34/64 of 29 November 1979, 35/127 and 35/128 of 11 December 1980, 36/64 of 27 November 1981, 38/34 of 25 November 1983, 40/19 of 21 November 1985, 42/7 of 22 October 1987, 44/18 of 6 November 1989, 46/10 of 22 October 1991, 48/15 of 2 November 1993, 50/56 of 11 December 1995, 52/24 of 25 November 1997, 54/190 of 17 December 1999, 56/97 of 14 December 2001, 1483 of 22 May 2003 by the Security Council of the UN concerning Iraq, 58/17 of 3 December 2003, 61/52 of 4 December 2006, 64/78 of 7 December 2009, A.67/L.34 of 5 December 2012, 67/80 of 12 December 2012, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/80

its specific mandate within the context of Security Council resolution 2199(2015). The Organization is encouraged to continue to strengthen cooperation and synergies in this field with other international bodies, including the International Criminal Police Organization (INTERPOL) and the United Nations Office on Drugs and Crime (Art.1). Moreover UNESCO and the ICPRCP are commended to work with the aim for the Return of Cultural property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. This task will be accomplished, in particular through the promotion of bilateral negotiations, for the return or restitution of cultural property, the preparation of inventories of movable cultural property and the implementation of the Object-ID standard related thereto. The reduction of illicit traffic in cultural property and the dissemination of information and tools to the public, institutions, Member States and others, is also concluded in the purposes (Art.2). UNESCO is commended to raise and train campaigns for museum experts, police forces, customs services and legal experts from Member States in the groups of African, Asia-Pacific, Eastern European, Latin America and Caribbean, and Western European and other States, from 2012 to 2015, aimed at preventing the illicit import, export and transfer of ownership of cultural property by providing the legal and operational knowledge and directly applicable skills to strengthen the protection of cultural property (Art.3). It is important to inform young people about the value of cultural heritage and the necessity to protect it, and Member States are called to promote and support such campaigns (Art.4). Finally all relevant bodies, agencies, funds and programmes of the United Nations system and other relevant intergovernmental organizations are asked to work in coordination with UNESCO, within their mandates and in cooperation with Member States, *“in order to continue to address the issue of return or restitution of cultural property to the countries of origin and to provide appropriate support accordingly”* (Art.5).

10.2. Declaration on the Rights of Indigenous Peoples (UNDRIP) (13 September 2007)

According to the preamble, States Parties, *acknowledge that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.*

The Provisions of Article 5 recognise the right of the Indigenous peoples to maintain and strengthen their distinct political, legal, economic, social and cultural institutions. According to Articles 11 and 12 Indigenous peoples have the right to practise and revitalize their cultural traditions and customs, to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies, to maintain, protect, and have access in privacy to their

religious and cultural sites. They have also the right to the use and control of their ceremonial objects. All this includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Moreover these provisions establish the *right to the repatriation of their human remains*. Both articles make provisions about the States' duty to provide redress through effective mechanisms, which may include restitution, and to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Under Article 31 the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions is recognised as a protected Human Right.

10.3. The UN Economic and Social Council (ECOSOC)

In its resolution adopted in 2003 on the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, ECOSOC recognizes the importance for States of protecting and preserving their cultural heritage in accordance with the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the United Nations Educational, Scientific and Cultural Organization on 14 November 1970, the preamble of which refers, inter alia, to the duty of every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation and illicit export, and also the commitment by States and relevant international organizations to combat such practices with all the means at their disposal, in particular with regard to international cooperation on the return of such property.

11. The United Nations Educational Scientific and Cultural Organization (UNESCO) Organs about the Return of Cultural Property

UNESCO is especially concerned with the Restitution of Cultural Property which is multiply expressed.

11.1. Intergovernmental Committee for Promoting the Return of Cultural Property (ICPRCP)

The ICPRCP is the organ, with advisory role, whose recommendations concerning States' disputes are not legally binding. UNESCO Member States may refer to this Committee for the restitution or return of their lost cultural objects of fundamental significance to its Countries of Origin.

About the Case of the return of the Parthenon Sculptures from the British Museum (United Kingdom) to the New Acropolis Museum in Athens (Greece), during several sessions, in

particular in 1989, 1991, 1994 and 1996, the ICPRCP adopted Recommendations calling for an amicable settlement of the dispute⁸⁴. In 1999 and again during the sixteenth session in Paris, in 21-23 September 2010 the Committee invited *the Director General to assist in convening the necessary meetings between Greece and the United Kingdom, with the aim of reaching a mutually acceptable solution to the issue of the Parthenon Sculptures.*⁸⁵

11.2. Recommendations and Resolutions adopted by UNESCO⁸⁶

The General Conference of UNESCO adopted several Recommendations about the protection and the Illicit Trafficking of cultural property on the International Principles Applicable to Archaeological Excavations (1956), on the Protection, at National Level, of the Cultural and Natural Heritage (1972), on the International Exchange of Cultural Property (1976), on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (1964). This last recommendation underlines the obligation of the Member States to prevent illegal exports and imports and the illicit transfer of ownership of cultural property, to lay down rules governing the application of the above principles. Moreover, museums and in general all services and institutions concerned with the conservation of cultural property, should refrain from purchasing any item of cultural property obtained through an illicit export, import or transfer of ownership.

11.3. On 7 June 1978 the Director General of UNESCO launched *a Plea for the Return of an Irreplaceable Cultural Heritage to those who created it*, recommended by the Venice Committee of Experts 1976.⁸⁷

11.4. In 1984 UNESCO issued a **report** on the implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, referring to **Cyprus**: *Unfortunately, in the area occupied by the Turkish army, museums and monuments have been pillaged or destroyed. The government has repeatedly applied to UNESCO and asked the mission of observers to report on the condition of the monuments. So far, this mission has met with the refusal of the Turkish 'authorities.*⁸⁸

⁸⁴ UNESCO, Information Kit 2001 ibid

⁸⁵ <http://unesdoc.unesco.org/images/0018/001896/189639E.pdf>

⁸⁶ http://portal.unesco.org/en/ev.php-URL_ID=12026&URL_DO=DO_TOPIC&URL_SECTION=-471.html

⁸⁷ See above: introduction, http://www.unesco.org/culture/laws/pdf/PealforReturn_DG_1978.pdf

Unesco Doc. SHC-76/CONF.615.5,3

⁸⁸ The report referred to the area of Paphos, which was subject to aerial bombardment by Turkey in 1974 and was placed on the World Heritage List in 1980. A subsequent UNESCO report adopted in 1989 described the situation in Cyprus in similar terms, in Cyprus: Destruction of Cultural Property in the Northern Part of Cyprus and Violations of International Law April 2009, The Law Library of Congress, Global Legal Research Center

Furthermore, in the Preamble of its Resolution adopted in 1993⁸⁹, the UNESCO General Conference reaffirmed that “*the fundamental principles of protecting and preserving cultural property in the event of armed conflict could be considered part of international customary law*”.⁹⁰

11.5. On 19 October 2017, the UNESCO’S General Conference during its 39th session in Paris, adopted a **draft Resolution**, submitted by Honduras on behalf of the Latin America and Caribbean Group, strengthening the implementation of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, underlining in its explanatory note that “*The international community is witness to an exponential growth of the destruction of millenary cultural heritage and its illicit traffic. At the same time, the illicit traffic of cultural property has strong links with transnational organized crime. New figures of illicit traffic have emerged such as Internet sales. Illegal traders have found their way to continue and reinforce their illegal activities.*” Thus the General Conference stresses the need to adopt new regulations, more effective in the fight against the illicit traffic of cultural property, such as the change of the legislation of some European countries and the updating of the European Guidelines.

It is important that this is an initiative of Honduras on behalf of the Latin America and Caribbean Group, which proves the universal consensus for the protection of the cultural heritage and the prevention of its illicit trafficking.

12. The Islamic Summit Conference

In a resolution adopted in 2000 on the destruction and desecration of the Islamic historical and cultural relics and shrines in the occupied Azeri territories, the Islamic Summit Conference condemned “the mass and barbaric demolition of mosques and other Islamic Shrines in Azerbaijan by Armenia” and stated that “governments are bound to ban theft and looting of whatever type, acts of illegal violations of cultural values... as well as savage prejudice to the

[https://www.loc.gov/law/help/cultural-property-destruction/cyprus.php#Cyprus'](https://www.loc.gov/law/help/cultural-property-destruction/cyprus.php#Cyprus) pp. 7-8 and fns.21-26

⁸⁹ Resolution adopted on the report of Commission IV at the twenty-eighth plenary meeting, on 13 November 1993, <http://unesdoc.unesco.org/images/0009/000956/095621E.pdf> p. 40

⁹⁰ International Committee of the Red Cross, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, Vol.II Practice Part 1, Edited by Jean – Marie Henkaerts and Louise Doswald-Beck with Contributions by Carolin Alvermann, Angela Cotroneo, Antoine Grand and Baptiste Rolle, pp. 806,812 para. 444, 475

above values. They are committed to prevent such acts or reverse their effects where necessary”.⁹¹

13. The Parliamentary Assembly of the Council of Europe

- In the Resolution 808(1983) on the return of the works of art, the Parliamentary Council, concerned with the issue of Parthenon Sculptures, wishes to encourage all moves to cooperate *in the negotiated return of certain items of cultural property to their country of origin.*

- In 2008, the Parliamentary Assembly of the Council of Europe issued the Resolution 1628 on the Situation in Cyprus, in which it urged Turkish and Cypriot authorities, inter alia, to protect all religious monuments and permit restoration of such monuments where it is necessary.⁹²

- The Standing Committee of the Parliamentary Assembly of the Council of Europe, in the Resolution 2057 (2015) on cultural heritage in crisis and post-crisis situations calls upon the restoration and reconstruction of cultural heritage after conflict resolution and reconciliation.

14. Codes of Ethics

14.1. UNESCO International Code of Ethics for Dealers in Cultural Property

The International Code of Ethics for Dealers in cultural property has been adopted by the UNESCO intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its Tenth Session (January 1999) and endorsed by the 30th General Conference of UNESCO (November 1999).⁹³

This code provides that professional traders in cultural property must abstain from importing, exporting or transferring the ownership of this property when they have reasonable cause to believe it has been stolen, illegally alienated, clandestinely excavated or illegally exported (Art. 1). When a trader is in possession of an object about which he has reasonable cause to believe

⁹¹ 9th Session of The Islamic Summit Conference Doha, State of Qatar (12-13 November 2000),

Resolution No. 25/9-C (IS) on the destruction and desecration of Islamic Historical and Cultural relics and shrines in the occupied Azeri territories resulting from the Republic from Armenia’s aggression against the Republic of Azerbaijan, preamble and para 1,3, <http://ww1.oic-oci.org/english/conf/is/9/9th-is-sum-cultural.htm#25>, See also International Committee of the Red Cross, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, *ibid* p. 803 para. 427

⁹² Council of Europe Resolution 1628, para. 11.4, Oct. 1, 2008, <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta08/ERES1628.htm>

⁹³ <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/legal-and-practical-instruments/UNESCO-international-code-of-ethics-for-dealers-in-cultural-property>

that it is a product of a clandestine excavation, or acquired illegally or dishonestly from an official excavation site or monument, or illegally exported, he must take all legally permissible steps to co-operate in the return of that object to the country of origin, which seeks its return (Art.3,4).⁹⁴

14.2. Code of Ethics for Museums (ICOM)

The ICOM Code represents a minimum standard for museums and is presented as a series of principles supported by guidelines for desirable professional practice.⁹⁵

According to this Code No object or specimen should be acquired by purchase, gift, loan, bequest, or exchange unless the acquiring museum is satisfied that a valid title is held. (Art.2.2). Museums owe to make any possible efforts before acquisition to ensure the legal acquisition or export of the objects offered for purchase, gift, loan, bequest, or exchange. Due diligence in this regard should establish the full history of the item from discovery or production (2.3). The display or usage of material of questionable origin or lacking provenance, may condone and contribute to the illicit trade in cultural property, therefore the Museums must avoid them (Art. 4.5). Museums have to develop partnerships with museums in countries and communities of origin or areas that have lost a significant part of their heritage, in the aim of sharing of knowledge, documentation and collections (Art. 6.1).

ICOM makes specific provisions about the Return of cultural property to a country or people of origin, for which museums should be prepared to initiate dialogues, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level (Art. 6.2).

As for the Restitution of Cultural Property, the museum concerned bears the obligation, if legally free to do so, to co-operate in the return of an object or specimen illegally acquired, when its country or people of origin seeks its restitution as a part of that country's or people's cultural or natural heritage (Art. 6.3). *Finally "museums should abstain from purchasing or acquiring cultural objects from an occupied territory and respect fully all laws and conventions that regulate the import, export and transfer of cultural or natural materials"* (Art. 6.4). It is underlined that the British Museum itself has been at the forefront of the campaign for intervention to preserve (and in time, return) precious cultural property seized in Syria and Iraq.

⁹⁴ <http://unesdoc.unesco.org/images/0012/001213/121320M.pdf>, see also Vrellis Sp., Codes of Ethics in the field of Cultural Property, Conference in the Amphitheater of the New Acropolis Museum (10.12.2010) about the Protection and Return of the Cultural Property, p. 26

⁹⁵ <http://archives.icom.museum/ethics.html#preamble2>, Vrellis Sp., Codes of Ethics, p.26

14.3. CINOA Code of Ethics⁹⁶

This code establishes the duty of the professional in possession of an object illegally imported under applicable national law, to comply with the procedures imposed by that law. Moreover the professional is obliged to return this object to its country of origin, at the request of the country of origin after receiving compensation, if permitted under the applicable national law of the professional (Art.1). Additionally all measures necessary must be taken by the professional to detect stolen objects, and refer, among other resources, to the registers and the databases that are published for this effect (Art. 3).

15. CONCLUSION

Humanity's Cultural Heritage is in great danger since Cultural Property is variously attacked: theft, looting, illegal export and import and illegal excavations are taking place under all circumstances. Subsequently, cultural property becomes a victim of International illicit trafficking, financing even terrorism and participating in all sorts of criminal offences. International Community, conscious and anxious about the risks against Humanity that this situation involves, has proceeded in the adoption of a great number of relevant rules through all sorts of legal instruments. As outlined in this Part, since many decades, a great number of international multilateral treaties, covering circumstances of War and Armed Conflict or Peace Time, have been adopted for the Return or Restitution of Cultural Property to its country of Origin. States feel that they have a legal obligation to follow this rule, which explains why the adoption of relevant multilateral Treaties is so widespread. Moreover the Resolutions of the UN Security Council are binding for the Member States of this Organization, while the Recommendations of the rest of the international Organs, while not binding, they reflect the feeling of Justice of the International Community. As for the Codes of Ethics, even though they are classified as soft law, they also show the tendencies and the developments in the international field. Thus it is obvious that a rule imposing the return of illicitly exported cultural property to its country of origin has been developed, through long-standing, general, constant and uniform practice of the International Community, using every possible legal instrument. The use of the aforesaid legal instruments which are extremely numerous, frequent and varied, reflects a universal *Opinio Juris* on this topic. Consequently in the International Field the principle of the Return or Restitution of Cultural Property to its country of Origin is well established through long-standing, general, constant and uniform practice (Multilateral Treaties, practice of International Organizations, Codes of Ethics) and accepted as law.

⁹⁶ CINOA is the principal international confederation of Art & Antique dealer associations <https://www.cinoa.org/>

II. STATE PRACTICE IN THE REPATRIATION OF CULTURAL PROPERTY

16. INTRODUCTION

As indicated in Part I, in the International Field the principle of the Return or Restitution of illicitly exported Cultural Property to its country of Origin is well established through long-standing, general, constant and uniform practice (Multilateral Treaties, practice of International Organizations, Codes of Ethics) accepted as law. State Practice follows in parallel with the result that, since many decades, lots of antiquities illicitly exported have already been returned to their country or people of origin. Following UNESCO's recommendations, many States, such as Italy, France, Spain, Bulgaria, USA and Peru, have established units specialized in the prevention and suppression of such crimes that have recovered an extremely great number of antiquities, while Greece has been stepping up its campaign for the return of recently looted antiquities.⁹⁷ Especially during the first decade of the 21th century a major change in attitude towards recently excavated antiquities appears.⁹⁸ In this Part it will be shown that the principle of the Return or Restitution of illicitly exported Cultural Property to its country of Origin is already established as International Customary Law through long-standing, general, constant and uniform State Practice accepted as law. State practice includes interstate Conventions, National Regulations, jurisdiction of domestic Courts, as well as a great number of cases of return through diplomatic channels or even voluntarily. The attitude of the Museums and other institutions towards this matter also proves the common sense and universal consensus for the return of looted antiquities to their place of origin.

⁹⁷ See more details in UNESCO Information Kit, *ibid*. It is worth noting that, as stated to the Information Kit, Italy was the first country to establish a unit specialized in the prevention and suppression of such crimes: the *carabinieri* command for protecting cultural heritage created on 3 May 1969, before the 1970 Convention. The *carabinieri* have recovered 961,082 antiquities, as well as 500,000 other objects (1 million exported objects from 51,892 thefts) and a million and half counterfeit pieces, mostly coins and stamps. Charges have been pressed against 28,600 people. A specific database created to register stolen objects numbers two million entries. There is a special unit of 30 agents in the *Guardia di Finanza* in Rome; the *Gruppo tutela patrimonio archeologico della Polizia tributaria* recovered 11,258 objects from 2008 to 2009 alone. On the other hand, first in 2007 Peru allocated public funds for the return of illegally excavated artifacts and there were 12 "returns" of a total of 815 objects from the USA, Uruguay, Germany, New Zealand, the United Kingdom and Colombia. By 2008, a further 500 pieces were restituted from Spain, Ecuador, Chile and the USA.

⁹⁸ Information Kit, *ibid*, where it is stated that: Recently, 100 antiquities have been returned to the Italian Government from North American collections. North American museums have now adjusted their acquisition policies in order to align them with the 1970 Convention. In 40 years the Italian *carabinieri* have recovered 800,000 stolen or illegally excavated artifacts; yet, "the quantity of unresolved reports exceeds by far the number of recovered artifacts", according to a document of the Italian Parliament.

A. STATES' LEGAL INSTRUMENTS

17. Inter - State agreements providing for the Repatriation of cultural property.

In order to ensure the return of the cultural objects, many States have signed similar bilateral agreements pursuant to the Art. 9 of 1970 UNESCO Convention. This chapter includes only an indicative list of the numerous similar agreements and Memorandums of Cooperation, which, due to the restricted extent of this study, cannot be exhaustive.

17.1. The **Federal Council of the Swiss Confederation and the Government of the Hellenic Republic** have adopted an Agreement on the import, transit and repatriation of cultural property (Concluded: 15 May 2007, entry into force: 13 April 2011.)⁹⁹

Switzerland and the Hellenic Republic agreed to cooperate to prevent theft, looting and the illicit import, export and transfer of cultural property, to ease the repatriation of such property and to strengthen contacts between both countries with regard to cultural exchanges. The Agreement applies exclusively to categories of cultural property of particular importance for the cultural heritage of the Party concerned as listed in Appendix I (Art. 1 para. 2). In order to import cultural property originating in the territory of the other party, as defined in Art. 1 para.3, including also maritime areas, each Party must demonstrate to the custom authorities that the export regulations of the other Party have been fulfilled (Art. 2). As far as the repatriation is concerned, each Party may file suit before the competent courts of the other Party into the territory of which the cultural property was illicitly imported. Each Party may also file a similar suit before its own courts, according to its own law (Art. 3). Time limitations are settled in article 4, while a fair and equitable compensation is provided for the person who acquired the cultural property in good faith (Art. 5). The Parties also agreed to cooperate with international institutions, such as UNESCO, Interpol, ICOM and World Customs Organization (Art. 9).¹⁰⁰ One of the consequences of the bilateral agreement is that the local authorities and courts of the country of import are required to apply the other State's public law regulating the export of cultural objects. To that extent these agreements are an important tool in the international administrative and judicial cooperation between States.¹⁰¹

Switzerland has concluded similar Agreements with the Government of the Republic of **Italy** on the import and repatriation of cultural property (2008), with the Republic of **Colombia** (1

⁹⁹ <https://treaties.un.org/doc/Publication/UNTS/Volume%202801/v2801.pdf> p.3

¹⁰⁰ Moustaira E., Handbook on the Law of Cultural Heritage and International Trade , 8.Greece, pp 176-191,

¹⁰¹ *Marc-Andri Renold and Beat Schöppenberger*, Handbook on the Law of Cultural Heritage and International Trade , 18. Switzerland , p 421

February 2010, entry into force: 4 August 2011¹⁰²) and the Republic of **Cyprus** (11.1.2013, entry into force: 15 February 2014¹⁰³).

The **Hellenic** Republic has signed similar agreements with **China, USA and Turkey**, such as educational and cultural agreements **with Albania, Bulgaria, Iraq, Lebanon, Montenegro, Poland, Hungary, the Czech Republic and Tunisia**.¹⁰⁴

17.2. The United States of America has adopted Agreements with the Republic of Guatemala (1984)¹⁰⁵ and the Republic of Peru (1981)¹⁰⁶ for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties. In order to ensure the return of the cultural objects, many States have signed similar bilateral agreements: **US and Bolivia, Cambodia, China, Colombia, Cyprus, El Savador, Hondura, Italy, Mali and Nicaragua; Switzerland and Italy**; They all establish *restrictions to the importation* of illicit antiques or antiquities and their *immediate return* from their country of origin, providing also for cultural collaboration.¹⁰⁷ Since 1983, the U.S. has entered into bilateral cultural property agreements with 18 States.¹⁰⁸

17.3. Mexico has entered into bilateral treaties for the recovery and restitution of cultural material, including specific provisions for export activities. In the Treaty of Cooperation providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties (1970)¹⁰⁹ with the **United States of America**, the parties agree to promote archaeological research and rescue activities, prevent illegal excavations and theft of archaeological, historical and cultural property, and regulate the legal trade of art. The Parties agreed the restitution of cultural material that has been exported illegally to the territory of the other party, with the further important agreement that their citizens may not claim damages under this treaty even in the case of bona fide purchasers.

Mexico has also signed treaties for the protection and restitution of archaeological, artistic and historic monuments with **Guatemala, Belize, El Salvador, Peru, and Chile**, with provisions of restitution of cultural properties illegally imported under the condition that the requesting party submits evidence to prove that cultural goods have been illicitly exported. No person who has

¹⁰² <https://treaties.un.org/doc/Publication/UNTS/Volume%202801/v2801.pdf> p.75

¹⁰³ http://www.unesco.org/culture/natlaws/media/pdf/switzerland/sw_ba_cyprus_13_entof

¹⁰⁴ Nikolentzos K., Voutsas K., & Koutsothanasis C. (2017), *ibid* p.364

¹⁰⁵ L.V.Prott, P.J.O'Keefe, *ibid*

¹⁰⁶ L.V.Prott, P.J.O'Keefe, *ibid*

¹⁰⁷ Stamatoudi I., *Cultural Property Law and Restitution, A Commentary to International Conventions and European Union Law*, pp 232-233

¹⁰⁸ <https://eca.state.gov/files/bureau/chart-of-import-restrictions.pdf>

¹⁰⁹ L.V.Prott, P.J.O'Keefe, *ibid* APPENDIX II

acquired cultural material that has been the subject of illicit trafficking may be indemnified or awarded damages and there is agreement to grant release of customs and taxation rights regarding the restitution of cultural property.

Mexico has entered cultural cooperation treaties with **Armenia, Belize, Bolivia, Czech Republic, Chile, Colombia, Cote d'Ivoire, El Salvador, Estonia, Finland, Granada, Honduras, Hungary, Indonesia, Latvia, Lebanon, Lithuania, Mongolia, Nicaragua, North Korea, Panama, Poland, Russia, Senegal, Slovenia, Spain, Syria, Thailand, Trinidad and Tobago, Turkey, Ukraine, Uruguay, Venezuela, and Vietnam** with the aim to ensure cooperation in combating the illegal traffic of cultural material.¹¹⁰

17.4. The Agreement between the **Socialist States** on cooperation and mutual aid concerns the means of detention and the return of cultural property illicitly transported across State Borders (1981).¹¹¹

17.5. The **Republic of Poland** has concluded bilateral agreements on the exported cultural objects. The treaty between the **Czech and Slovak Federal Republic** and the Republic of Poland on good neighborly relations, solidarity and friendly cooperation under Article 20.2, provides that the parties would cooperate in combating organized crime, terrorism, illegal trafficking in drugs and illegal transport of cultural and historical objects across borders. Furthermore, 'illegally exported cultural objects shall be returned to the other party'. Similarly drafted obligations are also provided by the treaty on good neighborhood and friendly cooperation concluded with **Belarus**.¹¹²

17.6. Memorandum between Hellenic Republic and China (2008) on the prevention of theft, illegal excavation, import and export of cultural property.

According to the Art. 3 the Parties will exchange information about legislation on the protection of cultural property, databases of cultural objects the export of which is forbidden, export certificates of cultural property, organizations of cultural property protection and preservation, cases of theft, illegal excavation and illegal export and import, archaeological discoveries, and basic procedures on the transfer of ownership of cultural property. The return of important cultural objects to their country of origin, even in cases that the 1970 UNESCO Convention does not cover, takes place with the collaboration of the Parties. Furthermore, it is stressed that the Parties exchange information on cultural objects illegally acquired in the international market (Art. 7).¹¹³

¹¹⁰Ernesto Becerril, in Handbook...13. Mexico p. 273-274

¹¹¹ L.V.Prott, P.J.O'Keefe, ibid APPENDIX II

¹¹² Andrzej Jakubowski and Olgierd Jakubowski, Handbook...15. Poland, p 314

¹¹³ Moustaira E., Handbook... ibid, pp 176-191

As of the end of 2013, pursuant to the 1970 UNESCO Convention, China has entered into a Memorandum of Understanding (MOU) with nineteen states prohibiting the illicit transfer, import, and export of cultural property: **Peru, India, Italy, the Philippines, Greece, Chile, Cyprus, Venezuela, the US, Australia, Turkey, Ethiopia, Egypt, Mongolia, Mexico, Colombia, Nigeria, and Switzerland.**¹¹⁴

17.7. The Cultural Memorandum of Understanding (MOU) between the Hellenic Republic¹¹⁵ and the United States (2011) concerns the imposition of import restrictions on categories of archaeological and Byzantine Ecclesiastical Ethnological Material of the Hellenic Republic. This MOU, a product of the cooperation of many years between the competent authorities of Greece and USA, aims at the protection of cultural objects that are illegally excavated and exported from Greece to USA as their final destination. According to Art. 1, the Government of the USA, in accordance with its domestic legislation, *“shall restrict the importation into USA of archaeological material representing the Upper Paleolithic Period (beginning approximately 20,000 B.C.) through the fifteenth century A.D., and of ecclesiastical ethnological material representing the Byzantine culture from approximately the fourth century through the fifteenth century A.D., including categories of stone, metal, ceramic, bone and ivory, wood and glass artifacts, textile, papyrus, paintings (including wall paintings), mosaics and other material identified on a list to be promulgated by the United States Government (hereinafter referred to as the Designated List), unless the Government of the Hellenic Republic issues a license or other documentation which certifies that such exportation was not in violation of its laws”*. Any material on the Designated List must be forfeited by the competent authorities of the USA and returned to Greece. The MOU foresees that, in order for US import restrictions to efficiently thwart pillage, Greece will attempt to strengthen cooperation among Mediterranean States for the protection of the cultural patrimony of the whole area and to seek increased cooperation with other art importing States, in order to restrict illicit imports and thus deter further pillage (Art.2 para.5)¹¹⁶.

¹¹⁴ Concluded in 2009 and garnering the majority of public interest, the MOU with the US imposes import restrictions on categories of archaeological material from the Palaeolithic Period through the Tang dynasty, and monumental sculpture and wall art at least two hundred fifty years old, in Liu Z. The Case of repatriating China’s cultural objects, 2016, Chapter 2: Law and Ethics Protecting Cultural Objects ed.Springer p.41

¹¹⁵ Moreover the Hellenic Ministry of Culture and Sports and the P.R.C. State Administration of Cultural Heritage have adopted a Memorandum on the Protection of Underwater Cultural Heritage (2016)

¹¹⁶ Moustaira E., Handbook...ibid, pp 176-191

17.8. Cultural Memorandum of Understanding (MOU) between the United States and Egypt (2016)

U.S.A. and Egypt adopted a bilateral cultural property agreement for the prevention of importation of stolen artifacts, and the looted cultural treasures, illegally smuggled into the U.S., were repatriated in a ceremony held just a day after signing the MOU. The U.S. authorities have been ramping up their efforts to stop the import of these trafficked artifacts through U.S. borders as well.¹¹⁷ The Department of Homeland Security Immigration and Customs Enforcement have returned more than 7,800 artifacts to over 30 countries, since 2007.¹¹⁸

17.9. Treaty on Good Neighborliness, Partnership and Cooperation between Germany and the Soviet Union

At the very end of the cold war, on September 9, 1990, Germany and the Soviet Union entered into the Treaty on Good Neighborliness, Partnership and Cooperation, ruling the return of cultural property. Russia adopted the treaty as a successor state to the Soviet Union. Pursuant to Article 16 of this Treaty, Germany and the Soviet Union agree that "lost or unlawfully transferred art treasures which are located in their territory will be returned to their owners or their successors." On December 16, 1992, the two countries entered into an Agreement on Cultural Cooperation reaffirming their commitment to solve the problem of trophy art. Article 15 states: "lost or unlawfully transferred cultural property which is located in their sovereign territory will be returned to its owners or successors." A joint commission to implement the agreement was subsequently established.¹¹⁹

18. National Legislations

This chapter includes only an indicative list of the numerous national legislations, which, due to the restricted extent of this study cannot be exhaustive. Nevertheless the following representative sample of national legislations assures the consensus on the return of illegally exported cultural objects to their Country of Origin. It is characteristic that two countries, the USA and Australia have ruled by domestic legislation the Return of Cultural Property to the People and not the country of Origin.

¹¹⁷ By Kristin Romey, 2.12.2016

<https://news.nationalgeographic.com/2016/12/antiquities-egypt-agreement-repatriation-mummy-artifacts/>

¹¹⁸ <https://theantiquitiescoalition.org/blog-posts/egypt-celebrates-the-return-of-antiquities-seized-during-investigation-by-u-s-authorities/>

¹¹⁹ See *inter alia* Lina M. Monten, Soviet World War II Trophy Art in Present Day Russia: The Events, the Law, and the Current Controversies, DePaul Journal of Art, Technology & Intellectual Property Law, Vol. 15, Iss. 1. Art.

18.1. The Australian Protection of Movable Cultural Heritage Act 1986 implemented the UNESCO Convention of 1970. Australia has not, however, ratified the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. The Protection of Movable Cultural Heritage Act 1986 protects Australia's heritage of movable cultural objects and supports the protection by foreign countries of their heritage of movable cultural objects. Australia has also **adopted the Aboriginal and Torres Strait Islander Heritage Protection Act 1984** for the Return to the Indigenous people, the Aborigines, of their cultural Treasures.¹²⁰ Under this Act¹²¹ Australia established the Return of significant Aboriginal objects to their people of origin. These are defined as objects (including Aboriginal remains) of particular significance to Aborigines in accordance with Aboriginal tradition. According to this Act: *21(1) Where Aboriginal remains are delivered to the Minister, whether in pursuance of a declaration made under section 12 or otherwise, he or she shall: (a) return the remains to an Aboriginal or Aborigines entitled to, and willing to accept, possession, custody or control of the remains in accordance with Aboriginal tradition; (b) otherwise deal with the remains in accordance with any reasonable directions of an Aboriginal or Aborigines referred to in paragraph (a).*

18.2. The principal federal laws of the **United States of America**¹²² that form the basis for interior enforcement measures as a substitute for specific export measures, are **the Native American Graves Protection and Repatriation Act (NAGPRA)**, which is essentially human rights law¹²³; the **Archaeological Resources Protection Act of 1979 (ARPA)**; the Antiquities Act of 1906 (which is largely superseded by ARPA); the National Historic Preservation Act of 1966 (NHPA); the National Environmental Policy Act of 1969 (NEPA); the Federal Land Policy and Management Act of 1976 (FLPMA); the Surface Mining Control and Reclamation Act of 1977 (SMCRA); and the National Stolen Property Act (NSPA), which normally applies to illegal imports rather than intended exports of cultural material.

¹²⁰ Craig Forrest, Handbook ...ibid 1. Australia, p 48

¹²¹http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/aatsihpa1984549/s3.html

¹²² the United States has adopted extensive laws and regulations and otherwise assumed major international obligations to bar the importation of stolen and pillaged objects and to restitute or return such objects to their countries of origin. As a so-called market state for cultural material, the country thus plays a major role in global efforts to deter and respond to illegal trafficking in cultural material. James A. R. Nqfziger, Handbook ... ibid, 21. United States of America, pp507-509

¹²³ *Ibid* fn 10: "Such human rights include religious, cultural, and group survival rights, as understood within the context of U.S. and international standards of human rights and rights of self-determination." Report of the Panel for a National Dialogue on Museum/Native American Relations § D(l)(a) (Feb. 28, 1990), *reprinted in* 24 *A r iz . St. L.J.* 487, 494 (1992).

Furthermore as far as the illegal import and trade of cultural property is concerned, under 19 U.S.C. § 1595a(c)(1)(A), merchandise may be seized and forfeited when it is illegally introduced into the United States and was stolen, smuggled, or clandestinely imported. Under 18 U.S.C. § 2314, it is illegal for a person to knowingly transport in interstate or foreign commerce any merchandise which has been stolen, converted or taken by fraud.

18.2.1. Within NAGPRA, objects of cultural patrimony are defined as objects having “ongoing historical, traditional, or cultural importance central to the Native American group or culture itself”, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual,

USA has adopted the Native American Graves Protection and Repatriation Act (NAGPRA), the primary purpose of which is to confirm ownership by Native American and Native Hawaiian tribes, groups, and tribal or group members of their heritage and to provide a mechanism for the restitution to them of human remains, sacred and funerary objects, and objects of their cultural patrimony. NAGPRA also contains a penal provision that applies whenever a person knowingly sells, purchases, uses for profit, or *transports* for sale or profit (including, of course, attempts to export) any cultural items obtained in violation of the law. According to NAGPRA sec.7 under the title “(a) *Repatriation of Native American Human Remains and Objects possessed or controlled by Federal Agencies and Museums* (1) *If, pursuant to section 5, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects. 1.(2) If, pursuant to section 6, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects...*

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5, or the summary pursuant to section 6, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) and, in the case of unassociated funerary objects, subsection (c), such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric,

oral traditional, historical, or other relevant information or expert opinion. (5) Upon request and pursuant to subsections (b), (c) and (e), sacred objects and objects of cultural patrimony shall be expeditiously returned where-- (A) the requesting party is the direct lineal descendant of an individual who owned the sacred object.”

18.2.2. ARPA is designed to protect the country’s archeological resources, which are defined as material remains of past human life or activities that are at least 100 years old, are of archeological interest, and have been found on federal, Native American or state lands, and, to the extent the law so provides or is interpreted, on private land¹²⁴. The federal statute vests ownership of such material in the federal government and requires permits for excavation, removal, damage, alteration, or defacement of the material. ARPA prohibits the interstate or international sale, purchase, exchange, transport, or receipt of archaeological resources in violation of federal, state, tribal or local law. The law further prohibits any offers to engage in any of the proscribed activities. The export of such resources as a form of “transport” is therefore prohibited. ARPA also imposes severe penalties for knowing violations of its provisions. The United States applies import controls primarily to protect the heritage of other countries and to combat illegal trafficking in cultural material. Such international cooperation is viewed as an important aspect of cultural diplomacy¹²⁵. The oldest federal legislation specifically designed to bar imports of cultural material is the Act for Importation of Pre-Columbian Monumental or Architectural Sculptures or Murals. Under this law, no listed pre-Columbian stone carving or wall art from the Americas may enter the United States unless accompanied by sufficient documentation to show that its export either complied with the laws of the country of origin or occurred before 1972, when the statute came into force. A certification of legitimate export is required, otherwise the item is seized, forfeited, and returned to the country of origin¹²⁶.

Under the Convention on Cultural Property Implementation Act (CPIA) United States’ aligns with the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. In 1982 the United States became the first “art market” state to ratify the Convention. The CPIA executes U.S. obligations under Article 7 of the 1970 Convention by providing for official cooperation in restituting property stolen from a museum, religious or secular public monument, or similar institution in a requesting state¹²⁷.

¹²⁴ *Ibid* fn 11: 18 U.S.C. § 1170(b) (2008).

¹²⁵ *Ibid* p. 520-525

¹²⁶ *Ibid* p. 523

¹²⁷ *Ibid*: Thus, the CPIA bars the importation of any cultural object if (i) it is “documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution;” (ii) the institution is located

The United States has concluded bilateral agreements of cooperation in enforcing export controls and restrict the importation from other countries of archeological or ethnological material that is determined to be part of a heritage in jeopardy of pillage with Bolivia, Cambodia, Canada, China, Colombia, Cyprus¹²⁸, El Salvador, Greece, Guatemala, Honduras, Iraq, Italy, Mali, Nicaragua, and Peru¹²⁹.

18.3. Peru's Regulations to the General Law on the Cultural Heritage of the Nation (2006) states: *Any form of export or transfer of unlawfully obtained cultural property from occupied territory ... is prohibited.... In the event of an armed conflict, restitution and/or recovery of cultural property shall be carried out in accordance with the provisions of the 1954 Hague Convention [for the Protection of Cultural Property] and its two protocols of 1954 and 1999. In such a case, competent authorities shall reciprocally facilitate the process of restitution and/or recovery of cultural property belonging to the cultural heritage of another State (obtained in violation of international law in the context of an armed conflict) if the property is located on Peruvian territory.* Furthermore Peru's IHL Manual (2004) states: "Cultural objects moved during the armed conflict must be returned to the party to the conflict in whose territory they were located before the armed conflict." IHL and Human Rights Manual (2010) states: "Cultural objects moved during the armed conflict must be returned to the party to the conflict in whose territory they were previously located."

18.4. Mexico is a Party to the **1994 General Agreement on Tariffs and Trade (GATT)**. Thus, Article XX section (f)¹³⁰ of that treaty is applicable to Mexican legislation, taking into consideration the importance of the protection of its cultural, archaeological and historic

in a country that has ratified, accepted or acceded to the 1970 UNESCO Convention; (iii) the object was stolen from such an institution; and (iv) the theft occurred either after the CPIA came into force (January 12, 1983) or after the date whenever the 1970 UNESCO Convention entered into force for the country of origin, whichever date is later. The Convention is not retroactive.(fn 67).

¹²⁸ Memorandum of Understanding between the United States and Cyprus imposes U.S. import restrictions on pre-Classical and Classical archaeological objects as well as Byzantine ecclesiastical and ritual ethnological material of 16 July 2007, as amended on 10 July 2012

¹²⁹ see above 17.2.

¹³⁰ 1 Article XX, General Exceptions: "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (f) imposed for the protection of national treasures of artistic, historic or archaeological value."

heritage. Additionally, the obligations mentioned in this article were recognized by Section 1 of Article 2101 of the North America Free Trade Agreement¹³¹.

Mexican Law foresees a cultural goods export license issued by the National Institute of Anthropology and History (INAH) and/or the National Institute of Fine Arts (INBA), depending on whether the license involves archaeological and historic goods (in the case of INAH) or artistic goods (in the case of INBA). Mexico is a Party to several relevant multilateral treaties on protection of human rights: the Universal Declaration of Human Rights, the International Protocol of Economic, Social and Cultural Rights, the American Convention on Human Rights (“Pact of San Jose, Costa Rica”) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”). The Foreign Affairs Ministry works very closely with INAH and INBA for the restitution and return of cultural material. The Federal General Attorney is the authority charged with investigating, filing and prosecuting federal crimes, such as illicit trafficking in cultural goods¹³².

18.5. The Swiss Government¹³³ ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and implemented it by means of the Federal Act on the International Transfer of Cultural Property (CPTA), approved by Parliament in 2003 and entered into force on 1 June 2005. The CPTA and its subordinate ordinance which regulate the import, export and transit of cultural property into, from and through Switzerland, implemented a special regime for cultural objects. With respect to Importation and/or exportation the CPTA expressly states that customs authorities inspect the transfer of cultural property at the border. In order to comply with Article 9 of the UNESCO Convention 1970, the violation of a foreign export law can now lead to a claim for return by a foreign state. Switzerland has also signed the aforesaid (II.A.1.a.) bilateral treaties on the return of smuggled cultural objects. Strictly seen, the CPTA goes beyond the simple implementation of the UNESCO Convention, in ways such as a new and stricter regime for the bona fide purchase of cultural property and with rules about return guarantees. If a cultural object which is subject to an agreement is illicitly exported, a contracting State can claim its return before the courts of the

¹³¹ 2 Article 2101, General Exceptions: “1. For purposes of: (a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment, and (b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services, GATT Article XX and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.”

¹³² Ernesto Becerril, Handbook ... *ibid* 13.Mexico, pp 271-285

¹³³ Marc-Andre Renold and Beat Schonenberger, Handbook *Ibid*, 18. Switzerland, pp 408-423,

other contracting State (Article 9 of the CPTA). In order to make these return claims possible the bilateral treaties establish a duty to inform the State of origin about illegal transfers. The Specialized Body for the International Transfer of Cultural Property of the Federal Office of culture is in charge of providing this information to contracting States. The claiming State will have to establish that the object is of significant importance and that it has been illicitly exported. A bona fide purchaser who is forced to return the cultural object will receive compensation, based on the purchase price he or she paid, and such compensation will be paid by the claiming State. The claim for return is subject to an absolute time limit of 30 years from when the cultural object was illegally exported. If the export of cultural property from a contracting state is subject to a permit under the laws of that state or not. If this is the case, the required export permit must be submitted. A false declaration or the illicit import is punishable (Art. 24 para. 1 let. c, CPTA).

18.6. The Canadian Cultural Property Export and Import Act (1977) establishes controls on the export of cultural Property. Canada is a party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The Act also implements the 1970 UNESCO Convention into Canadian domestic law along with the 1954 UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict¹³⁴. Pursuant to the Quebec's new Cultural Heritage Act 2012 the term "cultural property" (bien culturel) is replaced with the broader term "heritage property" (bien patrimonial), including also cultural heritage landscapes, intangible heritage and historic figures and events. The new law also recognizes the principle of inalienability for state-owned cultural heritage properties. Classified heritage objects cannot be sold or offered as gifts to any government other than Quebec or to any person who is not a Canadian citizen or permanent resident. Quebec's new law also restricts the removal of cultural property from its territory. The Cultural Heritage Act provides that "[no] classified heritage property may be transported out of Quebec [including to any other Canadian province] without [Ministerial] authorization."¹³⁵

18.7. Germany, as a member of EU, in order to accept the trade of cultural objects, imposes the need of a government license from the interested Member State authorizing permanent or temporary removal. Customs control has been replaced by a system of mutual obligations to return illegally removed objects to the Member State of origin as soon as that Member State becomes aware of the illegal removal and asks for the objects' Return. In German law stolen property cannot be acquired *bona fide* unless acquired at auction (para. 935 sect. 2 BGB) or acquired *bona fide* by

¹³⁴ Robert Kirkwood Paterson, Handbook ...ibid 4. Canada, p 74

¹³⁵ *Ibid* p. 102

prescription within ten years. All these objects will be returned even if not illegally exported because they were not listed as art objects for which an export license is needed.

Germany ratified the 1970 UNESCO Convention which entered into force on 29 February 2008. There is no movement on behalf of the federal government to ratify the UNIDROIT Convention of 1995¹³⁶.

Germany's Law Implementing the 1954 Cultural Property Convention (2007) establishes the obligation to prevent cultural property's removal from occupied territory and to return it to its country of origin after a relevant request of the interested State. Pursuant to § 1: *Obligation to return (1) Cultural property as defined in Article 1 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 (Federal Law Gazette 1967, Part II, p. 1233) coming from occupied territory of a Contracting State shall, after the close of hostilities, be returned to the respective competent authorities of the previously occupied territory, if ...1. after 11 November 1967, it was moved from the territory of that State into the federal territory during an armed conflict, and 2. the authorities of the Contracting State address a request for return to the Federal Foreign Office through the diplomatic channel.*

The obligation to return cultural property applies also to the persons who exercise actual physical control of cultural property (§ 1(4)). Under § 2, movement of cultural property is prohibited and the illegally moved cultural treasures are seized and returned after the close of hostilities. Additionally Germany's Military Manual (1992) states: *Each party to the conflict shall be bound to prevent the exportation of cultural property from a territory occupied by it during an international armed conflict. If, in spite of this prohibition, cultural property should nevertheless be transferred from the occupied territory into the territory of another party, the latter shall be bound to place such property under its protection.*

Germany is constantly opposed to the unilateral measures taken by Russia and the successor states of the former Soviet Union, by which cultural objects are considered as war reparations, and supports the return of cultural property transferred from occupied territory to its country of origin¹³⁷.

18.8. The **Russian Federation's** Law on Removed Cultural Property (1997) declares federal property of the Russian Federation: *all cultural values located in the territory of the Russian Federation that were brought [as a result of the Second World War] into the USSR by way of exercise of its right to compensatory restitution ... pursuant to orders of the Soviet Army Military Command,*

¹³⁶ Kurt Siehr, Handbook...ibid, 17. Sweden, pp 160-175

¹³⁷ Kurt Siehr, Handbook... ibid,7. Germany, p. 165 see also below 23.3.

*the Soviet Military Administration in Germany or instructions of other competent bodies in the USSR*¹³⁸.

Germany does not recognize such unilateral measures taken by Russia and the successor states of the former Soviet Union and has constantly maintained the opposite position in favor of their return¹³⁹.

18.9. According to **Denmark**'s Military Criminal Code (1973), as amended in 1978 *Any person who uses war instruments or procedures the application of which violates an international agreement entered into by Denmark or the general rules of international law, shall be liable to the same penalty [Any person who deliberately uses war means or procedures the application of which violates an international agreement entered into by Denmark or international customary law, shall be liable to the same penalty.*

18.10. **The South African National Heritage Resources Act (NHRA)** is in the main geared towards the conservation and management of South African heritage resources. However, the NHRA also contains provisions aimed at controlling the export of nationally significant heritage objects and the import into the Republic of cultural property illegally exported from foreign countries¹⁴⁰.

18.11. **Sweden**¹⁴¹ ratified the 1970 UNESCO Convention in 2003 with a declaration, pursuant to Article 1, that made property of importance to archaeology, prehistory, history, literature, art, or science synonymous with the list of categories adopted in its internal legislation for the purpose of defining cultural goods under *export* control. Ratification was not accompanied by implementing legislation. Property acquired through criminal acts on the request of a state seeking assistance could be returned to that state, subject to considerations of the interests of a third party. Cooperation under the EU Directive is a matter for the central authorities mandated by the respective member states. These authorities have duties of investigation, information, taking actions of preservation and act as an intermediary between holders and a state requesting its return. The National Heritage Board may apply for permission by a general court of law to conduct searches for a specified object. The relevant legal provisions are contained in Chapter 6 of the Cultural Monuments Act and the corresponding government Regulation. The implementing legislation for the 1995 UNIDROIT Convention is in Chapters 7 and 8 of this Act and also in its accompanying Regulation. Chapter 7 deals with illegally exported cultural objects. The provisions allow the state from which an object has been illegally exported to request a court

¹³⁸ Further details in International Committee of Red Cross, Customary Law, Rule 41 *ibid*

¹³⁹ Kurt Siehr, Handbook ... *ibid* 7. Germany, p. 165

¹⁴⁰ Margaret Beukes, Handbook ... *ibid* 16. South Africa, pp 361-362

¹⁴¹ Thomas Adlercreutz, Handbook ... *ibid* 17. Sweden, pp 381-407

order for its return, provided this request is made within the appropriate time limits. Chapter 8 deals with stolen objects.

18.12. Pursuant to Art. 9 and 10 of **Japan's** Law concerning the Protection of Cultural Property in the Event of Armed Conflict (2007): *Article 9. 1. A person who damages or disposes of trafficked cultural properties from occupied territories ... and imported into the country shall be sentenced to less than five years' imprisonment, with or without hard labour, or fined for less than three hundred thousand yen. 2. When the person prescribed in the previous paragraph is the possessor of the concerned cultural properties from occupied territories, he or she shall be sentenced to less than two years' imprisonment, with or without hard labour, or fined for less than two hundred thousand yen or for a lighter fine. Article 10: A person who transfers or who received trafficked cultural properties from occupied territories ... and imported into the country shall be sentenced to less than one year imprisonment with hard labour, or fined for less than one million yen.*

The Japanese government issued a notification (Public Notice of Deputy Commissioner of the Agency for Cultural Affairs No. 37) in order to prevent museums and similar institutions in Japan from acquiring cultural material stolen, during the armed hostilities in Iraq in 2003, from museums and historic sites in Iraq which suffered from plunders and destructions.

Moreover Japan has implemented the 1970 UNESCO Convention, which, together with its commitment to strengthen its domestic legal framework to prevent illegal trafficking of cultural property are appreciated as a significant step toward shedding her reputation as "looter of cultural assets." Act No. 81 seems to put more emphasis on preventing the import of stolen cultural property into Japan rather than preventing the export of lost or stolen domestic cultural property¹⁴².

18.13. In **China** the first legislation for the preserving of antiquities was adopted in 1930. The Law of the People's Republic of China on Protection of Cultural Relics was adopted in 1982. The Law was substantially revised in 2002 and 2007¹⁴³.

18.14. In Israeli Law export restrictions are imposed by the Antiquities Law, 5738-1978:
(a) A person shall not take out of Israel an antiquity of national value save with the written approval of the Minister [of Culture]; (b) A person shall not take out of Israel any other antiquity save with the written approval of the Director

¹⁴² Shigeru Kozai and Toshiyuki Kono, Handbook ... ibid 12. Japan, pp 257-270

¹⁴³ James Ding, Handbook ... ibid 5. China, p 107

The Israel Antiquities Authority (IAA) has tried to adopt a general prohibition of trade in antiquities in Israel, rendering them *res extra commercio*, in order to prevent theft from archeological sites.

In an attempt to curb the widespread theft from archeological sites located in territories controlled by the Palestinian Authority, the Antiquities Law was amended in 2003, by inserting § 22A, which forbids any person to transfer an antiquity from Judea, Samaria and Gaza without receiving prior approval from the IAA Director-General¹⁴⁴.

18.15. Under the **Italian** legal system the main rules concerning the protection of cultural property are contained in the Landscape and Cultural Heritage Code (2004). This Code gives a broad definition of cultural property and concerns the import and export of cultural objects. The restitution of cultural objects illicitly exported from another Member State after 31 December 1992 is regulated in Art. 75 and following of the Code¹⁴⁵. Under Article 33 of the Italian patrimony law of June 20, 1909 (Law Number 364), exportation of an antiquity, as defined under the law, is illegal when the article is not presented to Italian customs or otherwise concealed from Italian customs in order to avoid licensing requirements and payment of applicable taxes.

Under Article 44 of the Italian cultural patrimony law of June 1, 1939, all archaeological finds are property of the Italian state, unless the possessor can show private ownership prior to 1902, and reports the discovery of every archaeological item to the competent Italian authorities. The export of any cultural property is forbidden unless the possessor is furnished with an export license issued by the Italian Ministry of Culture, and pays custom duties, required for the export of any cultural property protected by the above patrimony laws of 1909 and 1939.

18.16. The **New Zealand** Protected Objects Act 1975 (POA) creates the category of ‘protected New Zealand objects’, which are determined by the importance of the objects of movable cultural heritage to the history of New Zealand. The definition of ‘protected New Zealand objects’ in section 2 of the POA broadly follows the definitions of cultural property in the 1970 UNESCO and 1995 UNIDROIT Conventions. Beside the wide categories there is that of nga taonga tuturu. These are defined as objects ‘more than 50 years old that relate to Maori culture, history and society and that were, or appear to have been, imported into New Zealand by Maori, manufactured or modified in New Zealand by Maori, or used by Maori’. Because of the importance of Maori cultural heritage to New Zealand, all taonga tuturu (regardless of how many representative examples of this type of taonga tuturu there may be in permanent public collections) are designated as protected New Zealand objects in schedule 4 of the POA. Section

¹⁴⁴ Talia Einhorn, Handbook... ibid 10. Israel, pp 221-233

¹⁴⁵ Manlio Frigo, Handbook... ibid 11. Italy, pp 234-256

5 of the POA prohibits the export or attempted export of protected objects from New Zealand unless prior approval is provided from the competent authorities. The criminal sanctions are significant. Unlawfully exported protected foreign objects are also protected under the Act and cannot be imported in New Zealand (Section 10A). The definition of protected foreign objects in section 2 of the POA mirrors the definition of cultural property in the UNESCO and UNIDROIT Conventions. Section 10 applies the provisions of the Customs and Excise Act 1996 to unlawfully exported protected foreign objects and empowers the New Zealand Customs Service to seize them as unlawful imports. Section 10D protects objects stolen from the inventories of foreign cultural institutions and imported into New Zealand. This article foresees that the reciprocating state must apply for recovery of the stolen object and the return takes place under the relevant procedure. This is a political process involving executive forfeiture and administration return, rather than a court claim based on a cause of action¹⁴⁶.

18.17. The **United Kingdom**¹⁴⁷ has adopted the UNESCO Convention (1970) on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. UK has not entered into any bilateral agreements on the protection of cultural property. The UK is a party to the Looted Jewish Cultural Property Resolution 1205 (1999) adopted by the Council of Europe to encourage Member States to facilitate the return of such property to their original owners in any way possible. This Resolution was a response to the issue resulting from the confiscation of cultural heritage items during the Holocaust period (1933-1945). Requests for return and recovery should be made through diplomatic offices. If a criminal offence has been committed, the police are then involved for investigation and may seize the object in question as evidence.¹²⁵ The DCMS good offices may persuade the police/Crown Prosecution Service to apply to the court for the return of the object to its rightful owner under Section 148 of the Powers of Criminal Courts (Sentencing) Act 2000 or under the Police (Property) Act 1897. If the object has been seized and forfeited by customs, it can be returned to the rightful owner without formality if it is not required for evidentiary purposes. When there are no sufficient grounds to initiate a criminal investigation and the object is in the possession of a third party, civil proceedings are the only way to seek the return of the object to its country of origin. There are databases of missing cultural objects available in order to assist in their recovery, including the London Stolen Arts Database of the Metropolitan Police and the commercially funded Art Loss Register.

¹⁴⁶ Piers Davies and Paul Myburgh, Handbook... *ibid*, 14. New Zealand, pp 286-304

¹⁴⁷ Kevin Chamberlain and Kristin Hausler, Handbook ... *ibid* 20 United Kingdom, pp 460-505

18.18. The **Indian** Antiquities Act of 1972 states that ownership of antiquities is vested ipso iure in the State. Export of such artefacts can therefore only take place after a valid export license is obtained from the competent national authorities. As the Durga Idol was not accompanied by such an export certificate, it can be argued that it was stolen and subsequently illicitly exported.

18.19. As Member of the European Union **France** applies the relevant rules combining the free movement of goods with the protection of cultural property as established in the EU legislation. The two EU instruments, which must be understood as compensation for the disruptive effects of the internal market's creation, are the regulation laying down provisions on the export of cultural goods to third countries (Council Regulation No 116/2009 codifying Reg. No 3911/92) and the Council Directive 93/7/EEC, on the return of cultural objects unlawfully removed from the territory of a member state¹⁴⁸. Thus the status of national treasure, by way of derogation from the principle of free movement of goods set forth in the TFEU (Art. 36), has the effect of enabling the states to take measures banning or restricting import, export or transit of such goods. In France, there are legal barriers to the permanent exit of some goods assigned to the category of national heritage¹⁴⁹. The Return of a national treasure may be requested when it unlawfully left the national territory, in the procedure foreseen. France has ratified the 1970 UNESCO in a 1997 law. As for the UNIDROIT Convention, the ratification process that started in Parliament was never completed. France has ratified other international or European conventions concerning the prevention of and fight against illicit trafficking of cultural goods, among which the European Convention on the Protection of the Archaeological Heritage (the Valetta Convention), the Convention for the Protection of Cultural Property in the Event of Armed Conflict (in 1957) and the UNESCO Convention on the Protection of the Underwater Cultural Heritage (in 2013). French law (1992) is former than the ratification of the UNESCO Convention 1970, and thus does not have its direct effect, mainly referring to the EU framework. Nevertheless the indirect influence of the 1970 UNESCO Convention can be seen in some cases of return, when more virtuous behaviors seem to have occurred than would have happened absent the Convention, even though it was not legally mandated. The French Internal Law (1992) imposes controls of the Movement of Works of Art and the demand of a certification form containing questions about works' origins. If there are serious concerns that the object was unlawfully imported, the administration may 'order proof of the property's lawful import and, in the absence of such proof, deny the issuing of the certificate' (Art. L. 111-4 of the Heritage Code).

¹⁴⁸ See above I.B.8.

¹⁴⁹ *Marie Cornu*, Handbook on the Law of Cultural Heritage and International Trade, 6. France, pp 126-159, Edward Elgar 2014

18.20. The **Hellenic** legislation on cultural heritage protection is based on the Law ‘On the protection of antiquities and cultural heritage’ (3028/2002)¹⁵⁰ and on the Law imposing ‘Measures for the Protection of the Cultural Objects and other provisions’ (3658/2008). These statutes align with the Hellenic Constitution (Art. 24)¹⁵¹ imposing to the State the obligation for the protection of cultural (and natural) environment as a human right of everyone. Under Hellenic legislation the right in personality includes the right of every citizen to the protection, rescue, use and enjoyment of cultural treasures and monuments of the country and their preservation in favor of the future generations¹⁵². As a Member of EU, Greece aligns with the relevant rules of EU legislation. Moreover the Hellenic Government has ratified the 1970 UNESCO and the 1995 UNIDROIT Conventions and has adopted several bilateral agreements¹⁵³.

The Hellenic regulation aims to protect the Cultural Heritage from antiquity until nowadays “*in the aim of the reservation of the historical memory in favor of the present and the future generations and the amelioration of the cultural environment*” (law 3028/2002 Art. 1 para.1). Paragraph 3 of this Article, makes also provisions about the cultural treasures removed from the Hellenic territory or connected historically with Greece, about the protection of which the Hellenic State must be concerned, within the framework of international law¹⁵⁴. Pursuant to an established presumption of the antiquity law, the ancient monuments, mobile and immobile,

¹⁵⁰ The Law 3028/2002 defines the cultural heritage of the country, which consists of both material and immaterial cultural objects being inside the Hellenic territory, inland waters and territorial waters included, as well as other maritime zones over which Greece has jurisdiction according to international law - that is, the contiguous zone, as well as the part of the continental shelf that coincides with the contiguous zone. Article 2b of the Law 3028/2002, regulates the specific notion of monuments, declaring that they ‘are considered cultural objects which constitute material testimony and belong to the cultural heritage of the country and which require a more specific protection’, whether ancient or modern, and immovable or movable, G. Karymbali-Tsiptsiou, Legal Regime of Monuments, Athens-Thessaloniki 2009, 27. In Moustaira E., Handbook on the Law of Cultural Heritage and International Trade, 8.Greece, p 177 fn:8, Edward Elgar 2014

¹⁵¹ According to a broad definition of paragraph 6 of the same article, the State protection covers monuments, traditional areas, traditional elements and, in general, every cultural object

¹⁵² Vergou M. *ibid* p. 1075-1076, fn. 74-79, Georgiadis Ap., General Principles of Civil Law, para. 5, 15, Karakostas I., The Law of Personality, p. 186-189, Karakostas I., The Right of Use and Enjoyment of the cultural Heritage in the new archaeological law p. 293,294, Grammatikaki-Alexiou, The protection of Cultural Heritage from the scope of Human Rights, Single Judge Court of First Instance of Thessaloniki 5163/2010, 1796/1993, Single Judge Court of First Instance of Athens 10691/1997

¹⁵³ See above 17.1., 17.7.

¹⁵⁴ Vergou M., *ibid* p. 1074

belong to the State, they cannot be purchased (*extra commercium*) and cannot be subject to acquisitive prescription (*usucapio*) (Art. 7 para. 1,2 and 21 para.1,3)¹⁵⁵.

The ‘Direction of Documentation and Protection of Cultural Objects’ is established as part of the Hellenic Ministry of Culture under law 3658/2008, which also provides for the illicit trafficking in antiquities, considered as an aspect of organized crime and thus the exclusive international jurisdiction of Hellenic courts is recognized (art.13). The possession of Cultural objects requires an evidence of origin, acquisition or import. The export of monuments from the Hellenic territory is prohibited, apart from specific exceptions (Art. 34 para.1) and under the condition of an export permit (Art.34 para.2&3). The underwater antiquities are especially protected pursuant to Art. 15. Hellenic legislation is extremely strict about the crimes against cultural property (e.g. theft, misappropriation, destruction, reception and disposal of cultural objects that are products of crime, illegal interference, illegal export, illegal excavation, Art. 53-67), considered as major offences punished with up to 10 years imprisonment. Hellenic legislation aims to consolidate the conviction that the pillage of archaeological sites leads to the irretrievable loss of unique archaeological, historical and scientific information and that cultural objects acquire real value only when the knowledge of their origin, history and context is secured¹⁵⁶.

18.21. The **Cyprus** Antiquities Law, (last amended in 2012)¹⁵⁷, bestow ownership of antiquities upon the Government of Cyprus: a) Article 3 provides that ownership of all antiquities lying undiscovered in any land when the law entered into force in 1935 “shall be the property of the government”; and b) Article 7 provides that the ancient monuments included in those listed in the Annex, as well as any monument that is added at a later time, “shall be the property of the government.” Since 1974, the government has added additional monuments to the list. Preservation and restoration of cultural property falls within the purview of the Department of Antiquities of the Ministry of Communications and Works, legally authorized to ensure protection and safeguard of cultural property. Since 1999, a special squad for art has been established by the Cyprus police. The Antiquities Law prohibits excavations without a prior obtained license from the Director of Antiquities. Violators face imprisonment and fines. Cyprus transposed the EU legislation on cultural property to its domestic legislation prior to joining the

¹⁵⁵ The fact that the Hellenic State is the owner of ancient monuments is characterized as a fundamental principle of the Antiquity Law, Karakostas I., *The Law of Personality*, p. 185

¹⁵⁶ Explanatory report of the Law 3658/2008: ‘Measures for the Protection of Cultural Objects and other provisions’, in Moustaira E., *Handbook* ibid 8.Greece, p 180 fn:14

¹⁵⁷ Republic of Cyprus, Department of Antiquities, http://www.mcw.gov.cy/mcw/da/da.nsf/DMLlaw_en/DMLlaw_en?OpenDocument

EU on May 1, 2004, adopting in 2002: i) The Return of Cultural Objects Law (183(1) of 2002), harmonizing its domestic legislation with the EEC Directive 93/7/EEC, as amended. The Antiquities Department of the Ministry of Communications and Works has been designated as the central authority to deal with cultural property issues. ii) The Law 182(1) of 2002 on the Export of Cultural Goods, enacted in order to enforce the European Community Regulations on the export of Cultural Goods, the export of any cultural object to third countries (non-EU countries) is prohibited without an export license, a committee is established to decide as to whether or not a license should be granted and criminal penalties of imprisonment of up to four years and/or a fine not exceeding more than 2,000 pounds (about US\$4,311) are established to anyone who exports or attempts to export cultural goods. In addition, Cyprus has ratified the 1954 Hague Convention and a series of international agreements dealing with cultural property, and has entered into bilateral agreements with China and the United States regarding import restrictions on archaeological artifacts.

B. REPATRIATION OF CULTURAL TREASURES IN PRACTICE

19. Court Decisions on the Repatriation of cultural Treasures

Some indicative court decisions are exposed in this chapter, dealing with the issue of the Cultural treasures Repatriation.

19.1. International Courts

19.1.1. International Court of Justice, Temple of Preah Vihear (Cambodia v. Thailand)

In this case, which in fact is a case of delimitation between Cambodia v. Thailand¹⁵⁸, the Court after finding that the Temple of Preah Vihear¹⁵⁹ was situated in territory under the sovereignty of

¹⁵⁸ It was found by the Court that the subject of the dispute was sovereignty over the region of the Temple of Preah Vihear. This ancient sanctuary, partially in ruins, stood on a promontory of the Dangrek range of mountains which constituted the boundary between Cambodia and Thailand. The dispute had its fons et origo in the boundary settlements made in the period 1904-1908 between France, then conducting the foreign relations of Indo-China, and Siam. See Summary of Judgement of 26 May 1961 (preliminary objections) <http://www.icj-cij.org/files/case-related/45/4859.pdf>

¹⁵⁹ “IV. ...The Temple of Preah Vihear is an ancient sanctuary and shrine situated on the borders of Thailand and Cambodia. Although now partially in ruins, this Temple has considerable artistic and archaeological interest, and is still used as a place of pilgrimage. It stands on a promontory of the same name, belonging to the eastern sector of the Dangrek range of mountains which, in a general way, constitutes the boundary between the two countries in this region-

Cambodia to the south and Thailand to the north.”, see Judgment of 15 June 1962, merits, chapter IV, <http://www.icj-cij.org/files/case-related/45/045-19620615-JUD-01-00-EN.pdf>

Cambodia, judged, in consequence, that Thailand was under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory and to restore to Cambodia any sculptures, stelae, fragments of monuments, sandstone model and ancient pottery which might, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities¹⁶⁰.

19.1.2. European Court of Human Rights (ECtHR) interprets Article 8 of the European Convention of Human Rights as securing the rights to the individual's identity, self-determination and physical and mental integrity¹⁶¹. The right to self-determination, and thus of private life is recognized in *Parrillo v. Italy*. (§ 159). In *Chapman v. the United Kingdom* (§ 73) and *McCann v. the United Kingdom* (§ 55) the right to maintain a minority identity and to lead one's private and family life in accordance with that tradition is recognized under Art. 8. The State's positive obligation to secure to the applicant the effective respect for his private life is also established (*Ciubotaru v. Moldova*, § 53)¹⁶². Since "individual identity", "self-determination", "minority identity" and "ethnic identity" are proper subjects of protection under Art. 8, "cultural identity" is also protected¹⁶³.

19.2. National Courts

Due to the restricted extent of this study, this chapter includes only an indicative list of cases on the return and repatriation of cultural treasures.

19.2.1. The Icelander Manuscripts' return to their country of origin was based to Danish legislation, court decisions and bilateral agreement.

Under the **Manuscript Act (1965)**, Denmark agreed to return to Iceland, the Icelander Manuscripts, removed 250 years earlier in the era of colonization and held in Copenhagen. This was the solution of a long time dispute among Denmark and Iceland, over the possession of these manuscripts. The action brought in 1965 by the Arnarnagnaean Institute, which possessed some of the Manuscripts till then, versus the Danish Ministry of Education, to oppose the restitution of the manuscripts, initiated an internal Danish legal dispute to which Iceland was not itself a party at any time. This dispute ended up to the Eastern High Court's judgment of 13 March 1970, according to which the Manuscript Institute was obliged to return, *without*

¹⁶⁰ Judgment of 15 June 1962, merits pp.34-35

¹⁶¹ ECtHR, Guide on Article 8 of the Convention – Right to respect for private and family life http://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf, paras. 43, 66, 165, 269

¹⁶² ECtHR, Guide on Article 8 *ibid*

¹⁶³ Geoffrey Robertson, Norman Palmer, Amal Clooney, *The Case for Return of the Parthenon Sculptures*, p.130, see also above 3.4.

compensation, such manuscripts as the law required.¹⁶⁴ After the Supreme Court's judgment (18 March 1971), the final agreement between Denmark and Iceland was ratified on 1 April 1971, according to which:¹⁶⁵

Transfer to Iceland of manuscripts regarded as Icelandic cultural property

Article 1. As soon as the division of the Foundation into two sections has been carried out according to Danish Law 26 May 1965 concerning the change of the Deed of 18 January 1760 for Arne Magnussen's legacy (the Arnamagnaean Institute), those manuscripts and archive documents that are to be kept and managed by Iceland's university are to be transferred to Iceland.

Article 2. The Icelandic government undertakes the responsibility through Iceland's university of keeping and managing the manuscripts and archive documents transferred to Iceland in accordance with the rules in the Deed in the Arnamagnaean bequest...

Article 6. The contracting parties are agreed that the arrangement that has been reached is to be recognized as a complete and final resolution of all Icelandic wishes concerning the transfer of national Icelandic heritage items, of any kind, residing in Denmark. In accordance with this it will not be possible in future for Iceland to raise or support demands or wishes for the handing over of any further such heritage items from Danish archives or collections, either public or private.

In the Danish manuscripts law, it had been indicated that a joint committee of four was to decide which manuscripts should be returned to Iceland in the light of the new law; two of them were to be nominated by the University of Copenhagen, and two by the University of Iceland. The bill allowed for the return of 1,700 manuscripts and documents from the Arnamagnaean Institute and 106 manuscripts and thirty documents from the Royal Library. It also provided for the return of some 1,350 original documents and some 6,000 copies of documents from the Arnamagnaean. The law referred particularly to the two immensely important manuscripts to be returned from the Royal Library of Copenhagen upon the confirmation of the new law, *Flateyjarbok* and *Codex Regius*. *Flateyjarbok* (the Book of Flatland) and *Codex Regius* (the King's Volume) are two of the most valuable manuscript treasures of Iceland's medieval literature.¹⁶⁶ During the years 1971-1997, 1,666 manuscripts and manuscript fragments kept in the Árni Magnússon

¹⁶⁴ Greenfield, Jeanette, The return of cultural treasures pp.10-46

¹⁶⁵ Greenfield, Jeanette, *ibid* pp. 41-43

¹⁶⁶ Greenfield, Jeanette, *ibid* p. 2. On 21 April 1971, when these two manuscripts were returned, by Danish frigate, to Icelandic soil and ceremoniously handed over in Reykjavik, the day was a momentous one for Icelanders. All activities were suspended as the whole nation watched on television one of the most extraordinary episodes of cultural restoration, *ibid* p. 41.

Collection, as well as all old Icelandic public records and copies of such records (a total of 7,324 documents), along with 141 manuscripts from the Danish Royal Library, were transferred to Iceland. The Arnamagnaean Manuscript collections were added to UNESCO's Memory of the World Register the 31th of July 2009 along with thirty-four other items of documentary heritage of exceptional value.¹⁶⁷

19.2.2. Kanakaria Mosaics – Autocephalous Greek Orthodox Church of Cyprus and Cyprus v. Goldberg

After the military invasion of Cyprus in July and August 1974 and the *de facto* division of the island into two separate areas the northern part of Cyprus, still illegally occupied by Turkey, has experienced a vast destruction and pillage of religious sites and objects during the armed conflict and continuing occupation.¹⁶⁸ As it is claimed by the Cyprus government and the Church of Cyprus, such religious sites constitute part of Cyprus' cultural property and are of paramount importance for the collective history and memory of the people of Cyprus as a nation, as well as to humankind. Cyprus has succeeded in repatriating few religious and archaeological objects either through diplomatic channels or through legal action.¹⁶⁹

The most well-known case of international importance relates to the removal and illegal export of the Kanakaria mosaics, a rare masterpiece of the 6th century AD¹⁷⁰, stolen from the Cypriot Church of the Panagia Kanakaria in Lythrankomi, following the Turkish military intervention. Thereafter, they were purchased by an American art dealer, Peg Goldberg. In 1989, the Autocephalous Greek Orthodox Church of Cyprus and the Republic of Cyprus traced the mosaics to Indiana and filed a judicial claim to obtain restitution. The United States District Court of Indiana ordered that the mosaics be awarded to the plaintiffs.¹⁷¹ Judge Bauer, President of the U.S. Court of Appeals, in his 1990 Judgment concluded that: "Only the lowest of scoundrels attempt to reap personal gain from this collective loss. Those who plundered the churches and monuments of war-torn Cyprus, hoarded their relics away, and are now smuggling and selling them for large sums, are just such blackguards".

¹⁶⁷ The Árni Magnússon Manuscript Collection, http://www.arnastofnun.is/page/handritasafn_en

¹⁶⁸ Republic of Cyprus, Ministry of Foreign Affairs http://www.mfa.gov.cy/mfa/mfa2016.nsf/mfa16_en/mfa16_en?OpenDocument

¹⁶⁹ See *inter alia* Cyprus: Destruction of Cultural Property in the Northern Part of Cyprus and Violations of International Law April 2009, The Law Library of Congress, Global Legal Research Center <https://www.loc.gov/law/help/cultural-property-destruction/cyprus.php#Cyprus>

¹⁷⁰ Republic of Cyprus, Ministry of Foreign Affairs http://www.mfa.gov.cy/mfa/mfa2016.nsf/mfa16_en/mfa16_en?OpenDocument

¹⁷¹ ART-LAW CENTRE – UNIVERSITY OF GENEVA PLATFORM ARTHEMIS art-adr@unige.ch - <http://unige.ch/art-adr>

19.2.3. The US Courts in the decisions **United States v. Hollinshead**, **United States v. McClain**, **United States v. Schultz** and **United States v. Portrait of Wally** established that the term “stolen property” (theft), which is not defined in the NSPA, may be defined by the law of the country of origin and, consequently, a foreign state may validly claim a right of restitution of an object illegally exported, if it has previously declared ownership of the object or of a specifically defined class of objects that includes it. The claimant state may then enlist United States cooperation in its return, including a request for prosecution of an illegal trafficker under the NSPA, so long as, prior to export, the foreign state has declared with sufficient specificity that the object is part of its cultural patrimony and that its export would violate that state’s law.¹⁷²

In a claim by the Mongolian government for the return of a 70-million-yearold skeleton of a Mongolian dinosaur - a *Tyrannosaurus bataar* – that was the property of the Mongolian government, which had prohibited its export¹⁷³, the federal court placed a restraining order on the fossil’s sale at auction pursuant to a process for its return to Mongolia. Subsequently, the skeleton was sold at auction for \$1.05 million, but the Mongolian government obtained a court order that barred the skeleton’s transfer to the buyer. Also, federal authorities brought charges of criminal fraud, making false statements and conspiracy against the paleontologist who had put the skeleton up for auction, and who was described by the prosecuting U.S. attorney as a “one-man black market in prehistoric fossils.”

19.2.4. Jiroft Collection – Iran v. The Barakat Galleries Ltd.

A collection of eighteen carved jars, bowls and cups had been illicitly excavated in the Jiroft region, in Southeast Iran, and subsequently exported abroad. The parties accepted that the dispute had to be determined according to the Iranian law at the time of the antiquities’ removal.¹⁷⁴ The Court of Appeal, examining Iran’s lawsuit versus the London-based Barakat Galleries seeking the restitution of the above treasures, held that the relevant laws of Iran were sufficiently clear to vest ownership title and an immediate right of possession of the relics in the Iranian State, and thus found the lawsuit admissible. Although the appeal decision concerned this preliminary issue, affirming that the Iranian claim should not be rejected on the ground of the principle that domestic courts should not entertain legal actions brought by foreign sovereigns to

¹⁷² James A. R. Nqfziger, Handbook... ibid 21. United States of America, p523

¹⁷³ - the skeleton’s country of origin had been misstated to be the United Kingdom and its stated value on customs and immigration forms was an absurdly low \$19 000 (initially reported as \$15 000)-, see ibid p. 516

¹⁷⁴ Bizos G., The legality of the Act (“Firman”) for the Removal of the Parthenon Marbles, in Protection and Return of Cultural Treasures, p. 253 para. 13.3.

enforce, directly or indirectly, its penal, revenue, or other public laws, this decision is important for Iran in its bid to obtain the return of the contested artifacts.¹⁷⁵

Such cases as *United States v. Schultz* and *Iran v. The Barakat Galleries* demonstrate the gradual evolution of domestic law in the sense of allowing the restitution of art objects wrongfully removed from, and claimed back by source countries, even in the absence of ownership title, and the courts of England and the United States increasingly recognize and protect such rights.

19.2.5. Etruscan Black-Figured Kalpis – Italy and Toledo Museum of Art¹⁷⁶

An Etruscan black-figure kalpis was returned by the Toledo Museum of Art to Italy in 2013 after an extensive investigation by U.S. Immigration and Customs Enforcement (ICE) and Homeland Security Investigations. The kalpis was found to be smuggled out of Italy after an illegal excavation prior to 1981, then sold to the Toledo Museum of Art in 1982 by Gianfranco and Ursula Becchina, who had earlier purchased it from the art smuggler Giacomo Medici. It was proved by ICE and the carabinieri through incontrovertible evidence that there was falsified documentation of the provenance of the vase furnished by Becchinas to the museum.

When the U.S. authorities became aware of the relations between the Museum and the Becchinas, they issued a subpoena to the Toledo Museum of Art for the documentation of the kalpis, being then on exhibition in Venice, and brought immediately back. After two years of HSI Rome's investigations into the kalpis, in June 2012, ICE filed their case for forfeiture¹⁷⁷ and seven months later, before the court order for forfeiture comes into effect, the Toledo Museum of Art voluntarily and unconditionally returned the kalpis to ICE in a public ceremony, issuing statements celebrating their cooperation with ICE and Italian authorities.¹⁷⁸

In this case it is worth noting that under domestic legislation, the kalpis was illegally exported from Italy to Switzerland and the Becchinas by Giacomo Medici, who was convicted in 2004 for intent to receive stolen archaeological artifacts illegally removed from Italy's cultural patrimony (including the kalpis).

¹⁷⁵ Alessandro Chechi, Raphael Contel, Marc-André Renold, "Case Jiroft collection – Iran v. The Barakat Galleries Ltd.," Platform ArThemis *ibid*

¹⁷⁶ Elizabeth Fraccaro, Ece Velioglu Yildizci, Marc-André Renold, "Case Etruscan Black-Figured Kalpis – Italy and Toledo Museum of Art" Platform ArThemis *ibid*

¹⁷⁷ *United States of America v. One Etruscan Black-Figured Kalpis, Circa 510-500 B.C.*, June 20, 2012, *ibid* fn.14

¹⁷⁸ "Transfer Ceremony Clears Way for Illegally Looted Ancient Vessel to be Returned to Italy," U.S. Immigration and Customs Enforcement, last modified January 7, 2013, accessed June 8, 2017, <https://www.ice.gov/news/releases/transfer-ceremony-clears-way-illegally-looted-ancient-vessel-be-returneditaly>. See Also "Kalpis Returns to Italy." *Ibid* fn 15

19.2.6. Victorious Youth – Italy v. J. Paul Getty Museum¹⁷⁹

The “Victorious Youth” - a life-size bronze statue created between the 4th and 2nd century BC – was discovered in 1964, by a fishing boat on the Adriatic coast of Italy. It changed hands a number of times until 1977, when it was acquired by the Getty Museum. In 1970 the Court of Appeals of Rome overturned the charges against fishermen of handling stolen property (in violation of Article 67 of the Italian Law of 1 June 1939, No. 1089), stating inter alia that it was not proved that the statue was found in Italian waters. After many transfers, the Victorious Youth was sold by Artemis, a Luxembourg-based corporation to the Getty Trust for US\$3.95 million. The Italian authorities were informed about the purchase in 1977 by INTERPOL – which cooperated with the Italian carabinieri on this case since 1970. In 1978 the Victorious Youth was publicly displayed for the first time at the Getty Museum. Ever since, it has become the signature piece of the Museum as the “Getty Bronze”.

In 1989 the Getty Museum denied the restitution of the statue demanded by the Italian Minister of Cultural Heritage. While a legal process concerning the illicit exportation of the Victorious Youth was pending before the Tribunal of Pesaro, in 2007 the Italian Ministry and the J. Paul Getty Trust reached an agreement which provided for the restitution of 40 objects to Italy and the establishment of a program of cultural collaboration between Italy and the Getty Museum. In 2007 the Tribunal dismissed the proceedings due to expiration of the statute of limitations. With an order of 2009, however, the prosecutor demanded the forfeiture (confiscation) of the statue since it had been exported in contravention of Italian laws and the Pre-Trial Judge at the Tribunal of Pesaro, ruled in 2010 that the Victorious Youth was exported in violation of Italian legislation and, accordingly, issued an order for its immediate forfeiture and restitution. After the Getty’s appeal, the Court of Cassation, in 2011, not ruling on the legitimacy of the forfeiture order, decided that the case should be remitted to the Tribunal of Pesaro for a new examination on the merits due to the erroneous qualification of the action launched against the 2010 order. In 2012 the Pre-Trial Judge at the Tribunal of Pesaro, upheld the 2010 order for the forfeiture of the statue, thereby confirming that it was illegally exported from Italy.

The crucial points of this case, still pending, are: a) which is the applicable law in this case as (i) this unique statue was made in ancient Greece¹⁸⁰, (ii) it was netted in international waters and

¹⁷⁹ See Alessandro Chechi, Raphael Contel, Marc-André Renold, “Case Victorious Youth – Italy v. J. Paul Getty Museum,” Platform ArThemis, *ibid*

¹⁸⁰ it is attributed to the greatest Greek sculptor Lysippos and it is one of the finest original Greek bronzes to have survived from the classical era, see Alessandro Chechi, Raphael Contel, Marc-André Renold, “Case Victorious Youth – Italy v. J. Paul Getty Museum,” Platform ArThemis *ibid*

(iii) only briefly passed through Italy before being spirited abroad; b) the Getty Museum didn't exercise the required due diligence, and thus, based on the available evidence, Getty officials were not in good faith at the moment of the acquisition of the Victorious Youth.¹⁸¹

19.2.7. Venus of Cyrene – Italy and Libya

The “Venus of Cyrene” was found in 1913 by Italian soldiers deployed at Cyrene. The statue, shipped to Italy, was placed on display in the Museo Nazionale delle Terme of Rome in 1915. After having relinquished all claims to Libya with the Peace Treaty of 1947 and Libya's declaration of independence (1951), Italy and Libya concluded an Agreement on the restitution of the Venus of Cyrene (2000). This agreement followed the request of Libyan authorities for restitution of the Venus of Cyrene (1989) and the Joint Communiqué (1998), which concerned, *inter alia*, the restitution of all cultural assets removed from the former Italian colony. In 2002 the Italian Ministry of Cultural Heritage and Activities implemented through a decree the 1998 Joint Communiqué and the 2000 Agreement and decided for the restitution of the Statue to Libya. Italia Nostra, an Italian non-governmental organization, sued in 2002 the Ministry before the Tribunale Amministrativo Regionale (“TAR”), seeking the annulment of the decree.¹⁸² This claim was rejected by the Court (2007). In 2008 the Consiglio di Stato upheld the judgment of the TAR, confirming that Italy was under an obligation to return the Venus of Cyrene to Libya on the basis of both the 1998 Joint Communiqué and the 2000 Agreement. Finally in 30 August 2008 the Venus of Cyrene was returned to Libya.

It is worth noting that the Joint Communiqué of 1998 contained the apologies of the Italian Government for the suffering caused to the Libyan people as a result of Italian colonization and

Getty declares the artist as “unknown”: <http://www.getty.edu/art/collection/objects/7792/unknown-maker-statue-of-a-victorious-youth-greek-300-100-bc/>.

¹⁸¹ For further details Alessandro Chechi, Raphael Contel, Marc-André Renold, “Case Victorious Youth – Italy v. J. Paul Getty Museum,” Platform ArThemis *ibid*

¹⁸² Italia Nostra sought the annulment of the decree of 1 August 2002, claiming that the artwork in question was a component of Italian cultural heritage because it had been discovered in territory subject to Italian sovereignty. As such, it could be removed from the patrimony of the State and ceded to a foreign sovereign only with the enactment of a specific law, and not by way of a mere governmental decree. Next, the plaintiff lamented that the decree was illegitimate because the Ministry did not take into account the artistic and cultural value of the sculpture. Italia Nostra argued that the proper setting for the Venus was the Italian heritage and not the patrimony of an Islamic country. The instant case involved multiple legal issues such as: (i) the legitimacy of the restitution of the Venus of Cyrene in light of the national rules prohibiting the deaccessioning of items forming part of the Italian patrimony, which is, by definition, inalienable; and (ii) the responsibility of the Italian State arising from the removal of the statue during the colonial occupation of Libya,

in Alessandro Chechi, Anne Laure Bandle, Marc-André Renold, “Case Venus of Cyrene – Italy and Libya,” Platform ArThemis *ibid*

the commitment of the Italian Government to return “all manuscripts, archives, documents, artifacts and archaeological pieces transferred to Italy during and after the Italian occupation of Libya in accordance with the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property”. In addition, the two countries agreed to “cooperate to determine these manuscripts, documents, artifacts and archaeological pieces and their whereabouts”.

By returning Venus, the Italian Government abided by the principle of international law according to which the commission of a wrongful act – such as the subjugation of a people through military occupation – involves an obligation to make reparation in order to reestablish the situation which existed before the wrongful act was committed. The restitution of property wrongly seized is the first remedy available to a State as a result of a breach of the prohibition of the use of force. It is only when restitution is impossible or inadequate that States may resort to other forms of reparation, including restitution in kind, compensation and apology.

Moreover it is worth noting that the TAR ruled that Italy was bound by the bilateral agreement. Moreover the Supreme Court ruled that the Italian State had obligations under customary law. The *Consiglio di Stato* improving upon the reasoning of the TAR, which referred to the customary rule that enshrines the restitution of the works of art removed during military occupation and colonial rule¹⁸³, held that the international obligation compelling the restitution of cultural objects taken wrongfully in times of war or colonial occupation was the corollary of the interplay between two principles of general international law, namely the principle prohibiting the use of force –enshrined in Article 2, paragraph 4, of the Charter of the United Nations – and the principle of self-determination of peoples – enshrined in Articles 1, paragraph 2, and 55 of the Charter of the United Nations.¹⁸⁴ Moreover the *Consiglio di Stato* recognized that the principle of self-determination of peoples had come to include the cultural identity as well as the cultural heritage linked either to the territory of a sovereign State or to peoples subject to a foreign government. Consequently, the restitution of works of art served the

¹⁸³ as manifested in Article 56 of the Regulations with respect to the Laws and Customs of War on Land (1899), Article 46 of the Regulations Respecting the Laws and Customs of War on Land (Hague Convention (IV) 1910), and Article I of the First Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, see above 1, 5.2.

¹⁸⁴ The Supreme Court refers to the relevant jurisprudence of the ICJ, recognizing the right to self-determination: case of Namibia (1971) and case of Sahara occident (1975)

safeguarding of such cultural ties whenever these have been jeopardized by acts of war or the use of force arising from colonial domination.¹⁸⁵

19.2.8. Maori Head of Rouen – France and New Zealand¹⁸⁶

On 19 October 2007, the Municipality Council of Rouen authorized the restitution of a Maori Head reserved in the collections of the Museum of Rouen since 1875. This authorization was annulled by the administrative Tribunal of Rouen and by the Supreme Court of Douai. On 18 May 2010, the French Parliament adopted a law providing that the Maori heads reserved by French museums can be returned to New Zealand. The Museum surrendered the Maori head to the Maori representatives on 9 May 2011.

19.2.9. Fresques de Casenoves – Museum of Art and of History of the city of Geneva and France¹⁸⁷

In this case the judicial means were not effective, as the first decision rendered on this dispute dates from 1954. The Court of Cassation ended this conflict in 1988, with a decision, declaring that the French courts lacked competence. Finally on the 1st July 1997, the museum of Art and History of Geneva and the French state represented by the minister of Culture, signed an agreement over the loan of two fragments of the fresques de Casenoves (Christ in Majesty and Adoration of Mages). On 19 mars 2003, the administrative council of Geneva decided to transform this loan to donation.¹⁸⁸

20. Repatriations of Cultural Treasures via Diplomatic way

The Diplomatic field is the most common way of Cultural Treasures' Repatriation due to the difficulties of the judicial way and the State's reluctance to be engaged in litigation which means lots of cost for both parts and negative publicity for the defendant. The negotiations lead usually to bilateral agreements. The UNESCO Intergovernmental Committee is also often used to solve such cases.

¹⁸⁵ Alessandro Chechi, Anne Laure Bandle, Marc-André Renold, "Case Venus of Cyrene – Italy and Libya, "Platform ArThemis ibid. The court Decision in: file:///C:/Users/user/Downloads/Italia%20Nostra%20v.%20Ministry%20of%20Cultural%20Heritage%20-%20Consiglio%20di%20Stato%202008%20(3).pdf

¹⁸⁶ Raphael Contel, Anne Laure Bandle, Marc-André Renold, « Affaire Tête Maori de Rouen – France et Nouvelle-Zélande », Plateforme ArThemis ibid

¹⁸⁷ Raphael Contel, Anne Laure Bandle, Marc-André Renold, « Affaire Fresques de Casenoves – Musée d'Art et d'Histoire de la Ville de Genève et la France », Plateforme ArThemis ibid

¹⁸⁸ Cour de cassation <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte =JURITEXT000007020575>

20.1. Bilateral Agreements

20.1.1. Norman Rockwell paintings – USA and Brazil

In a case concerning seven Norman Rockwell paintings that had been stolen and appeared to be bound for export to Brazil, the ACT team¹⁸⁹, after recovering four of the paintings in the United States, determined that three others were already in Brazil. This case is especially interesting because the stolen material had not been acquired in violation of laws specifically designed to protect cultural resources. Moreover, the investigation and enforcement measures were undertaken by the FBI, whose operations are ordinarily limited by federal law to United States territory and strictly domestic investigations. In order to retrieve the three paintings in Brazil, the FBI therefore had to rely on a diplomatic request by the State Department to Brazil under a bilateral mutual legal assistance treaty¹⁹⁰.

20.1.2. Korean Manuscripts –France and South Korea¹⁹¹

In 1866 during a military operation in Korea many cultural treasures were destroyed or exported. In 2011 France and South Korea signed an agreement about the Loan of the royal archives to South Korea. In 2008 thirty copies were returned to the Korean authorities and in 2011, the French and Korean Presidents signed an agreement principally providing for the loan of the manuscripts to the South Korea. On 27 may 2011, all the manuscripts were in the territory of South Korea. Jack Lang, former French Minister of Culture declared in this occasion that this is a long term loan, that the manuscripts were finally in their country of origin and that he was optimistic about the final legal solution.¹⁹²

20.1.3. Belier Malien – France, Jacques Chirac and Mali¹⁹³

In November 1996, the President of the French Republic Jacques Chirac received as a present, Malian Aries made from terracotta, looted from an area in Mali, which was restituted in the form of donation through negotiations on January 1998.

¹⁸⁹ The Art Crime Team was established in 2004 by the Federal Bureau of Investigation (FBI) to help combat the theft of cultural material

¹⁹⁰ James A. R. Nqfziger, Handbook ... ibid 21. United States of America, pp514-515

¹⁹¹ Raphael Contel, Anne Laure Bandle, Marc-André Renold, « Affaire Manuscrits Coréens – France et Corée du Sud », Plateforme ArThemis ibid

¹⁹² « Personnellement, j'interprète ce retour comme un dépôt de longue durée. Ces manuscrits sont sur le sol coréen, ils sont ici dans leur patrie d'origine. Je n'imagine pas personnellement un seul instant qu'un gouvernement français puisse ne pas renouveler cette décision jusqu'au jour où on finira par pérenniser par une loi et je suis optimiste. [...] Ils sont là durablement, ils sont chez vous ». in Raphael Contel, Anne Laure Bandle, Marc-André Renold, « Affaire Manuscrits Coréens – France et Corée du Sud », Plateforme ArThemis ibid

¹⁹³ Seth Médiateur Tuyisabe, Justine Ferland, Marc-André Renold, « Affaire Béliet malien – France, Jacques Chirac et Mali », Plateforme ArThemis ibid

Under the object exposed in the Bamako museum there is an inscription «present of Jacques Chirac, President of the French Republic».

20.1.4. Euphronios Krater and Other Archaeological Objects – Italy and Metropolitan Museum of Art¹⁹⁴

In February 2006, the Italian Ministry for Cultural Heritage and Activities and the Metropolitan Museum of Art (MET) of New York entered into an agreement by which the ownership title to the Euphronios Krater and other 21 archaeological artefacts was transferred to the Italian Government. The Euphronios Krater¹⁹⁵ was acquired in 1972 by the (MET) for \$1.2 million. Thomas Hoving refused to reveal the identities of the vase's previous owner, a private English collector, and of the dealer who sold it to the MET. However, many specialists being sceptical about Hoving's account, doubted that a vase by Euphronios could have lain for half a century unknown in a private collection. In the meanwhile the Italian government never gave up seeking proof for the Krater's illicit provenance. Thus in August-September 1995 during a routine investigation over illicit trafficking, the Italian *Carabinieri* discovered an organizational chart showing how the clandestine network was arranged through Italy and elsewhere, i.e. who was in the hierarchy and how they were related to each other, who supplied whom, which areas of Italy were supplied by which middlemen, and what their links were to international dealers, museums and collectors. An Italian art dealer, Giacomo Medici, was then identified to be a senior figure responsible for bringing archaeological objects out of Italy. The Medici's warehouse at the Geneva Free Port contained vases, statues, mosaics, photographs and documents, including shipment invoices. This evidence confirmed that Medici had exported out of Italy several objects, among which the Krater, which as proved by the documents found in Robert Hecht's apartment in Paris, was excavated in a necropolis north of Rome in late 1971 and Hecht was the dealer who sold it to the MET.

This case shows that under the pressure of negative publicity, and with constant and close investigation to prove their illicit provenance, many artifacts can be repatriated. After the raids in Giacomo Medici's warehouse at Geneva and Robert Hecht's apartment in Paris, Italy obtained the proof of the illicit removal of the Krater. Thanks to this evidence, Italian authorities could question the MET's ownership and reach an agreement on the return of the Krater and of other masterpieces which would otherwise not have been achieved. As it has been reported, "the short time between the Italian government's request and the deaccessioning of the objects suggests

¹⁹⁴ Raphael Contel, Giulia Soldan, Alessandro Chechi, "Case Euphronios Krater and Other Archaeological Objects – Italy and Metropolitan Museum of Art," Platform ArThemis *ibid*

¹⁹⁵ The Krater it is a rare huge urn for mixing wine with water, 12 gallons worth, dating to around 510 BC, signed by the painter Euphronios.

that the evidence was overwhelming”. Importantly, the agreement was also the result of the aggressive strategy of the Italian Government, which threatened to deny art loans to museums that refuse to return or that buy illicitly exported cultural objects.

20.1.5. 15 Archaeological Objects – Italy and Princeton University Art Museum¹⁹⁶

The negotiations initiated by the Italian Ministry of Cultural Heritage and Activities following the discovery of substantial evidence demonstrating the illicit provenance of 15 Archaeological Objects ended, after a few months, with an agreement (2007) between the Italian Government and the Princeton University Art Museum about their return. The then Italian Minister affirmed that the agreement represented a successful example of cultural diplomacy confirming that the Italian Government is leading the fight against the illicit trafficking in antiquities. However, the Italian Government could have filed a claim in the United States versus the Princeton Museum relying on the evidence demonstrating that the requested antiquities had been excavated and smuggled out of Italy in violation of existing laws. Stolen antiquities can be recovered in United States courts by a foreign nation bringing a replevin claim, basing its right to ownership on the national vesting laws.

Italy and Greece have recently succeeded in recovering artifacts from the Metropolitan Museum of Art, the Boston Museum of Fine Arts and the J. Paul Getty Museum basing their arguments on the possibility to bring actions for replevin.

20.1.6. Aidonia Treasure – Greece and Ward Gallery¹⁹⁷

In 1978 the Mycenaean cemetery at Aidonia, near Nemea, in southern Greece was looted and the Greek Archaeological Service, after securing the site recovered the artefacts left behind by the looters and rescued pots, figurines and a collection of jewellery from the unlooted tombs, which were transferred to the Museum of Nemea. In 1992 the Ward Gallery in New York acquired a collection of Mycenaean jewellery (the Aidonia Treasure). Before the purchase, the Gallery made enquiries in various Mediterranean States, including Greece, to find out whether the treasure was stolen and the Greek authorities responded negatively. However, when in April 1993 the Ward Gallery offered the Aidonia Treasure for \$1.5 million at auction, Ricardo J. Elia, a professor of archaeology at Boston University, visited the pre-auction exhibition and wrote to the Greek Consul General in New York, stating his belief that the objects offered for sale had been illegally exported from Greece. The Greek Consul General in New York having visited the Ward Gallery and sent several catalogues to the Ministry of Culture in Athens for study, on 14

¹⁹⁶ Alessandro Chechi, Anne Laure Bandle, Marc-André Renold, “Case 15 Archaeological Objects – Italy and Princeton University Art Museum,” Platform ArThemis *ibid*

¹⁹⁷ *ibid*

May 1993 the Republic of Greece notified the Gallery's director, that the Mycenaean collection offered for sale was the property of Greece and demanded its return, which was denied. The action brought by Greece on 25 May 1993 before the Federal District Court of New York versus the Gallery to recover the Aidonia Treasure was never discussed, because in December 1993 the Ward Gallery donated the Aidonia Treasure to the Society for the Preservation of Greek Heritage in Washington, D.C., a non-profit organization. Meanwhile, following Greece's request, the Court issued a temporary restraining order enjoining the defendant from transferring ownership or moving the collection pending the action. In 1996 the Society for the Preservation of Greek Heritage returned the Aidonia Treasure to Greece, where it was placed on display in the National Archaeological Museum in Athens and then transferred to the Museum of Nemea. Greece sought a judgment declaring that it was the lawful owner of the treasure and directing the Gallery to return it. The legal action was based on evidence proving that the artefacts had been excavated at Aidonia. The study of the catalogue concerning the Ward's exhibit and the Mycenaean objects that had been rescued by Greek archaeologists in the area, by an expert committee appointed by the Greek Ministry of Culture led to the conclusion that the similarities in materials, workmanship, motifs and forms between the objects on sale at the Gallery and the objects found by Greek archaeologists at the tombs identified them as coming from the same site. Consequently the collection on sale at the Ward Gallery was the product of looting from the tombs of Aidonia. The director of the museum reached finally a settlement with Greece before the case reached trial, because of the overwhelming evidence demonstrating that the treasure had been removed from Aidonia. A lawyer for the Greek Government, said that "there is no Mycenaean art legitimately in private hands". Furthermore, Greece gathered substantial evidence proving that the Mycenaean collection acquired by Ward had been looted in Aidonia. James Wright, a professor of archaeology at Bryn Mawr College and an expert in Mycenaean archaeology, stated that the objects at the Ward Gallery could not have been discovered outside of mainland Greece.

20.1.7. Orpheus Mosaic – Turkey and Dallas Museum of Art¹⁹⁸

In 1999 the Dallas Museum of Art acquired a fragment of a Roman marble mosaic depicting Orpheus taming wild animals (the Orpheus mosaic) at an auction at Christie's in New York for US\$ 85,000. Turkey's attempt to block the sale on the grounds that the mosaic had been illicitly excavated from the ancient city of Edessa (today's Şanlıurfa), in south east Turkey failed because Christie's refused to reveal the buyer's identity and Turkey lost track of the mosaic. In

¹⁹⁸ Ece Velioglu, Alessandro Chechi, Marc-André Renold, "Case Orpheus Mosaic – Turkey and Dallas Museum of Art," Platform ArThemis ibid

2008 a Turkish archaeologist, Barış Salman, published a study on Edessa mosaics, which also mentioned the one in the Dallas Museum's collection, and wrote an article (2009) on the plundering of the Edessa mosaics in the magazine *Aktüel Arkeoloji*, which caught the attention of Turkish authorities.

In 2012 the new director of the Dallas Museum, trying to identify the Orpheus mosaic, found out that it lacked documented provenance and according to Museum's research, it had not been cited in publications before its inclusion in Christie's catalog. The criminal investigation started in the same year by the prosecutor's office of the city of Şanlıurfa on the possible illicit export of the mosaic, led to the collaboration between the Dallas Museum and Turkey. Turkish authorities provided the Museum with "compelling evidence" that the mosaic originated from Şanlıurfa and that it was illegally removed in 1998. In particular, the Şanlıurfa prosecutor's office presented photographs of the mosaic *in situ*, presumably taken by the looters. Consequently on 3 December 2012 Turkey and the Dallas Museum of Art signed a Memorandum of Understanding on the return of the mosaic and on the establishment of an exchange program and on 6 December 2012 the Orpheus mosaic was returned to Turkey. This agreement was possible thanks to the detailed information on the provenance of the mosaic, especially the evidence emerging in the ongoing criminal investigations.

20.1.8. Marienkirche Window Panels – Germany and Russia, State Hermitage Museum, Pushkin State Museum of Fine Arts¹⁹⁹

In 1946 Soviet troops took 117 rare 14th century stained-glass window panels from the New Palace in Potsdam (*Neues Palais*), where they were stored after being disassembled into the 117 panels for safekeeping, from the Lutheran Church of St Mary in Frankfurt-on-the-Oder (*St. Marienkirche*). After their rediscovery in 1997 and the Germany commitment to contribute \$1.5 million for the restoration of the 14th century church in Novgorod, the Dormition of the Mother of God, fell under heavy siege at the time of the 1941 invasion of German bombers, Russia approved in 2001 the return of the glass panels. In 2002 a State law was enacted enabling the return of a first group of 111 panels. In 2005 the 6 other panels were found in the A. S. Pushkin State Museum of Fine Arts and returned in 2008 to Germany following lengthy negotiations. The German legal viewpoint was underlined in the Government's press release on the day of the return, stating that "*the cultural heritage of a nation is a very important part of its identity. International law thus clearly establishes that cultural property have a special status during war*

¹⁹⁹ Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, "Case Marienkirche Window Panels – Germany and Russia, State Hermitage Museum, Pushkin State Museum of Fine Arts," Platform ArThemis ibid
Lekakis G., Kontra news, Russia returned to Germany the panels stolen from a church of Frankfurt, 10.11.2017 (in greek)

times and may not be retained as reparation. This is also the line of the Federal Government”.

The Baldin Collection still remains in Russia.²⁰⁰

20.1.9. Weary Herakles – Turkey and Museum of Fine Arts Boston

A recent case of reunification is this of the “Weary Herakles”, a marble statue excavated in 1980 in Perge, Turkey. On September 2011, after lengthy negotiations, the Museum of Fine Arts Boston returned to Turkey the upper part of the sculpture, acquired in 1981 on September 2011, since the other half was conserved in Antalya Museum.²⁰¹

20.2. Repatriations of cultural Treasures under the aegis of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP).

The intergovernmental Committee has in some cases been successful in facilitating the end of disputes about the return of cultural Property via diplomatic way through bilateral or multilateral agreements.²⁰²

20.2.1. Shortly following the recommendation made during the sixteenth session of the ICPRCP in September 2010²⁰³, inviting both Parties to hold comprehensive bilateral negotiations as soon as possible with a view to bringing this issue to a mutually acceptable solution, Turkey and Germany had reached in May 2011, an agreement on the case of the **Bogazköy Sphinx**, initially presented to the ICPRCP in 1987, and a memorandum of understanding was signed, ensuring the return of the Boğazköy Sphinx to Turkey. The case led to the adoption of a Recommendation (No.2).

20.2.2. On 10 May 2010 in Paris, the restitution ceremony of the **Makondé Mark** to the United Republic of Tanzania, after the parties’ bilateral agreement in 2010, took place under the aegis of the International Council of Museums (ICOM) and in the presence of UNESCO.

20.2.3. Through mediation facilitated by the ICPRCP the **Phra Narai lintel** was in 1988 returned to Thailand by the United States of America.

²⁰⁰ Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, “Case Baldin Collection – Kunsthalle Bremen, Germany and State Hermitage Museum Russia,” Platform ArThemis *ibid*

²⁰¹ Alessandro Chechi, Raphaël Contel, Marc-André Renold, “Case Weary Herakles – Turkey and Museum of Fine Arts Boston,” Platform ArThemis *ibid*

²⁰² Return or Restitution Cases: <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/return-or-restitution-cases/#topPage>, 40th Anniversary of the 1970 Convention Information Kit <http://unesdoc.unesco.org/images/0019/001916/191606E.pdf>

²⁰³ <http://unesdoc.unesco.org/images/0018/001896/189639E.pdf#page=2>

20.2.4. In 1987 7,000 **Bogazköy cuneiform tablets** were directly returned to Turkey from the Former German Democratic Republic.

20.2.5. In 1986 the Cincinnati Art Museum (USA) and the Department of Antiquities of Amman (Jordan) decided, after a request submitted by Jordan to the ICPRCP, to jointly exchange moulds of the respective parts of the sandstone **panel of Tyche** with the zodiac in their possession, in order to be able to present the work in its entirety.

20.2.6. Italy returned in 1983 over **12,000 pre-Columbian objects** to Ecuador following the resolution of a seven-year litigation process, with the moral support expressed by the ICPRCP, which was recognized by the Ecuadorian authorities as a significant factor in the success of this case.

20.2.7. The Acropolis - Parthenon Sculptures - Erechtheion – Greece and United Kingdom

The most famous and still pending case concerns the Hellenic Government's demand for the return by the United Kingdom of the Acropolis Treasures, exhibited in the British Museum, namely the 60% from the Parthenon Sculptures the one of the six Caryatids and an Ionic Column from the North Porch removed by the Lord Elgin²⁰⁴ from the temples of Parthenon and Erechtheion respectively, during 1801-1803, in the era of colonization²⁰⁵, while Greece was occupied by the Ottomans, unfortunately just a few years before the Hellenic Revolution (1821), which led to the Hellenic Independence.²⁰⁶

The destruction of the monuments and the detachment of the ornaments took place “under questionable circumstances”.²⁰⁷ When Elgin was asked by the British parliament for his legal documentation to remove the sculptures, he claimed that he had an official permission from the occupant authorities, however he was unable to provide relevant evidence. His collaborator, Hunt, called as witness in the end of the hearings, made reference for the first time to an Italian translation of the alleged document.²⁰⁸ Beside the suspicious circumstances surrounding the

²⁰⁴ Thomas Bruce, the seventh Earl of Elgin, was in 1798 the representative of the British Empire in Constantinople

²⁰⁵ See Waxman S., LOOT, The battle over the stolen treasures of the ancient world, p. 224

²⁰⁶ The Parthenon was first destroyed, after more than 2,000 years of life in the Acropolis hill, in 1687 by the Venetian general Morosini who, during the siege of the Acropolis, set off a canon blast directly to the Parthenon, where the gunpowder was stored by the Turks. Then the roof was demolished and one entire length of the parthenon's colonnades was decimated. Morosini did still more damage when he tried to take home some sculptures. It was the worst moment in the Parthenon's history till the arrival of Lord Elgin, see Waxman S., LOOT, The battle over the stolen treasures of the ancient world, p. 226

²⁰⁷ See The Resolution submitted by Mrs. Carolyn B. Maloney of New York (for herself, Mr. Bilirakis and Mr. Payne) was referred to the Committee on Foreign Affairs <https://www.congress.gov/115/bills/hconres51/BILLS-115hconres51ih.pdf>

²⁰⁸ Bizos G., The legality of the Act (“Firman”) for the Removal of the Parthenon Marbles, in Protection and Return of Cultural Treasures, p. 257, para. 17.3

Italian document²⁰⁹, which was not even signed²¹⁰ and the fact that the English document finally provided to support Elgin's claim was actually a distorted translation of an Italian translation of the original Ottoman document²¹¹, it is underlined that this last document was not in fact a valid firman, but just a letter setting out the recommendation of the writer.²¹² Consequently this document could not have any legal consequences. Additionally it is worth noting that Elgin said the firman was issued on 1 July 1801, but it is nowhere to be found among the archives which hold all the firmans issued by the Sultan at the time.²¹³ In any case, this dubious document in which Elgin and his successors, namely the British government and the British museum, base their rights, gives only a permit to "*artists... in the service of the British Ambassador... to enter freely within the walls of the Citadel and to draw and model with plaster the ancient temples there to eject scaffolding and to dig where they may wish to discover ancient foundations and liberty to take away any sculptures or inscriptions which do not interfere with the works or walls of the Citadel*".²¹⁴ This text confers no authority to remove sculptures from the building or to damage it in any way²¹⁵ and Elgin did not have prior permission to remove the marbles.²¹⁶ In the middle of the second paragraph of the document it is emphasized that the local Athens officials should honour the firman given to Lord Elgin "*particularly as there is no harm in the said figures and edifices being thus view, contemplated and designed*".²¹⁷ Hunt admitted as much to the Select Committee in 1816 when he said that the Governor had been "induced" to "extend the

²⁰⁹ Ibid, Geoffrey Robertson, Norman Palmer, Amal Clooney, *ibid*, pp 24-29

²¹⁰ Bizos G, *ibid* p. 258, para.17.8.

²¹¹ Bizos G., *ibid* p. 254, para.14.2

²¹² Bizos G., *ibid*, p. 254 para. 14.1. About the features demanded to have a valid firman, see Bizos *ibid* p. 255 para. 16.3. with reference to Demetriades, see also British Committee for the Reunification of the Parthenon Marbles <http://www.parthenonuk.com/articles-and-research/76-george-bizos-sc> ,

Geoffrey Robertson, Norman Palmer, Amal Clooney, *The Case for Return of the Parthenon Sculptures*, p. 28 with reference to Vassilis Demetriades, "Was the Removal of the Parthenon Marbles by Elgin Legal?" (paras 15-20) Annex A. "Memorandum of the British Committee for Restoration of the Parthenon Marbles" in Seventh Report Session 1999-2000, Department of Culture. Media & Sport, VOL III Appendix 2 (printed 18 July 2000)

²¹³ Geoffrey Robertson, Norman Palmer, Amal Clooney, *ibid*, p. 27

²¹⁴ Geoffrey Robertson, Norman Palmer, Amal Clooney, *ibid* p. 24, with further references, Waxman S., *LOOT, The battle over the stolen treasures of the ancient world*, p. 225

²¹⁵ As William St. Clair points out in his definitive account, "Lord Elgin and the Marbles", in Waxman S., *LOOT*, *ibid*, p. 225, see also, Moustaira E. *Comparative Law and Cultural objects*, p.141

Korka E., *the Framework of the Greek Request for claiming the Parthenon Marbles*, p. 233

²¹⁶ Bizos G, *ibid* pp. 259-269, para.19-22.

²¹⁷ Bizos G., *ibid* p. 259-262, para.19-20

precise permissions of the Firman”.²¹⁸ Furthermore there is no written evidence of any permission given by the legally required authorities for the shipment of artifacts to Britain²¹⁹; even the *disdar*, the authority responsible for the Acropolis, protested but was ignored.²²⁰ It is also questionable if the Ottomans’ military occupation of Greece could in any case give them any authority to alienate these cultural treasures.²²¹ Elgin, taking advantage of his immunity as a British Ambassador²²² and with the main purpose to decorate with the sculptures his house in Scotland²²³, dispossessed the Parthenon of fifty slabs and two half-slabs of the frieze, and fifteen metopes, as well as various sculptures from other buildings on the Acropolis - all, as Hunt later said, that was worth taking. Under his orders, serious damage was done to the building by sawing through the frieze slabs, removing the cornice so as to detach the metopes and breaking the entablature on which they rested.²²⁴ Undoubtedly the monuments suffered immeasurable damage²²⁵, as confessed by the painter Lusieri, who wrote to Elgin: “I must do more still and I must want to try it so that some barbarisms I have been obliged to commit in your service may

²¹⁸ Geoffrey Robertson, Norman Palmer, Amal Clooney, *ibid*, p. 29, with further references, where it is cited that even Cook (formerly keeper of the Greek collections at the museum) admits that “it may be questioned whether the firman actually authorized even the partial dismantling of buildings in order to remove the sculptures”.

²¹⁹ Bizos G. *ibid* p.269, para. 24, such permission is only referred to be given in a letter written by the British Ambassador in Constantinople, Robert Adair, to the Foreign Secretary in London.

²²⁰ Waxman S., *LOOT*, *ibid*, p. 225, 227

²²¹ Bizos G. *ibid* pp267-269, para. 23

²²² Geoffrey Robertson, Norman Palmer, Amal Clooney, *ibid*, p. 30, with further references

²²³ Bizos G, *ibid* pp. 263-6, para. 20.8.6. quoting the Elgin’s correspondence to Lusieri

As it is cited by Geoffrey Robertson, Norman Palmer, Amal Clooney, *ibid*, p.30, fifteen years later in 1816, Elgin insisted before the Parliamentary Select Committee that he had the intention to draw and mould the sculptures, until he came to Athens and realised that they were in peril of “imminent and unavoidable destruction... had they been left many years longer the prey of mischievous Turks, who mutilated them for wanton amusement or for the purpose of selling them piecemeal to occasional travellers”. But in fact the “terrible Turks”, had prevented the French Ambassador, at the height of his own influence, from behaving like Elgin, in 1780 (p.23).

²²⁴ As stated by Geoffrey Robertson, Norman Palmer, Amal Clooney, *ibid*, “the words “vandalism”, and “looting” are appropriate descriptions of Elgin’s actions”, pp. 29-30, with further references, see also Waxman S., *LOOT*, *The battle over the stolen treasures of the ancient world*, p. 227

²²⁵ It was recorded that backs of the architectural sculptures were cut off if their thickness made them inconveniently heavy for any methods of transport then available. Apart from the actual removal of the Parthenon’s sculptural decorations, the cornice above the south metopes, and a part of the south angle of the east pediment were destroyed. Moreover the ship *Mentor* bringing the treasures to England sank near *en route* in September 1802 and the treasures remained for two years in the seabed, Greenfield J., *The return of cultural treasures*, pp 72-74, Geoffrey Robertson, Norman Palmer, Amal Clooney, *ibid* p. 36

be forgotten...²²⁶ In 1816 the British Parliament voted to buy the sculptures for 35.000 pounds, 5000 more than it had offered a decade earlier.²²⁷ Even in the British parliament there were severe negative reactions and the Lord Elgin's actions were severely criticized.²²⁸

In 1835²²⁹ the Hellenic government requested officially the return of the illegally detached and exported treasures, after the British Museum offered plaster casts²³⁰. After numerous requests made in 1842, 1924, 1927, 1941, 1961 by the Hellenic authorities, the Academy of Athens, the mayor of Athens, archaeologists and others²³¹, in 1982, during the UNESCO Conference in Mexico, the Hellenic Minister of Culture Melina Merkouri made a request for the return of the sculptures from the British museum to Greece. In October 1983 the Hellenic government submitted an official request to the United Kingdom for their return which was rejected.²³²

In 1984 the Hellenic government submitted an official request for the return of the sculptures to the ICPRCP. In 1987 the Committee asked its president to promote negotiations for the

²²⁶ Waxman S., LOOT, ibid, p.227

²²⁷ The first shipment of the treasures went on display in 1807, in a shed behind Piccadilly Circus, Waxman S., LOOT, ibid, pp. 229, 231

²²⁸ During the debate in parliament Sir John Newport M.P., member of the special select committee said that "The honorable Lord had taken advantage of the most unjustifiable means ...and has committed the most fragrant pillages. It was, it seems, fatal that a representative of our country LOOT these objects that the Turks and other barbarians considered sacred", in Comino E. Are the Hellenes of today the same of those 2500 years ago?, p.283

Lord Byron wrote in the "Curse of Minerva": What more I owe let gratitude attest- Know, Alaric and Elgin did the rest, That all many learn from whence the plunderer came, The insulted wall sustains his hated name". Byron talks about the vanity and the littleness of the man and refers to the two painters (Lusieri and Fauvel) who "contest the privilege of plundering the Parthenon, and triumph in turn." Byron stated: I opposed- and ever will oppose -the robbery of ruins from Athens to instruct the English in sculpture, (who are capable of Sculpture as the Egyptians of skating) Waxman S., LOOT, ibid p. 231-232

²²⁹ In Greece the Philomousos Company was founded in 1812 in the occupied Athens to avoid similar phenomena. The independent Hellenic government, having in mind the loots in Acropolis (1801-1803), in Aphaea (1811) and in Epicoureios Apollo (1812-1814) made provisions for the protection and the export prohibition of the cultural property in the Troizina Constitution (1827), and the first Hellene governor Ioannis Kapodistrias demanded the prevention of the cultural objects export, Vergou M. ibid p. 1072 with further references

²³⁰ Waxman S., LOOT, ibid p. 232

²³¹ Korca E. ibid p. 227

²³² It is worth noting that the arguments of protection from barbarism, of the weakness of the Hellenic government to protect them and of the absence of an appropriate museum to accommodate them, have collapsed. The treasures were not protected since at first they were carelessly stored in the museum, and in 1930 they were caused irreparable harm by attempts by the museum to remove the original color and patina of the Marbles with abrasive cleaners! Moreover the reason to "protect them from barbarism" ceased to exist a few years after their removal, since the foundation of the independent Hellenic State in 1830 and the British Government didn't return them since then.

Sculptures' return. This case was discussed in the competent International and non-International Organizations, UN, UNESCO, Council of Europe, European Committee, ICOM, ICOMOS and ICCROM.²³³ UNESCO adopted in 1999 a recommendation that bilateral talks be initiated between Greece and the United Kingdom²³⁴ and the Intergovernmental Committee for Promoting the Return of Cultural Property (ICPRCP) during several sessions, in particular in 1989, 1991, 1994, 1996, 1999, 2010, 2011 and 2016, adopted Recommendations calling for an amicable settlement of the dispute. The European Parliament adopted in 1998 a Declaration in favor of the Return of the Parthenon Marbles to Greece.²³⁵

Recently, on 2 May 2017, the U.S. 115th Congress in its Resolution 51²³⁶, characterizing Parthenon as “*a universal symbol of culture, democracy, and freedom, making the Parthenon Marbles of concern not only to Greece but to all the world*”, expressed its sense that the Parthenon sculptures should be returned to Greece, “*Whereas the Parthenon was built on the hill of the Acropolis in Athens, Greece, in the mid-fifth century B.C. under the direction of the Athenian statesman Pericles and the design of the sculptor Phidias;*” being “*... the ultimate expression of the artistic genius of Greece, the preeminent symbol of the Greek cultural heritage, including its art, architecture, and democracy, and of the contributions that modern Greeks and their forefathers have made to civilization;*”.

Nowadays the 40% of the Parthenon - the Temple of the Virgin Goddess Athina- sculptures are located in the New Acropolis Museum, the frieze of the Parthenon, narrative of the story of the Panathenaic Procession, pieced together with a combination of the original blocks of the frieze and cast copies of the pieces in museums abroad, such as the British Museum and the Louvre²³⁷. From the entire frieze that survives today, 50 meters are in the Acropolis Museum, 80 meters in the British Museum, one block in the Louvre, whilst other fragments are scattered in the

²³³ Korka, ibis p. 228-229

²³⁴ See MEMORANDUM ON THE PARTHENON MARBLES submitted by the Government of the Hellenic Republic to the House of Commons Select Committee on Culture, Media and Sport, on 9 March 2000, <http://www.culture.gr/DocLib/memorandum.pdf>

see also Korka E. ibid p.230

²³⁵ See above, Introduction, UNESCO Information Kit ibid,

²³⁶ The Resolution submitted by Mrs. Carolyn B. Maloney of New York (for herself, Mr. Bilirakis and Mr. Payne) was referred to the Committee on Foreign Affairs <https://www.congress.gov/115/bills/hconres51/BILLS-115hconres51ih.pdf>, The Congress had adopted a similar Resolution in 2016, H.Con.Res.162 - Expressing the sense of the Congress that the Parthenon Marbles should be returned to Greece 114th Congress (2015-2016) , Lekakis G., Kontra news, The US congress Resolution for the return of Parthenon Sculptures, 14.10.2016 (in greek)

²³⁷ The Acropolis Museum, Parthenon Gallery, <http://www.theacropolismuseum.gr/en/content/parthenon-gallery>

museums of Palermo, the Vatican, Würzburg, Vienna, Munich and Copenhagen.²³⁸ The area around the Erechtheion was considered the most sacred of the Acropolis. The eastern part of the Temple was dedicated to Athena, whilst the western part was dedicated to local hero Boutes, Hephaistos and other gods and heroes. The Caryatids are six statues of maidens supporting the roof of the Erechtheion, instead of the typical columns. The second Korai from the western section and an Ionic Column from the North Porch were removed by Lord Elgin in 1801 and are exhibited in the British Museum.²³⁹ The Parthenon carvings of the friezes, pediments, and metopes, the Caryatid and the Ionic Column are not merely statuary, movable decorative art, but integral parts of the Parthenon and the Erechtheion temples, and should be repatriated to their country and their people of origin, with which they are connected by a history of almost 2,500 years and reunified to the temples of Parthenon and Erechtheion. For the Hellenes the statues have a soul and the Caryatids are waiting for their sister.

21. Voluntary Repatriations from State to State.

Although the history of returns of cultural treasures begins even earlier, in 1950²⁴⁰, a great number of repatriations have taken place recently voluntarily, which proves the increasing practice of returning cultural property to its country and people of origin. In fact during recent years an explosion in the cases of return is realized. The great number and variety of the States from all Continents, and of Museums and other Organizations, taking part in the repatriations, is significant of the Universality of the Rule that cultural treasures must be returned to their Country of Origin. This massive participation to the movement of the cultural heritage's repatriation shows also the belief that this act is legal and that the States such as the Museums, Universities etc. are legally bounded to return the Cultural Treasures to their Country or People of Origin. Hereinafter some indicative repatriations are exposed expressing this spirit, with a special reference to the repatriations of years 2015-2017, in order to show the density, the variety and the belief that this practice has become obligatory.

²³⁸ Acropolis Museum, The Frieze <http://www.theacropolismuseum.gr/en/content/frieze-0>

²³⁹ Several interpretations about the Caryatids have been put forth. The most convincing one supports the view that they constituted the visible portion of the grave of Kekrops and were the choephoroi who paid tribute to the glorious dead. The Acropolis Museum, the Erechtheion, <http://www.theacropolismuseum.gr/en/content/erechtheion>
Another Caryatid was removed from Eleusis in 1801 by E.D. Clarke and is exhibited in the Fitzwilliam Museum <http://www.fitzmuseum.cam.ac.uk/dept/ant/greeceandrome/browsegallery/area4/object.html?65755&ClassicalGreekWorldCaseFreestandingClarke>

²⁴⁰ See below 21.1. fn 243

21.1.Repatriations until 2014

The history of returns of cultural treasures begins even earlier, in 1950.²⁴¹ During the decade of 2000:

21.1.1. i) Russia agreed in 2001, to return to **Belgium** the military archives stolen by the Nazis during the Second World War and then taken to Moscow by Soviet forces;²⁴² **ii)** Over a period of fifteen years, **Denmark** has returned much of the Greenland collection at the Danish National Museum to the National Museum of **Greenland** in Nuuk.²⁴³; **iii)** Under the 1970 UNESCO Convention **Canada** has returned numerous artifacts since 1997;²⁴⁴ **iv)** In **Italy** *la Guardia di Finanza*

²⁴¹ 1950: agreement between France and Laos about the restitution of Laotian objects of art; 1962: the Cambridge University Museum of Archaeology and Anthropology returned to Uganda special objects; 1964: the Mandalay regalia were returned to Burma by the Victoria and Albert Museum; 1968: there was an agreement between France and Algeria returning some three hundred paintings which had been exhibited in the Museum of Algeria; 1970: Belgium returned at least forty objects to Zaire; 1973: the fragment of a stela stolen from the Piedras Negras was returned by the Brooklyn Museum to Guatemala; 1974: a fifth century mosaic from the ancient city of Apamea was returned by the Newark Museum New Jersey to Syria; 1974: a mask was returned to Papua New Guinea by the National Museum of New Zealand; 1977: Belgium returned several thousand cultural objects to Zaire, on top of the 1970 consignment; In 1977: the Netherlands concluded an agreement to return a number of important historical and cultural objects to Indonesia; 1977: two major American institutions returned a number of cultural items to Panama; 1977: Australia started returning artifacts to Papua New Guinea; 1980: France and Iraq came to an arrangement about the return of fragments of Babylonian law codes to Iraq; 1981: a French court ordered the restitution to Egypt of a stolen Amon Min statue which had been illicitly traded; 1981: South Africa returned some carved birds to Zimbabwe; 1981: New Zealand returned more than a thousand cultural objects to the Solomon Islands; 1981: the Wellcome Institute in London returned a collection of Him/yarite items to the Yemen; Throughout the 1980s restitution has continued unabated, to the gratification of countries like Vanuatu (New Hebrides), Honduras, Kenya, Iraq, Ethiopia, Ecuador, and Peru, Greenfield, J., The return of cultural treasures, introduction p. 5

²⁴² See inter alia <http://www.lootedart.com/QD00RO229111>

²⁴³D. Fasouli, Parthenon Sculptures and their return, University of Leicester, file:///C:/Users/user/Downloads/DanaiFassouli.pdf, where also stated that on 27 March 1996, the Court of First Instance of Genoa ordered the restitution to Ecuador of 87 archaeological items dating from the pre-Columbian era. On 23 June 1998, the Court of First Instance of Rho (Milan) ordered the restitution of 479 archaeological items to their various countries of origin: Peru, Mexico, Costa Rica, Colombia, Ecuador and Guatemala. (United Nations, 2000)

²⁴⁴ 2002: Canada returned several hundred pre-Columbian textiles to the Plurinational State of Bolivia; 2010: more than 300 ancient coins, jewelry and metal artifacts to Bulgaria; 2011: 21 000 archeological objects, covering more than 2600 years of the history to Bulgaria; 2010: 35 fish, plant, insect, and reptile to China; a collection of pre-Columbian gold jewelry and two ceramic figures to Colombia; 2006: an ancient anthropomorphic figurine to Colombia; 2004: a clay funerary figurine to Egypt; 2010: a sculpted head of a woman, to Egypt; 2009: three bronze bracelets to Mali; 1997: 20 ceramic pots and figures to Mexico; 2009: a terracotta figure, to Nigeria; 1997, 2000, 2002, 2005: pre-Columbian artifacts to Peru; 1997, 1999: Byzantine mosaics to Syria, in Robert Kirkwood Paterson,

discovered the existence of looted objects which once belonged to Maria Callas' collection including an entire sepulchre of Paestum and four walls of the sepulchre have been returned²⁴⁵; v) In 2006 the **UK** notified Greece that it had recovered a Greek antiquity, which was returned to **Greece** through an amicable out-of-court settlement; vi) In 2006 the first formal return request to the **UK** under the Directive was brought by **France** with regard to a musical instrument.²⁴⁶

21.1.2. i) 2008: restitution of 262 stolen archaeological objects (**France – Burkina Faso**); **ii) 2008:** restitution of 243 Pre-Columbian objects (**Spain – Peru**); **iii) 2009:** restitution of 3,000 archaeological objects (**Italy – Bulgaria**); **iv) 2009:** restitution of three cuneiform tablets (**Peru – Iraq**); **vi) 2009:** restitution of a marble head (**Switzerland – Lebanon**); **v) March 2009:** restitution of 2 mural frescos (**Greece – Italy**); **vi) 2009:** restitution of 7 cultural objects (**Thailand – Cambodia**); **vii) 2009:** restitution of 5 frescos (**France – Egypt**); **viii) 19 January 2010:** restitution 139 cultural objects (**Spain – Nicaragua**); **ix) 2010:** restitution of Sumerian treasures (**Germany – Iraq**); **x) May 2010:** restitution of the Makonde Mask (**Switzerland – Tanzania**); **xi) May 2010:** restitution of human remains (**France- New Zealand**); **xii) The Metropolitan Museum of Art in New York has recognized that Egypt is the owner of 19 objects from the tomb of Tutankhamun (USA – Egypt); xiii) Since 2002 Egypt has recuperated 5,000 objects of illicit provenance.**²⁴⁷

21.1.3. Moreover: i) According to official Italian documents²⁴⁸, during 2011, numerous stolen or illegally exported cultural objects were recovered and returned by **Italy to foreign Countries**

Handbook ... *ibid*, 4. Canada, Appendix p.104 *Source:* Returns to Country of Origin, Department of Canadian Heritage. Online at <http://www.pch.gc.ca/eng/1346288431727/I3462891>

²⁴⁵ UNESCO Information Kit *ibid*

²⁴⁶ Kevin Chamberlain and Kristin Hausler, Handbook *ibid* 20 United Kingdom, p 466

²⁴⁷ UNESCO Information Kit *ibid*

²⁴⁸ Manlio Frigo, Handbook ... *ibid*, 11. **Italy**, pp 251-252 **RETURNS:** i. to Mexico, nine pre-Columbian objects illegally exported, ii. to Spain, two wooden consoles, stolen; iii. to Belgium, a painting stolen, seized by the Carabinieri after an investigation in collaboration with the Belgian police; iv. to Peru, 37 pre-Columbian objects illegally exported, seized by the Carabinieri, identified in a private collection; v. to France, in June 2011, an oil painting on wood representing Saint Francis with the crucifix, stolen from a museum in Nice, seized by the Carabinieri during an investigation at an auction house and repatriated in collaboration with the French police body, the *Office Central de Lutte contre le Trafic Illicite des Biens Culturels* (OCBC); vi. to Ecuador, in June 2011, 68 archaeological finds illegally exported, seized from a private collector; vii. to Guatemala, five pre-Columbian archaeological finds illegally exported, seized from a private collection; viii. to Costa Rica, pre-Columbian archaeological finds illegally exported, seized from a private collection. see also appendix

ibid p. 253: **Returns under amicable out-of-court settlements, administrative cooperation measures and return proceedings from 2008 to 2011: Table 11A. 1 Overview of returns under amicable out-of-court settlements:** 2008 Germany Czech Republic 1 wooden Pieta statue (Mocidlec), 2008 Germany Czech Republic 4

‘after completing of judicial procedures’; **ii) Switzerland** returned to **Egypt**, a batch of 32 ancient cultural objects, dating from the Pharaonic and Roman periods; **iii)** between 2013 and 2015, **Cambodia** obtained the return of six of the nine statues of great cultural heritage significance, which were looted from Prasat Chen, Koh Ker and had been located abroad; **iv)** an ancient ritual knife (“Tumi”) was handed over **from Germany to Peru**; **v)** **Germany** handed over to **Italy** a collection of grave goods, dating back to the 5th millennium BC; **vi)** In 2013 **Germany** returned thirteen ancient artifacts have been returned to **Iraq**, among them at least one object stolen from the National Museum of Iraq in Baghdad in 2003; **vii)** **France** handed over a statue of Nok civilization to Nigeria; **viii)** In 2013 **France** returned six statues to **Nigeria**.²⁴⁹

21.2. In 2015: i) in Greece 27 cases of repatriations were successfully accomplished from 2009 until 2015, 16 of which took place in 2014 and 2015, with the collaboration of the General Directorate of the Hellenic Ministry of Culture and Sports, Greek and foreign customs and consular services, judicial and law enforcement authorities, as well as intergovernmental organizations, such as Interpol;²⁵⁰ **ii) Hawaii** returned a stolen totem in **Alaska**; **iii) Australia** returned a Buddha’s statue to **India**; **iv) France** returned an ancient stele to **Mexico**, and an ancient statue of swimmer in **Egypt**; **v) Germany** returned stolen statues to **India** and to **Cashmere**; **vi) Switzerland** returned ancient sarcophagus of Hercules to **Turkey**; **vii) Spain** returned hundred of antiquities to **Ecuador**; **viii)** the **Church of Cyprus** succeeded to have the return of 34 stolen antiquities from **Germany**; **ix)** more than 500 stolen artifacts were returned

wooden Church Fathers statues (Semin), 2008 Germany Czech Republic 1 wooden angel statue (Klokočka) 2008 Spain Sweden Archaeological objects, 2009 Germany Czech Republic 1 wooden angel statue, ‘Allegory of love’ (Ceska Skalice), 2009 Germany Czech Republic 1 wooden angel sculpture (Hnevceves), 2009 Austria Czech Republic 1 wooden statue of St John of Nepomuk (Pristoupim), 2009 Slovenia Italy Gorzani’s book, 2009 Austria Czech Republic 1 church painting of St Anna (Noutonice), 2009 Germany Greece 90 antique objects 2010 Netherlands Czech Republic Statues of angels (Hnevotin) (2), 2010 Germany Czech Republic 1 wooden statue of St Nicholas (Libnic), 2010 Austria Bulgaria Archaeological coins, 2010 Sweden Latvia Paintings 2010 France Spain Canvas, 2011 Czech Republic Austria Wooden sculpture of Christ the Saviour, 2011 United Kingdom Greece 6 icons, 2011 Estonia Latvia 3 icons, 2011 United Kingdom Italy Two 14th and 15th century manuscripts and one 14th century Missal, 2011 Germany Austria Collection of manuscripts, 2011 Germany Italy Manuscript, 2011 France Germany 2 sculptures

²⁴⁹ UNESCO, other cases of return or restitution of cultural objects, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/other-cases-of-return-or-restitution-of-cultural-objects/>

²⁵⁰ Nikolentzos K., Voutsas K., Koutsathanasis C., *ibid* p. 367

to **Egypt** in 2015;²⁵¹ **x)** through bilateral negotiations between the **Chinese and French** governments, in 2015, **32 looted gold antiquities**, stolen from ancient Chinese tombs and held by French collectors, were returned to China²⁵² and formally handed over to northwest China's Gansu Provincial Museum; **xi)** in 2015 the President of the **Prussian** Cultural Heritage Foundation handed over a 2,600 years old clay brick, with an inscription of the Babylonian King Nebukadnezar, to the ambassador of the Republic of **Iraq** in Berlin.²⁵³

21.3. In 2016: i) Switzerland returned Etruscan statues in **Italy**; **ii) Belgium** returned a stolen ancient statue to **Egypt**; **iii)** an illicitly exported Buddhist sculpture was returned from **USA to Pakistan**; **iv) Belgium and USA** returned ancient objects to **Iran**; **v) USA** returned a stolen letter of Columbus to **Italy**; **vi) Israel** returned 2 stolen sarcophagus to **Egypt**; **vii) USA** returned ancient stolen figurines to **India**; **viii) Denmark** returned the princess Sabina's chariot to **Italy**; **ix)** Prehistoric clay figurine, stolen in 1974 returned from **Germany to Cyprus**; **x) USA, Switzerland and UK** returned ancient frescoes to **Italy**; **xi) Germany** returned 45 antiquities to **Peru**; **xii) Switzerland** returned an ancient stele in **Egypt**; **xiii)** an individual returned ancient objects from sea to the **Israel** authorities; **xiv)** a ancient clay pot stolen from **Cyprus** was found in **UK** and returned; **xv) Netherlands** returned a stolen head statue to **Italy**;²⁵⁴ **xvi) France** returned a relief of Pharaoh to **Egypt**;²⁵⁵ **xvii)** two valuable paintings of former Dutch masters, despoiled by the Nazis in the late 1930s, were returned to the beneficiaries of a **German Jewish art dealer** exiled to Canada; **xviii) Germany** returned to the Republic of **Iraq** a Sumerian clay cuneiform tablet on 14 January 2016.²⁵⁶

²⁵¹ Lekakis G., Kontra News (in greek) 2.12.2015, 5.12.2015, 29.10.2015, 24.10.2015, 16.10.2015, 30.9.2015, 17.10.2015, 10.10.2015, 5.11.2015, 26.9.2015, 8.1.2016 with further sources mentioned, Vergou M. *ibid* p. 1077-1078

²⁵² Lekakis G., Kontra news 29.7.2015, France returned 32 stolen gold objects in China (in greek), [https://archaeologynewsnetwork.blogspot.gr/2015/07/france-returns-looted-gold-antiquities.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed:+TheArchaeologyNewsNetwork+\(The+Archaeology+News+Network\)#.Va3IT_ntlBc2ZlHVbMp7d6dBB9H.97](https://archaeologynewsnetwork.blogspot.gr/2015/07/france-returns-looted-gold-antiquities.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed:+TheArchaeologyNewsNetwork+(The+Archaeology+News+Network)#.Va3IT_ntlBc2ZlHVbMp7d6dBB9H.97)
[http://archaeologynewsnetwork.blogspot.gr/2015/07/france-returns-looted-gold-antiquities.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed:+TheArchaeologyNewsNetwork+\(The+Archaeology+News+Network\).Va3IT_ntlBc#EzqKwQgOswl7XAzl.97](http://archaeologynewsnetwork.blogspot.gr/2015/07/france-returns-looted-gold-antiquities.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed:+TheArchaeologyNewsNetwork+(The+Archaeology+News+Network).Va3IT_ntlBc#EzqKwQgOswl7XAzl.97) Source: Xinhua [July 20, 2015]

²⁵³ UNESCO, other cases of return or restitution, *ibid*

²⁵⁴ Lekakis G., Kontra News (in greek), 21.1.2016, 16.4.2016, 9.5.2016, 18.5.2016, 29.5.2016, 3.6.2016, 17.6.2016, 15.7.2016, 10.8.2016, 28.9.2016, 15.11.2016, 22.11.2016, 26.11.2016, 6.12.2016, 9.12.2016, with further sources mentioned, Vergou M. *ibid* p. 1077-1078

²⁵⁵ Lekakis G., Xronos Komotinis (in greek), 2.11.2016 with further sources mentioned

²⁵⁶ UNESCO, other cases of return or restitution of cultural objects *ibid*

21.4. In 2017: i) **UK** returned a stolen relief to **Egypt**; ii) **Colombia** returned 8 antiquities to **Peru**; iii) **Italy** returned 12 ancient objects in **Mexico**; iv) **USA** returned to **Egypt** 5 smuggled objects; v) **UK, Belgium, Italy and USA** returned 558 antiquities to **Iran**; vi) **USA** returned a stolen fragment of Sarcophagus to **Greece**; vii) **France** returned an stolen ancient mummy mask to **Egypt**; viii) **France** returned an ancient relief to **Egypt**; ix) **USA** returns ancient royal seals to **South Korea**; x) Ancient sarcophagus with Hercules was repatriated from **Switzerland to Turkey**; xi) **Japan** returned a stolen tombstone to **Korea**; xii) 18 Maya's ancient objects were repatriated to **Guatemala from Germany, Italy and Switzerland**;²⁵⁷ xiii) A trove of ancient Mayan artifacts including the heads of several figurines were returned to **Guatemala** after more than 50 years into European museums and private collections in Europe (**Germany, Italy and Switzerland**). In July of last year four Mayan stone tablets and three carved limestone fragments that had been found in the possession of a **Californian collector** were returned by the FBI;²⁵⁸ xiv) On 20.11.2017 a ceremony of **repatriation of 26 ancient cultural treasures from Austria** took place in the **Hellenic** Embassy in Vienna. These treasures of Minoan, Classical and Hellenistic period, were among those **looted by the German** general Julius Ringel in 1941 from the stratigraphic museum and the villa Ariadni in Knosos (Crete), who had granted them to the Graz University before 1945²⁵⁹; xv) a 2,300-year-old sculpture was returned from **USA to Lebanon**; xvi) the Republic of **Korea** returned 11 dinosaur fossils to **Mongolia**; xvii) a stolen Etruscan vessel was returned from **USA to Italy**.²⁶⁰

22. Repatriations from Museums and other Institutions

22.1. France: Le Louvre returned the fragments of burial frescos (Tetiky) **to Egypt** without binding from the 1970 UNESCO Convention, but in the light of it, since the museum did not have an obligation to return them, but the return procedure was explicitly inspired by the 1970 Convention;²⁶¹ the **Guimet museum** returned a statue head to the **Cambodia** national museum.²⁶²

²⁵⁷ Lekakis G., Kontra News (in greek), 2.1.2017, 8.1.2017, 10.1.2017, 19.1.2017, 14.2.2017, 6.4.2017, 19.5.2017, 12.7.2017, 18.7.2017, 14.11.2017, 25.11.2017 with further sources mentioned,

UNESCO, other cases of return or restitution of cultural objects *ibid*

²⁵⁸ Newsweek, 10.11.2017 ancient Mayan heads smuggled out of Guatemala return home after more than 50 years <http://www.newsweek.com/ancient-mayan-heads-smuggled-out-guatemala-return-home-707844>

²⁵⁹ Hellenic Ministry of Culture, <http://www.culture.gr/el/information/SitePages/view.aspx?nID=2076>

²⁶⁰ UNESCO, other cases of return or restitution of cultural objects *ibid*

²⁶¹ Marie Cornu, Handbook ...*ibid* 6. France, p. 141

²⁶² Lekakis G., Kontra News, 9.2.2016, A French museum returns a looted head to the Cambodia national Museum with further sources mentioned

22.2. Greece: As far as **Greece** is concerned, the **University of Heidelberg** returned a fragment from Parthenon's frieze (2006); the **Rijks Museum** in Netherlands a marble architectural fragment probably from Acropolis (2011); the **Museum of Natural History in Austria** a human skeletal remains originated from the early Helladic Marathon Cemetery at Tsepi Marathon (2010); the **Fitzwilliam Museum** (United Kingdom) a fragment of a post-byzantine incunabulum and a photogeometric oenochoe (2012);²⁶³ in 2014, the **Badisches Karlsruhe Museum** returned two cultural objects, characteristic of the early Cycladic civilization, - a marble figurine dating from 2700-2300 BC and a pan dating from 2700-2400 BC, - looted probably in the first decades after World War II;²⁶⁴ on December 2014, after longstanding negotiations and collaboration of the Greek with the U.S. authorities, the **Duke University** returned a **byzantine manuscript** to the local authorities, who delivered it to the Greek Embassy in Washington;²⁶⁵ in 2015 **the British auction house Bonham's returned to Greece a marble Hermes head**; the Greek demand was based on irrefutable evidence due to the collaboration of the authorities, in such a way that the auction house withdrew the Hermes head from the auction.²⁶⁶ Moreover **Greece** has succeeded in obtaining **from the Getty Museum** a number of items, including a **gold funerary wreath** coming from Macedonia, acquired in 1993 after passing through Switzerland; from Germany in 1998 the '**Saarbrücken youth**' thought to have been found in the sea of Preveza; an **Apollo from Gortyn on Crete**, stolen in 1991, handed over by Jean-David Cahn who had received it from a German collector, having purchased it from a British **art dealer**; material raided from the archaeological museum in Corinth having been recovered after pieces surfaced at **two New York auctions** as 'The Property of an American Private Collector' in December 1997 and March 1998 [The items were identified when they were subsequently offered for sale by a New York dealer, and as a result 265 items were seized from a fish storage facility in Miami, Florida]; in November 2008 **Vatican** returned to Greece **a fragment of frieze from the Parthenon**.

22.3. Italy: Some 120 artifacts illegally excavated and exported have been returned from **American museums to Italy**; 21 from the **Metropolitan Museum in New York**, 60 from the **Getty** in

²⁶³ Nikolentzos K., Voutsas K., & Koutsothanasis C. (2017), *ibid* p. 367 fn 58.

²⁶⁴ These treasures are a standing female figure with folded arms, belonging to the canonical type of Early Cycladic figurines, and a "frying pan" vessel, popular theme in the Early Cycladic Civilization. According to Sotirakopoulou, the majority of the Cycladic idols, now located in the museums of Western Europe or North America, probably have been illicitly exported from Greece, Nikolentzos K., Voutsas K., & Koutsothanasis C. (2017), Nikolentzos K., Voutsas K., & Koutsothanasis C. (2017) *ibid*, p. 368, fn 66 with further information, see also UNESCO, other cases of return or restitution of cultural objects *ibid*

²⁶⁵ Vergou M. *ibid* p.1077, fn 85

²⁶⁶ Vergou M. *ibid* p. 1076

Malibu, 13 from the **Boston Museum**, 14 from the **Cleveland Museum**, and 8 from the **Princeton Museum**, from the **Royal Athena Gallery** and from the **private collection formed by Leon Levi and Shelby White**, both in New York. “Such a massive restitution had not occurred since the end of the Second World War”.²⁶⁷ In 2016 a **Belgian museum** returned a marble statue head of the Emperor August to **Italy**.²⁶⁸ In 2017 the **museum of Art in Cleveland** returned to **Italy** an ancient head statue, stolen during WWII.²⁶⁹

22.4. Turkey:²⁷⁰ In 1993, the **Metropolitan Museum** returned to **Turkey** the “**Treasure of Croesus**”, a set of 363 objects of valuable materials, purchased between 1966 and 1970 for US\$ 1.5 million, and exhibited partially in 1984. In 2016 an **individual from Vienna** returned an ancient Taurus head in Antalya.²⁷¹

22.5. Egypt: In 2015 Egypt repatriated a relief from the era of New Kingdom from an auction house in London and prevented the sale of the goddess of War Shekmet from Sotheby’s.²⁷²

22.6. Bulgaria: The Archaeology Museum in Plovdiv, Bulgaria’s second biggest town, recovered in 2015 a Roman Thracian silver mask and helmet, stolen in 1995 following an armed robbery.²⁷³

22.7. USA: In 2017 the **American University in Cairo** returns 5.000 ancient objects from the Fustat excavation to **Egypt**; antiquities found in a **New York Gallery were returned to Italy**; the **US Police** confiscated an ancient stolen sculpture of \$1,2 million, in the New York International Art Exhibition TEFAF.²⁷⁴

22.8. Switzerland: In 2017 a St. Gallen museum returned two 17th-century ornamental silver and gold-plated ships looted by the Nazi regime to the heirs of a German-American Jewish art collector.²⁷⁵

23. Repatriations of cultural treasures looted during occupation or armed conflict

States from all over the world unanimously are placed in favor of the return of cultural treasures looted during occupation or armed conflict. This especially refers to the States involved in

²⁶⁷ UNESCO Information Kit *ibid*

²⁶⁸ Lekakis G., Kontra News (in greek), 21.6.2016 with further sources mentioned

²⁶⁹ Lekakis G., Kontra News (in greek), 28.4.2017 with further sources mentioned

²⁷⁰ UNESCO Information Kit *ibid*

²⁷¹ Lekakis G. Xronos Komotinis (in greek), 16.3.2016 with further sources mentioned

²⁷² Lekakis G., Kontra News (in greek), 15.10.2015 with further sources mentioned

²⁷³ UNESCO, other cases of return or restitution of cultural objects, *ibid*

²⁷⁴ Lekakis G., Kontra News (in greek), 21.6.2017, 17.7.2017, 13.11.2017 with further sources mentioned

²⁷⁵ Lekakis G., Kontra News (in greek), 1.12.2017 with further sources mentioned, Swiss info 7.11.2017, https://www.swissinfo.ch/eng/ships-ahoy-_swiss-museum-hands-back-nazi-looted-art/43655592

similar operations in the past, such as Germany, and to the States currently suffering from similar situations, such as Kuwait and Iraq.

23.1. Kuwait: In 1997, during a debate in the UN General Assembly, Kuwait reiterated the allegation that Iraqi soldiers had robbed and looted Kuwaiti cultural property during the Gulf War, including manuscripts and historical documents, adding that many treasures which had been returned had been damaged. He then appealed to the international community to urge the return of Kuwait's cultural property.

23.2. United Arab Emirates: In 1999, during a debate in the UN General Assembly, the United Arab Emirates called on **Iraq to return Kuwaiti** cultural property.

23.3. Germany: In 1991 Germany declared that it “fully accepts the fact that cultural property has to be returned after the end of hostilities”. Germany has returned cultural property in all cases in which the cultural goods were found and could be identified, otherwise it has paid compensation to the original owner countries. In 1997, the Government of Germany reiterated the principles contained in a general declaration made in 1984, whereby “thefts and destruction of cultural property by the Nazi regime as well as the removal of cultural property by the Soviet Union during and after the Second World War were breaches of international law”.²⁷⁶

24. CONCLUSION

The Repatriation of Cultural Treasures as an International Custom

International and State practice, as outlined in this study, show substantial agreement on the principle of return of expatriated cultural heritage. This norm is sufficiently well established to amount to an emerging customary rule of international law, as it was already stated in 1989.²⁷⁷ In the same year it was also stated that “the principle of the physical return of cultural property is becoming, through increasing state and institutional practice, a custom of international law”.²⁷⁸ This norm applies much more today after many decades of constant practice of the States and the recent expansion in repatriations. The firm conviction of the international community that the cultural treasures must be protected and repatriated is evident from the number of International

²⁷⁶ ICRC Practice Relating to Rule 41. Export and Return of Cultural Property in Occupied Territory https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cha_chapter12_rule41

²⁷⁷ by Prott L.V. & O’Keefe P.J. *ibid*, p. 923 para. 1665.

²⁷⁸ This has especially been true in the case of objects of religious, royal and palaeontological significance and in the case of historic records and ‘immovable’ state property. It is becoming established practice in the case of the illicit and contemporary removal of archaeological treasures. That is to say, Greece may argue that the Parthenon belongs to a class of property which was removed in such past circumstances that title never passed, Greenfield J., *The return of cultural treasures*, p. 104

and Bilateral Conventions and Protocols adopted, as well as from the numerous repatriations of such cultural heritage artifacts.

States worldwide have used all possible legal instruments and diplomacy to show their belief that cultural treasures must be returned to their country and people of origin who created them and consider them as a part of their proper identity. As expounded in this study, State practice on the cultural property repatriation, including that of States whose interests are specially affected, have been both extensive and virtually uniform, in such a way as to show a general recognition that a rule of law or legal obligation is involved.²⁷⁹

While writing this study, numerous repatriations of cultural treasures keep taking place. In 28.11.2017 during his official visit to Burkina Faso, France's President Emmanuel Macron characterized the restitution of French-owned African heritage as a Top Priority. In a speech delivered in front of around 800 students at the University of Ouagadougou, he said that he wants "the conditions to be met for the temporary or permanent restitution of African heritage to Africa." Macron said *inter alia*: "I cannot accept that a large part of cultural heritage from several African countries is in France. There are historical explanations for that, but there are no valid justifications that are durable and unconditional. African heritage can't just be in European private collections and museums." Macron has since tweeted about the issue, writing, "African heritage cannot be the prisoner of European museums."²⁸⁰ French newspapers talked about the Macron's commitment to return the African Cultural Treasures.²⁸¹ This is a very serious development because France, together with U.S.A., U.K. and Germany, is one of the most important art importing States, with some of the biggest Museums and Art Collections

²⁷⁹ see Pellet A. *ibid* para. 215

²⁸⁰ "le patrimoine africain ne peut pas être prisonnier de musées européens », Art net news, 28.11.2017, [https://news.artnet.com/art-world/french-president-promises-restitution-african-heritage-ouagadougou-university-speech-](https://news.artnet.com/art-world/french-president-promises-restitution-african-heritage-ouagadougou-university-speech-1162199?utm_content=from_artnetnews&utm_source=Sailthru&utm_medium=email&utm_campaign=Europe%20November%2029&utm_term=New%20Euro%20%2B%20Newsletter%20List)

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²⁸¹ TV5 Monde, 2.12.2017 "Macron s'engage a restituer le patrimoine africain", <http://information.tv5monde.com/en-continu/macron-s-engage-restituer-le-patrimoine-africain-206975>, Epochtimes 2.12.2017, Macron veut « un retour du patrimoine africain à l'Afrique » <http://www.epochtimes.fr/macron-veut-un-retour-du-patrimoine-africain-a-lafrique-131503.html>

worldwide. Such commitment expressed from the French President reflects the belief that the return of Cultural treasures to their Country and people of origin is rendered obligatory by the existence of a rule of law requiring it.²⁸²

Moreover the great number of resolutions and recommendations adopted by the organs of the international organizations have contributed to the formation of a rule of customary law on the repatriation of cultural property²⁸³.

Simultaneously the administrative acts or attitudes, in particular in the diplomatic field, the national legislations, the acts of the judiciary and the international and bilateral treaties, as completed by soft law rules and guidelines, exposed in this study, lead to the conclusion that the State Practice of Repatriation of Cultural Treasures exists²⁸⁴. This conclusion is confirmed by the explosion of the repatriation of cultural treasures during the last years, as exposed in the relevant chapters.²⁸⁵

This practice has all the demanded elements permitting it to be taken into account in the customary process, namely:²⁸⁶ a. *Length*: Since many decades International Treaties and Bilateral Agreements, National Legislations, Court Decisions and Diplomatic process such as the practice of International Organizations coincide to the same point, the duty to return the cultural treasures to their country and people of origin²⁸⁷; b. *Generality, Constancy and uniformity*: This practice is adopted from all export and import States whose interests are affected, all over the world and under all sorts of legal systems and legal tools and take place in a more general framework.

Furthermore there is undoubted evidence of the belief that this practice has become obligatory by the existence of a legal rule requiring the repatriation of cultural treasures and thus the condition of *opinio juris sive necessitatis*²⁸⁸ is met. This belief is expressed in a great number of international and bilateral treaties, domestic legislations and court decisions but also in the diplomatic field, in which States voluntarily align with these rules and principles, which proves the universal consensus to the legality of such claims.

Especially about the circumstances of colonial domination, occupation or armed conflict, the decision of the Italian Council of the State (of 8.4.2008), recognizing the existence of a rule of

²⁸² see Pellet A. Ibid para. 223

²⁸³ see Pellet A. ibid para. 214

²⁸⁴ see Pellet A. Ibid para. 217

²⁸⁵ see above 19.2, 20-22

²⁸⁶ see Pellet A. ibid para. 216

²⁸⁷ see above 19-23

²⁸⁸ Pellet A. ibid para. 217

customary international law which obliged recipient States to return all cultural objects which have been taken as a result of colonial domination or acts of armed conflict²⁸⁹ and the relevant rule 41 of the International Committee of Red Cross²⁹⁰ are significant.²⁹¹ In the same vein the UN Security Council, extremely anxious about the situation in Iraq and Syria, has repeatedly and firmly stated that the loot of cultural heritage especially during armed conflict is prohibited and that the illegally removed cultural treasures should be returned to their country of origin.²⁹² Subsequently the Removal of Cultural Treasures in time of armed conflict or during occupation could be considered as a Crime against Humanity and the duty to repatriate them rises to the level of *Ius Cogens*.

In Conclusion, Humanity is conscious that the cultural heritage is an indispensable element of people's identity and self-knowledge to the ultimate scope of the salvage and the evolution of Human Civilization. Thus the Norm of Repatriation of Cultural Treasures to their people and country of origin is well established as a Rule of International Customary Law.

“I am keenly aware that in the context of a tragic humanitarian crisis, the state of Syria’s cultural heritage may seem secondary. However, I am convinced that each dimension of this crisis must be addressed on its own terms and in its own right. There is no choice between protecting human lives and safeguarding the dignity of a people through its culture. Both must be protected, as the one and same thing — there is no culture without people and no society without culture.” Irina Bokova, Director General UNESCO 2013.

²⁸⁹ The Council also ruled that the retentive Italian legislation which ostensibly prohibited the return of the statue must give way to Italy’s international obligation to return cultural objects removed or retained in the prescribed conditions. Finally the Council of State held that no time limits operate in favor of a State which has acquired cultural objects displaced through colonial domination or armed conflict. See Robertson G., Palmer N., Clooney A., *ibid* p. 96-97

²⁹⁰ See above I.B.5.1.

²⁹¹ This rule aligns with the findings of the International Court of Justice which in the *Nicaragua case*, held that common Article 3 of the Geneva Conventions reflected “elementary considerations of humanity” constituting a “minimum yardstick” applicable to all armed conflicts and in the *Nuclear Weapons case* held that the great majority of the provisions of the 1949 Geneva Conventions represent customary international law

²⁹² See above I.B.9.



Ιωνικός Κίον Ερεχθείου, Βρετ. Μουσείο – Ionic Column Erechtheion, British Museum



Καρυάτιδα Ερεχθείου, Βρετανικό Μουσείο – Caryatid Erechtheion, British Museum



**Αθηνά και Ήφαιστος, Ανατολική ζωφόρος Παρθενώνας, Βρετανικό Μουσείο –
Athena and Hefaiistos, East Frieze of Parthenon, British Museum**



**Εστία, Ανατολικό Αέτωμα του Παρθενώνα, Βρετανικό Μουσείο -
Hestia, East Pediment of Parthenon, British Museum**



Δήμητρα και Περσεφόνη, Ανατολικό αέτωμα του Παρθενώνα, Βρετανικό Μουσείο
Demeter and Persephone, East Pediment of Parthenon, British Museum



Ο πέπλος των Παναθηναίων, Ανατολική Ζωφόρος Παρθενόνος, Βρετανικό Μουσείο
Peplos of Panathinaia, East Frieze of Parthenon, British Museum

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ΑΓΑΛΜΑΤΑ - STATUES

Από τα μονοπάτια του Ομήρου
η θύμηση ατενίζει γνώριμα σταυροδρόμια
χάρδια μεταξωτά και φιλντισένια
μαρμάρινα αστραποβολήματα
σε ηλιακά περάσματα
παρέα με τους Θεούς,
μαρμαρωμένους κι αυτούς
στα χαλάσματα της αρχαίας τους δόξας...

Σπαρταράει η ψυχή...
Νοσταλγία, αγωνία, ελπίδα...
Και σ' ένα ανοιγόκλειμα ματιού
Σπινθηροβόλημα θεϊκής ενέργειας
Ξεμαρμαρώνουν τ' αγάλματα
Εκτοξεύονται στις παλιές τους Πατρίδες
Και επανέρχονται ορμητικά
Για την Νέα Απελευθέρωση

Μαρία Βέργου – Maria Vergou