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Case 14 Archaeological objects – Italy and Cleveland Museum of Art

Italy/Italie – Cleveland Museum of Art – Archaeological object/objet archéologique – Post 1970 restitution claims/demandes de restitution post 1970 – Illicit excavation/fouille illicite – Illicit exportation/exportation illicite – Ownership/propriété – Procedural issue/limites procédurales – Due diligence – Diplomatic channel/voie diplomatique – Negotiation/négociation – Settlement agreement/accord transactionnel – Conditional restitution/restitution sous condition – Cultural cooperation/coopération culturelle – Loan/prêt

On 19 November 2008, the Italian Ministry for Cultural Assets and Activities and the Cleveland Museum of Art signed an agreement concerning 14 archaeological objects in the museum's collection. This agreement provides for the return to Italy of the artworks in exchange for loans of "a similar number of works of equal aesthetic and historical significance".

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

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I. Chronology

Post 1970 restitution claims

- **August 1995:** During an investigation over illicit trafficking in archaeological objects, the Italian Carabinieri (Cultural Heritage Protection Office) discovered an **organizational chart** showing how the clandestine antiquities 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, and what their links were to international dealers, museums and collectors. The chart demonstrated that **Giacomo Medici**, an Italian art dealer, was one of the principal responsible for the smuggling of ancient artefacts out of Italy.
- **September 1995:** The Italian Carabinieri, in conjunction with Swiss police, raided the warehousing facility of Giacomo Medici at the **Free Port of Geneva**. The warehouse contained vases, statues, mosaics, photographs and documents, including shipment invoices. This evidence confirmed that Medici had exported out of Italy several antiquities and that he was in close relationship with tomb raiders in Italy and with art dealers, prominent museums and collectors in Europe and the United States.¹
- **2007:** The Italian Ministry for Cultural Assets and Activities presented the **Cleveland Museum of Art** with a list of **42 objects** in the museum's collection which appeared in some of the photographs, letters and documents obtained in the 1995 raid on Medici warehouse.
- **19 November 2008:** The Italian Ministry and the Cleveland Museum signed an **agreement** concerning the return of **14 archaeological objects**.
- **22 April 2009:** The Cleveland Museum **handed over** the 14 objects to Italy.²

II. Dispute Resolution Process

Negotiation – Diplomatic channel – Settlement agreement

- Italian authorities and the Cleveland Museum reached the abovementioned agreement after nearly two years of negotiation. Both parties acknowledged that discussions were conducted reasonably and in a thoughtful manner. Maurizio Fiorilli, the Italian State lawyer who represented the Italian Ministry in the negotiations, praised the Cleveland Museum by saying that it “was a negotiation among gentlemen. They always collaborated and exhibited great openness”. Timothy Rub, director of the Cleveland Museum, said that the “representatives of the Italian government [...] have been dedicated to [...] righting what they perceive as wrongs. [...] We've looked at things together and come to conclusions that both sides believe

¹ Peter Watson and Cecilia Todeschini, *The Medici Conspiracy: The Illicit Journey of Looted Antiquities, from Italy's Tomb Raiders to the World's Greatest Museums* (New York: Public Affairs, 2006), 10-23.

² Steven Litt, “Cleveland Museum of Art Will Return Tainted Antiquities to Italy Wednesday,” *Cleveland.com*, April 22, 2009, accessed July 8, 2013, http://blog.cleveland.com/entertainment/2009/04/cleveland_museum_of_art_will_r.html.

are fair and equitable”. He added that it is “always difficult when adverse claims are made against an object or objects in a museum’s collection, but the most important thing to do is to first of all determine if these claims have any merit, and if they do, to deal with them as transparently and as thoroughly as possible”.³

- However, it is worth underlining that the Italian Government could have filed a claim in the United States against the Cleveland Museum relying on the evidence demonstrating that the requested antiquities had been excavated and smuggled out of Italy. Basing its right to ownership on national vesting laws, a foreign nation can recover its stolen antiquities in United States courts by bringing a replevin claim.⁴ Many such claims have been brought. In this respect, it has been argued that Italy (and other art-rich countries) succeeded in recovering artefacts through direct negotiation from the Metropolitan Museum of Art, the Boston Museum of Fine Arts and the J. Paul Getty Museum because it had the evidence to bring legal actions against such museums.⁵
- Nevertheless, it can be submitted that Italy and the Cleveland Museums avoided litigation because negotiation has the potential to increase the focus of the dispute resolution process on the parties’ interests and to make the resolution of claims more productive.⁶

III. Legal Issues

Due diligence – Illicit excavation – Illicit exportation – Ownership – Procedural issue

- The instant case involved various legal questions, none of which was judicially tested. Among them it is noteworthy to consider the problem of the evidentiary burden related to illicitly excavated artefacts and the issue of due diligence.
- Generally speaking, States that seek the recovery of archaeological objects through judicial means bear the burden of proving that, at the time they were discovered and removed from their land, a national law was in place vesting ownership of such antiquities in the State. This proof is often difficult to obtain because: (i) the presence of buried archaeological objects is unknown until their removal; (ii) such objects are often broken into pieces in order to facilitate transport and multiply profits; (iii) antiquities clandestinely excavated may change hands several times through the black market before being bought by an institutional or private collector; (iv) archaeological objects are sold without scientific information about their origin or provenance. In the case at hand the Italian Government’s action was not constrained by these uncertainties. In effect, thanks to the evidence obtained in the 1995 raid on Medici warehouse, it could demonstrate that at the time the requested antiquities were unearthed and smuggled abroad, the applicable legislation: (i) prohibited unauthorized excavations; (ii)

³ Steven Litt, “Cleveland Museum of Art Strikes Deal with Italy to Return 14 Ancient Artworks,” *Cleveland.com*, November 19, 2008, accessed July 8, 2013, http://www.cleveland.com/arts/index.ssf/2008/11/cleveland_museum_of_art_1.html.

⁴ Patty Gerstenblith, “Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past,” *Chicago Journal of International Law* 169 (2007-2008): 177.

⁵ Ibid.

⁶ On this aspect see also section V. Comment.

vested ownership of all antiquities in the State; and (iii) regulated the exportation of antiquities.⁷

- The issue of due diligence is relevant in this case as in any other restitution case involving antiquities looted from archaeological sites. *Timothy Rub* contended that the agreement was based on “the understanding that neither the museum nor its directors or curators are in any way tainted by the return of objects”.⁸ He also affirmed that the Cleveland Museum “innocently acquired objects that clearly were associated with bad actors”.⁹ However, it is a fact that the Cleveland Museum acquired (or received by gift) precious archaeological artefacts between the 1970s and the 1990s even if they lacked export documents and even if they had been handled by dealers with a dubious past like Robert Hecht.¹⁰ In sum, it appears that the contention that the requested archaeological objects were acquired in good faith by the Cleveland Museum is hardly tenable in light of the standards set forth in existing international treaties that developed since the 1970s.

IV. Adopted Solution

Conditional restitution – Cultural cooperation – Loan

- On 19 November 2008, the Italian Ministry for Cultural Assets and Activities and the Cleveland Museum of Art signed at a news conference an agreement on the restitution of 14 archaeological objects to Italy. The 14th object, a late Gothic processional cross that was stolen after World War II from a church in Trequanda, a small town south of Siena, was returned by the Museum as a gift.¹¹ For its part, the Italian Ministry agreed to loan “a similar number of works of equal aesthetic and historical significance from its State collections for study and display in Cleveland”.¹² These objects will be loaned for renewable 25-year periods.¹³
- The Italian Government and the Cleveland Museum “have also agreed to organize cooperatively at least one exhibition and create a close association between the Cleveland Museum and a cultural institution in Italy for curatorial and research exchanges in areas such

⁷ Law No. 1089 of 1 June 1939 concerning the Protection of Objects of Artistic and Historic Interest (replaced by Legislative Decree No. 42 of 2004, Code of Cultural Heritage and Landscape).

⁸ Steven Litt, “Cleveland Museum of Art Strikes Deal with Italy to Return 14 Ancient Artworks”.

⁹ *Ibid.*

¹⁰ Robert Hecht, an American antiquities dealer, skipped in and out of trouble for much of his career, weathering accusations that he trafficked in illicit artifacts. For instance, in 2005 he was indicted for conspiracy to traffic in antiquities – along with his supposed co-conspirators Marion True (formerly the chief curator of antiquities at the J. Paul Getty Museum). The trial collapsed in January 2012 when a three-judge panel declared that the statute of limitations on the charges against him had expired. He died in February 2012 at his home in Paris. Bruce Weber, “Robert Hecht, Antiquities Dealer, Dies at 92,” *The New York Times*, February 9, 2012, accessed July 8, 2013, <http://www.nytimes.com/2012/02/10/arts/design/robert-hecht-antiquities-dealer-dies-at-92.html>.

¹¹ Steven Litt, “Cleveland Museum of Art Strikes Deal with Italy to Return 14 Ancient Artworks”.

¹² Press Release, Cleveland Museum of Art and Italian Ministry of Cultural Assets and Activities, “The Cleveland Museum of Art and Italy Agree to Exchange of Antiquities and Scholarship”, 28 November 2008.

¹³ Steven Litt, “Cleveland Museum of Art Strikes Deal with Italy to Return 14 Ancient Artworks”.

as conservation and exhibition design and planning”.¹⁴ In particular, they established a joint scientific commission to perform further research on two pieces, namely an ancient bronze statue of Apollo and a small ancient bronze chariot ornament.¹⁵

- Given that the agreement has remained confidential, it is not clear why the list of 42 objects originally presented by Italy shrunk to 14 and why the processional cross was returned as a gift. As for the first question, it can be argued that Italy possessed strong evidence only regarding the 14 archaeological objects. As for the second question, instead, Italy could prove that the cross had been stolen. Therefore, it is likely that the parties – as often happens in inter-States negotiations – agreed on this solution (gift rather than outright restitution) as the best way to lay the foundation for a mutually satisfactory agreement on the other requested items.

V. Comment

- The accord with the Cleveland Museum was the latest in a series of negotiations in which Italy has persuaded American museums to return illicitly excavated archaeological objects.¹⁶ The agreement – which should be considered as a contract rather than an international treaty¹⁷ – constitutes an efficient out-of-court settlement with which the parties: (i) agreed on the restitution of various precious antiquities; (ii) avoided litigation and the legal expenses and the negative publicity associated to it; and (iii) established a continuing program of cultural cooperation involving reciprocal loans of artworks, the sharing of information about potential future acquisitions, and collaboration in the areas of scholarship and archaeological investigation.
- Timothy Rub said that the agreement underlined the commitment of the Cleveland Museum “to build and maintain a collection of art from around the world and across time that is acquired in good faith using the highest ethical standards and after rigorous provenance research”.¹⁸ This affirmation emphasizes that nowadays the community of art trade professionals are increasingly eager to adhere to the standards set up in international instruments like the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property¹⁹ and the Convention on Stolen or Illegally Exported of Cultural Objects of the International Institute for the

¹⁴ Press Release, Cleveland Museum of Art and Italian Ministry of Cultural Assets and Activities, “The Cleveland Museum of Art and Italy Agree to Exchange of Antiquities and Scholarship”, 28 November 2008.

¹⁵ Steven Litt, “Cleveland Museum of Art Strikes Deal with Italy to Return 14 Ancient Artworks”.

¹⁶ See, e.g., Alessandro Chechi, Anne Laure Bandle, Marc-André Renold, “Case 15 Archaeological Objects – Italy and Princeton University Art Museum,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva; Giulia Soldan, Raphael Contel, Alessandro Chechi, “Case 13 Antiquities – Boston Museum of Fine Arts”, Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva; and Raphael Contel, Giulia Soldan, Alessandro Chechi, “Case Euphronios Krater and Other Archaeological Objects – Italy and Metropolitan Museum of Art,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

¹⁷ Tullio Scovazzi, “*Diviser c’est détruire*: Ethical Principles and Legal Rules in the Field of Return of Cultural Properties,” *Rivista di diritto internazionale* (2010): 380.

¹⁸ Steven Litt, “Cleveland Museum of Art Will Return Tainted Antiquities to Italy Wednesday”.

¹⁹ 17 November 1970, 823 UNTS 231, entered into force on 24 April 1972.

Unification of Private Law (UNIDROIT).²⁰ The latter limits the rights of good faith buyers of stolen art and codifies an international standard of diligence for a flexible assessment of the circumstances of the acquisition.²¹ Moreover, as demonstrated by the more rigorous acquisition standards recently applied by museums and auction houses, it also appears that the 1970 UNESCO Convention is reconfiguring the market, even if not all States have ratified it. Growing numbers of art trade professionals feel that at some point in the not-too-distant future, this convention will be widely adhered to. Then, antiquities first bought after 1970 will become hard if not impossible to display or sell in the absence of documents showing how they left their countries of origin.²²

- Nevertheless, this agreement constitutes another instance demonstrating that for a long time museums have bought archaeological objects with little or no thought to provenance, based on a “don’t ask, don’t tell” approach. In effect, evidence and information from criminal investigations in Italy and elsewhere linked the artworks in the Cleveland Museum’s collection to convicted antiquities smuggler Giacomo Medici and others in his circle, including Robert Hecht, Robin Symes and Fritz Burki.²³

VI. Sources

a. Doctrine

- Gerstenblith, Patty. “Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past.” *Chicago Journal of International Law* 169 (2007-2008): 169–195.
- Scovazzi, Tullio. “*Diviser c’est détruire*: Ethical Principles and Legal Rules in the Field of Return of Cultural Properties.” *Rivista di diritto internazionale* (2010): 341-395.
- Watson, Peter, and Cecilia Todeschini. *The Medici Conspiracy: The Illicit Journey of Looted Antiquities, from Italy’s Tomb Raiders to the World’s Greatest Museums*. New York: Public Affairs, 2006.

²⁰ 24 June 1995, 34 ILM 1322, entered into force 1 July 1998.

²¹ Article 4(4) states: “In determining whether the possessor exercised due diligence, regard shall be had 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 in the circumstances”.

²² Souren Melikian, “How UNESCO’s 1970 Convention Is Weeding Looted Artifacts Out of the Antiquities Market,” *Blouin Artinfo*, August 31, 2012, accessed July 8, 2013, <http://www.blouinartinfo.com/news/story/822209/how-unescos-1970-convention-is-weeding-looted-artifacts-out-of-the-antiquities-market>.

²³ Steven Litt, “Cleveland Museum of Art Strikes Deal with Italy to Return 14 Ancient Artworks”.

b. Documents

- Giulia Soldan, Raphael Contel, Alessandro Chechi, “Case 13 Antiquities – Boston Museum of Fine Arts”, Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.
- Alessandro Chechi, Anne Laure Bandle, Marc-André Renold, “Case 15 Archaeological Objects – Italy and Princeton University Art Museum,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.
- Raphael Contel, Giulia Soldan, Alessandro Chechi, “Case Euphronios Krater and Other Archaeological Objects – Italy and Metropolitan Museum of Art,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

c. Media

- Melikian, Souren. “How UNESCO’s 1970 Convention Is Weeding Looted Artifacts Out of the Antiquities Market.” *Blouin Artinfo*, August 31, 2012. Accessed July 8, 2013, <http://www.blouinartinfo.com/news/story/822209/how-unescos-1970-convention-is-weeding-looted-artifacts-out-of-the-antiquities-market>.
- Weber, Bruce. “Robert Hecht, Antiquities Dealer, Dies at 92.” *The New York Times*, February 9, 2012. Accessed July 8, 2013, <http://www.nytimes.com/2012/02/10/arts/design/robert-hecht-antiquities-dealer-dies-at-92.html>
- Litt, Steven. “Cleveland Museum of Art Will Return Tainted Antiquities to Italy Wednesday.” *Cleveland.com*, April 22, 2009. Accessed July 8, 2013, http://blog.cleveland.com/entertainment/2009/04/cleveland_museum_of_art_will_r.html
- Press Release, Cleveland Museum of Art and Italian Ministry of Cultural Assets and Activities, “The Cleveland Museum of Art and Italy Agree to Exchange of Antiquities and Scholarship,” 28 November 2008.
- Litt, Steven. “Cleveland Museum of Art Strikes Deal with Italy to Return 14 Ancient Artworks.” *Cleveland.com*, November 19, 2008. Accessed 8 July 2013, http://www.cleveland.com/arts/index.ssf/2008/11/cleveland_museum_of_art_1.html.