



UNIVERSITÉ  
DE GENÈVE

FACULTÉ DE DROIT  
Centre du droit de l'art



United Nations  
Educational, Scientific and  
Cultural Organization

In partnership with  
UNESCO

Alessandro Chechi, Anne Laure Bandle, Marc-André Renold

October 2011

## Case Boğazköy Sphinx – Turkey and Germany

*Turkey/Turquie – Germany/Allemagne – Archaeological object/objet archéologique – Pre 1970 restitution claims/demandes de restitution pre 1970 – Ownership/propriété – Institutional facilitator/facilitateur institutionnel – Negotiation/négociation – Settlement agreement/accord transactionnel – Cultural cooperation/coopération culturelle – Unconditional restitution/restitution sans condition*

*In 2011, Germany decided to conclude the long running dispute concerning the “Boğazköy Sphinx” by voluntarily transferring to the Turkish Government the title of the sculpture. Turkey had submitted a restitution request with the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP) in 1986.*

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

ART-LAW CENTER – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS

[art-adr@unige.ch](mailto:art-adr@unige.ch) – <https://unige.ch/art-adr>

This material is copyright protected.

## I. Chronology

### Pre 1970 restitution claims

- **1910s:** Over 10,000 cuneiform tablets and two Hittite statues of stone sphinxes were **discovered** at the Turkish archaeological site of Boğazköy under the auspices of the German Archaeological Institute.
- **1917:** These objects were **temporarily** sent to Germany to be cleaned, restored and catalogued. Between the two World Wars many items were sent back to Turkey, including one of the two sphinxes, but several others remained in Berlin at the Museum of the Ancient Near East (*Vorderasiatisches Museum*) and at the Pergamon Museum.
- **1986:** Turkey filed a restitution request with the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (**ICPRCP**).
- **1987:** The then German Democratic Republic **returned** 7,400 cuneiform tablets, but not the second so-called “Boğazköy Sphinx”.
- **1987-2011: Negotiations** between the German and Turkish Governments regarding the sphinx intensified thanks to the “good offices” of the **ICPRCP**. The latest recommendation was adopted in **September 2010**, when the ICPRCP invited the parties “to hold comprehensive bilateral negotiations as soon as possible with a view to bringing this issue to a mutually acceptable solution”.<sup>1</sup>
- **May 2011:** The parties reached an **agreement**. Following expert meetings in Ankara and Berlin in April and May 2011, Germany and Turkey signed a **memorandum of understanding** according to which “the statue will be handed over to Turkey as a voluntary gesture of friendship”. The Boğazköy Sphinx had to be transferred to Turkey before 28 November 2011 to comply with the agreement.<sup>2</sup>
- **27 July 2011:** The Boğazköy Sphinx arrived in Istanbul.<sup>3</sup>

<sup>1</sup> Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, Sixteenth session, Paris, 21-23 September 2010, Doc. CLT-2010/CONF.203/COM.16/5, Recommendation No. 2.

<sup>2</sup> Press and Information Office of the Federal Government Press Release, Turkey to Receive Hittite Sphinx, 13 May 2011.

<sup>3</sup> “Boğazköy Sphinx Finally Returns to Turkey after Decades in Germany,” *Daily News*, July 28, 2011, accessed September 4, 2011, <http://www.hurriyetdailynews.com/n.php?n=bogazkoy-sphinx-finally-returns-to-turkey-after-decades-in-germany-2011-07-28>.

## II. Dispute Resolution Process

### **Institutional facilitator (UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation) – Negotiation – Settlement agreement**

- The Turkish Government had sought the return of the Boğazköy Sphinx uniquely by resorting to inter-governmental negotiation. In this sense, it filed a formal restitution request with the ICPRCP in 1987. Created in 1978, this permanent body is entrusted with the task of assisting UNESCO Member States in dealing with cases falling outside the framework of existing conventions, such as the disputes concerning historical cases of cultural objects lost as a result of colonial occupation. Although not endowed with jurisdictional powers, the ICPRCP may offer a framework for bilateral negotiations. The preference for negotiation derives from the belief that each claim is unique and can only be dealt with extra-judicially on a case-by-case basis.
- However, during negotiations the Turkish Government insisted that the statue be returned by threatening Germany with the disruption of existing scientific projects. This led a German archaeologist to say that excavations “had fallen victim to the ministry’s ‘extortionate demands’ over the [Boğazköy] sphinx”.<sup>4</sup> Therefore, it can be argued that it was the adoption of this aggressive strategy that convinced the German Ministry to return the Sphinx.

## III. Legal Issues

### **Ownership**

- The restitution claim of the “Boğazköy Sphinx” involved little legal questions. This is due to the fact that, although the origin of the statue was uncontested, many documents as to its provenance had been lost during the Second World War. Accordingly, neither of the parties could prove actual ownership, that is, whether the Sphinx was part of a *partage* agreement,<sup>5</sup> or whether it was transferred to Germany only temporarily for restoration and cataloguing purposes.

---

<sup>4</sup> Susanne Güsten, “Turkey Presses Harder for Return of Antiquities,” *The New York Times*, May 25, 2011, accessed July 25, 2011, <http://www.nytimes.com/2011/05/26/world/europe/26iht-M26C-TURKEY-RETURN.html>.

<sup>5</sup> According to *partage* agreements western museums and archaeologists were allowed by the host country to take a portion of the objects found in the course of an excavation for the reason that they had financed the mission.

## IV. Adopted Solution

### Cultural cooperation – Unconditional restitution

- The agreement concluded in May 2011 by Germany and Turkey is similar to the accords with which other States have settled disputes over cultural objects. It provided that **the “Boğazköy Sphinx” had to be brought back to Turkey**. In particular, the agreement established that the statue would arrive in Turkey before 28 November 2011. This date is relevant for Turkey as it corresponds to the 25th anniversary of the inscription of Boğazköy as “Hattusha the Hittite Capital” on the List of the 1972 World Heritage Convention. Moreover, the agreement comprised a package of **bilateral cooperation** between the two States in the museum sector and on archaeological projects.<sup>6</sup> Instead, the earlier proposals to use replicas were rejected: “Germany proposed keeping the original Sphinx and having a replica made to give to Turkey. Turkey proposed the return of the Sphinx to Turkey and giving a replica to Germany. Neither proposal was accepted. The truth is that [...] only the original [work of art] has the aura or magic”.<sup>7</sup>
- On the other hand, the agreement under consideration is dissimilar from most inter-States accords in that the German Government purposely avoided the use of the terms *return* or *restitution*. The agreement, in fact, simply provided that “the statue will be handed over to Turkey as a **voluntary gesture of friendship**”.<sup>8</sup> The reason is that the German State did not want use terms that could entail that the statue had been wrongfully removed and that, accordingly, it bore the legal responsibility to return it.<sup>9</sup>

## V. Comment

- The strategy used by Turkey to obtain the restitution of the “Boğazköy Sphinx” resembles the Italian aggressive campaign launched by the Italian Minister of Culture against US museums in the period 2006-2008. As recalled, not only had the Italian Ministry proposed to negotiate for the pending restitution requests. He also: (i) used the media to stress the wrongful removal of countless art objects from the Italian soil; (ii) underlined the unethical behaviour and the responsibilities of the US museums involved; and (iii) threatened to break off cultural relations with the museums unless disputed objects were returned. Eventually this strategy paid off. Quite clearly, this is due to the fact that loans and exchanges are the lifeblood of the international museum community. They constitute important means for museums to fulfil their educational mission and, above all, a major source of income.

<sup>6</sup> Press and Information Office of the Federal Government Press Release, Turkey to Receive Hittite Sphinx.

<sup>7</sup> See Report of the Rapporteur Mr. Folarin Shyllon to the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation, Sixteenth Session, Paris, 21-23 September 2010, Doc. CLT-2010/CONF.203/COM.16/8, October 2010, 2.

<sup>8</sup> Press and Information Office of the Federal Government Press Release, Turkey to Receive Hittite Sphinx.

<sup>9</sup> Federal Government Commission for Culture and the Media, personal communication, July 2011.

- Similarly, the Turkish Government sought the return of the “Boğazköy Sphinx” by filing a request with the ICPRCP. As it is well known, this permanent body has no jurisdictional power to rule in disputes between States. Rather, it may act in an advisory capacity, thereby offering a framework for discussion and bilateral negotiations. In parallel, the Turkish Government stepped up its restitution campaign against Germany (and other market States). It did not threaten a cultural embargo. Turkey’s Culture Ministry threatened Germany with the disruption of existing scientific projects, for instance the termination of excavation licenses. This occurred at the beginning of 2011, when the German Archaeological Institute lost its dig in the ancient Roman town of Aizanoi in western Turkey. This episode was seen by archaeologists and experts “as a warning shot in the restitution battle”.<sup>10</sup>
- For Turkey, the return of the “Boğazköy Sphinx” symbolizes an important victory in the larger effort for the repatriation of the antiquities that had been removed in the distant past. However, this case must be distinguished from other inter-State disputes over cultural objects because the German Government has always been willing to settle the dispute. This is demonstrated by the fact that the German Government had proposed the use of replicas and that it had never rebuffed Turkish requests by relying on the arguments that are routinely used by market States and museums: the Turkish Government was not legitimized to request the return of the statue as the Turkish State was established only in 1922; the creators were not the ancestors of the claimants; the repatriation of cultural objects may undermine or limit their public accessibility and security.
- In light of the above considerations, it appears that the case of the “Boğazköy Sphinx” was not settled earlier due to a complex array of reasons, chiefly the lack of documentation and historical events – such as the two World Wars and the Cold War (the museum where the Sphinx was stored was in East Berlin).<sup>11</sup> These factors made the issue of restitution a difficult one at a time when the climate of cooperation that nowadays pervades inter-State relations with respect to cultural heritage had not yet developed.

## VI. Sources

### a. Documents

- Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, Sixteenth session, Paris, 21-23 September 2010, Doc. CLT-2010/CONF.203/COM.16/5, Recommendation No. 2.
- Report of the Rapporteur Mr. Folarin Shyllon to the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation, Sixteenth Session, Paris, 21-23 September 2010, Doc. CLT-2010/CONF.203/COM.16/8, October 2010.

<sup>10</sup> Güsten, “Turkey Presses Harder for Return of Antiquities”.

<sup>11</sup> Federal Government Commission for Culture and the Media, personal communication, July 2011.

## b. Media

- Presse- und Informationsamt der Bundesregierung Press Release, Hethitische Sphinx wird der Türkei übergeben, 13 May 2011.
- Stiftung Preussischer Kulturbesitz Press Release, Einigung zur Sphinx von Hattuscha, 13 May 2011.
- Press and Information Office of the Federal Government Press Release, Turkey to Receive Hittite Sphinx, 13 May 2011.
- Güsten, Susanne. "Turkey Presses Harder for Return of Antiquities." *The New York Times*, May 25, 2011, accessed July 25, 2011, <http://www.nytimes.com/2011/05/26/world/europe/26iht-M26C-TURKEY-RETURN.html>.
- "Boğazköy Sphinx Finally Returns to Turkey after Decades in Germany." *Daily News*, July 28, 2011, accessed September 4, 2011, <http://www.hurriyetdailynews.com/n.php?n=bogazkoy-sphinx-finally-returns-to-turkey-after-decades-in-germany-2011-07-28>.