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Case Murals of Teotihuacán – Fine Arts Museums of San Francisco and National Institute of Anthropology and History

Fine Arts Museums of San Francisco – National Institute of Anthropology and History – Mexico/Mexique – United States/États-Unis – Archaeological object/objet archéologique – Pre 1970 restitution claims/demandes de restitution pre 1970 – Judicial claim/action en justice – Judicial decision/décision judiciaire – Negotiation/négociation – Settlement agreement/accord transactionnel – Illicit excavation/fouille illicite – Illicit exportation/exportation illicite – Enforcement of foreign law/applicabilité du droit public étranger – Ownership/propriété – Cultural cooperation/coopération culturelle – Co-ownership/Co-propriété

In 1978, the Fine Arts Museums of San Francisco became the owner of a number of murals from the world-famous Aztec site of Teotihuacán (Mexico). The Mexican Government failed in its attempts to obtain the return of these wall paintings through a court action in the United States. Nevertheless, representatives of the Fine Arts Museums met with representatives of the Mexican National Institute of Anthropology and History to negotiate a solution for the conservation and restitution of the murals. A joint custody agreement was reached in 1984.

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

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I. Chronology

Pre 1970 restitution claims

- **1960s: Harold Wagner** bought in Mexico a number of **murals** from the world-famous Aztec site of **Teotihuacán** and brought them into the United States.
- **1971:** The United States and Mexico concluded a **Treaty of Cooperation** on the restitution of cultural objects.¹
- **1976: Harold Wagner passed away.** His will contained a **bequest of the murals to the Fine Arts Museums of San Francisco** (hereafter “the Museum”),² under the condition that they pay for the cost of his estate.
- **July 1978:** Aware of the legal and ethical problems surrounding the ownership of the murals, **the Museum** contacted the Mexican Consul General in San Francisco. The objective was to verify whether it was possible to negotiate some sort of shared ownership or partial repatriation. The Consul General put them in contact with the **National Institute of Anthropology and History (INAH)**. Subsequently, pursuant to the Treaty of Cooperation of 1971, the **Mexican government formally requested the United States Attorney General to block the probate of Wagner’s will** and to order the return of the murals to Mexico. **The Federal District Court rejected the restitution claim** on the grounds that the Treaty of Cooperation was not retroactive. Consequently, the will was probated and the murals became the property of the City and County of San Francisco under the jurisdiction of the Museum.³
- **November 1978: Negotiations** started between the Museum and the INAH.
- **May 1979:** The Museum and the INAH arrived at a ten points **draft agreement** concerning, inter alia, the conservation of the murals and the return of some of them to Mexico.
- **February 1980:** García Cantú, Director General of INAH, sent a letter to the Museum with a new proposed agreement. It stated that Mexico wanted the return of all murals.
- **December 1981:** A new round of **negotiations** between the INAH and the Museum lead to the conclusion of an **agreement** in four points whereby the Museum agreed, inter alia, to “**return to Mexico a minimum of fifty percent of the murals to create a positive moral climate and precedent**”.

¹ Treaty of Cooperation between the United States of America and the United Mexican States Providing for the Recovery and Return of Stolen Archaeological, Historical, and Cultural Properties, 22 March 1971. As a result, the United States adopted the Regulation of Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals (27 October 1972, Public Law n. 92-587, 19 U.S.C. §§ 2091 ff., 1972), whereas Mexico adopted the *Ley federal sobre monumentos y zonas arqueológicas, artísticas et históricas* (6 May 1972, D.O. 6 May 1972, replacing the 1934 *Ley federal*).

² The Fine Arts Museums of San Francisco was created in 1972 by the merger of two separate city-owned museums, the M.H. De Young Memorial Museum and the California Palace of the Legion of Honour.

³ The other legatees did not contest the bequest to the Museum. Essentially, they believed that they were in a better position to resolve the legal and ethical issues involved that were private individuals. Thomas K. Seligman, “The Murals of Teotihuacán: A Case Study of Negotiated Restitution”, in *The Ethics of Collecting Cultural Property*, ed. Phyllis Mauch Messenger (New Mexico: University of New Mexico Press, 1999, 2nd edition), 78.

- **February 1986:** About seventy percent of the murals returned to Mexico.⁴

II. Dispute Resolution Process

Judicial claim – Judicial decision – Negotiation – Settlement agreement

- The Mexican Government first tried to obtain the return of the mural fragments through litigation in accordance with the Treaty of Cooperation of 1971. Under Article 11, paragraph 3, of the Treaty, the US Attorney General has the power to file a civil action in US district courts on behalf of Mexico. However, the Attorney General was unable to find any evidence that the murals entered into the United States after 1972, that is, after the entry into force of the Treaty. Therefore, the legal action failed. This obliged the Mexican Government to negotiate with the Museum.
- Negotiations began in July 1978, that is, when Wagner's will had not yet been probated and the murals were not yet acquired by the Museum. This clearly demonstrates that the Museum decided to negotiate with INAH on a purely voluntary basis.
- Personnel at the Museum cited several reasons for the decision to negotiate. First, they felt that the ethical aspects at stake exceeded the complicated legal dispute. Second, they felt that they had a moral duty to find an acceptable compromise to ensure the best preservation of the murals. Third, the Museum accepted the Mexican claim that the murals were of cultural significance to Mexico. Fourth, the Museum was not specialized in Mexican or Pre-Columbian art, so the Mexicans could provide the Museum with important assistance in the conservation of the mural fragments.⁵
- The result of the negotiation was an original and mutually beneficial joint custody agreement.

III. Legal Issues

Enforcement of foreign law – Illicit excavation – Illicit exportation – Ownership

- According to the Mexican law, all immovable archaeological monuments belong to the State, including the elements of such monuments that have been dismembered. Therefore, the murals were Mexican national property. As such, they could not be transferred abroad without an export permit.⁶ However, it appears that Wagner never obtained an export permit.⁷

⁴ Seligman, 73-81. See also Ron Russel, "How an Eccentric Architect with a Penchant for Pre-Columbian Relics Rocked the Antiquities World and Became the de Young Museum's Most Mysterious Donor", *San Francisco Weekly*, 30 August 2006, accessed June 23, 2011, <http://www.sfweekly.com/content/printVersion/321933/>.

⁵ John Henry Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts* (The Netherlands: Kluwer Law International, 2007, 5th edition), 367.

⁶ *Ley sobre protección y conservación de monumentos arqueológicos e históricos, poblaciones típicas y lugares de belleza natural* (1934), quoted in Francisco Arturo Schroeder Cordero, "Legislación protectora de los monumentos y zonas de monumentos en México", accessed 29 June 2011, <http://www.bibliojuridica.org/libros/2/700/43.pdf>, 672.

⁷ Merryman, Elsen and Urice, 366.

- Under US law, the will of Harold Wagner was valid and the Museum became the rightful owner of the murals. Therefore, even if it wanted to, the Museum was not in the position to return the murals to Mexico or to grant Mexico ownership of the murals. Under US law, the Museum is a public agency and the murals were its property. Thus, giving the mural fragments to Mexico would have constituted giving away public property, which is illegal.⁸

IV. Adopted Solution

Cultural cooperation – Co-ownership

- The dispute over the Teotihuacán Murals was settled through an agreement providing for joint custody. More particularly, the negotiated resolution provided that at least half of the murals would be returned to the Mexican National Museum; that the Mexican National Museum and the Fine Arts Museums would share the costs of conservation; and that the murals would be exhibited at both institutions with credits noting each other's participation. In sum, the dispute was solved without the conflicting ownership claims being resolved.
- Text of the Agreement:

“Agreement Relating to the Return of the Teotihuacán Murals

Declarations

- I. ‘The Institute’ [the National Institute of Anthropology and History] declares that it is the organism of the Mexican Government which, by virtue of the Federal Law relative to Archaeological, Artistic and Historical Monuments and Zones, is charged with the conservation, protection and study of the archaeological and historical monuments of Mexico. In accordance with the authority vested by the Institute’s Organic Law, the Institute, acting by and through its General Director, possesses the legal capacity to enter into this agreement.
- II. ‘The Museum’ [the Fine Arts Museums of San Francisco] declares that it is the department of the City and County of San Francisco responsible for the care and management of the City’s art museum and their collections and that its Director possesses the legal authority to represent the museum in this agreement.
- III. ‘The Museum’ declares that it acquired the Teotihuacán Murals which are the subject of this agreement as a testamentary legacy from Mr. Harold Wagner.
- IV. ‘The Institute’ declares the Teotihuacán Murals that were willed to the Museum are originally from the San Juan Teotihuacán archaeological zone and are authentic archaeological monuments according to the determinations made by the archaeological expert appointed for the purpose of authentication.
- V. ‘The Institute’ and ‘The Museum’ together declare that, within the scope of their respective powers, they shall unite their efforts and respective capacities for the purpose of preserving

⁸ Ibid., 367.

these Teotihuacán Murals and reintegrating those which have an essential sociocultural value into the cultural patrimony of which they are a part in accordance with the study on the principles, conditions and means for the restitution or return of cultural property in view of reconstituting dispersed heritages prepared for UNESCO by the Ad Hoc Committee appointed by the Executive Council of ICOM, a copy of which is attached hereto and is referred to hereafter as the UNESCO report.

In consideration of the declarations, the parties [...] agree to the following:

Clauses

FIRST – ‘The Museum’ agrees to return to the Institute a minimum of 50% of the Teotihuacán Murals which were donated by way of Mr. Harold Wagner’s testamentary legacy. The selection of the Murals to be returned to the Institute shall be made by the Museum in accordance with the principles set forth in the UNESCO report and in consultation with representatives of the Institute and other scholars. The Institute will be responsible for the cost of packing and shipping the Murals which will be returned.

SECOND – ‘The Institute’ agrees to send to the Museum persons who are qualified in the subject of restoration, for the purpose of assisting the Museum in restoring the Murals.

THIRD – ‘The Museum’ agrees to pay the expenses of the restoration of the Murals if funds can be raised for this purpose. The Institute will loan the Museum experts who will train people to perform the restoration. The living expenses of the experts who will be selected by the Institute for travel to San Francisco for the restoration work shall be included as a cost of the restoration.

FOURTH – ‘The Institute’ agrees to exhibit the Teotihuacán Murals that are returned to Mexico in a location which will provide maximum protection and public accessibility for the Murals and to give credit for said return to the Fine Arts Museums of San Francisco.

FIFTH – ‘The Museum’ agrees that it shall exhibit the Murals retained in San Francisco and that it shall give suitable credit to the Institute for its assistance with the restoration of the Murals”.

V. Comment

- The case of the Teotihuacán Murals illustrates how complicated the return of works of art can become when contradictory national laws and international principles are at stake.
- It can be argued that negotiation succeeded because it was carried out outside the political process by museums professionals, that is, people primarily concerned with the proper conservation of the murals. The result might have been quite different if negotiation was directed by the Mexican and US Governments.⁹

⁹ Ibid., 368.

- The collaboration between the Museum and INAH has led to joint exhibitions, loans, as well as educational and research projects. Therefore, the case of the Teotihuacan Murals had a huge impact on the perspective of San Francisco museums regarding the acquisition of pre-Columbian artwork as well as on the place of these museums in international relations and on the international art market.¹⁰

VI. Sources

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b. Legislation

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c. Documents

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¹⁰ Kathleen Berrin, “San Francisco, le Mexique et les peintures murales de Teotihuacán”, *Museum International* 235 (2007), accessed June 23, 2011, <http://portal.unesco.org/culture/en/files/34885/11974725625235FR.pdf/235FR.pdf>, 16-20.

d. Media

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