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Raphael Contel, Giulia Soldan, Alessandro Chechi

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## Case Euphronios Krater and Other Archaeological Objects – Italy and Metropolitan Museum of Art

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

*In February 2006, the Italian Ministry for Cultural Heritage and Activities and the Metropolitan Museum of Art (MET) of New York entered into a landmark agreement with which the ownership title to the Euphronios Krater and other archaeological artefacts was transferred to the Italian Government.*

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

ART-LAW CENTRE – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS

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

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## I. Chronology

### Post 1970 restitution claims

- **November 1972:** The **Metropolitan Museum of Art (MET)** of New York **acquired** the **Euphronios Krater** for \$ 1.2 million. The Krater is a rare huge urn for mixing wine with water, 12 gallons worth, dating to around 510 BC, signed by the painter Euphronios.<sup>1</sup> **Thomas Hoving** told the New York Times reporter who compiled the story that the Krater had been purchased from a private English collector. Thomas Hoving refused to reveal the identities of the vase's previous owner and of the dealer who sold it to the MET. However, no sooner was the news about the acquisition made public, than suspicions about the possibly illicit origin of the vase erupted. Many specialists were sceptical about Hoving's account; they doubted that a vase by Euphronios could have lain for half a century unknown in a private collection.<sup>2</sup>
- **1973:** The New York Times published a number of articles arguing that the vase had been illicitly exported from Italy and attacking the official version of the Krater's acquisition, which appeared to be inconsistent in many ways.<sup>3</sup> However, the **Italian Government** could not prove the origin of the vase, the bad faith of Thomas Hoving, or any other element that would justify an official restitution request.
- **August-September 1995:** During a routine investigation over illicit trafficking, the Italian **Carabinieri** (Cultural Heritage Protection Office) 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. The chart identified an Italian art dealer, **Giacomo Medici**, as being a senior figure responsible for bringing archaeological objects out of Italy.<sup>4</sup> Subsequently, the Italian and Swiss Police raided the warehousing facility of **Giacomo Medici** at the **Geneva Free Port**. The warehouse contained vases, statues, mosaics, photographs and documents, including shipment invoices. This evidence confirmed that Medici had exported out of Italy several objects and that he was in close relationship with *tombaroli* in Italy, prominent museums and collectors in Europe and the United States, and art-dealers, including **Robert Hecht**.<sup>5</sup> In turn, Hecht's apartment in Paris was raided by the

<sup>1</sup> Thomas Hoving, "Super Art Gems of New York City: The Grand and Glorious 'Hot Pot' - Will Italy Snag It?" Artnet, June 29, 2001, accessed August 17, 2011, <http://www.artnet.com/Magazine/FEATURES/hoving/hoving6-29-01.asp>. Thomas Hoving, MET's Director from 1967 to 1977, wrote a series of articles on Artnet about the negotiation and the purchase of the Krater, where he also admitted that he had strong suspicions that it had been illegally dug up and smuggled.

<sup>2</sup> 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), xi.

<sup>3</sup> John Hess, "The Vase: Not Easy To Piece Together," *The New York Times*, February 25, 1973. See also Nicholas Gage, "How the Metropolitan Acquired 'The Finest Greek Vase There Is'," *The New York Times*, February 19, 1973; and Nicholas Gage, "Met's Evidence Backs Vase Dillon Says," *The New York Times*, June 27, 1973.

<sup>4</sup> Peter Watson and Cecilia Todeschini, *The Medici Conspiracy*, 10–18.

<sup>5</sup> *Ibid.*, 19–23. See also David Gill and Christopher Chippindale, "From Malibu to Rome: Further Developments on the Return of Antiquities," *International Journal of Cultural Property* 14 (2007): 206.

- police in 2001. This permitted to uncover other documents describing the excavation of the Krater in a necropolis north of Rome in late **1971**, the exportation from Italy and proving that Hecht was the dealer who sold it to the MET.<sup>6</sup>
- **21 February 2006:** The Italian Ministry for Cultural Heritage and Activities and the MET signed an **agreement** which provided for the **return** of the Krater and of other archaeological objects.<sup>7</sup>
  - **January 2008:** The Krater was shipped to Rome, together with other 21 artefacts.<sup>8</sup>

## II. Dispute Resolution Process

### Diplomatic channel – Negotiation – Settlement agreement

- Although it did not have the elements of proof to demand restitution or to initiate a lawsuit in the years following the MET's purchase, Italy never abandoned the idea of recovering the Euphronios Krater. On the other hand, the MET's representatives regularly criticized and rejected all arguments and doubts put forward by the New York Times articles as to the illicit origin of the Krater.
- 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 that the evidence was overwhelming".<sup>9</sup>
- 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.<sup>10</sup>

<sup>6</sup> Jason Horowitz, "How Hot Vase It?" *The New York Observer*, 20 February 2006, accessed August 17, 2011, <http://observer.com/2006/02/how-hot-vase-it/>.

<sup>7</sup> Elisabetta Povoledo, "Italy and U.S. Sign Antiquities Accord," *The New York Times*, February 22, 2006, accessed August 17, 2011, [http://www.nytimes.com/2006/02/22/arts/design/22anti.html?\\_r=1&pagewanted=print](http://www.nytimes.com/2006/02/22/arts/design/22anti.html?_r=1&pagewanted=print).

<sup>8</sup> Elisabetta Povoledo, "Ancient Vase Comes Home to a Hero's Welcome," *The New York Times*, January 19, 2008, accessed August 11, 2011, <http://www.nytimes.com/2008/01/19/arts/design/19bowl.html>.

<sup>9</sup> David Gill and Christopher Chippindale, "From Boston to Rome: Reflections on Returning Antiquities," *International Journal of Cultural Property* 13(2006): 323.

<sup>10</sup> See, e.g., Hugh Eakin, "Italy Using Art Loans to Regain Antiquities," *The New York Times*, January 10, 2006, accessed August 11, 2011, <http://www.nytimes.com/2005/12/27/arts/27iht-loans.html>.

### III. Legal Issues

#### **Illicit excavation – Illicit exportation – Criminal offence – Ownership – Procedural issue**

- The illicit traffic in archaeological objects and the destruction of archaeological sites are two major issues for cultural heritage law. As no government can police every archaeological site in its country in an attempt to keep looters away, nor can it monitor every border crossing to enforce export controls, it is evident that archaeological objects and archaeological sites cannot be easily protected in terms of law. Another problematic aspect is that States are generally reluctant to recognize or enforce foreign laws.
- Italy has a strict legal regime based on a 1939 law vesting ownership in the State for all objects of artistic, historical, archaeological or ethnological interest found in the ground during excavations or by chance, and rendering it illegal to export such items without an export license.<sup>11</sup> This law allows Italy to make reasonable cases for restitution in the event of illicit removal or cultural materials.
- In the case under consideration, Italy could not have officially requested the restitution of the Krater, or launch a legal action against the MET, on the basis its right to ownership under the national vesting laws without clear and convincing evidence as to the clandestine provenance of the Krater itself. Only when the evidence emerged demonstrating trafficking operations that linked Medici and Hecht to the MET and the Krater, Italy was enabled to demand restitution and initiate criminal proceedings against the persons involved. For instance, Medici was found guilty of dealing in stolen goods in 2004, and sentenced to 10 years in jail and fined € 10 million.<sup>12</sup> Instead, the trial against Robert Hecht collapsed in January 2012 when the statutes of limitations on the charges had elapsed.<sup>13</sup>

### IV. Adopted Solution

#### **Conditional restitution – Cultural cooperation – Loan**

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<sup>11</sup> Law No 1089 of 1 June 1939 (Gazzetta Ufficiale, No 184 of 8 August 1939) on the protection of objects of artistic and historic interest.

<sup>12</sup> Medici appealed the 2004 verdict. In June 2009, the Appeal Court partly upheld the original decision (smuggling charges were dismissed because the statute of limitations had expired) and reduced the sentence to 8 years in jail. Medici appealed against this decision, which however was rejected by the Court of Cassation. Fabio Isman and Gareth Harris, “Smuggler’s Final Appeal Fails,” *The Art Newspaper*, March 2012, 8.

<sup>13</sup> Jason Felch, “Robert Hecht Jr. Dies at 92,” *Los Angeles Times*, February 9, 2012, accessed March 1, 2012, <http://articles.latimes.com/2012/feb/09/local/la-me-robert-hecht-20120209>.

- The Italy-MET agreement<sup>14</sup> – which should be considered as a contract rather than an international treaty<sup>15</sup> – appears to be a model that could be replicated in similar cases. This is also due to the fact that the agreement was made public. The most important terms of the agreement are the following.
- The Italy-MET agreement regulates the transfer of title to all requested items (Article 2). In exchange for the restitution, Italy undertook to make four-year loans to the MET on a rotating basis of a selection of archaeological objects or objects of equivalent beauty and artistic or historical significance (Article 4.1). Finally, with the agreement the Italian Government waived the right to initiate a legal action against the MET, whether civil or criminal, for any of the requested objects (Article 8.3).
- Furthermore, the agreement is a model of international collaboration because it establishes a forty-year long programme of cultural cooperation (Article 8.1) including exchange of students, professors and cooperation in the fields of restoration, research and excavation.
- Interestingly, the Italy-MET agreement does not contain a conflict of law clause (it is possible that the parties did not manage to agree on this point), whereas it contains a provision on dispute settlement, according to which, “[i]f the Parties are unable to reach a mutually satisfactory resolution to their dispute, the disputed issues shall be settled in private by arbitration on the basis of the Rules of Arbitration and Conciliation of the International Chamber of Commerce by three arbitrators appointed in accordance with said Rules” (Article 9.2).

## V. Comment

- The Italy-MET agreement can be seen as an efficient out-of-court settlement. Apart from the restitution of various precious archaeological objects and the establishment of a continuing program of cultural cooperation, the accord is noteworthy in that it permitted to avoid litigation and the legal expenses and the negative publicity associated to it, on the one hand, and to emphasise that Italian authorities were no longer willing to turn a blind eye to the acquisition of illicitly excavated relics, on the other hand.
- It can be argued that the agreement under consideration cannot be easily replicated due to several factors, including: (i) the great value of the Euphronios Krater; (ii) Italy’s commitment to restore its cultural heritage and to fight the illicit trafficking through an aggressive strategy encompassing both diplomatic means and legal actions; (iii) the existence of a bilateral agreement between Italy and the United States; and (iv) the evidence demonstrating that chain of people involved in illicit trafficking of archaeological objects from Italy to the MET and other leading museums.
- In the light of the above discussion, it can be affirmed that the Italy-MET agreement is not easily replicable. Nevertheless, this should be seen as a model of international collaboration that, even if it cannot set a legal precedent, it has affected the climate of the art world. As a

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<sup>14</sup> Agreement between the Ministry for Cultural Heritage and Activities of the Italian Republic and the Metropolitan Museum of Art, New York, of 21 February 2006.

<sup>15</sup> 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.

result, it should not be surprising that various source countries have embraced with success the “cultural diplomacy” strategy inaugurated by the Italian Government and that several similar bilateral agreements have been concluded between art-rich States and leading museums since 2006.<sup>16</sup>

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<sup>16</sup> See, e.g., Alessandro Chechi, Liora Aufseesser, Marc-André Renold, “Case Machu Picchu Collection – Peru and Yale University,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva; Alessandro Chechi, Raphaël Contel, Marc-André Renold, “Case Weary Herakles – Turkey and Boston Museum of Fine Arts,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva; and Alessandro Chechi, Anne Laure Bandle, Marc-André Renold, “Case Lydian Hoard – Turkey and Metropolitan Museum of Art,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

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