



UNIVERSITÉ
DE GENÈVE

FACULTÉ DE DROIT
Centre du droit de l'art



United Nations
Educational, Scientific and
Cultural Organization

In partnership with
UNESCO

Ece Velioglu, Anne Laure Bandle, Marc-André Renold

May 2013

Case Troy Gold – Turkey and the University of Pennsylvania Museum of Archaeology and Anthropology

Turkey/Turquie – University of Pennsylvania Museum of Archaeology and Anthropology – Archaeological object/objet archéologique – Pre 1970 restitution claims/demandes de restitution pre 1970 – Negotiation/négociation – Settlement agreement/accord transactionnel – Illicit excavation/fouille illicite – Illicit exportation/exportation illicite – Ownership/propriété – Loan/prêt – Cultural cooperation/coopération culturelle

In September 2012, the University of Pennsylvania Museum of Archaeology and Anthropology decided to loan indefinitely to Turkey a collection of antique jewelry that the Museum had acquired in 1966. The collection was probably illicitly excavated in Troy, a city in Northwest Turkey. In return, Turkey agreed to provide the Museum important loans and further collaboration in the field of archaeology.

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 - <http://unige.ch/art-adr>

This material is copyright protected.

I. Chronology

Pre 1970 restitution claims

- **1966:** The University of Pennsylvania Museum of Archaeology and Anthropology (“Penn Museum”) purchased from George Allen, a Philadelphia antiquities dealer, 24 pieces of gold jewelry dating from the Early Bronze Age (circa 2400 BC)¹. The biggest motivation for this acquisition was their similarity to the Early Bronze Age jewelry of Troy, the Homeric city located in northwest Turkey, which is why the collection was named “Troy Gold”². Following the acquisition, George Bass, the then assistant curator of the Penn Museum studied the jewelry and concluded that it was difficult to link the collection to a specific site like Troy. Instead, two other sites could possibly be its location of origin (Poliochni on the island of Lemnos in Greece and Ur in southern Iraq)³.
- **1970:** Uncertainty about the Troy Gold’s provenance urged the Museum to adopt the “Pennsylvania Declaration”⁴ prohibiting the acquisition of undocumented objects. The Museum is the first institution to take such a stand⁵ (even prior to the adoption of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property⁶).
- **February 2009:** Scientists from Germany reexamined the Troy Gold and found a particle of soil inside one object which was not noticed before. The analysis of the soil showed that its composition was consistent with the soil in Troy⁷.
- **2009:** Officials from the anti-smuggling department of the Ministry of Culture and Tourism in Turkey realized that in the Penn Museum’s collection, there were certain items that might

¹ See Kültür Varlıkları ve Müzeler Genel Müdürlüğü, “Amerika’dan İadesi Sağlanan Troya Eserleri (2012 A.B.D.),” accessed April 6, 2013, <http://www.kulturvarliklari.gov.tr/TR,47532/amerikadan-iadesi-saglanan-troya-eserleri-2012-abd.html>; University of Pennsylvania Museum of Archaeology and Anthropology Press Release, “Penn Museum Strengthens Partnership with Turkey, Agrees to Indefinite Term Loan of Troy Gold,” 4 September 2012, accessed April 6, 2013, <http://www.penn.museum/press-releases/887-penn-museum-strengthens-partnership-with-turkey-agrees-to-indefinite-term-loan-of-troy-gold.html>.

² See Tom Avril, “Penn museum lends possibly plundered items to Turkey,” *Philly.com*, September 7, 2012, accessed April 6, 2013, http://articles.philly.com/2012-09-07/news/33651449_1_penn-museum-penn-s-museum-turkish-minister.

³ See University of Pennsylvania Museum of Archaeology and Anthropology Press Release, “Penn Museum Strengthens Partnership with Turkey, Agrees to Indefinite Term Loan of Troy Gold.”

⁴ The Pennsylvania Declaration, Decision of Curators of the University Museum University of Pennsylvania, April 1, 1970, *Expedition* 22/ 3 (1980): 3, accessed April 6, 2013, <http://www.penn.museum/documents/publications/expedition/PDFs/22-3/The%20Pennsylvania.pdf>.

⁵ See Alessandro Pezzati, “From the Archives: The Pennsylvania Declaration,” *Expedition* 52/ 2 (2010): 4, accessed April 6, 2013, <http://www.penn.museum/documents/publications/expedition/PDFs/52-2/from%20the%20archives.pdf>.

⁶ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, in force 24 April 1972, 823 UNTS 231.

⁷ See University of Pennsylvania Museum of Archaeology and Anthropology Press Release, “Penn Museum Strengthens Partnership with Turkey, Agrees to Indefinite Term Loan of Troy Gold.”

- have originated from Troy⁸. **The same year**, Robert Hecht, the indicted American dealer who sold the famous Euphronios Krater to the Metropolitan Museum of Art⁹, affirmed in an interview to be involved in the sale of the Troy Gold with George Allen acting as his agent¹⁰.
- **In late 2011**, Turkish authorities contacted the Penn Museum to discuss an eventual return of the Troy Gold to Turkey¹¹.
 - **2012**: Following negotiations, the parties reached an agreement. The Museum agreed to transfer the Troy Gold to Turkey on an indefinite loan and in return, Turkey consented to provide important loans to the Museum for future exhibitions and to support the excavations of the University of Pennsylvania in Turkey¹².
 - **1 September 2012**: The Troy Gold is sent to Turkey by the Penn Museum¹³.

II. Dispute Resolution Process

Negotiation – Settlement agreement

- Turkey and the Penn Museum settled the controversy regarding the provenance of the Troy Gold in an amicable way¹⁴. The long-standing partnership between the parties in the field of archaeology was certainly a key factor in the resolution process. The University of Pennsylvania has indeed been conducting excavations at the site of Gordion (the capital of the Phrygian Kingdom) in central Turkey since 1950¹⁵. Brian Rose, Professor at the University of Pennsylvania and the curator in charge for the Museum's Mediterranean section, co-directs the excavations at Gordion since 2006. He is also the head of Post-Bronze Age excavations at Troy since 1991¹⁶. Being an academic conducting field work at the very site of Troy and a curator at the Museum, he was able to supervise the process involving the Troy Gold for many years¹⁷.

⁸ See Ömer Erbil, "Troya'nın hazin öyküsü," *Radikal*, September 9, 2012, accessed April 6, 2013, <http://www.radikal.com.tr/radikal.aspx?type=radikaldetayv3&articleid=1099708&categoryid=77>.

⁹ 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.

¹⁰ See Avril, "Penn museum lends possibly plundered items to Turkey."

¹¹ See University of Pennsylvania Museum of Archaeology and Anthropology Press Release, "Penn Museum Strengthens Partnership with Turkey, Agrees to Indefinite Term Loan of Troy Gold."

¹² See Avril, "Penn museum lends possibly plundered items to Turkey."

¹³ See Kültür Varlıkları ve Müzeler Genel Müdürlüğü, "Amerika'dan İadesi Sağlanan Troya Eserleri (2012 A.B.D.)."

¹⁴ We would like to thank Zeynep Bayrak from the anti-smuggling department of the Ministry of Culture and Tourism in Turkey for all the useful information she provided on the negotiation process.

¹⁵ See "Archaeological Investigations at Gordion," Digital Gordion, accessed April 6, 2013, <http://sites.museum.upenn.edu/gordion/archaeology>.

¹⁶ See "Charles Brian Rose", Department of Classical Studies, University of Pennsylvania, accessed April 6, 2013, <http://www.classics.upenn.edu/bio/rose>.

¹⁷ See University of Pennsylvania Museum of Archaeology and Anthropology Press Release, "Penn Museum Strengthens Partnership with Turkey, Agrees to Indefinite Term Loan of Troy Gold."

III. Legal Issues

Illicit excavation – Illicit exportation – Ownership

- The Troy Gold was sold to the Penn Museum without any documentation¹⁸ which may suggest an illicit provenance. The connection of Robert Hecht to the sale is an important element to support this claim. Furthermore, the scientists who studied the Troy Gold in different time periods and with different techniques believed that it had been looted. The archeologist George Bass underlined several times in an article published in 1970 that the collection was not excavated under scientific conditions¹⁹. German scientists and Professor Brian Rose who studied the collection later on shared the same opinion²⁰. However, none of them could confirm and definitely determine its place of origin as Troy because of the lack of archaeological data. Therefore, the information above can hardly constitute substantial evidence in favor of Turkey to prove the link between the collection and Troy.
- Assuming that this Early Bronze Age jewelry comes from the site of Troy, they should be considered as illegally exported. Turkey has a strict regulation regarding the export of cultural properties since the end of the nineteenth century. The legislation in force at the time of an eventual export (around the 1960s) was the Decree on Antiquities of 1906²¹. According to this Decree, newly found antiquities were State property and they could not be taken out of the country²². As a result, in this hypothesis, not only Turkey's export control regulations are violated but also its ownership title.
- The Penn Museum adopted on 1 April 1970 the "Pennsylvania Declaration" by which the Museum commits not to purchase antiquities "unless the objects are accompanied by a pedigree – that is, information about the different owners of the objects, place of origin, legality of export". This important document was reinforced by the Museum's acquisition policy of 1978²³. In principle, Turkey cannot base its return claim on the Declaration since it is not retroactive²⁴. However, it seems to have had an indirect effect on negotiations. Following the return of the object, Professor Brian Rose explained the difficulty of determining the "fate of cultural property whose only certain provenance is the art market" and added that the Museum "continued to adhere to the principles of the "Pennsylvania Declaration" that the Penn Museum formulated 42 years ago"²⁵. It is clearly important for the

¹⁸ See Avril, "Penn museum lends possibly plundered items to Turkey."

¹⁹ George Bass. "A Hoard of Trojan and Sumerian Jewelry," *American Journal of Archaeology* 74 (1970): 339, 341.

²⁰ See Tom Avril. "Could museum's gold be from ancient Troy?," *Philly.com*, January 31, 2010, accessed April 6, 2013, http://articles.philly.com/2010-01-31/news/24955967_1_heinrich-schliemann-ancient-city-treasure.

²¹ Asar-ı Atika Nizamnamesi, 29 Safer 1324 (1906).

²² Sibel Özel. "Under the Turkish Blanket Legislation: The Recovery of Cultural Property Removed from Turkey," *International Journal of Legal Information* 38/ 2 (2010): 179.

²³ The policy states that the Museum "will not knowingly acquire, by gift, bequest, exchange or purchase any materials known or suspected to be illegally exported from their countries of origin, (...) and will actively discourage the collection of such material, exhibiting such material in the University Museum," The University Museum Acquisitions Policy, May 2, 1978, *Expedition* 22/ 3 (1980): 3, accessed April 6, 2013, <http://www.penn.museum/documents/publications/expedition/PDFs/22-3/The%20Pennsylvania.pdf>.

²⁴ Ibid.

²⁵ See University of Pennsylvania Museum of Archaeology and Anthropology Press Release, "Penn Museum Strengthens Partnership with Turkey, Agrees to Indefinite Term Loan of Troy Gold."

Museum not to contradict its own principles even if they are not applied directly to a case in a strictly legal sense.

IV. Adopted Solution

Loan – Cultural cooperation

- The agreement between the Penn Museum and the Turkish Ministry of Culture and Tourism resulted in the transfer of the Troy Gold to Turkey under an **indefinite loan**. The Museum thus retained ownership.
- In return, Turkey undertook to provide “the loan of a group of remarkable artifacts excavated in a series of royal tombs at Gordion and in Lydia for a future major exhibition at the Penn Museum”²⁶ Furthermore, Turkey committed to support the University of Pennsylvania’s excavations at the archaeological site of Gordion.
- Finally, both parties agreed to increase their cultural collaboration in the future²⁷.

V. Comment

- The present case illustrates very well the fact that restitution claims by source nations are no longer a terrifying threat for museums but a way to strengthen their relations and to collaborate. As commented by the Penn Museum’s director, Dr. Julian Siggers, the agreement with Turkey “is right and appropriate” and “will lead to great opportunities – for Penn, for Philadelphia, and for the wider archaeological community – to experience more of Turkey’s rich cultural history and heritage in future”²⁸. It is important for university museums like the Penn Museum, which conduct their own expeditions, to secure their continued access to the sites in source countries.
- The Museum transferred only the possession of the Troy Gold to Turkey (even if the loan is granted for an indefinite period) and not the ownership. Julian Siggers explained that this was due to the lack of substantial evidence for the provenance of the collection²⁹. Museums act indeed very carefully when they consider returning objects that are claimed to be illegally exported before 1970. Since the UNESCO Convention was adopted in 1970, the legal regime governing the return of objects exported before this date is still under debate. By doing so, museums intend to prevent other source countries from claiming further objects from their collections based on their ownership right.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ See Avril, “Penn museum lends possibly plundered items to Turkey.”

- Julian Siggers considers the agreement to be a win-win solution³⁰. As a result, Turkey ensured the return of the Troy Gold which was the main priority during the negotiation process³¹. The Penn Museum in turn was thereby able to demonstrate its compliance with the principles adopted under the Pennsylvania Declaration and avoid eventual court proceedings that may have damaged its reputation as an institution. Besides, the Museum could also negotiate for specific loans (artefacts from the site of Gordion) and a privilege for excavations which seem to be unusual concessions for Turkey³². The long established relationship between the parties appears to have shaped the outcome of the negotiations.

VI. Sources

a. Bibliography

- Bass, George. "A Hoard of Trojan and Sumerian Jewelry." *American Journal of Archaeology* 74 (1970): 335-341.
- Özel, Sibel. "Under the Turkish Blanket Legislation: The Recovery of Cultural Property Removed from Turkey." *International Journal of Legal Information* 38/ 2 (2010): 177-184.

b. Documents

- The Pennsylvania Declaration, Decision of Curators of the University Museum University of Pennsylvania, April 1, 1970. *Expedition* 22/ 3 (1980): 3. Accessed April 6, 2013. <http://www.penn.museum/documents/publications/expedition/PDFs/22-3/The%20Pennsylvania.pdf>.
- The University Museum Acquisitions Policy, May 2, 1978, *Expedition* 22/ 3 (1980): 3. Accessed April 6, 2013.

³⁰ See Huizhong Wu, "Turkish Troy gold at Penn Museum stirs up controversy," *Daily Pennsylvanian*, September 2012, 12, accessed April 6, 2013, <http://www.thedp.com/article/2012/09/turkish-troy-gold-at-penn-museum-stirs-up-controversy>.

³¹ The Troy Gold is expected to be later displayed in a new museum planned to be constructed in the archaeological site of Troy. The question of where an object will be displayed once it is returned to the source country still has certain importance for museums. Kültür Varlıkları ve Müzeler Genel Müdürlüğü, "Amerika'dan İadesi Sağlanan Troya Eserleri (2012 A.B.D.)."

³² It is interesting to compare this case to the dispute regarding the Orpheus mosaic where Turkey negotiated with another American museum, the Dallas Museum of Art, for the return of an illegally excavated and exported mosaic and reached an agreement only three months later, in December 2012. Unlike in the Troy Gold case, the Orpheus mosaic was returned definitely to Turkey (both the ownership and the possession) and the parties agreed to jointly select the items to be loaned to the Museum in future. It is important to note that in the Orpheus Mosaic case, Turkey could prove with substantial evidence that the mosaic was illegally excavated and exported from Turkey after 1970. Therefore, it seems that the Museum did not have serious concerns about returning the object considering also that it has newly established its art loan program and seeking for partnership with source countries. Ece Velioglu, Alessandro Chechi, Marc-André Renold, "Case Orpheus Mosaic – Turkey and Dallas Museum of Art," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

<http://www.penn.museum/documents/publications/expedition/PDFs/22-3/The%20Pennsylvania.pdf>.

c. Media

- Kültür Varlıkları ve Müzeler Genel Müdürlüğü. “Amerika'dan İadesi Sağlanan Troya Eserleri (2012 A.B.D.).” Accessed April 6, 2013. <http://www.kulturvarliklari.gov.tr/TR,47532/amerikadan-iadesi-saglanan-troya-eserleri-2012-abd.html>.
- Wu, Huizhong. “Turkish Troy gold at Penn Museum stirs up controversy.” *Daily Pennsylvanian*, September 2012, 12. Accessed April 6, 2013. <http://www.thedp.com/article/2012/09/turkish-troy-gold-at-penn-museum-stirs-up-controversy>.
- Erbil, Ömer. “Troya'nın hazin öyküsü.” *Radikal*, September 9, 2012. Accessed April 6, 2013. <http://www.radikal.com.tr/radikal.aspx?atype=radikaldetayv3&articleid=1099708&categoryid=77>.
- Avril, Tom. “Penn museum lends possibly plundered items to Turkey.” *Philly News*, September 7, 2012. Accessed April 6, 2013. http://articles.philly.com/2012-09-07/news/33651449_1_penn-museum-penn-s-museum-turkish-minister.
- University of Pennsylvania Museum of Archaeology and Anthropology Press Release. “Penn Museum Strengthens Partnership with Turkey, Agrees to Indefinite Term Loan of Troy Gold.” 4 September 2012. Accessed April 6, 2013. <http://www.penn.museum/press-releases/887-penn-museum-strengthens-partnership-with-turkey,-agrees-to-indefinite-term-loan-of-troy-gold.html>.
- Pezzati, Alessandro. “From the Archives: The Pennsylvania Declaration.” *Expedition 52/ 2* (2010): 4. Accessed April 6, 2013. <http://www.penn.museum/documents/publications/expedition/PDFs/52-2/from%20the%20archives.pdf>.
- Avril, Tom. “Could museum’s gold be from ancient Troy?” *Philly.com*, January 31, 2010. Accessed April 6, 2013. http://articles.philly.com/2010-01-31/news/24955967_1_heinrich-schliemann-ancient-city-treasure.
- “Archaeological Investigations at Gordion.” Digital Gordion, accessed April 6, 2013, <http://sites.museum.upenn.edu/gordion/archaeology>.