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Case Weary Herakles – Turkey and Museum of Fine Arts Boston

Turkey/Turquie – Museum of Fine Arts Boston – Antalya Museum – Archaeological object/objet archéologique – Post 1970 restitution claims/demandes de restitution post 1970 – Diplomatic channel/voie diplomatique – Negotiation/négociation – Settlement agreement/accord transactionnel – Illicit excavation/fouille illicite – Illicit exportation/exportation illicite – Ownership/propriété – Deaccession – Unconditional Restitution/restitution sans condition

The “Weary Herakles” is a Roman marble statue that was excavated in 1980 in Perge, Turkey. In 1981, the Museum of Fine Arts Boston acquired a half-interest in the upper part of the sculpture, while the other half-interest was owned by collectors Leon Levy and Shelby White. In 1990, the Turkish Government claimed ownership of the sculpture. After lengthy negotiations, the “Weary Herakles” returned to Turkey on September 2011.

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

- **1980:** In Perge, Turkey, a major archaeological site, Turkish archaeologists found a dozen statues, including the **bottom section of the “Weary Herakles”**. Since then, the statue has been on display in the Antalya Museum.
- **1981: The Museum of Fine Arts Boston (“MFA Boston”) and New York collectors Leon Levy and Shelby White purchased** the upper half of the “Weary Herakles” from Mohammad Yeganeh, a German dealer. Pursuant to their agreement, the **MFA Boston took possession** of the statue but received only 50 percent ownership; the remaining 50 percent was to be gifted to the Museum after Leon Levy’s death.
- **1990:** The statue was **loaned** to the New York Metropolitan Museum of Art. Subsequently, a magazine published an article arguing that the statue in MFA Boston’s possession and the half conserved in Antalya Museum are the matching halves of the whole statue.¹
- **1992:** A **test** took place at the MFA Boston: a plaster of the bottom half was sent to Boston by the Turkish Government to verify whether it fitted with the statue of the MFA Boston. Under the close watch of experts and lawyers, the cast fit perfectly, thus proving that the two fragments were pieces of the same statue. In spite of this, the MFA Boston, Leon Levy and Shelby White did not offer to return their half, but simply stressed the fact that the statue had been legally purchased.
- **2003: Leon Levy died** and the MFA Boston obtained full ownership of the upper half of the “Weary Herakles”.
- **2003-2011:** After the MFA Boston acquired full interest of the top half of the sculpture, **negotiations** resumed;² in July 2011, the MFA Boston announced that the contested upper half will be returned to Turkey and will be reunited with the bottom part. MFA Boston officials declared that it is in the intention of the museum to formalize **an agreement in 2011** and to obtain a short-term loan of the whole “Herakles” for an exhibition prior to repatriation.
- **22 September 2011:** MFA Boston and Turkish officials signed an agreement with which the ownership of the upper half of the “Weary Herakles” was transferred to the Turkish Government. The statue was handed over after the signing.³

¹ Press Release of the Boston Museum of Fine Arts, Museum of Fine Arts, Boston, and Turkish Republic Reach Agreement for Transfer of Top Half of *Weary Herakles* to Turkey, 23 September 2011.

² Ibid.

³ “Turkey: Boston Museum Returns Top of Hercules Statue,” *The Washington Post*, September 25, 2011, accessed September 26, 2011, http://www.washingtonpost.com/world/middle-east/turkey-boston-museum-returns-top-of-hercules-statue/2011/09/25/gIQAj6xZwK_story.html.

II. Dispute Resolution Process

Diplomatic channel – Negotiation – Settlement agreement

- Since the discovery that the MFA Boston possessed the upper half of the “Weary Herakles”, the Turkish Government, the Antalya Museum and several Turkish archaeologists supported the reunification of the statue. On its part, the MFA Boston relied on the legality of the purchase and on its rights under the general law of possession and ownership.
- However, in 2003, after the acquisition of full interest of the top half of the sculpture, MFA Boston decided to contact Turkey regarding a resolution.⁴

III. Legal Issues

Illicit excavation – Illicit exportation – Ownership – Deaccession

- The restitution claim of the “Weary Herakles” involved the legal issues that typically feature most, if not all, the cases concerning relics clandestinely removed from archaeological sites and unlawfully smuggled out of the country of origin:
 - (i) there was not documentation detailing the discovery of the object and the context and whether the two pieces were truly of the same statue;
 - (ii) MFA Boston records demonstrated that the German dealer likely provided a false provenance to facilitate the laundering of the object (he alleged that the statue came from his mother’s collection, who got it around 1950 from a German dealer);
 - (iii) there was no evidence that the pertinent Turkish legislation applied at the time of the removal;
 - (iv) the museum was unable to autonomously deaccession and return the fragment given it was partly owned (50 percent) by Leon Levy;
 - (v) there was no bilateral agreement between the United States and Turkey under the Convention on Cultural Property Implementation Act (CCPIA), the act with which the United States have implemented the **UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property** of 1970 (pursuant to the CCPIA, the United States may enter into a bilateral agreement with a State Party to the UNESCO Convention – subject to certain conditions – and impose import restrictions on cultural materials stolen and illegally exported from that State).

⁴ Press Release of the Boston Museum of Fine Arts, Museum of Fine Arts, Boston, and Turkish Republic Reach Agreement for Transfer of Top Half of *Weary Herakles* to Turkey, 23 September 2011.

IV. Adopted Solution

Unconditional Restitution

- *The “Weary Herakles”* was returned to Turkey from the MFA Boston following the signing of a repatriation deal on 22 September 2011. The conclusion of the agreement between MFA Boston and Turkish officials was preceded by a vote of the MFA Boston’s Board of Trustees in favour of the deaccessioning of the sculpture.⁵
- Noticeably, the agreement acknowledges that the MFA Boston had initially acquired the object in good faith, without any knowledge of ownership issues.⁶
- Contrary to early information, the agreement does not contain a clause subjecting the return to the temporary loan of the whole statue to the MFA Boston.

V. Comment

- The agreement concluded between MFA Boston and Turkey has concluded one of the long running cultural property disputes.
- It can be argued that the MFA Boston offered to resume negotiations after more than a decade due to three main reasons.
- First, after Leon Levy passed away, the museum gained full ownership to the sculpture and, accordingly, full responsibility *vis-a-vis* Turkey’s restitution request.
- Second, MFA Boston’s officials were aware of the developments which had occurred in the cultural heritage realm with respect to the question of restitution of wrongfully removed art. Such developments relate not only to the shift in balance of power between market and source countries, but also to the change of museum practices with respect to acquisition and restitution. Likewise, MFA Boston’s officials were conscious of the advantages ensuing from the adoption of a cooperative approach to the question of restitution. In this respect, it should be recalled that, in 2006, the MFA Boston concluded an agreement with Italy concerning the restitution of several archaeological artefacts. The museum decided to conclude that agreement because of the evidence that emerged during the trial of Marion True and Robert Hecht in Rome, which demonstrated that the antiquities had been removed by illicit digging. Therefore, it is apparent that in dealing with the “Weary Herakles”, MFA Boston’s officials wanted to avoid a public scandal as well as the reputational harm that could be caused by the continuance of the dispute. Therefore, this is just another case proving that in the past many museum’s directors acquired cultural materials knowing (or ignoring) their illicit origin.
- Third, and consequently, it cannot be excluded that MFA Boston’s officials offered to resume negotiations with Turkey upon the advice of their consent in order to avoid the risk of a legal action. In other words, it cannot be excluded that the settlement under consideration has been prompted by the prospect of Turkey’s likely success at trial. True, one can only speculate on

⁵ Ibid.

⁶ “Boston Museum Returns Hercules Bust to Turkey,” *CBC News*, September 26, 2011, accessed September 26, 2011, <http://www.cbc.ca/news/arts/story/2011/09/26/hercules-bust-return-turkey.html>.

what would have happened had the Turkish Government filed a claim against the MFA Boston before US courts. However, various cases demonstrate that US courts do apply domestic statutes – such as the National Stolen Property Act (NSPA) and the Archaeological Resources Protection Act (ARPA) – to protect archaeological materials smuggled from foreign States.⁷

VI. Sources

a. Bibliography

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b. Legislation

- Legislation for the Ancient Properties of 25 April 1973 No. 1710 (Turkey)

c. Media

- Geoff Edgers, “Making ‘Herakles’ Whole after All These Years”, *The Boston Globe*, July 17, 2011, accessed July 22, 2011, http://www.boston.com/ae/theater_arts/articles/2011/07/17/museum_of_fine_arts_to_return_weary_herakles_statue_to_turkey/?page=full.
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⁷ The United States’ ability to prosecute persons who traffic in stolen archaeological artefacts under the NSPA is proved, *inter alia*, by the cases *United States v. McClain* (545 F.2d 988, 991-992 (5th Cir. 1977)) and *United States v. Schultz* (178 F.Supp. 2d445 (S.D.N.Y. 3 January 2002), *aff’d*, 333 F.3d 393 (2nd Cir. (NY) 10 June 2003)). While its plain language and its legislative history proclaim ARPA’s purpose to be the protection of archaeological resources originating within the United States, since 1996 federal attorneys have it to archaeological resources stolen from foreign States, see ,e.g., *United States v. An Archaic Etruscan Pottery Ceremonial Vase C. Late 7th Century, B.C.*, No. 1:96-cv-09437 (S.D.N.Y. 24 March 1997). On this point see Stephen K. Urice and Andrew L. Adler, “Unveiling the Executive Branch’s Extralegal Cultural Property Policy,” *University of Miami Legal Studies Research Paper* No. 20 (2010), accessed July 20, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1658519.