

# **The Agreements between the Italian Ministry of Culture and American Museums on the Return of Removed Cultural Properties**

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**Abstract** In the last decade the MIBACT concluded a number of agreements with foreign museums that were holding illicitly excavated and exported cultural properties (for example the 2006 Agreement with the Metropolitan Museum of Art of New York). The agreements allow the State of origin to achieve the return of the cultural properties and avoid the uncertain outcome of a litigation on their ownership before a foreign court. They also allow the foreign museums to preserve their reputation as truthful cultural institutions that do not encourage the pillage of the heritage of foreign countries. Both parties agree on the strengthening of their relationship through future cooperative activities, including loans granted by Italy of archaeological properties of equivalent value. The agreements go in the direction of settling through negotiations disputes on the return of cultural properties in order to reach an equitable solution taking into account all the relevant circumstances.

**Summary** 1 Introduction. – 2 The Agreement with the Metropolitan Museum of Art. – 3 The *Euphronios Krater*. – 4 Other Returned or Non-returned Archaeological Properties. – 5 Conclusive Remarks.

**Keywords** Cultural properties. Return. Agreement.

## **1 Introduction**

Particularly notable to address the question of the restitution of removed cultural properties are the agreements signed by the Ministry of Cultural Properties and Activities on the one side, and foreign cultural institutions on the other (Fiorilli 2010, 161; Scovazzi 2014, 3). Agreements of this kind<sup>1</sup> have been concluded by the Ministry with a number of American museums, such as the Metropolitan Museum of Art of New York, the Museum of Fine

<sup>1</sup> The instruments in question, usually called ‘agreements’, cannot be considered as international treaties, but belong to the category of contracts between States and foreign nationals. These types of legal instruments, which have an important background in the field of exploitation of natural resources (for example, concessions to foreign companies for oil exploration or exploitation) are used here to pursue a rather different purpose.

Arts of Boston, the Princeton University Art Museum, the John Paul Getty Museum of Los Angeles, the Cleveland Museum of Art and the Dallas Museum of Art. Other agreements also exist.<sup>2</sup>

The agreements allow the State of origin to overcome the obstacles posed by the uncertain outcome of a litigation before a foreign court on the ownership of the claimed properties. They also allow the foreign museums to preserve their reputation as truthful cultural institutions that do not encourage the pillage of the heritage in foreign countries and do participate in the fight against the destruction of cultural contexts and the illegal traffic resulting therefrom. Far from being confined to the return of given properties, the agreements also aim at the strengthening of the relationship between the parties through future cooperative activities, including loans granted by the State of origin of archaeological properties of equivalent value.

## **2 The Agreement with the Metropolitan Museum of Art**

While the text of most agreements is confidential, an exception is the agreement signed on 21 February 2006 by the Ministry and the Commission for Cultural Properties of the Region of Sicily,<sup>3</sup> on the one hand, and the Metropolitan Museum of Art of New York,<sup>4</sup> on the other.

In the premise of the agreement, the Ministry states that the Italian archaeological heritage “is the source of the national collective memory and a resource for historical and scientific research”. It also recalls some basic aspects of the Italian legislation on cultural properties, in particular that

the archaeological heritage includes the structures, constructions, architectural complex, archaeological sites, movable objects and monuments of other types as well as their contexts, whether they are located underground, on the surface or under water (preamble, recital B);

to preserve the archaeological heritage and guarantee the scientific character of archaeological research and exploration operations, Italian

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2 In 2012 an agreement was concluded with a Japanese institution, the Tokyo Fuji Art Museum. It provides for the return, under certain conditions, of the *Tavola Doria*, an anonymous painting of the sixteenth century. It reproduces a portion of *The Battle of Anghiari*, a lost fresco painted by Leonardo da Vinci on a wall of Palazzo Vecchio in Florence. According to press releases, in July 2016 an agreement was reached by the Ministry and the Ny Carlsberg Glyptotek of Copenhagen. It provides, *inter alia*, for the return of the Etruscan objects illegally excavated from a princely tomb in Sabina.

3 Under the Italian constitutional system, Sicily is the only region entitled to exercise an exclusive competence as regards the cultural properties existing in the region.

4 Hereinafter: the Museum.

law sets forth procedures for the authorization and control of excavations and archaeological activities to prevent all illegal excavations or theft of items of the archaeological heritage and to ensure that all archaeological excavations and explorations are undertaken in a scientific manner by qualified and specially trained personnel, with the provision that non-destructive exploration methods will be used whenever possible (preamble, recital C).

In fact, under Italian Legislative Decree 22 January 2004, no. 42 (called Code of Cultural Properties and Landscape), all cultural properties found by anyone in any way in the subsoil or on the seabed belong to the State demesne, if immovable, or to the inalienable patrimony of the State, if movable (art. 91, para. 1). The finder is entitled to a reward which cannot exceed one-fourth of the value of the properties found. A reward is also granted to the owner of the immovable property where the find has been made and to the holder of a concession for research.<sup>5</sup> The reward may be paid either in money or through the cession of part of the properties found (art. 92, para. 4).<sup>6</sup> A special procedure, as specified in art. 93, applies in order to determine the amount of the reward. Legislation based on similar principles has been in force in Italy since 1909 (Law 20 June 1909, no. 364; Law 1 June 1939, no. 1089; Legislative Decree 29 October 1999, no. 490).

The agreement also states in the premise that the Museum:

believes that the artistic achievements of all civilizations should be preserved and represented in art museums, which, uniquely, offer the public the opportunity to encounter works of art directly, in the context of their own and other cultures, and where these works may educate, inspire and be enjoyed by all. The interests of the public are served by art museums around the world working to preserve and interpret our shared cultural heritage (preamble, recital F);

[...] deplores the illicit and unscientific excavation of archaeological materials and ancient art from archaeological sites, the destruction or defacing of ancient monuments, and the theft of works of art from individuals, museums, or other repositories (preamble, recital G);

[...] is committed to the responsible acquisition of archaeological materials and ancient art according to the principle that all collecting be done with the highest criteria of ethical and professional practice (preamble, recital H).

5 No reward is due to the finder if he has entered into an immovable property without the consent of the owner (art. 92(3)).

6 A tax credit of value corresponding to the reward can be granted on request to those who are entitled to the reward.

The first objective of the agreement is the return of a number of archaeological items that the Ministry had requested on the basis of the assumption that they “were illegally excavated in Italian territory and sold clandestinely in and outside the Italian territory” (preamble, recital E). The Museum, “rejecting any accusation that it had knowledge of the alleged illegal provenance in Italian territory of the assets claimed by Italy, has resolved to transfer the requested items in the context of this Agreement” (preamble, recital I). The transfer does not constitute an acknowledgment on the part of the Museum of any type of civil, administrative or criminal liability for the original acquisition or holding of the requested items. The Ministry and the Region of Sicily waive any legal action in relation to the returned items.

The items in question magnificently document the spreading of ancient Greek civilization in Southern Italy. They are the *Euphronios krater*, four vases (namely, a Laconian *kylix*, a red-figured Apulian *dinos* attributed to the Darius painter, a red-figured *psykter* decorated with horsemen and a red-figured Attic amphora by the Berlin painter), a set of fifteen Hellenistic silver items<sup>7</sup> and a *pyxis*.<sup>8</sup>

The second, but not secondary, objective of the agreement is to promote cultural co-operation between the parties. In exchange for the *Euphronios krater*, “to make possible the continued presence in the galleries of the Museum of cultural assets of equal beauty and historical and cultural significance”, the Ministry agrees to make four-year loans to the Museum of archaeological objects of equivalent beauty and historical and artistic significance selected from a list of twelve artefacts specified in the agreement (art. 4(1)). In exchange for the transfer of the four above mentioned vases, the Ministry agrees to “loan a first-quality Laconian artefact to the Museum for a period of four years and renewable thereafter” (art. 3(2)). In exchange for the Hellenistic silvers, the Ministry agrees to make to the Museum loans of cultural properties “of equal beauty and historical and artistic significance [...] on an agreed, continuing and rotating sequential basis” (art. 5(3)).<sup>9</sup>

7 The fifteen refined items of gilded silver, called *Morgantina Silvers*, are the most important set of jeweller’s art coming from Hellenistic Sicily. They were illegally excavated after 1978 from the archaeological site of Morgantina, an ancient city destroyed by the Romans in 211 b.C. They were bought by the Museum for \$3,000,000. They are now exhibited at the Museo Archeologico Regionale of Aidone.

8 The items were displayed at an exhibition held from December 2007 to March 2008 at the Quirinale Palace in Rome (the residence of the President of the Republic), together with other objects recovered from abroad. See the catalogue of the exhibition: *Nostoi - Capolavori ritrovati*, 2007. *Nostoi* means ‘returns’ in Greek.

9 “The Museum shall arrange and bear the costs of packing, insurance and shipment of the requested and loaned items for transit to and from Italy” (art. 6, para. 4).

Throughout the forty-year duration of the agreement (art. 8(1)), the mutual co-operation established under the agreement includes excavations, loans and restorations of cultural objects (art. 7).<sup>10</sup> Disputes on the interpretation or application of the agreement are to be settled amicably or, if the parties are unable to reach a mutually satisfactory resolution, “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” (art. 9(2)).

### 3 The *Euphronios Krater*

The story of the *Euphronios krater* (a bowl used to mix wine and water) well documents the gravity of the looting of archaeological sites and the consequent international trafficking of cultural properties that affected Italy in the last decades (Watson, Todeschini 2006; Felch, Frammolino 2011).

After having been manufactured by Euxitheos, the vase known today as the *Euphronios krater* was painted and signed by the Athenian artist Euphronios (active between 520 and 470 b.C.), one of the three great masters of red-figure vases. It is one of the best Attic vases, the only complete among the twenty-seven known as painted by Euphronios. The obverse side represents the god Hermes who supervises the transport by *Hypnos* (Sleep) and *Thanatos* (Death) of the corpse of the Trojan hero Sarpedon, killed in battle. The reverse side represents warriors arming themselves for the battle. At the time of Euphronios, the most valuable Greek vases were manufactured and painted in Athens and then exported to Central Italy where the Etruscans used to buy them for high prices.

In 1972 the *Euphronios krater* was exhibited for the first time in the collections of the Metropolitan Museum. It was bought in exchange for \$1,000,000 and a collection of ancient Greek coins. In an interview given on 12 November 1972, the director of the Museum, Mr. Thomas Hoving, provided quite vague information about the provenance of the property:

We got it from a dealer who was the agent for a person who has had this in the family collection since about the First World War and we don't talk about the name of these people because they have other things that we might want to buy in the future. [...] we bought it from somebody

<sup>10</sup> According to Briggs (2006-2007), “this unprecedented resolution to a decades-old international property dispute has the potential to foster a new spirit of cooperation between museums and source nations, spawn stricter museum acquisition and loan policies, reduce the demand for illicit cultural property, and permanently alter the balance of power in the international cultural property debate”.

who happened to be in the country of Switzerland, who was acting as the agent for somebody who was even in another country whose family had it since around the First World War and that goes back a nice long time. (Meyer 1973)

The story became even less credible when Mr. Dietrich von Bothmer, the curator of Greek and Roman art at the Museum, disclosed that the previous owners of the property were the members of an Armenian family who, because of unfortunate events, were forced to leave their home in Lebanon and emigrate to Australia.<sup>11</sup>

After some time, the truth was unveiled following an unexpected event. An Italian antique dealer died in a car accident. In his pocket the police found a piece of paper with the names of several people involved in the trafficking of illicitly excavated archaeological properties. The Italian authorities concentrated their interest on Mr. Giacomo Medici, another Italian antiquarian. In cooperation with the Swiss police, they inspected a three-roomed warehouse held by Mr. Medici at the free-port of the Geneva airport. What they found was astonishing. In the warehouse were kept about 3,000 artefacts, often of very high quality, most of them illegally excavated in Italy,<sup>12</sup> together with a detailed archive that shed light on a chain of people involved at different levels in the illegal trafficking, export and sale of archaeological properties: diggers (so-called *tombaroli*, in Italian), middlemen, traders, restorers, experts, European and American museum curators and collectors. Pictures were also found that provided useful evidence about the relevant facts. In the case of the *Euphronios krater*, the pictures documented the vase when found in a clandestine excavation,<sup>13</sup> the vase during the restoration and the vase exhibited at the Museum, with Mr. Medici and Mr. Robert Hecht (the American antiquarian who bought the vase from Mr. Medici and sold it to the Museum) smiling next to it. Besides recovering the items deposited in the warehouse, the Italian police and prosecutors were able to reconstruct the whereabouts of many archaeological properties that had been sold to museums and collectors.<sup>14</sup>

11 "Why not an Eskimo moving to Florida?" (Meyer 1973, 93).

12 Including frescos detached in the area of Pompei from a villa clandestinely excavated and irreparably damaged by the looters.

13 The looters used the *polaroid* technique, also to avoid the risk of entrusting a photographer with the printing of the pictures. The *polaroid* technique, which was developed in the United States after WWII and introduced in Europe some years later, provides sure evidence that the excavations were made after the enactment (1909) of the Italian legislation that prohibited unauthorized archaeological excavations.

14 Unfortunately it was not possible to locate a rare Etruscan *Sarcophagus with Spouses* which appears in one of the pictures seized. Was it sold to a private collector who keeps it hidden somewhere?

It was finally proved that the *Euphronios krater* was clandestinely excavated in 1971 at Cerveteri, in the core of the area inhabited by the Etruscans (Rizzo 1995, 15). It was illegally (according to Italian law) exported from Italy to Switzerland and, after a number of transfers, sold to the Museum by Mr. Hecht, who imported it into the United States legally (according to American law).<sup>15</sup> It seems that the customs officer at the airport in New York made a quite pertinent comment when the box was opened and Mr. Hecht showed him the vase: "I don't know anything about Greek art, but you've really got something beautiful here" (Meyer 1973, 91).

After its return to Italy as a consequence of the 2006 agreement between the Ministry and the Museum, the vase is being exhibited at the Museo Nazionale Etrusco of Villa Giulia in Rome.

However, the question may be asked whether the agreement would ever have been concluded, if a car accident had not occurred.

#### 4 Other Returned or Non-returned Archaeological Properties

Under the agreement concluded in 2006 with the Museum of Fine Arts of Boston, the Ministry got the return of thirteen items, including the marble statue of *Vibia Sabina*, wife of the Roman emperor Hadrian (Povoledo 2007),<sup>16</sup> and several vases.

Under the agreement concluded in 2007 with the John Paul Getty Museum of Los Angeles, the Ministry got the return of the *Venus of Morgantina* (a statue of 2.20 m, with head and limbs in marble and body in limestone, illegally excavated in Morgantina and exported after having been cut in three pieces, paid by the Museum \$18,000,000), the *Trapezophoros* (a support for ritual table that represents two griffons attacking a hind, illegally excavated nearby Ascoli Satriano, paid by the Museum \$5,500,000),<sup>17</sup> as well as several vases.

<sup>15</sup> Today such an import would be illegal also according to American law, because of the Agreement between Italy and the United States concerning the imposition of import restrictions on categories of archaeological material representing the pre-classical, classical and imperial Roman periods of Italy (Washington, 19 January 2001; renewed in 2006 and 2011).

<sup>16</sup> According to a joint press communiqué of 28 September 2008, "the agreement includes the creation of a partnership in which the Italian government will loan significant works from Italy to the MFA's displays and special exhibitions programme, and establishes a process by which the MFA and Italy will exchange information with respect to the Museum's future acquisitions of Italian antiquities. The partnership also envisages collaboration in the areas of scholarship, conservation, archaeological investigation and exhibition planning". The statue of *Vibia Sabina* is now exhibited at the archaeological site of Villa Adriana in Tivoli.

<sup>17</sup> The *Venus of Morgantina* is now exhibited at the Museo Regionale Archeologico di Aidone, the *Trapezophoros* at the Museo Civico-Diocesano of Ascoli Satriano. The picture of Mr. Medici next to the *Trapezophoros* at the John Paul Getty Museum was found in the

Under the agreements concluded with the Princeton University Art Museum (2007), the Cleveland Museum of Art (2008) and the Dallas Museum of Art, the Ministry got the return of respectively eight, fourteen and six cultural properties.

Several other cultural properties illegally exported abroad are claimed or might be claimed by Italy. Some of the claims relate to properties that were not included in the above mentioned agreements with American museums, such as the bronze statues of the *Victorious Youth* (or *Athlete*), attributed to Lysippus and held by the John Paul Getty Museum,<sup>18</sup> and the *Cleveland Apollo*, attributed to Praxiteles and held by the Cleveland Museum of Art.

## 5 Conclusive Remarks

The question of restitution of removed cultural properties to which the treaties in force do not apply for chronological or other reasons is far from being settled under customary international law. While it is not possible to elaborate here on the matter (more elaboration can be found in Scovazzi 2011, 341), it seems that an evolutionary trend is developing in present customary international law. This trend is broad enough to cover both interstate claims and claims between States and foreign institutions. According to it, claims relating to the return of cultural properties should be addressed in order to achieve an equitable solution, taking into account all the relevant circumstances, such as, *inter alia*:

- the factors surrounding the removal of the cultural property from the State of origin, in particular the legality of the removal under the law of the State of origin or the substantive injustice of the removal;
- the importance of the cultural property for the State of origin, including its emblematic character;
- the harm to the integrity of the cultural context from which the cultural property was removed;
- the amount of time since the cultural property was removed from the State of origin;
- the appreciation for, and the care used to preserve, the cultural property in the State of destination;
- the State of origin's commitment to care for the preservation of the cultural property if it is returned to it.

warehouse in Geneva (see *supra*, para. 3). In 2012 the museum returned to Italy also several marble fragments that belonged to the same tomb from which the *Trapezophoros* was illegally excavated.

<sup>18</sup> The statue was found on the seabed of the Adriatic Sea. It was clandestinely imported in Italy and then illegally exported abroad. See Scovazzi 2011, 5; Lanciotti 2012, 301.

In this regard, the participants to the International Conference of Experts in the Return of Cultural Property, held in Seoul on 16 and 17 October 2012, recommended, *inter alia*, that

States discuss cases relating to the return of cultural objects not governed by international legal instruments, seeking equitable solutions taking into account all the relevant and specific circumstances, such as integrity of the cultural context, significance of the object for the States concerned, ethical propriety of its removal, treatment of the object by the present possessors, and the State's of origin commitment to security and care of the objects;

[...] States, in attempting to reach equitable solutions, consider means of co-operation with other States, entities and individuals through cultural policy in general, including loans, temporary exhibitions, joint excavation activities, research, and restoration.

*The Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Properties* (Paris, 1970), adopted by consensus on 18 May 2015 by the Meeting of States Parties to the convention (Scovazzi, Ferri 2015, 195), provide as follows:

For items of illegally exported, illegally removed or stolen cultural property imported into another State Party before the entry into force of the Convention for any of the States Parties concerned, States Parties are encouraged to find a mutually acceptable agreement which is in accordance with the spirit and the principles of the Convention, taking into account all the relevant circumstances. (*Operational Guidelines*, 103)

The agreements between the Ministry and the American museums go in the direction of settling disputes on the return of cultural properties in order to reach an equitable solution taking into account all the relevant circumstances. This objective should govern the relationship between the States of origin and the States of destination of cultural properties and should also be shared, if this is the case, by non-State entities involved in the movement of cultural properties. In the near future, resort to non-adversarial means to address disputes<sup>19</sup> and a more active use of the Inter-

<sup>19</sup> "Because the origins of international cultural heritage law lie in the battlegrounds of conflict and the underworld of crime, it is not surprising that the normative framework to protect the cultural heritage has been essentially adversarial. Historically, efforts to develop an effective body of cultural heritage law have emphasized formal remedies to past wrongs. Considerable emphasis has been placed on exclusive rights of ownership and the elaboration of rules for the restitution of stolen property or return of illegally exported

governmental Committee for Promoting the Return of Cultural Property, established with UNESCO in 1978, including the procedure for mediation and conciliation adopted under ICPRCP Recommendation no. 4 of 23 September 2010,<sup>20</sup> could be the most effective ways to co-operate in the field of return of cultural properties.<sup>21</sup>

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property. In resolving related disputes, litigation has been a preferred means despite the voices of experience that have urged a greater recourse to mediation and other informal means of dispute resolution when that is feasible. Unfortunately, however, the stakes are often too high in the commercial art world to rely on mediation and other informal techniques" (Nafziger 2009, xix). See also Cornu, Renold 2010, 1.

<sup>20</sup> See UNESCO doc. CLT-2010/CONF.203/COM.16/1 Rev of July 2010, ICPRCP, *Final Report of the Subcommittee of Experts on the Draft Rules of Procedure on the Mediation and Conciliation*.

<sup>21</sup> See also Resolution no. 4, adopted in 2006 in Toronto by the ILA and formulating Principles for cooperation in the mutual protection and transfer of cultural material (ILA, *Report of the Seventy-second Session*, London, 2006, 32 and 337). The principles are based on "the need for a collaborative approach to requests for transfer of cultural material, in order to establish a more productive relationship between and among parties" and on "the need for a spirit of partnership among private and public actors through international cooperation".

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