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Cultural Property

FABIENNE D. STRUELL

I. Recent Cases Under the Convention on Cultural Property Implementation Act

Nineteen ninety-six was replete with examples of the international cooperation between affluent market nations and source nations rich in cultural artifacts. Some of the cooperation resulted in import restrictions or forfeiture decrees implemented pursuant to the Convention on Cultural Property Implementation Act¹ (Act) which provides the president with the authority to enter into bilateral agreements with any nation participating in the UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property² (UNESCO Convention). The Cultural Property Advisory Committee (Advisory Committee)—consisting of eleven presidential appointees who represent the interests of museums, archeologists, dealers, and the public—was established by the Act. Any of the eighty-five nations that ratified the UNESCO Convention can ask the United States to establish import controls on their cultural patrimony. The Advisory Committee reviews the requests and submits recommendations to the president. The five cases below illustrate the process of restitution and assistance the United States was able to provide in 1996.

A. GREECE

Early in 1996, a collection of rare ancient Mycenaean gold jewelry and ornaments that “had passed through the hands of grave robbers and art dealers in at least two countries was shipped back to its native Greece.”³ The procedure to effectuate their return began in 1993 when two professors, one of whom, James Wright, an archeologist, saw a photograph of the object in a newspaper article. It described the rings, necklaces, and rosettes from a belt and explained

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1. Convention on Cultural Property Implementation Act, 19 U.S.C.A. §§ 2601-2613 (Supp. V. 1981).

2. The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231, 10 I.L.M. 289 (1971) [hereinafter UNESCO Convention].

3. Irvin Molotsky, *20 Years After Theft, Rare Gold Ornaments Will Return to Greece*, N.Y. TIMES, Jan. 31, 1996, at C16.

that they were for sale at a Manhattan art gallery, owned by Michael Ward, who was at the time a member of the Advisory Committee. As part of the settlement, Mr. Ward donated the objects to the Society for the Preservation of Greek Heritage which returned them to Greece.

B. GUATEMALA

After being stolen in 1992, valuable manuscripts dating as far back as the sixteenth century were returned to the Guatemalan Government by the U.S. Customs Service in May 1996. The historic documents, which included the original extradition treaty between the United States and Guatemala in 1903 and a 1555 manuscript signed by conquistador Bernal Diaz Del Castillo, were stolen by the wife of the Director of the General Archive of Central America in Guatemala City. U.S. Customs was able to crack the case due to the relationship it maintains with auction houses and the art world.⁴ Such cooperation between the government of Guatemala and the United States is based on both bilateral and multilateral treaty law.⁵

C. ITALY

On July 5, 1996, U.S. District Judge Shira Scheindlin issued the first forfeiture order under the Act, in the Southern District of New York. It resulted in the return of the torso of Artemis which had been stolen from the Maria Immacolata Convent in Pozzuoli (near Naples), Italy, in the spring of 1988 and later sold to a London art dealer. Once again, it was the publication in Sotheby's auction catalogue in 1995 which attracted the attention of the Italian Government officials. With investigatory assistance from the U.S. Customs Service, a complaint was filed on April 19, 1996, outlining the "probable cause for forfeiture" and "stating a claim for forfeiture" of the torso to the U.S. Government under 19 U.S.C. § 2609(a)⁶ of the Act. "This ruling demonstrates that any person who possesses property found to be protected by such an agreement under the Convention could be ordered to return it, no questions asked, even if the possessor is a good faith purchaser."⁷ All persons having an interest in the property at issue who wish to oppose the forfeiture must appear before the court and show cause why the forfeiture should not be decreed. "It is not clear after this first case what, if any, demonstrations of interest by an independent party will be held significant enough to outweigh the terms of the agreements under the Convention."⁸

D. PERU

The Peruvian Government applied for U.S. assistance in curtailing extensive looting from the recently discovered royal tombs located in the northern region of Sipan. On Novem-

4. Theresa O Rourke, *Paper Chase Ends: Stolen Archives Found, Returned to Guatemala*, NEWSDAY, May 4, 1996, at A8.

5. See *supra* note 2.

6. § 2609 (a) provides in part that: "Any designated archeological or ethnological material or article of cultural property, as the case may be, which is imported into the United States in violation of section 2606 of this title or section 2607 of this title shall be subject to seizure and forfeiture."

Section 2607 states: "No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of entry into force of the Convention for the State Party, whichever is later, may be imported into the United States."

7. *Stolen Torso Returned to Italy: Ruling Is the First Under the Cultural Property Implementation Act*, 17 IFAR REP., July-Aug. 1996.

8. *Id.*

ber 15, 1994, Sotheby's held an auction of pre-Columbian Art. Officials of the Peruvian Government identified the objects as being taken from the Sipan region and therefore falling under the specific ban of the Act.

After identification, the next step towards recovery of protected objects was to obtain a seizure warrant from a magistrate or a judge. The U.S. Customs Service, as the designated law enforcement agency responsible for handling such cases, has very broad seizure authority over any objects imported in violation of the Act. Recovery can be expedited by the efforts of the countries who know their cultural treasures may be at risk. Sotheby's provides further assistance by sending sales catalogues to Peruvian and other relevant governments well in advance of auctions.⁹

E. GERMANY

UNESCO has now designated a total of 440 monuments—ranging from a Confucian temple in Qufu, China, to ancient grave mounds in Denmark—as part of humanity's cultural heritage. Germany is home to 15 of those monuments. Quedlinburg, according to UNESCO's citation, is "an extraordinary example of medieval European city" and its St. Servatius Church counts as one of the "architectural masterpieces of the Romanesque."¹⁰ Quedlinburg began making headlines in 1990, when the heirs of a former U.S. army officer, a brother and sister, tried to sell ecclesiastical artifacts that had disappeared from St. Servatius's treasury after the war. They eventually succeeded in selling the treasures for \$2.75 million, and a five percent commission for their former lawyer who procured the buyers, a group of European art dealers, who returned them to Germany.¹¹ The trio was charged with illegal conspiracy to sell 2 of the 12 Quedlinburg treasures. Citing a technicality, Judge Brown, a federal judge in Sherman, Texas, dismissed the government's charges. The case, seemingly a dead issue in October 1996, was revived in December 1996, with a recommendation by the Criminal Division of the Department of Justice to appeal the decision.¹² If the appeal to the Fifth Circuit Court of Appeals in New Orleans is successful, it could lead to a trial before Judge Brown.

II. Draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects

Another recent development in the international effort to combat illicit trade of cultural property is the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, which was adopted by a conference of over seventy participating countries on June 24, 1995, and remained open for signature in Rome, Italy, until June 30, 1996.¹³ Unlike the UNESCO Convention, the UNIDROIT agreement attempts to provide explicitly for the return of illegally exported objects to the country of origin as well as the return of stolen property whose export may or may not have been illegal. Its most significant provision is one which adopts the common

9. *Peruvian Antiquities Seized as Sipan Artifacts*, 17 IFAR REP., July-Aug. 1996.

10. *UNESCO Adds a Medieval German Town and a 19th Century German Ironworks to Its List of Cultural Treasures*, THE WEEK IN GERMANY, Mar. 3, 1995.

11. William H. Honan, *U.S. Revives Art Theft Case*, N.Y. TIMES, Jan. 24, 1997, at C8.

12. *Id.*

13. International Institute for the Unification of Private Law (UNIDROIT): Final Act of the Diplomatic Conference for the Adoption of the Draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects, opened for signature June 24, 1995, 34 I.L.M. 1322 (1995) [hereinafter UNIDROIT].

law rule instead of the civil law rule which provides liberal protection to the bona fide purchaser for value.¹⁴

III. The Buenos Aires Draft Convention on the Protection of Underwater Cultural Heritage

The Buenos Aires Draft Convention on the Protection of Underwater Cultural Heritage attempts to resolve jurisdictional issues related to the protection of the underwater heritage and to provide broader protection for shipwrecks and other sensitive and precious artifacts beyond coastal states' jurisdictions.¹⁵

After adoption by the eighteen-member Cultural Heritage Law Committee of the International Law Association (I.L.A.) in 1994,¹⁶ UNESCO accepted it for review. In 1996 a UNESCO Committee of Experts recommended consideration of the Draft Convention at the organization's next General Conference.

In a related development, in October 1996, the International Council on Monuments and Sites (ICOMOS) ratified an International Charter on the Protection and Management of Underwater Cultural Heritage,¹⁷ which the Buenos Aires Draft Convention adopts by reference.

14. The basic philosophy underlying the UNIDROIT Convention is clearly announced in Article 3(1), which simply states that "the possessor of a cultural object shall return it."

15. This statement is drawn from the Final Report of the Committee on Cultural Heritage Law, International Law Association, REPORT OF THE SIXTY-SIXTH CONFERENCE 432 (1994) [hereinafter I.L.A. REPORT]. A summary of the working Session on the Draft Convention at the I.L.A. Conference appears at 448, *id.* The Report, Draft Convention, Selected Bibliography, and article-by-article commentaries appear at 25 OCEAN DEV. & INT'L L. 391 (1994) and 26 OCEAN DEV. & INT'L L. 193 (1995) (Update).

16. I.L.A. REPORT, *supra* note 15, at 14-15.

17. International Council on Monuments and Sites, ICOMOS INTERNATIONAL CHARTER ON THE PROTECTION AND MANAGEMENT OF UNDERWATER CULTURAL HERITAGE (Oct. 5-9, 1996).