

THE INTERNATIONAL PROTECTION OF CULTURAL HERITAGE

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Outline:

The need to protect works of artistic and historical interest by means of a special regulation emerged first in the national legal orders and then gradually involved the International Community. It was only after World War 2, and the rise in number of destructions, thefts, spoliations and illicit exportations of artworks that some international institutions and organizations took the issue into consideration and promoted the adoption of some international instruments (treaties and declarations) dedicated to the protection of both moveable and immovable cultural heritage.

As a matter of principle, according to International Law, each State has the right of sovereignty over cultural property located in its territory. States more committed to the protection of their historical-artistic heritage ratify international convention and in so doing undertake obligations to cooperate and assist reciprocally in the safeguarding and enhancing of their own cultural property and national heritage.

The obligations of protection are different in respect to immovable property (such as museums, historical palaces, monumental and archaeological centres) and movable property (such as archaeological findings, property of an artistic-historical interest and other artworks), which – by their nature – can be displaced and transferred illicitly from one State territory to another.

As for immovable property, International Law's main concern is to achieve cooperation among States with the aim to safeguard immovable property of universal value in the place where it stands (the so called "*in situ protection*") so to protect the most significant sites, which are inserted in the List of *World Cultural and Natural Heritage* to be preserved and transmitted to future generations. Turkey, as well as Italy, has sites inscribed in the UNESCO's World Heritage List.

As for moveable property, the main concern is to prevent thefts, spoliations and illicit exportation of cultural property which cause the impoverishment of the State of origin's national heritage. International treaties in this field regulate international trade and try to establish the right to restitution of stolen or illicitly exported objects.

Turkey is a party to the 1970 UNESCO Convention on *the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. Turkey also ratified the Convention for the Safeguarding of the Intangible Cultural Heritage, which have enlarged the notion of protected "cultural property" far beyond the traditional concept, for it encompasses living and mainly intangible cultural expressions of a nation which were not taken into account by the previous conventions.

The issue of cultural heritage conservation is also addressed by EU Law. In the 90s' the European Community began to show interest in the protection of historical and artistic treasures of its Member States from the standpoint of controlling illicit traffic and export in cultural goods. Eventually, an all-encompassing general provision dealing with "Culture" was added in the EU Treaty, thus giving a specific legal basis and competence to the EU institutions in the field of, among others, "*conservation and safeguarding of cultural heritage of European significance*". In so doing, the concept of European cultural heritage was introduced in the text of the EU Treaty. Article 167 of TFEU, among other things, states that both the EU and its Member States shall "*foster cooperation with third countries and the competent international organisations in the sphere of culture*".

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VICTORIOUS YOUTH

Believed to have been hewn and cast in Greece, possibly by Lysippus, the personal sculptor to Alexander the Great, the bronze statue apparently was being transported by ship and lost at sea. It is so beautiful, so well preserved, so rare of its kind and so delicate that it commands a climate-controlled room of its own at the Getty Villa antiquities museum in Pacific Palisades. It went on display in 1978, a year after the Getty Trust bought it for \$3.95 million, the equivalent of \$15.4 million today. In the Getty's view, it is far too fragile to be moved or exposed to heat and humidity. It remains a must-see for more than 400,000 visitors a year.

The Villa has considerably fewer must-sees nowadays. Since 2006 the Getty has sent more than 40 prized works back to Italy and Greece, conceding that they likely had been looted from their native soil and illegally smuggled and sold. But the Getty insists that "Victorious Youth" is clean, that this story is quite different.

New York's Metropolitan Museum of Art and others in America went down the same path of repatriating antiquities after being confronted with evidence of looting. The old approach of buy first, ask questions later (if at all) has been replaced since the late 2000s by new museum-world standards mandating cautious deliberation and an exacting study of a prized object's past whereabouts. New acquisition policies that the Getty adopted in 2006 have been widely praised as exemplary.

Stephen Clark, a Getty Trust vice president and its top lawyer, wouldn't go so far as to say that the museum would defy a ruling against it this week in Rome, where the Court of Cassation is expected to deliberate the case in a closed session beginning Wednesday. How to proceed if the court orders the Getty to hand over the statue would be up to the Getty Trust's board, Clark said.

Italy never had a legally valid ownership claim, she said, because the statue wasn't found in Italian waters or on Italian soil, and it wasn't made or owned by modern Italy's Roman and Etruscan forebears. (Patty Gerstenblith, professor at DePaul University in Chicago and director of its Center for Art, Museum and Cultural Heritage Law,

