

Protection and Repatriation of Cultural Treasures - The Acropolis Sculptures

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Abstract State practice in both International and National Fields show substantial agreement on the principle of return of expatriated cultural heritage. States worldwide have used all possible legal instruments and diplomacy to show their belief that cultural treasures must be returned to their countries and peoples of origin who created them and consider them as a part of their proper identity. The relevant State practice on the cultural property repatriation, including that of States whose interests are specially affected, has been both extensive and virtually uniform, in such a way as to show a general recognition that a rule of law or legal obligation is involved. State practice of the last decades, crystallized during recent years, reflects the belief that the return of Cultural Treasures to their Countries and Peoples of origin is rendered obligatory by the existence of a rule of law requiring it. The State practice on the Repatriation of Cultural Treasures is evident from the number of International and Bilateral Conventions and Protocols adopted, as completed by soft law rules and guidelines, the administrative acts or attitudes, in particular in the diplomatic field, the national legislations and the judicial acts. This practice, already stable and uniform, is confirmed by the explosion of the repatriation of antiquities during the last years, as exposed in the relevant chapters. The great number of relevant resolutions and recommendations adopted by the organs of the international organizations, especially by the UN Security Council about the situation in Syria and Iraq, (the Resolutions of which, acting under Chapter VII of the Charter, are considered binding, in accordance with Article 25 of the Charter), strengthens the argument that a rule of customary international law on the repatriation of cultural property is already formed. Humanity is conscious that the cultural heritage is an indispensable element of people's identity and self-knowledge to the ultimate scope of the salvage and the evolution of Human Civilization. Thus the Norm of Repatriation of Cultural Treasures to their people and country of origin is well established as a Rule of International Customary Law. The Customary rule of international law includes especially, the duty of Repatriation of cultural treasures – symbols of cultural and historic heritage, the duty of Unification of Monuments and the duty of Repatriation of Cultural Treasures wrongfully acquired during war, occupation or colonization. United Kingdom, by refusing to return the Acropolis Sculptures, which have been illegally removed, since there is not a firman and Lord of Elgin had no permission to destroy the Acropolis Monuments and, violates the above principles.

Keywords Caryatid, Parthenon Sculptures, Parthenon Marbles, Acropolis, Acropolis Treasures, Syria, Iraq, Illicit trade in antiquities, International Customary Law, International Custom

1. Introduction [1]

1.1. Cultural Treasures have been victims of destruction and illicit trafficking during Wars and armed conflicts since the Antiquity. During the Turkish Occupation in Northern Cyprus, since the invasion of July-August 1974, a large number of religious and archaeological objects have been illegally exported and subsequently sold in art markets.

1.2. According to the official elements of UNESCO

(Information Kit, <http://unesdoc.unesco.org/images/0019/001916/191606E.pdf>):

- "...Together with the trafficking in drugs and arms, the black market of antiquities and culture constitutes one of the most persistent illegal trades in the world".
- From illegal excavation to final sale, the value of the most beautiful masterpieces increases 100 fold, a greater growth than that of drugs.
- As for the online purchases, it is estimated that 80 percent of the 100,000 antiquities available online at any given moment have no recorded provenance — which means they are probably looted or fake. These objects have a combined total asking price of more than \$10 million.
- The ISIS looting across the Middle East in recent years, bringing a wave of illicit objects into the marketplace

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and the easy access to the antiquities through Facebook, WhatsApp, eBay, and Amazon, have contributed to the increase of fake and looted antiquities.

2. International Conventions

2.1. Time of War and Occupation

• **Treaty of Tolentino (1797):** the Papal States returned to France 100 treasures of Art from the Vatican collections, as well as 500 manuscripts from the Papal archive.

The defeated Italian states also returned the horses to St. Mark's Square in Venice (the Horses of Chios were stolen from Constantinople during the Crusade) and the Venus from Florence. Following the defeat of Napoleon (Waterloo 1815), and the military convention, it was decided to return to the countries of origin all looted cultural goods. The most influential proponents of this decision were members of the British delegation (the Viscount Castlereagh, and the Duke of Wellington). They pledged to return the artifacts and represented Britain in allied actions to return the monuments to their countries of origin, since they both said there must be a common position that Napoleon had violated international rules of war and "justice"... However, shortly afterwards, in 1816, the British Parliament purchased from Lord of Elgin the sculptures looted by Acropolis...

- American Lieber Code 1863,
- Hague Conventions 1899, 1907 and 1954 and the two Protocols (1954, 1999).
- Roerich Pact of States of America 1935.
- Treaties of Versailles 1919 and 1949 (art. 245 and 247).
- The Monuments, Fine Arts and Archives Section (MFAA or 'Monuments Men') was founded by the allied Forces based in the Inter-Allied Declaration against Acts of Dispossession (London Declaration 1943) for the return of the treasures looted by Nazis to their countries of origin.
- Treaty of Peace between the Allied and Associated Powers and Italy (1947).
- Convention on the Settlement of Matters Arising out of the War and the Occupation (1952).
- Hague Convention (1954), Art. 4(3) and the Protocols.
- ICRC Rules of the International Humanitarian Customary Law, Rules 40 and 41: "*Rule 40. Each party to the conflict must protect cultural property: A. All seizure of or destruction or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited. B. Any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited.*

Rule 41. The occupying power must prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities

of the occupied territory".

2.2. Time of Peace

- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970).
- Guideline 103 of the 1970 Convention (18.5.2015) (pre-convention removals): "*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*".
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 24 June 1995) The possessor must prove "due diligence" and cannot be in a more favourable position than the person from whom he/she acquired the cultural object by inheritance or otherwise gratuitously.

3. Human Rights

- Universal Declaration of Human Rights - Art. 27
"1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."
- Council of Europe Convention on Offences relating to Cultural Property, Nicosia, 19.05.2017: the aim of the Council of Europe to achieve a greater unity between its members and that the diverse cultural property belonging to peoples constitutes a unique and important testimony of the culture and identity of such peoples, and forms their cultural heritage.
- The ILO Indigenous and Tribal Peoples Convention, 1989.
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the General Assembly on Thursday, 13 September 2007.
- The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Australia) also reflects the idea of the protection and maintenance of cultural heritage as a human right.
- The Native American Graves Protection and Repatriation Act (NAGPRA), 1990 (USA) is considered to be interpreted and applied in the light of the Human Rights Law on a domestic and international level.

4. United Nations

- Security Council Resolutions (2015), 2253 (2015), 2322 (2016), 2347 (2017), 2368 (2017): Member States bear the obligation to *request and provide*

cooperation in investigations, prosecutions, seizure and confiscation as well as the return, restitution or repatriation of trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded cultural property, and judicial proceedings, through appropriate channels and in accordance with domestic legal frameworks as well as with the United Nations Convention against Transnational Organized Crime and the Protocols thereto and relevant regional, sub regional and bilateral agreements.

- The United Nations General Assembly: The Guideline 46 titled “Return, restitution or repatriation” calls upon States to undertake appropriate measures to recover trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded cultural property for the purpose of their return, restitution or repatriation. Furthermore the United Nations General Assembly has adopted a great number of resolutions from 18.12.1972 to 12.12.2012.

5. Hellenic Law

- Constitution of Troizina 1827.
- Constitution 1975/1986/2001/2008: Art. 24 par.1 and 6: the protection of the cultural and natural environment is an obligation of the State and a right of every person.
- Laws 3028/2002 and 3658/2008: The ancient monuments, movable and immovable, belong to the State and cannot be sold or purchased. Protection of cultural heritage is imposed “with the aim of preserving historical memory for the present and future generations”.

6. Court Decisions

6.1. International Court of Justice, Temple of Preah Vihear (Cambodia v. Thailand)

In this case, which in fact is a case of delimitation between Cambodia v. Thailand, the Court after finding that the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia, judged, in consequence, that Thailand was under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory and to restore to Cambodia any sculptures, stelae, fragments of monuments, sandstone model and ancient pottery which might, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities.

6.2. The European Court of Human Rights (ECtHR)

This court interprets Article 8 of the European Convention of Human Rights as securing the rights to the individual’s identity, self-determination and physical and mental integrity. The right to self-determination, and thus of private life is

recognized in *Parrillo v. Italy*. (§ 159). In *Chapman v. the United Kingdom* (§ 73) and *McCann v. the United Kingdom* (§ 55) the right to maintain a minority identity and to lead one’s private and family life in accordance with that tradition is recognized under Art. 8. The State’s positive obligation to secure to the applicant the effective respect for his private life is also established (*Ciubotaru v. Moldova*, § 53). Since “individual identity”, “self-determination”, “minority identity” and “ethnic identity” are proper subjects of protection under Art. 8, “cultural identity” is also protected.

6.3. Venus of Cyrene – Italy and Libya

The “Venus of Cyrene” was found in 1913 by Italian soldiers deployed at Cyrene. The statue, shipped to Italy, was placed on display in the Museo Nazionale delle Terme of Rome in 1915. After having relinquished all claims to Libya with the Peace Treaty of 1947 and Libya’s declaration of independence (1951), Italy and Libya concluded an Agreement on the restitution of the Venus of Cyrene (2000).

The Consiglio di Stato (dec.8.4.2008), held that the Italian State had obligations under the customary rule that enshrines the restitution of the works of art removed during military occupation and colonial rule.

6.4. Consiglio Di Stato

The international obligation compelling the restitution of cultural objects taken wrongfully in times of war or colonial occupation was the corollary of the interplay between two principles of general international law, namely the principle prohibiting the use of force – enshrined in Article 2, paragraph 4, of the Charter of the United Nations – and the principle of self-determination of peoples – enshrined in Articles 1, paragraph 2, and 55 of the Charter of the United Nations.

The principle of self-determination of peoples had come to include the cultural identity as well as the cultural heritage linked either to the territory of a sovereign State or to peoples subject to a foreign government. Consequently, the restitution of works of art served the safeguarding of such cultural ties whenever these have been jeopardized by acts of war or the use of force arising from colonial domination.

7. Diplomatic Field

7.1. Orpheus Mosaic – Turkey and Dallas Museum of Art

In 1999 the Dallas Museum of Art acquired a fragment of a Roman marble mosaic depicting Orpheus taming wild animals (the Orpheus mosaic) at an auction at Christie’s in New York for US\$ 85,000. Turkey’s attempt to block the sale on the grounds that the mosaic had been illicitly excavated from the ancient city of Edessa (today’s Şanlıurfa), in south east Turkey failed because Christie’s refused to reveal the buyer’s identity and Turkey lost track of the mosaic. on 3 December 2012 Turkey and the Dallas Museum of Art signed a Memorandum of Understanding on the return of the mosaic and on the establishment of an exchange

program and on 6 December 2012 the Orpheus mosaic was returned to Turkey. This agreement was possible thanks to the detailed information on the provenance of the mosaic, especially the evidence emerging in the ongoing criminal investigations.

7.2. Weary Herakles – Turkey and Museum of Fine Arts Boston

Reunification of a Statue excavated in 1980 in Perge, Turkey. On September 2011, after lengthy negotiations, the Museum of Fine Arts Boston returned to Turkey the upper part of the sculpture, acquired in 1981 on September 2011, since the other half was conserved in Antalya Museum.

7.3. Kanakaria Mosaics

These are rare masterpiece of the 6th century AD170, stolen from the Cypriot Church of the Panagia Kanakaria in Lythrankomi, following the Turkish military intervention. They were purchased by an American art dealer, Peg Goldberg. In 1989, the Autocephalous Greek Orthodox Church of Cyprus and the Republic of Cyprus traced the mosaics to Indiana and filed a judicial claim to obtain restitution. The United States District Court of Indiana ordered that the mosaics be awarded to the plaintiffs. Judge Bauer, President of the U.S. Court of Appeals, in his 1990 Judgment concluded that: *“Only the lowest of scoundrels attempt to reap personal gain from this collective loss. Those who plundered the churches and monuments of war-torn Cyprus, hoarded their relics away, and are now smuggling and selling them for large sums, are just such blackguards”*.

8. The Acropolis – Parthenon Sculptures - Erechtheion

The most famous and still pending case concerns the Hellenic Government's demand for the return by the United Kingdom of the Acropolis Treasures, exhibited in the British Museum, namely the 60% from the Parthenon Sculptures the one of the six Caryatids and an Ionic Column from the North Porch removed by the Lord Elgin [2] from the temples of Parthenon and Erechtheion respectively, during 1801-1803, in the era of colonization [3], while Greece was occupied by the Ottomans, unfortunately just a few years before the Hellenic Revolution (1821), which led to the Hellenic Independence. [4]

The destruction of the monuments and the detachment of the ornaments took place “under questionable circumstances”. [5] When Elgin was asked by the British parliament for his legal documentation to remove the sculptures, he claimed that he had an official permission from the occupant authorities, however he was unable to provide relevant evidence. His collaborator, Hunt, called as witness in the end of the hearings, made reference for the first time to an Italian translation of the alleged document. [6] Beside the suspicious circumstances surrounding the Italian document [7], which was not even signed [8] and the

fact that the English document finally provided to support Elgin's claim was actually a distorted translation of an Italian translation of the original Ottoman document [9], it is underlined that this last document was not in fact a valid firman, but just a letter setting out the recommendation of the writer. [10] Consequently this document could not have any legal consequences. Additionally it is worth noting that Elgin said the firman was issued on 1 July 1801, but it is nowhere to be found among the archives which hold all the firmans issued by the Sultan at the time. [11] In any case, this dubious document in which Elgin and his successors, namely the British government and the British museum, base their rights, gives only a permit to *“artists... in the service of the British Ambassador... to enter freely within the walls of the Citadel and to draw and model with plaster the ancient temples there to eject scaffolding and to dig where they may wish to discover ancient foundations and liberty to take away any sculptures or inscriptions which do not interfere with the works or walls of the Citadel”*. [12] This text confers no authority to remove sculptures from the building or to damage it in any way [13] and Elgin did not have prior permission to remove the marbles. [14] In the middle of the second paragraph of the document it is emphasized that the local Athens officials should honour the firman given to Lord Elgin *“particularly as there is no harm in the said figures and edifices being thus view, contemplated and designed”*. [15] Hunt admitted as much to the Select Committee in 1816 when he said that the Governor had been “induced” to “extend the precise permissions of the Firman”. [16] Furthermore there is no written evidence of any permission given by the legally required authorities for the shipment of artifacts to Britain [17]; even the *disdar*, the authority responsible for the Acropolis, protested but was ignored. [18] It is also questionable if the Ottomans' military occupation of Greece could in any case give them any authority to alienate these cultural treasures. [19] Elgin, taking advantage of his immunity as a British Ambassador [20] and with the main purpose to decorate with the sculptures his house in Scotland [21], dispossessed the Parthenon of fifty slabs and two half-slabs of the frieze, and fifteen metopes, as well as various sculptures from other buildings on the Acropolis - all, as Hunt later said, that was worth taking. Under his orders, serious damage was done to the building by sawing through the frieze slabs, removing the cornice so as to detach the metopes and breaking the entablature on which they rested. As it is sited, fifteen years later in 1816, Elgin insisted before the Parliamentary Select Committee that he had the intention to draw and mould the sculptures, until he came to Athens and realised that they were in peril of “imminent and unavoidable destruction... had they been left many years longer the prey of mischievous Turks, who mutilated them for wanton amusement or for the purpose of selling them piecemeal to occasional travellers”. But in fact the “terrible Turks”, had prevented the French Ambassador, at the height of his own influence, from behaving like Elgin, in 1780. [22] Undoubtedly the monuments suffered immeasurable damage. It was recorded

that backs of the architectural sculptures were cut off if their thickness made them inconveniently heavy for any methods of transport then available. Apart from the actual removal of the Parthenon's sculptural decorations, the cornice above the south metopes, and a part of the south angle of the east pediment were destroyed. Moreover the ship *Mentor* bringing the treasures to England sank near *en route* in September 1802 and the treasures remained for two years in the seabed [23]. As confessed by the painter Lusieri, who wrote to Elgin: "I must do more still and I must want to try it so that some barbarisms I have been obliged to commit in your service may be forgotten..." [24] In 1816 the British Parliament voted to buy the sculptures for 35,000 pounds, 5000 more than it had offered a decade earlier. The first shipment of the treasures went on display in 1807, in a shed behind Piccadilly Circus. [25] Even in the British parliament there were severe negative reactions and the Lord Elgin's actions were severely criticized. During the debate in parliament Sir John Newport M.P., member of the special select committee said that "The honorable Lord had taken advantage of the most unjustifiable means ...and has committed the most fragrant pillages. It was, it seems, fatal that a representative of our country LOOT these objects that the Turks and other barbarians considered sacred". [26] Lord Byron wrote in the "Curse of Minerva": What more I owe let gratitude attest- Know, Alaric and Elgin did the rest, That all many learn from whence the plunderer came, The insulted wall sustains his hated name". Byron talks about the vanity and the littleness of the man and refers to the two painters (Lusieri and Fauvel) who "contest the privilege of plundering the Parthenon, and triumph in turn." Byron stated: I opposed- and ever will oppose -the robbery of ruins from Athens to instruct the English in sculpture, (who are capable of Sculpture as the Egyptians of skating). [27]

In Greece the Philomousos Company was founded in 1812 in the occupied Athens to avoid similar phenomena. The independent Hellenic government, having in mind the loots in Acropolis (1801-1803), in Aphaea (1811) and in Epicoureios Apollo (1812-1814) made provisions for the protection and the export prohibition of the cultural property in the Troizina Constitution (1827), and the first Hellene governor Ioannis Kapodistrias demanded the prevention of the cultural objects export. [28] In 1835 the Hellenic government requested officially the return of the illegally detached and exported treasures, after the British Museum offered plaster casts [29]. After numerous requests made in 1842, 1924, 1927, 1941, 1961 by the Hellenic authorities, the Academy of Athens, the mayor of Athens, archaeologists and others [30], in 1982, during the UNESCO Conference in Mexico, the Hellenic Minister of Culture Melina Merkouri made a request for the return of the sculptures from the British museum to Greece. In October 1983 the Hellenic government submitted an official request to the United Kingdom for their return which was rejected. [31]

In 1984 the Hellenic government submitted an official request for the return of the sculptures to the ICPRCP. In 1987 the Committee asked its president to promote

negotiations for the Sculptures' return. This case was discussed in the competent International and non-International Organizations, UN, UNESCO, Council of Europe, European Committee, ICOM, ICOMOS and ICCROM. [32] UNESCO adopted in 1999 a recommendation that bilateral talks be initiated between Greece and the United Kingdom [33] and the Intergovernmental Committee for Promoting the Return of Cultural Property (ICPRCP) during several sessions, in particular in 1989, 1991, 1994, 1996, 1999, 2010, 2011 and 2016, adopted Recommendations calling for an amicable settlement of the dispute. The European Parliament adopted in 1998 a Declaration in favor of the Return of the Parthenon Marbles to Greece. [34]

Recently, on 2 May 2017, the U.S. 115th Congress in its Resolution 51 characterizing Parthenon as "a universal symbol of culture, democracy, and freedom, making the Parthenon Marbles of concern not only to Greece but to all the world", expressed its sense that the Parthenon sculptures should be returned to Greece, "Whereas the Parthenon was built on the hill of the Acropolis in Athens, Greece, in the mid-fifth century B.C. under the direction of the Athenian statesman Pericles and the design of the sculptor Phidias;" being "... the ultimate expression of the artistic genius of Greece, the preeminent symbol of the Greek cultural heritage, including its art, architecture, and democracy, and of the contributions that modern Greeks and their forefathers have made to civilization;". The Resolution submitted by Mrs. Carolyn B. Maloney of New York (for herself, Mr. Bilirakis and Mr. Payne) was referred to the Committee on Foreign Affairs (<https://www.congress.gov/115/bills/hconres/51/BILLS-115hconres51ih.pdf>). The Congress had adopted a similar Resolution in 2016, H.Con.Res.162 - Expressing the sense of the Congress that the Parthenon Marbles should be returned to Greece 114th Congress (2015-2016). [35]

Nowadays the 40% of the Parthenon - the Temple of the Virgin Goddess Athina- sculptures are located in the New Acropolis Museum, the frieze of the Parthenon, narrative of the story of the Panathenaic Procession, pieced together with a combination of the original blocks of the frieze and cast copies of the pieces in museums abroad, such as the British Museum and the Louvre [36]. From the entire frieze that survives today, 50 meters are in the Acropolis Museum, 80 meters in the British Museum, one block in the Louvre, whilst other fragments are scattered in the museums of Palermo, the Vatican, Würzburg, Vienna, Munich and Copenhagen. [37] The area around the Erechtheion was considered the most sacred of the Acropolis. The eastern part of the Temple was dedicated to Athena, whilst the western part was dedicated to local hero Boutes, Hephaistos and other gods and heroes. The Caryatids are six statues of maidens supporting the roof of the Erechtheion, instead of the typical columns. The second Korai from the western section and an Ionic Column from the North Porch were removed by Lord Elgin in 1801 and are exhibited in the British Museum. The Parthenon carvings of the friezes, pediments, and metopes, the Caryatid and the Ionic Column

are not merely statuary, movable decorative art, but integral parts of the Parthenon and the Erechtheion temples, and should be repatriated to their country and their people of origin, with which they are connected by a history of almost 2,500 years and reunified to the temples of Parthenon and Erechtheion. For the Hellenes the statues have a soul and the Caryatids are waiting for their sister.

The Acropolis Sculptures are kept in the British Museum in a very bad situation, among coffee cafes and cakes that insults civilized people.

9. The Customary Rule of International Law on the Repatriation of Acropolis Sculptures

International and State practice, as outlined in this study, show substantial agreement on the principle of return of expatriated cultural heritage. This norm is sufficiently well established to amount to an emerging customary rule of international law, as it was already stated in 1989. [38] In the same year it was also stated that “the principle of the physical return of cultural property is becoming, through increasing state and institutional practice, a custom of international law”. This has especially been true in the case of objects of religious, royal and palaeontological significance and in the case of historic records and ‘immovable’ state property. It is becoming established practice in the case of the illicit and contemporary removal of archaeological treasures. That is to say, Greece may argue that the Parthenon belongs to a class of property which was removed in such past circumstances that title never passed. [39] This norm applies much more today after many decades of constant practice of the States and the recent expansion in repatriations. The firm conviction of the international community that the cultural treasures must be protected and repatriated is evident from the number of International and Bilateral Conventions and Protocols adopted, as well as from the numerous repatriations of such cultural heritage artifacts.

The international conventions, the jurisdiction and the practice of states, museums and art dealers prove that there is an international customary rule that requires States to restore illegally acquired cultural property of special historical value. [40]

This rule is reinforced by the 1970 UNESCO Convention which recognized the right of States to claim “keys to their heritage”, which were illegally removed. The rights deriving from the Convention concern goods removed after its signing, but this principle can be applied proportionally to establish a customary rule applicable to cultural goods unlawfully removed earlier. The Guideline 103 of the 1970 Convention (18.5.2015) (pre-convention removals) (“*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”), obliges the States to follow the rules of the Convention even in cases of removal before 1970.

In the International law in the time of the sale of the sculptures to the British Parliament (1816) there was the principle which would require the return of the Marbles, namely that no State, whether through the use of force or otherwise, may remove the cultural heritage of another State. The principle that imposed the return of the treasures stolen by Napoleon can be applied in the Elgin’s loot. [41]

The Elgin’s loot took place in time of war, since shortly after the removal of the Sculptures from the Parthenon, war was declared between Great Britain and Ottoman Turkey. The war lasted between 1806 and 1809. During this time, a large number of the Sculptures taken off the Parthenon remained in Greece, packed up and awaiting departure at the port of Piraeus. Lord Elgin himself, in a letter to the First Lord of the Admiralty, requested a warship to be sent to recover them and suggested the use of force [42] and the Hellenic War of Independence that led to the Hellenic Independence and the foundation of the Hellenic State. The Hellenic-Ottoman War in 1821 followed many more revolutions in many places and the Hellenic Revolution took place in 1821 after many local uprisings and almost uninterrupted rebellion in the mountains against the Ottoman dynasty. [43] Therefore, during the critical period of the removal of the Sculptures from Lord Elgin, Greece was under occupation, under foreign rule, while in Greece a continuous revolutionary movement was in progress. Elgin’s looting retains all the characteristics of the colonial period.

Although the UNESCO Convention does not have retroactive effect to international customary law, it reflects the practice of states at the time it was concluded and *opinio juris*, that the theft of antiquities is illegal and that the occupying states must return them. The Convention was concluded in 1970, and although the looting took place a century and a half before its signing, the Convention implies the present obligation to return the looted antiquities.

On the other hand, the continuous and increasing repatriations show that the practice of the European States is being formed for the repatriation of vital cultural heritage, ie those cultural goods that are particularly important for the cultural heritage of the states.

Furthermore, there are many common elements between the case of Aphrodite of Cyrene and that of the Parthenon Sculptures. Hellas, like Libya, was occupied at the time of the looting. Aphrodite was not an isolated statue, but was part of the wider complex of the particularly important archaeological site of Kyrenia, which has been designated a World Heritage Site. In addition, the Italian authorities and jurisdictions relied on the 1970 UNESCO Convention and the Vienna 1983 Convention on the Succession of States in Respect of State Property, Archives and Debt, 1983, to conclude that Italy should return the statue in Libya [44].

Another common element is that Libya, like Greece, was not an independent State at the time of the removal, but this

did not prevent Italy from returning the statue to Libya under the 1970 Convention.

Four principles can be inferred from these decisions (esp. *Venus of Cyrene* and *Cambodian Temple*):

- i) The sovereign right of nations to possess, enjoy, regulate the disposition of and generally exert dominion over the keys to their ancient history;
- ii) The value of cultural objects to the identity and well-being of nations and communities;
- iii) The duty of nations to co-operate with one another in returning unlawfully removed national treasures to their country of origin;
- iv) The legitimate interest of nations in seeking the recovery of national cultural symbols. (Geoffrey Robertson, Norman Palmer, Amal Clooney, p.102).

The Customary rule of international law includes:

- **Duty of Repatriation of cultural treasures – symbols of cultural and historic heritage**
- **Duty of Unification of Monuments**
- **Duty of Repatriation of Cultural Treasures wrongfully acquired during war, occupation or colonisation**

After that it is clear that Britain, at the present time, by refusing to return the Acropolis Sculptures, which have been illegally removed and have all the above characteristics, but also by refusing to negotiate, violates the above principles. Consequently, the way to appeal to the International Court of Justice in The Hague is open, as the United Kingdom denies repatriation and negotiation. On the other hand, it has been proposed to seek the opinion of the International Court of Justice in The Hague on the formulation of a customary rule that imposes the obligation of repatriation and reunification of unique monuments of vital importance, which are symbols of cultural identity and have special historical significance. In addition, Greece can bring an action against the United Kingdom before the European Court of Human Rights for breach of Article 1 of the First Additional Protocol to the ECHR, as well as Article 8 of the ECHR, as a transnational action under Article 33. [45]

10. Conclusions

The Parthenon sculptures of frieze, gables and fronts, the Caryatid and the Ionian Column are not just statues, movable works of art, but integral parts of the temples of the Parthenon and the Erechtheion and should be repatriated to the country and the people who they are associated with a history of about 2,500 years and reunited in the temples of the Parthenon and the Erechtheion. For as the Hellenes, the statues have a soul and the Caryatids are waiting for their sister.

I close this presentation with the conviction that the legitimacy of the demand for the return of the Sculptures to the Homeland is unquestionable and with the hope that their repatriation will take place immediately, so that the

sculptures of the Parthenon, Caryatid and Kion are in the native Earth 200th anniversary of our National Polygenesis in 2021!!! The symbol of the Greek, European and World Spirit, which expresses universal values, since Hellenic Culture is essentially Humanistic and Ecumenical, must be united and intact at this critical time for the Greek Nation!

Athena, the goddess of Wisdom, to whom Parthenon is dedicated, will be assistant in this struggle that is carried out in the name of Truth and Justice.

This speech is dedicated to the Statues, which, for the Hellenes, have a soul...

REFERENCES

- [1] see M. Vergou, The Repatriation of Cultural Treasures as an International Custom, masterthesis, Pergamos, the unified Institutional Repository / Digital Library of the University of Athens (UoA), <https://pergamos.lib.uoa.gr/uoa/dl/object/2686575>, 2018, with further references.
- [2] T. Bruce, the seventh Earl of Elgin, was in 1798 the representative of the British Empire in Constantinople.
- [3] S. Waxman, LOOT, The battle over the stolen treasures of the ancient world, 2008, p. 224.
- [4] The Parthenon was first destroyed, after more than 2,000 years of life in the Acropolis hill, in 1687 by the Venetian general Morosini who, during the siege of the Acropolis, set off a canon blast directly to the Parthenon, where the gunpower was stored by the Turks. Then the roof was demolished and one entire length of the parthenon's colonnades was decimated. Morosini did still more damage when he tried to take home some sculptures. It was the worst moment in the Parthenon's history till the arrival of Lord Elgin, see S. Waxman, LOOT, The battle over the stolen treasures of the ancient world, New York: Times Books, 2008 p. 226.
- [5] The Resolution submitted by Mrs. Carolyn B. Maloney of New York (for herself, Mr. Bilirakis and Mr. Payne) was referred to the Committee on Foreign Affairs <https://www.congress.gov/115/bills/hconres51/BILLS-115hconres51ih.pdf>.
- [6] G. Bizos, The legality of the Act ("Firman") for the Removal of the Parthenon Marbles, in Protection and Return of Cultural Treasures, Conference in the Amphitheater of the New Acropolis Museum (10.12.2010) about the Protection and Return of the Cultural Property, ed. Sakkoulas, Athens-Thessaloniki 2011, p. 257, para. 17.3.
- [7] G. Robertson, N. Palmer, A. Clooney, The Case for Return of the Parthenon Sculptures, 31.7.2015, pp 24-29.
- [8] G. Bizos, *ibid* p. 258, para.17.8.
- [9] G. Bizos, *ibid* p. 254, para.14.2.
- [10] G. Bizos, *ibid*, p. 254 para. 14.1. About the features demanded to have a valid firman, see Bizos *ibid* p. 255 para. 16.3. with reference to Demetriades, see also British Committee for the Reunification of the Parthenon Marbles <http://www.parthenonuk.com/articles-and-research/76-george-bizos-sc>, G. Robertson, N. Palmer, A. Clooney, The Case

- for Return of the Parthenon Sculptures, p. 28 with reference to Vassilis Demetriades, "Was the Removal of the Parthenon Marbles by Elgin Legal?" (paras 15-20) Annex A. "Memorandum of the British Committee for Restoration of the Parthenon Marbles" in Seventh Report Session 1999-2000, Department of Culture, Media & Sport, VOL III Appendix 2 (printed 18 July 2000).
- [11] G. Robertson, N. Palmer, A. Clooney, *ibid*, p. 27.
- [12] G. Robertson, N. Palmer, A. Clooney, *ibid* p. 24, with further references, S. Waxman, LOOT, *ibid*, p. 225.
- [13] As William St. Clair points out in his definitive account, "Lord Elgin and the Marbles", in S. Waxman, LOOT, *ibid*, p. 225, see also, E. Moustaira Comparative Law and Cultural objects, 2012, Nomiki Bibliothiki, Athens, p.141 E. Korka, the Framework of the Greek Request for claiming the Parthenon Marbles, in "Protection and Return of Cultural Objects" Conference in the Amphitheater of the New Acropolis Museum (10.12.2010) about the Protection and Return of the Cultural Property, ed. Sakkoulas, Athens-Thessaloniki 2011, p. 233.
- [14] G. Bizos, *ibid* pp. 259-269, para.19-22.
- [15] G. Bizos, *ibid* p. 259-262, para.19-20.
- [16] G. Robertson, N. Palmer, A. Clooney, *ibid*, p. 29, with further references, where it is sited that even Cook (formerly keeper of the Greek collections at the museum) admits that "it may be questioned whether the firman actually authorized even the partial dismantling of buildings in order to remove the sculptures".
- [17] G. Bizos *ibid* p.269, para. 24, such permission is only referred to be given in a letter written by the British Ambassador in Constantinople, Robert Adair, to the Foreign Secretary in London.
- [18] S. Waxman, LOOT, *ibid*, p. 225, 227.
- [19] G. Bizos *ibid* pp267-269, para. 23.
- [20] G. Robertson, N. Palmer, A. Clooney,, *ibid*, p. 30, with further references.
- [21] G. Bizos, *ibid* pp. 263-6, para. 20.8.6. quoting the Elgin's correspondence to Lusieri.
- [22] G. Robertson, N. Palmer, A. Clooney, *ibid*, p.23, 30. As stated by G. Robertson, N. Palmer, A. Clooney, *ibid*, "the words "vandalism", and "looting" are appropriate descriptions of Elgin's actions", pp. 29-30, with further references, see also S. Waxman, LOOT, The battle over the stolen treasures of the ancient world, p. 227.
- [23] J. Greenfield, The return of cultural treasures, Cambridge University Press 1989 pp 72-74, G. Robertson, N. Palmer, A. Clooney, *ibid* p. 36.
- [24] S. Waxman, LOOT, *ibid*, p.227.
- [25] S. Waxman, LOOT, *ibid*, pp. 229, 231.
- [26] E. Comino. Are the Hellenes of today the same of those 2500 years ago?, in Protection and Return of Cultural Objects Conference in the Amphitheater of the New Acropolis Museum (10.12.2010) about the Protection and Return of the Cultural Property, ed. Sakkoulas, Athens-Thessaloniki 2011 p.283.
- [27] Waxman S., LOOT, *ibid* p. 231-232.
- [28] M. Vergou Protection of Cultural Property- International, European and Greek Law, Nomiko Vima 2016, p. 1072 with further references.
- [29] S. Waxman, LOOT, *ibid* p. 232.
- [30] E. Korka, *ibid* p. 227.
- [31] It is worth noting that the arguments of protection from barbarism, of the weakness of the Hellenic government to protect them and of the absence of an appropriate museum to accommodate them, have collapsed. The treasures were not protected since at first they were carelessly stored in the museum, and in 1930 they were caused irreparable harm by attempts by the museum to remove the original color and patina of the Marbles with abrasive cleaners! Moreover the reason to "protect them from barbarism" ceased to exist a few years after their removal, since the foundation of the independent Hellenic State in 1830 and the British Government didn't return them since then.
- [32] E. Korka, *ibis* p. 228-229.
- [33] See MEMORANDUM ON THE PARTHENON MARBLES submitted by the Government of the Hellenic Republic to the House of Commons Select Committee on Culture, Media and Sport, on 9 March 2000, <http://www.culture.gr/DocLib/memorandum.pdf>. see also E. Korka *ibid* p.230.
- [34] Information Kit produced by the Division of Public Information and the Culture Sector of UNESCO on the occasion of the 40th Anniversary of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, <http://unesdoc.unesco.org/images/0019/001916/191606E.pdf>.
- [35] G. Lekakis, Kontra news, The US congress Resolution for the return of Parthenon Sculptures, 14.10.2016.
- [36] The Acropolis Museum, Parthenon Gallery, <http://www.theacropolismuseum.gr/en/content/parthenon-gallery>.
- [37] Acropolis Museum, The Frieze <http://www.theacropolismuseum.gr/en/content/frieze-0>.
- [38] Several interpretations about the Caryatids have been put forth. The most convincing one supports the view that they constituted the visible portion of the grave of Kekrops and were the choephoroi who paid tribute to the glorious dead. The Acropolis Museum, the Erechtheion, <http://www.theacropolismuseum.gr/en/content/erechtheion> Another Caryatid was removed from Eleusis in 1801 by E.D. Clarke and is exhibited in the Fitzwilliam Museum <http://www.fitzmuseum.cam.ac.uk/dept/ant/greeceandrome/browsegallery/area4/object.html?65755&ClassicalGreekWorldCaseFreestandingClarke>.
- [39] J. Greenfield J., The return of cultural treasures, *ibid* p. 104.
- [40] G. Robertson, N. Palmer, A. Clooney, *ibid*, p.93.
- [41] G. Robertson, N. Palmer, A. Clooney, *ibid*, p. 110.
- [42] G. Robertson, N. Palmer, A. Clooney, *ibid*, p.111-112.
- [43] HISTORY OF GREEK NATION, EKDOTIKI OF ATHENS, t. 27, p. 12.

- [44] G. Robertson, N. Palmer, A. Clooney, *ibid*, p.97.
- [45] G. Robertson, N. Palmer, A. Clooney, *ibid*, p.140-141.