

Committee: Social Humanitarian and Cultural Committee (GA3)

Issue: Working towards the Repatriation of Balkan Cultural Heritage

Student Officer: Scarlata Pasvani

Position: Co-Chair

PERSONAL INTRODUCTION

Dear Delegates,

My name is Scarlata Pasvani, I am 16 years old, a student of Mandoulides Schools in the 11th grade. This will be my first-time chairing and more so in a topic I am emotionally attached to. Till now I have attended five MUN conferences as a delegate and I hope I will have the chance to participate in many more.

I welcome you all to the 5th DSTMUN and specifically to the Social Humanitarian and Cultural Committee, where one of the two topics we will be discussing is the repatriation of the Balkan cultural heritage, a very serious and touching affair. This study guide will help you have a better understanding of the topic, nonetheless it should not be your only piece of research.

Taking everything into consideration, I strongly advise you to study this study guide well and take notes of it, since it will stand crucial for the comprehension of the topic and consequently for the resolution itself. Regarding any questions, concerning the following guide or the Rules of Procedure feel free to contact me at scarlata.pasvani@gmail.com. I will be more than happy to answer you!

I am looking forward to meeting and working with you all, in hopes for a fruitful debate.

Best Wishes,
Scarlata Pasvani

TOPIC INTRODUCTION

The Balkan Peninsula is a district with a vast amount of cultural heritage - as in-built environment, natural environment and artefacts - that hold great value for both the international community, but also for the individual ethnic groups. Even though dozens of these unique attractions are protected by UNESCO, much more of them have either been looted by states or stolen and sold to private collectors, of course illegally and during crisis periods, such as wars and armed conflicts.

Consequently, these areas are being left out of their historical context, meaning that the archaeologists and historians shape an inaccurate or incomplete understanding of the sites, cultures, and historical time periods. Therefore, due to the loss of this crucial and serious information, this stands as a disadvantage to everyone and therefore a global issue that needs to be dealt with.

Apart from that, the countries are being deprived of their national identity, since the artefacts end up damaged beyond repair. In this way, the local communities, that these archaeological landmarks have originated from, do not engage with their heritage in a viable way.

Cultural goods have a special, protected status because of their intangible cultural heritage value for people as symbols of an identity. This has been the case since the beginning of international law and today there is an extensive legal framework to protect cultural property and prohibit looting. Nevertheless, cultural goods are looted, smuggled and traded as long as there is demand and also the profits are high. Eventually their character tends to transform from protected heritage in a pristine environment to valuable art and utensil in the hands of new owners. In this new environment, the legal status of such objects will most likely be a matter of ownership and the private law regime of the country in which they end up

In fact, the UNESCO Secretariat quoted: «It has been claimed that culture is central to man and that without it no rights are possible since it is the matrix from which all else must spring. Culture is the essence of being human. »¹. The aforementioned quote highlights the importance of culture and especially the Balkan culture. Culture, in the Balkan region, is the invisible bond that holds people together. It refers to the pattern of human activity. A community's art, literature, language, and religion represent its culture. Cultural values and beliefs are manifested in the well-known Balkan lifestyle.

Yet there are many incidents of plundered artefacts, one of them dating back to 447-438 BCE in Ancient Greece, namely the Elgin Marbles. The repatriation of these highly valued heirlooms is however immensely complex. First and foremost, museum curators

¹ UNESCO Secretariat (1970), p. 10, quoted by Vrdoljak (2014), p. 139. Vrdoljak's pioneering work on the interrelation between human rights and cultural heritage law

argue that the artefacts should not be returned, due to safety and preservation issues. It is no secret though, that the bigger concern lies within the financial opportunities that would be lost if the repatriation was to happen.

Protecting, preserving and repatriating Balkan cultural heritage and supporting creative and vibrant cultural sectors are fundamental to address the challenges of our time, from climate change to poverty, inequality, to increasingly complex emergencies and conflicts. The UN is convinced that without a strong cultural component, no development can be sustainable. Only a human-centred development approach based on mutual respect and open dialogue between cultures can lead to lasting peace.²

DEFINITION OF KEY TERMS

Repatriation

The act or process of restoring or returning someone or something to the country of origin, allegiance, or citizenship: the act of repatriating or the state of being repatriated. It is a process by which cultural objects are returned to a nation or state at the request of a government.³

Restitution

1. An act of restoring or a condition of being restored such as
 - a. a restoration of something to its rightful owner
 - b. a making good of or giving an equivalent for some injury
2. A legal action serving to cause restoration of a previous state⁴
3. A process by which cultural objects are returned to an individual or a community.⁵

Cultural heritage

Cultural heritage includes artefacts, monuments, a group of buildings and sites, museums that have a diversity of values including symbolic, historic, artistic, aesthetic, ethnological or

² UNESCO, Culture, Protecting Our Heritage and Fostering Creativity, <https://www.unesco.org/en/culture>

³ Merriam-Webster, repatriation, <https://www.merriam-webster.com/dictionary/repatriation>

⁴ Merriam-webster, restitution, <https://www.merriam-webster.com/dictionary/restitution>

⁵ Restitution and repatriation, <https://collectionstrust.org.uk/cultural-property-advice/restitution-and-repatriation/>

anthropological, scientific, and social significance. It includes tangible heritage (movable, immobile, and underwater), intangible cultural heritage (ICH) embedded into cultural, and natural heritage artefacts, sites or monuments. The definition excludes ICH related to other cultural domains such as festivals, celebration etc. It covers industrial heritage and cave paintings.^{6,7}

Cultural destruction

In the context of globalisation, cultural destruction can be defined in two ways. One definition refers to perceptions that globalisation is having a destructive impact on local cultures, encompassing objects and sites as well as other forms ...⁸

Excavation

The act of removing earth that is covering very old objects buried in the ground in order to discover things about the past⁹

Trafficking of cultural goods

The illicit import, export and transfer of ownership of cultural property (items of importance for archaeology, prehistory, history, literature, art or science). This can take different forms:

1. theft from cultural heritage institutions or private collections
2. looting of archaeological sites
3. displacement of artefacts due to wars¹⁰

BACKGROUND INFORMATION

It is an undeniable fact that the Balkan peninsula is a region of different cultures and traditions emerging together, creating a cultural pluralism. Thousands of artefacts and relics have been found, which disclosed the rich culture heritage in the Balkans, not necessarily

⁶ UNESCO, Cultural heritage, <http://uis.unesco.org/en/glossary-term/cultural-heritage>

⁷ Fiorentini et al. (2016), p. 11; Prutt and O'Keefe (1992).

⁸ Sage knowledge, Cultural destruction, <https://sk.sagepub.com/reference/globalstudies/n108.xml>

⁹ Cambridge Dictionary, Excavation , <https://dictionary.cambridge.org/dictionary/english/excavation>

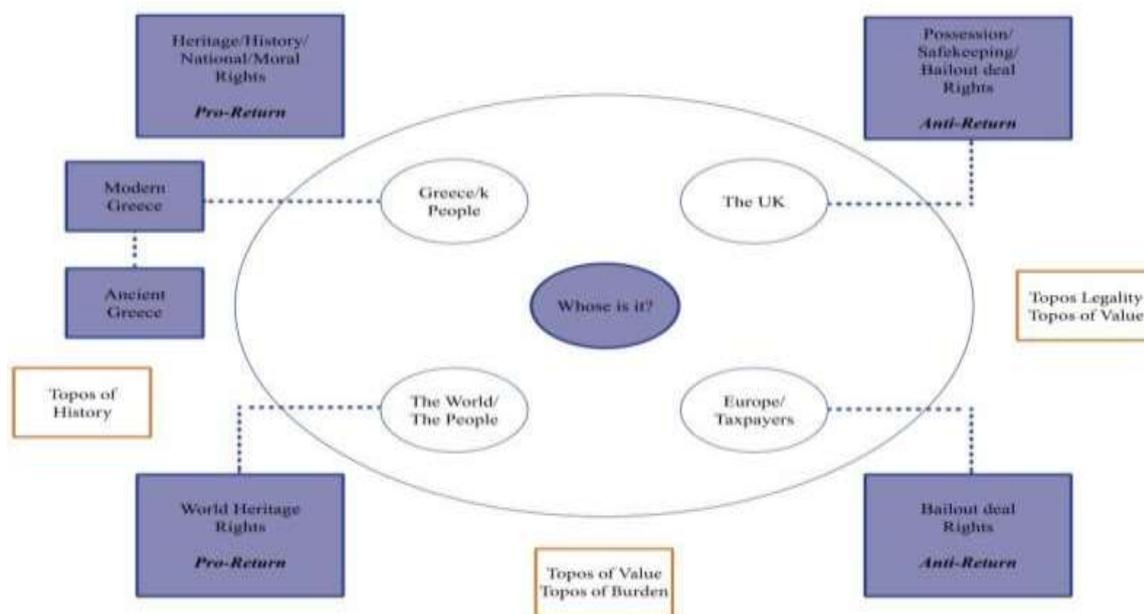
¹⁰ European Commission, Protection against illicit trafficking, <https://culture.ec.europa.eu/cultural-heritage/cultural-heritage-in-eu-policies/protection-against-illicit-trafficking>

only from the Balkan countries but from other cultures as well (eg. Vikings¹¹, ancient Maydos¹²).

Occurrence and Causes

If culture is both a tangible and an intangible part of a group's identity, one must ask why cultural assets are being destroyed. According to a Professor of International Law, Tom Dannenbaum, the motives for destroying cultural property can be categorised into three types. Perpetrators destroy cultural property with one or more of the following intentions: eradicate, displace, or reframe of a population.¹³

Another aspect that should also be considered is the looting of cultural property. Mostly private collectors, but also states, are lured into looting these cultural goods and involving them in their either private or public collections. Nevertheless, Romanian authorities also claim that most of the cultural goods are being circulated on an illicit trafficking of cultural property and then in international smuggling routes.



The Parthenon Marbles

Figure 1. Negotiation of ownership

The circumstances in which the excavations occurred, as aforementioned, were during the crisis. Specifically, one very famous example of excavation would be the so-called Elgin

¹¹ Konstantin Kolev Jr., Visual material evidence of Viking presence in the Balkans, Medievalists.net, 2015, <https://www.medievalists.net/2020/04/vikings-balkans/>

¹² Artifacts show ancient Maydos was 'gateway to Europe', 2019, <https://www.hurriyetdailynews.com/artifacts-show-ancient-maydos-was-gateway-to-europe-148573>

¹³ Interview with Tom Dannenbaum, November 8, 2017

Marbles (also known as the Parthenon Marbles). Lord Elgin removed in an extremely violent way the sculptures after having been granted permission by the ambassador of the Ottoman Empire.¹⁴ The Greek government has frequently demanded the return of the sculptures, yet the legal framework, financial factors, and safekeeping are hindering the process.

The Legal Framework

As in the bordering regions of Eastern Europe and the Eastern Mediterranean, the former Yugoslavia has basic laws, significant reforms. Still the intricacies of the laws and the peculiarities of their implementation range across the region. However, the wording and spirit of the law has been similar and unambiguous throughout the region since at least 1948.

In international law, cultural heritage encompasses a wide range of concepts. The role of cultural heritage in a country's international relations and the instruments available in international law for its protection and valorisation. Two areas in particular are mentioned: the vulnerability of cultural property to trafficking and the tension between the protection of cultural heritage and economic law and development. The vulnerability of cultural heritage persists in situations where there are no violations of international or domestic law, so this must be taken into account when designing policy and legal instruments, especially given the nature of tangible and intangible culture as irreplaceable goods.

Ownership versus Heritage

Cultural objects have a dual nature, as is illustrated by the two ways they are referred to: either as 'cultural property' or as 'cultural heritage'. Similarly, disputes over lost cultural objects can be approached as a matter of stolen property or as lost heritage: this activates different norms. Whereas property and its ownership are mainly regulated by national private law, norms protecting heritage are predominantly of a public international law nature.

Major differences exist, most notably between common and civil law jurisdictions, with many variations on the theme of whether and how title over a (stolen) good can be transferred to a new possessor. Where misappropriated cultural property is concerned, the situation becomes even more fragmented as stolen artefacts tend to surface only years or decades later, by which time they may have crossed many borders. At that point, private international law should guide judges to a just outcome. One great problem occurs at this level. Ownership disputes regarding movable goods are regulated by the law of the country where the object is located at the time of a transaction.

¹⁴ Kerry Kolasa-Sikiaridi, The History of the Parthenon Marbles, 2021, <https://greekreporter.com/2021/09/04/the-history-of-the-parthenon-marbles/>

From a heritage point of view, cultural objects are valued because of their intangible value to people: as symbols of an identity. Throughout history and in most cultures, objects that are meaningful to the community, enjoy special legal status.

Thus, the European Added Value Assessment (EAVA), outlines potential legal action that could be taken at the European level in order to contribute to resolving the legal uncertainties linked with restitution claims concerning looted works of art and cultural goods.

Kosovo-Serbia Dilemma

1,247 artefacts from Kosovo's public museum collection were stolen from the National Museum of Kosovo by the Serbian Academy of Sciences during the war (1998-99). It was part of the Serbian project of genocide against Albanian history/identity, alongside the destruction of over 1,000 cultural heritage sites, The Kosovo minister said that nearly 24 years later, the collection is still wrongly and illegally kept in Belgrade museums. According to an agreement, which was made during wartime, the two sides agreed upon the fact that the artefacts would be taken from the Serbian Government for only a temporary exhibition. However only one of them has returned to the National Museum of Kosovo. The situation becomes even more difficult, due to the mutual non-recognition, both parties remain on.¹⁵

Bosnian War

At the armed conflict in 1992-1996 in Bosnia and Herzegovina there was undeniable and widespread demolition of cultural and religious heritage. Governmental bodies, institutions, local communities and organisations reported such destruction. Due to this crisis a major route for the illicit trafficking of looted and stolen art and antiquities flourished and an enormous amount of cultural property was looted. So far, this has not been adequately addressed either in detailed documentation of lost objects or in investigations of the removal, destination and whereabouts of looted cultural property.

Convention for the Safeguarding of the Cultural Heritage

This convention aims to raise public awareness of the importance of preserving the world's cultural diversity from the homogenising effects of globalisation. The tendency of States parties to use the 2003 UNESCO Convention for the Protection of Cultural Heritage as a political tool for state building. Because they have overall control and authority over the administration and implementation of this Convention, States parties often use it to promote an official version of the intangible heritage to promote national identity and unity. Such state dominance can, in some cases, lead to increased state control over minority

¹⁵ Relaunching the Kosovo-Serbia Dialogue, 2021

<https://www.crisisgroup.org/europe-central-asia/balkans/kosovo/262-relaunching-kosovo-serbia-dialogue>

heritage and contribute to the appropriation of their heritage as national heritage, which becomes a means of rejecting their identities and cultures.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

United Kingdom

Even though the British Museum is facing many demands for the restitution of the looted cultural goods to take place, only very few of them have actually been repatriated. In fact, the trustees of the British Museum cannot at law give back the item – regardless of the circumstances of its acquisition¹⁶. Specifically, the British Museum Act of 1963 prevents the museum from permanently removing objects from its collections¹⁷. In addition to that the British Museums position (here for the Parthenon Marbles) directly quotes: “We share this collection with the widest possible public, lending objects all over the world and making images and information on over four million objects from the collection available online.”¹⁸

Greece

More than 8,500 Greek antiquities of incalculable value are found abroad today. The Greek Government has over the years demanded multiple times the repatriation of the cultural goods from several countries such as: The United Kingdom, France, the United States of America.

Serbia

Despite the Dialogue between those two countries in 2011, no progress has since been made, other than the one small figurine.

Kosovo

The Serbian Ministry of Culture and Information believes that Kosovo is trying to falsify history and artificially create an identity

Bosnia and Herzegovina

Bosnia and Herzegovina is highly vulnerable to the degradation and destruction of archaeological sites, as well as trade in cultural assets, which hampers culture's potential to

¹⁶ The British Museum, looted artefacts, and the law,2021, <https://davidallengreen.com/2021/05/the-british-museum-looted-goods-and-the-law/>

¹⁷ Barnaby Phillips, THE WISH TO RETURN OBJECTS, FORBIDDEN BY LAW, <https://www.goethe.de/prj/zei/en/pos/22450380.html>

¹⁸ BM, The Parthenon Sculptures <https://www.britishmuseum.org/about-us/british-museum-story/contested-objects-collection/parthenon-sculptures>

foster economic development and poses a threat to collective memory. Nonetheless no formal claims for restitution of looted cultural property have been made by governmental or institutional authorities.¹⁹

BLOCS EXPECTED

Bloc I

In the first block, delegates of countries that have been looted of their cultural property should gather. The delegates should discuss their restitution rights and claims, announce their demands from the other party and find compromises.

Bloc II

The second block should consist of delegates of countries that keep foreign cultural property. They are expected to elaborate on reasons why it is important that the countries keep the artefacts.

TIMELINE OF EVENTS

Date	Description of Date
1801-1816	The Parthenon marbles were removed, taken to the UK, and lastly sold to the British Government
14 th May 1954	First protocol of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflicts
14 th November 1970	UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

¹⁹ Helen Walasek, ARCA's blog: Fighting Art Trafficking and Art Crime in Bosnia: the work of CPKU, 2017 <https://www.cpkku.org/arcas-blog-fighting-art-trafficking-and-art-crime-in-bosnia-the-work-of-cpkku/>

6 th April 1992	Beginning of the Bosnian War.
17 th May 1992	Shelling of the Oriental Institute in Sarajevo
25-26 th August 1992	Bosnia's National and University Library was shelled and burned from Serbian nationalists
15 th March 1993	The European Parliament and Council Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State
24 th June 1995	Convention on Stolen or Illegally Exported Cultural Objects
14 th December 1995	End of Bosnian Wars
26 th March 1999	Second protocol of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflicts
18 th December 2008	Council Regulation (EC) No 116/2009 on the export of cultural goods ensures uniform controls at the EU's external borders
December 2014	Foundation of the Center against trafficking in works of art (NGO)
17 th April 2019	Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods.
2019	Study on Preventing and Fighting Illicit Trafficking in Cultural Goods in the European Union

2014-2020	EU Programme implemented by UNESCO, focuses on protecting cultural heritage in the Western Balkans, by reinforcing the fight against illicit trafficking of cultural property
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RELEVANT RESOLUTIONS, TREATIES AND EVENTS

The proposed legislative measures include, inter alia, establishing a general in rem jurisdiction (based on the location of the property and the principle that Cross-border restitution claims of looted works of art and cultural goods -enforcement follows property rather than person) for movable property (not only limited to cultural objects); harmonising anti-seizure statutes across EU Member States; introducing a general prohibition of sale and acquisition for stolen and illegally exported/imported works of art and cultural goods, and complementary measures such as setting-up an EU department or self-standing agency on the protection of looted works of art or cultural goods, and supporting provenance research at the European level. The EAVA argues that the adoption of such measures would create a more certain EU legal system for restitution claims of works of art and cultural goods looted in armed conflicts and wars. Legal certainty, accompanied by complementary measures, such as support for provenance research at the European level, would constitute an added value in itself. It would also help to reduce costs, such as those incurred in ensuring robust results of provenance research or additional legal fees due to the cross-border context.

The International Criminal Tribunal for the former Yugoslavia

The International Criminal Tribunal for the Former Yugoslavia (ICTY) is a United Nations court coping with war crimes committed during the Balkan conflicts of the 1990s. In the former Yugoslavia, hundreds of religious and cultural sites were methodically destroyed in order to eradicate the culture of specific groups in certain areas. From its very first cases, the ICTY has affirmed that the destruction of cultural heritage is a crime under global international law. The ICTY also found that systematic crimes against cultural heritage can constitute crimes against humanity, "for all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects".²⁰

²⁰ United Nations, International Criminal Tribunal for the former Yugoslavia
<https://www.icty.org/en/about/tribunal/achievements>

In 2001, the Court indicted four defendants for crimes committed during the 1991 siege of the Croatian coastal city of Dubrovnik. While the indictment and successive trials incorporated charges of murder and inhumane treatment of civilians, the deliberative damage to this UNESCO World Heritage Site played the primary role in both the evidence and the public perspective of these trials. This was the first occasion that crimes against cultural heritage were the focus of an international criminal case.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

What is decisive is that, when considering these international and European legal instruments as a whole, private law plays a subordinate role for claims for the return of stolen art and cultural assets. The focus so far has been on international law. Small exceptions in the field of private law are partly the UNIDROIT Convention and the EU Regulation 1215/2012, which relate to civil claims for the recovery of a cultural property.

Despite these tools, there is no effective standard regime to deal with the legal downsides arising from the cross-border nature of claims for the return of looted art and cultural property. The lack of an effective (international and European) private law framework to reinforce such restitution claims is a general weakness. In addition, there is a multitude of specific weaknesses within the EU legal system that led to an uncertain legal situation: no uniform or harmonised definition of cultural property and regulatory fragmentation; fragmentation of anti-seizure legislation and unclear link between national anti-seizure legislation and EU Directive 2014/60; different substantive legislation and selection of law rules in EU Member States.

POSSIBLE SOLUTIONS

One of the most important things to do would be the establishment of specialized police units solely dedicated to crimes related to cultural property, as well as dedicated databases of stolen works of art directly linked to INTERPOL's database²¹. The importance of specialized units in supporting member countries in tackling crimes related to culture, has been highlighted on several occasions and events.

Apart from that, in order to enhance the legal, technical and institutional capacities and frameworks of key stakeholders in the fight against illicit traffic of cultural property, the wide public can be informed regarding the value of cultural heritage, as well as the damage

²¹ Stolen Works of Art Database, <https://www.interpol.int/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database>

it has suffered in previous years – especially in the Balkan region. In this way one can also raise awareness on the need for and importance of protecting cultural heritage.

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