

CONFERENCE REPORTS

General Assembly at Its 54th Session Adopts Resolution on the Return and Restitution of Cultural Properties without a Vote

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On 17 December 1999 the United Nations General Assembly adopted its biannual resolution on the return or restitution of cultural properties to the countries of origin (General Assembly Resolution 54/190, *below*) without a vote for the first time since the beginning of the debate in 1972. Previous texts had regularly been submitted to a vote in the General Assembly and had drawn a considerable number of abstentions,¹ mostly from art-importing member states. What at first sight may appear as a breakthrough, however, is owing not so much to a change of well-established positions as to far-reaching changes in the text that finally allowed even those countries that had up until then been critical of the resolution to agree to it.²

The main sponsor of the resolution, which had been introduced and run for the past twenty-six years by the Democratic Republic of the Congo (formerly Zaire), was now Greece. Unlike their predecessors in previous years, the Greeks were from the beginning keen to carry out extensive negotiations with all interested States and were able, after a number of amendments to their original draft, to garner much broader support for the resolution than ever before.³ Whereas resolutions 50/56 (1995) and 52/24 (1997) had been cosponsored by no more than seventeen and twenty-four Member States, respectively, the new text drafted by Greece was able to attract thirty-seven cosponsorships from among the Member States of the United Nations. Having had an opportunity to participate in the negotiations, none of the States that in earlier times had been critical of the text and had abstained felt compelled to call for a vote this time.

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1 MAIN FEATURES OF THE RESOLUTION

The new text finally agreed to by all States differs considerably from previous versions, although it has to be recalled that the resolution had already undergone a major restructuring in 1995. The scope of both the preamble and the operative part is broader than before, as the resolution now for the first time also refers to the dangers to which cultural property is exposed “in areas of armed conflict and territories that are occupied” (preambular paragraph); it reaffirms the importance of the provisions of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, welcomes the adoption of the 1999 Second Protocol to the Convention, and invites all Member States that have not yet become parties to those instruments to consider doing so (operative paragraphs 2 and 3).

Equally new is a reference to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (preambular paragraph 4, operative paragraph 4).⁴ The General Assembly reaffirms the UNIDROIT Convention’s importance and invites Member States to consider becoming parties to it.

As far as the traditional reference to the 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership (preambular paragraph 5) and praise for the work accomplished by UNESCO and the Intergovernmental Committee (operative paragraph 1) is concerned, the text uses the same wording as in previous years, since these parts of the resolution have actually never been controversial.

The most remarkable change is to be seen in the scrapping of the old formula whereby the General Assembly had for many years reaffirmed that the restitution to a country of its objets d’art, monuments, museum pieces, and other cultural or artistic treasures would contribute to the strengthening of international cooperation (*cf.* operative paragraph 2 of G.A. Res. 52/24 and 50/56). Indirect as this request had been, it could still be interpreted as calling on States to return certain cultural property to its country of origin. The General Assembly’s call for action is now transformed into a general call upon “all relevant bodies, agencies (etc.) of the United Nations system and other relevant intergovernmental organizations to work in coordination with UNESCO, within their mandates, and in cooperation with Member States, in order to continue to address the issue of return and restitution of cultural property.” We see here the last step of a gradual change of focus over the past twenty years: Whereas before the States had for many years been the main addressees of the operative part, it is now the relevant bodies of the United Nations—within their mandates and only “in cooperation with” Member States—who are requested to take action, if “to work in order to continue to address the issue of return and restitution” can be called action at all. This is truly a far cry from the bold language that was used in the late 1970s, when the General Assembly invited “Member States to take

all possible steps for the restitution and return of cultural and artistic property, . . . , through, inter alia, the establishment of bilateral arrangements,"⁵ and it is still much weaker than the appeal the General Assembly addressed to Member States in the 1980s, when it asked them "to co-operate closely with the Intergovernmental Committee for the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation and to conclude bilateral arrangements for this purpose."⁶ The only call directed expressly to States is now to be found in operative paragraph 6, where the General Assembly "invites Member States to continue drawing up . . . systematic inventories of their cultural property."

In addition, UNESCO is called upon to encourage the linking of databases and identification systems that may exist in Member States or at international organizations to allow for the electronic transmission of information on cases of loss of or illicit trafficking in cultural property. From a practical point of view, this provision, which at first sight looks rather technical, may prove to be one of the most efficient tools to identify and trace lost cultural property and to alert the international art market.

Finally, the careful reader will not fail to notice a slight shift of focus in the division of labour between the Secretary-General and UNESCO when it comes to implementing the resolution (operative paragraph 8). Whereas in previous years the request to continue to develop all possibilities for bringing about the attainment of the objectives of the resolution was addressed to the Secretary-General in collaboration with UNESCO, those roles are now reversed: the resolution now merely requests the Secretary-General to cooperate with UNESCO in *its* efforts to this regard, thus assigning the lead role in this field to UNESCO rather than to the Secretary-General. But the resolution here only acknowledges what had been practice for many years. The Secretary-General actually never acted independently in this field, and the report that had been requested from him every second year had in reality never been more than a cover note by which he forwarded the report of the Director-General of UNESCO to the General Assembly.⁷

2 CONCLUSIONS

In the twenty-seven years since this item first appeared on the agenda of the General Assembly, the text of the resolution changed many times, sometimes quite dramatically, before it finally found the support of all Member States. Critics may say that in terms of "calls for action" it has been depoliticized and watered down beyond recognition. On the other hand, it does not help the issue if a discussion that has stretched out for more than a quarter of a century does not lead to agreement at least on a technical procedure how to deal with the problem. This is what the new 1999 consensus text finally achieves. It is of a rather procedural character and ac-

knowledges the different roles of all players, States and international organizations alike, and limits the role of the General Assembly to reminding them of their responsibilities and taking note of the results of their work. It leaves the concrete action to those under whose competence the issue belongs in the first place: UNESCO and its Intergovernmental Committee.⁸ It is here at the expert level where practical cases are sometimes dealt with quite successfully, as the report clearly shows.

NOTES

1. G.A. Res. 50/56 of 1995 was adopted by a vote of 124 to 0, with 24 abstentions, G.A., Res. 52/24 by a vote of 87 to 0, with 23 abstentions.
2. For an account of G.A. Res. 50/56 (11 Dec. 1995), see Thomas Fitschen, United Nations General Assembly Discusses the Return and Restitution of Cultural Property to the Countries of Origin at its 50th Session, 1995, 5 *International Journal of Cultural Property* 324 (1996).
3. For the debate see U.N. Doc. A/54/PV.84.
4. For the text, see 5 *International Journal of Cultural Property* 155 (1996).
5. G.A. Res. 33/50 (14 Dec. 1978), adopted by a recorded vote of 127 to 0, with 13 abstentions.
6. G.A. Res. 44/18 (6 Nov. 1989), adopted by a recorded vote of 139 to 0, with 16 abstentions.
7. Cf. the report entitled "Return or Restitution of Cultural Property to the Countries of Origin: Report of the Secretary-General," U.N. Doc. A/54/436 (4 Oct. 1999); previous report, U.N. Doc. A/52/211 (25 June 1997).
8. A description of the work of the Committee and the full text of its recommendations and resolutions are brought to the attention of the General Assembly in the Report by the Secretary-General, *supra* note 7; Jan Hladik, Ninth Session of the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation, 6 *International Journal of Cultural Property* 151 (1997).

The Restitution of the Parthenon Marbles and the European Union: A Historical-Cultural-Legal Approach

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The Parthenon sculptures now in the British Museum have been surrounded by controversy since shortly after their removal from Greece at the beginning of the nineteenth century. Originally a part of the Parthenon, a sanctuary to Athena built during Pericles' rule on the Acropolis dominating Athens, the sculptures are a high point of Greek classical culture. The question of whether they remain in England or are returned to Greece has become the lightning rod for restitution issues, the center of the critically important debate about where cultural property should reside.

The Parthenon, which was used as a church in the fifth century and later as a mosque, was converted, along with the Acropolis, into a fort in the fifteenth century, after Greece became part of the Ottoman Empire. In 1687 the Parthenon, until then in good condition, was severely damaged when a Venetian cannonball hit munitions stored in the building. The Parthenon and its sculptures suffered further depredation thereafter, from 1750 on mainly from tourists, who acquired sculptures as souvenirs from the Ottoman soldiers garrisoned on the Acropolis.

When Lord Elgin became England's ambassador to the Sublime Porte in 1799, he privately sought to have the Parthenon and its sculptures copied through drawings and casts. Frustrated by the local authorities, Elgin used his position as an ambassador, then much in favor due to England's chasing the French out of Ottoman Egypt, together with bribes to obtain letters authorizing, among other things, the "liberty to take away any sculptures or inscriptions which do not interfere with the works or walls of the Citadel." Elgin's men aggressively used the opportunities this

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provided to remove most of the remaining frieze, fifteen of the metopes, and a substantial part of the pedimental sculptures, causing further damage to the Parthenon and some of the sculptures.

With the 200th anniversary of their removal fast approaching, the debate about whether the sculptures should now be returned to Greece is heating up. That debate began with Byron's poetic attack on Elgin, followed by the British Parliament's 1816 inquiry on the propriety of purchasing the sculptures for the British Museum. Since its independence in 1830, Greece has continued with periodic entreaties for their return, most strongly voiced by Melina Mercouri when she was Greece's Minister of Culture, with a formal demand made to the English government in 1983, followed by a request to UNESCO for international assistance to resolve the matter—both rejected by England and the British Museum. The claim that the sculptures should be returned was reinforced by the recent release of previously sealed documents concerning the museum's improper cleaning of the sculptures in the 1930s. Additional impetus for prompt restitution comes now from Greece's selection to host the Olympic Games in 2004 and its renewed efforts at diplomatic contact, which has led a Select Committee of the Parliament to consider the matter.

The conference, entitled "The Restitution of the Parthenon Marbles," was clearly intended as another step furthering Greece's long quest for the sculptures' return. Sponsored by Greek cultural organizations under the auspices of the Greek Ministry of Culture and the UNESCO National Committee, nearly 100 participants were invited to Athens to discuss the situation. The conference began with an evening of entertainment and dinner, replete with dignitaries and political speeches. During the next two days, forty-two speakers from eleven countries presented approximately fifteen-minute papers, leaving little time for questions or discussion. About half of the speakers were Greek or members of organizations formed to obtain the sculptures' return. Not surprisingly, given the conference's title, place, and sponsorship, there was substantial sympathy for Greece's attempt to obtain the sculptures' return, with about three-quarters of the speakers favoring prompt repatriation, about eight, including William St. Clair, not expressing personal views, and only four speakers indicating reservations about restitution.

A key question is to what extent the conference, perhaps the most elaborate on the topic, furthered the debate. As its sponsors plan to promptly publish the presentations in full, interested readers should soon be able to determine this for themselves. Until then, a brief outline of the presentations and, more important, a general sense of the debate should be helpful. As is perhaps often the case with such meetings, the ultimate importance of the conference may be less in its words than in what it showed about the current state of affairs and how it might affect future approaches to the underlying matter.

Discussion of the Parthenon sculptures, described as the heart and soul of Greece and the Greek people, has always been emotional. Their removal and now the difficulties in obtaining their return have engendered strong feeling, almost as much on the part of those who champion their retention by the British Museum as those who seek their repatriation. If nothing else has changed, the passage of time and the long course of past discussions should have clarified the emotional aspects of the debate.

At the conference, impassioned, heartfelt calls for the sculptures' return predominated. However, little was said to explain the emotional claim other than that as some of classical Greece's greatest and best-known public artistic achievements, the sculptures are an inalienable part of Greek history, inherently belong to Greece and the Greek people, and, although they cannot again be placed on the Parthenon, are most appropriately viewed in Athens, as close to their original context as possible. The problem with this argument is that it is not convincing and of limited value to those not already committed to the sculptures' return. Perhaps this is the nature of long-discussed elemental disputes: either one preaches to the converted or one's pleas fall on deaf ears. However, as the most renowned argument for returning a culture's property, the issue is one politicians, museum professionals, cultural administrators, archaeologists, collectors, and other interested parties approach on tenterhooks, concerned that, no matter how different or deserving, the innumerable other claims for restitution will all be equally affected by this paradigm case.

Although emotion was foremost, additional reasons and new facts were presented to further the case for return, along with restatements of prior arguments about the illegality and immorality of the original taking. Speakers analyzed and discussed the limited documentation alleged to support the Ottoman grant of authority for the sculptures' removal and generally concurred that, whatever Elgin obtained, it was not a "firman" or official governmental authorization for the sculptures' removal, and that its unofficial translations provided little, if any, legal justification for Elgin's conduct. There were also lengthy presentations on the effect of the unauthorized cleaning of the sculptures and other failures in the British Museum's stewardship, which, together with reports on Greece's expertise and efforts in these matters, was viewed as calling into question England and the British Museum's moral claim to retain the sculptures and as strengthening Greece's claim that it would be a better, more appropriate custodian. In addition, the English government's inconsistencies in forthrightly dealing with Greece's claim, as well as its intransigence, paternalism, and general unwillingness to discuss the matter, was unfavorably compared with Greece's willingness to open discussions and its apparent sensitivity to the problem that the sculptures' return could set a precedent that eventually might empty the world's museums.

On the other side, the few voices that questioned the sculptures' return argued that history alone was not itself a reason, and that, as the sculptures could not be placed on the Parthenon, neither were there any art-historical grounds for return.

More generally, Greece and the rest of the world were said to have been well served by the sculptures' availability outside of Greece, and, it was maintained, the sculptures now had their own history and place in the world's culture and could not properly be thought of as solely Greek or independent of other interests and concerns. Finally, because of the sculptures' immense importance and unique position as the world's most notable example of cultural property, all aspects and issues needed to be thoroughly explored and comprehensively dealt with lest the sculptures' return create the next generation's cultural property problems.

In addition to this continuation of the traditional debate, there were presentations concerned with neutral scholarly issues (such as the sculptures' original meaning and that changes to the Parthenon over time have made it something more and other than a purely classical Greek monument), as well as the changing legal and political context (such as increasing international sensitivity to cultural property issues). Thus it was clear that the debate itself was affected by the changing world and context in which it took place. What seemed most relevant, however, was that notwithstanding scholarly and other developments, the legal framework for resolution remained limited, and a political solution was probably the only viable grounds for progress. As a result, it seems likely that the legal, moral, and scholarly concerns will either be part of a political settlement or continue as unresolved points in the debate. Consequently, as noted in concluding remarks, it was most unfortunate that the British Museum declined to send a representative, that no (especially no conservative) member of Parliament was invited to attend, and that no report was given on the status of the museum to be built in Athens to house the sculptures upon their return.

Notwithstanding the omissions, the conference sponsors were clearly perspicacious and likely to be well rewarded. Publication of the presentations can be expected to keep the issue alive and create further pressure for resolution, and, what often seems most important in matters of politics, could further Greece's public relations and affect public opinion. Nevertheless, the question remains whether there was any real progress on the complex of difficult and emotional issues surrounding the underlying controversy of whether the sculptures should be returned. What are Greece's proper claim and that of the rest of the world? Is the British Museum to be condemned or thanked? What are the remaining valid concerns that need to be addressed? How should the cultural takings that are the remaining vestiges of colonialism to be dealt with? What and how much of the plunder of the past should now be undone? What is the real importance to cultures and identities of such emotionally laden symbolic objects as the sculptures? And, most important in the exemplary case of the Parthenon sculptures, what will be the effect of their return on such critical and still-open questions?

While the conference was not intended—and did little—to address these broad issues, I think it was nevertheless important and successful. This was owing at least as much to the fact that there was discussion as to what was discussed.

Thus, I suspect that those invited to continue the pressure for restitution will realize that more is likely to be accomplished by addressing the non-Greek concerns about the sculptures' return. And for those few still implacably against restitution, there seems little doubt that the issue is no longer over whether but when. In short, the real benefit of the conference seems to have been the implicit recognition that the issue of repatriation is not going away and must be dealt with. Moreover, the conference itself exemplified how much change has already occurred, from the irate emotional statements and measured legal and moral analyses of the 1980s to the present understanding of the now inherently political nature of the issue. For those seeking return, the remaining issues need to be faced; for those opposed to it, whatever is relevant in their position needs to be clarified. Unquestionably, the discussion has advanced: things are changing, and the two sides are getting closer. Both now need to be more open and forthright in dealing with what remains; otherwise both sides are likely to do worse than now seems possible.

In this I see hope in what seems most difficult and perplexing about cultural property disputes: their highly emotional, intractable nature. This was indirectly addressed by the final speaker, a member of the University of Athens School of Philosophy, one of the sponsors, who told a story about the taking of cultural property from a Greek city-state during classical times. The leader of a vanquished polis whose heritage was taken was asked why he was not more depressed about what had happened. His response was that the taking recognized his city's achievements, which would now be seen elsewhere and be recognized by others. That is, cultural achievements are not destroyed or diminished if shared, but, like knowledge, grow when appreciated by others. Would that the story were true and could be repeated today! As it indicates, at bottom, emotions are the real issue. Little may be lost by being shared. Perhaps when the only difference between London's or Athens's having the Parthenon sculptures is emotional—when there is no critical difference between the two cities—then the sculptures can be uncontroversially returned. That is, when the only issue that remains in such a symbolic matter is emotion, the side with the strongest emotional connection should have its day.