

The «First Time Instance» as Regards Restitution of Removed Cultural Properties

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1. Introduction

A rule of customary international law is commonly believed to consist in «a general practice accepted as law», as stated in Art. 38, para. 1, *b*, of the Statute of the International Court of Justice. In studying the process that leads to the creation of a new customary rule where no rule existed or the replacement of an old rule by a new one, particularly important is the «first time» instance, that is the case when the need for a new regime is publicly manifested for the first time. As such a need cannot be grounded on legal precedents, for the simple reason that they do not exist, reasons of moral, political, social, economic or cultural character are often put forward to explain the innovation and make it acceptable for other States.

The first antecedent of present debates on the return of removed cultural properties to their States of origin¹ can be found in a diplomatic mission made in 1815 by the Italian sculptor Antonio Canova (1757-1822).

¹ For more elaboration on the general questions related to restitution of cultural properties see MEYER, K. E. *The Plundered Past*. New York, 1973; NAHLIK, S. «La protection internationale des biens culturels en cas de conflit armé, in Recueil des cours de l'Académie de Droit International de la Haye», vol. I, 1967, p. 65; SIEHR, K. «International Art Trade and the Law», *ibid.*, VI, 1993, p. 9; KOWALSKI. «Restitution of Works of Art pursuant to Private and Public International Law», *ibid.*, vol. 288, 2001, p. 9; FRIGO, M. *La protezione dei beni culturali nel diritto internazionale*. Milano, 2007; SANDHOLTZ, W. *Prohibiting Plunder: How Norms Change*. Oxford, 2007; NAFZIGER, J.A.R. & T. SCOVAZZI (eds.). *Le patrimoine culturel de l'humanité – Cultural Heritage of Mankind*. Leiden, 2008; VRDOLJAK, A. *International Law, Museums and the Return of Cultural Objects*. Cambridge, 2008; PROTT, L. (ed.). *Witnesses to History – Documents and Writings on the Return of Cultural Objects*. Paris, 2009; NAFZIGER, J.A.R. & A.M. NICGORSKI. *Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce*. Leiden, 2009. On the concept of cultural heritage see FRANCIONI, F. *A Dynamic Evolution of Concept and Scope: From Cultural Property to Cultural Heritage*, in YUSUF, A. (ed.). *Standard-Setting in UNESCO – Normative Action in Education, Science and Culture*, I. Paris, 2007, p. 221.

2. Canova's Journey to Paris

The French revolutionaries discussed whether works of art deserved to be destroyed as memories of the shameful age of tyrannies or should be preserved as such to help nations to progress in new directions. For instance, on 14 August 1792 the National Assembly adopted a decree relating to the destruction of monuments representing feudality. It was based on the assumption that objects which embodied pride, prejudice and tyranny should not be kept under the eyes of the French people and, if made of bronze, could more usefully be converted into cannons:

L'Assemblée nationale, considérant que les principes sacrés de la liberté et de l'égalité ne permettent pas de laisser plus longtemps sous les yeux du peuple français les monumens élevés à l'orgueil, au préjugé et à la tyrannie;

Considérant que le bronze de ces monumens, converti en canons, servira utilement à la défense de la patrie, [...]².

However, while the fate of certain monuments was unquestionably decided, the objects which were of essentially artistic value could have the chance to be preserved:

Les monumens, restes de la féodalité, de quelque nature qu'ils soient, existant encore dans les temples et autres lieux publics, et même à l'extérieur des maisons particulières, seront, sans aucun délai, détruits à la diligence des communes (Art. 3).

La commission des monumens est chargée expressément de veiller à la conservation des objets qui peuvent intéresser essentiellement les arts, et d'en présenter la liste au Corps-Législatif, pour être statué ce qu'il appartiendra (Art. 4).

In the end the view prevailed that France had the right and even the duty to «free» the works of art held by royal or religious oppressors in other countries and to exhibit them to the public in the national museums, beginning with the Louvre. This is the reason why the treaties concluded by France with defeated countries in Italy, such as those with the Papal State (Armistice of Bologna of 5 Messidor IV / 23 June 1796³ and Peace Treaty of Tolentino of 1st Ventôse V / 19 February 1797⁴) and others⁵,

² Text in DUVERGIER, J.B. *Collection complète des lois, décrets, ordonnances, réglemens, avis du Conseil-d'Etat* etc., 2nd ed. Paris, 1834, p. 305. See, in general, POMMIER, E. *L'art de la liberté – Doctrines et débats de la Révolution française*. Paris, 1991.

³ Art. VIII: «Le pape livrera à la république française cent tableaux, bustes, vases, ou statues, au choix des commissaires qui seront envoyés à Rome; parmi lesquels objets seront notamment compris le buste de bronze de Junius Brutus et celui en marbre de Marcus Brutus, tous les deux placés au capitole; et cinq cent manuscrits au choix des mêmes commissaires» (PARRY, C. *Consolidated Treaty Series*, vol. 53, p. 128).

⁴ Art. XIII: «L'article VIII du traité d'armistice signé à Bologne, concernant les manuscrits et objets d'arts, aura son exécution entière et la plus prompte possible» (*ibid.*, p. 489).

⁵ For example, the treaty of 20 Floréal 4 (9 May 1796) between France and Parma (Art. IV: «Il [= Le Duc de Parme] remettra vingt tableaux, au choix du général en chef, parmi ceux existans aujourd'hui dans le duché»),

included, as a fig leaf of legality, provisions on the right to remove a certain number of cultural properties chosen by French generals or commissions⁶.

In 1815, after the fall of Napoleon, Pope Pius VII sent Canova to Paris as his special envoy to King Louis XVIII in the attempt to recover the one hundred works of art and five hundred manuscripts delivered by the Papal State to France under the treaty of Tolentino. Although the question had been discussed, the instruments adopted within the framework of the Congress of Vienna (1815) did not provide explicitly for the return of cultural properties to the territories they had been taken from by France.

Canova was known and celebrated everywhere in Europe for his outstanding artistic talent and personal qualities. He had been working for the most important private and public purchasers, including Venetian and English noblemen, the popes, Napoleon and his family, the emperor of Austria, the kings of Naples and of Bavaria, the tsar of Russia. The fact that one of Napoleon's favourite artists⁷ was later in charge of recovering the masterpieces removed by the former French emperor himself should not be seen as a change in human inclinations, but simply as confirmation that the merit of art goes beyond the fate of the protagonists of history.

Yet Napoleon's habit of removing works of art from defeated countries was criticized even at the time of the height of his glory. One of Canova's most powerful allies in his mission was a booklet published in 1796 by the French scholar Antoine-Chrysostome Quatremère de Quincy (1755-1849), containing seven letters on the prejudice that would be caused to arts and science by the removal of monuments of art from Italy. In this work, re-published in Rome in 1803 and 1815, Quatremère took a clear position against the spoliation of the Italian territories⁸.

the armistice of 23 Floréal 4 (12 May 1796) between France and Modena (Art. III: «Le duc de Modène sera tenu de livrer vingt tableaux à prendre dans sa galerie ou dans ses états, au choix des citoyens qui seront à cet effet commis») and the armistice of 16 May 1797 between France and Venice (secret Art. V: «La république de Venise remettra enfin aux commissaires à ce destinés vingt tableaux et cinq cent manuscrits au choix du général en chef»).

⁶ «Il n'en était fait aucun mystère. [...] Les comités chargés de diriger l'entreprise menaient leurs opérations en toute clarté, et les chefs-d'oeuvre pillés étaient reçus à Paris avec le faste et les honneurs qu'ils méritaient. Ils étaient exposés au Louvre pour témoigner de glorieuses victoires, puis envoyés dans des musées de province, sauf s'ils étaient de très grande valeur» (POMIAN, K. *Biens culturels, trésors nationaux, restitution. Museum International*, No. 228, 2005, at 87).

⁷ See, among Canova's works, the bronze statue of Napoleon (Brera Palace, Milan) and the marble statue of Paolina Bonaparte (Borghese Gallery, Rome). In 1802 Canova personally complained to Napoleon about the spoliation of works of art from Italy: D'ESTE, A. *Memorie di Antonio Canova*. Firenze, 1864, p. 127.

⁸ QUATREMERE DE QUINCY, A.C. *Lettres sur le préjudice qu'occasionneraient aux Arts et à la Science, le déplacement des monumens de l'art de l'Italie, le démembrement de ses Ecoles, et la spoliation de ses Collections, Galeries, Musées, etc.* Rome, 1815 (published for the first time in 1796; the 1815 edition, which Canova took with him to Paris, is used for the quotations in the following footnotes).

The purposes of Quatremère's booklet are clearly limited to the specific case of Rome. Nevertheless a broader scope can be attributed to his thoughts. According to Quatremère, a sort of «republic of arts and sciences» (*république des arts et des sciences*) had been established in Europe among a group of selected individuals. It was ruled by the principle of universal brotherhood which could not be defeated by the bloody practice of war:

En effet, vous le savez, les arts et les sciences forment depuis long-temps en Europe une république, dont les membres, liés entre eux par l'amour et la recherche de beau et du vrai qui sont leur pacte social, tendent beaucoup moins à s'isoler de leurs patries respectives, qu'à en rapprocher les intérêts sous le point de vue si précieux d'une fraternité universelle. Cet heureux sentiment, vous le savez encore, ne peut être étouffé même par ces discordes sanglantes qui poussent les nations à s'entre-déchirer⁹.

A corollary to this general principle was that nobody had the right to seize properties which are the heritage of all peoples¹⁰. To imitate the ancient Romans who had the habit of looting conquered cities would have been to move backwards from civilization to chaos:

Je sais bien aussi qu'il existe sur l'objet de cette discussion des maximes de droit public, que quelques esprits pervers ou perversis feignent d'ignorer, et dont l'oubli, s'il pouvoit avoir lieu, feroit rétrograder l'Europe, et rentrer son droit des gens dans le chaos de la politique léonine des anciens Romains¹¹.

For the French scholar, to divide cultural properties by removing them from the places where they had been created was to destroy them (*diviser c'est détruire*¹²). Their removal strikes a mortal blow to the education of foreign countries, without it being useful for the country that seizes the properties¹³.

⁹ QUATREMÈRE DE QUINCY, A.C. *Op. cit.*, p. 3.

¹⁰ «Ainsi, je ne puis bien répondre à votre question, qu'en faisant abstraction de ce faux intérêt de pays, qui est le partage des ignorans et des fripons: ce sera comme membre de cette république générale des arts et des sciences, et non habitant de telle ou telle nation, que je discuterai de cet intérêt que toutes les parties ont à la conservation du tout. Quel est-il cet intérêt? C'est celui de la civilisation, du perfectionnement des moyens de bonheur et de plaisir, de l'avancement et des progrès de l'instruction et de la raison, de l'amélioration enfin de l'espèce humaine. Tout ce qui peut concourir à cette fin appartient à tous les peuples; nul n'a le droit de se l'approprier ou d'en disposer arbitrairement» (*ibid.*, p. 4).

¹¹ *Ibid.*, p. 8.

¹² *Ibid.*, p. 25.

¹³ «Le déplacement des principaux monumens de l'art enlevés à leur patrie, doit porter un coup funeste à l'instruction des autres nations, sans devenir utile à la nation qui se les approprieroit» (*ibid.*, p. 87). «Mais voyez combien ce transport de monumens qui ne peut jamais être que partiel et très-borné, combien ce transport est funeste à l'Europe, devient encore inutile au pays qui en aura été le recéleur. En effet, croyez-vous que la nation qui se seroit adjudgé à son prétendu profit, quelques-uns des modèles du beau, comme autant de ballots de marchandises, trouveroit un gros bénéfice dans cette importation? Pensez-vous qu'elle y trouve

Quatremère's thoughts applied not only to cultural properties taken as war booty, but also to traffic in such properties peacetime. For the same reason that a State cannot remove the cultural properties from other States, it cannot trade its own cultural properties for economic gain¹⁴. Cultural properties have a special status and cannot be treated as commercial goods¹⁵. We owe to Quatremère also the profound intuition that the richest can also be the most undeserving, especially if they are accustomed to appreciating only the commercial value of the objects that they possess¹⁶.

The Quatremère's thoughts reflect the idea of a collective interest which is shared by all human beings and aims at the protection of cultural heritage and its preservation in the context where it has been created. Although the concept that belligerent States cannot destroy cultural properties had already been enunciated before him¹⁷, Quatremère stated very clearly that to remove is equivalent to destroy. He gave to this concept a general sense, which covered both war and peacetime. In fact, the *république des arts et des sciences* existed only in Quatremère's mind and it is likely that it will never exist in an international community composed of sovereign States. But such a trivial remark has no particular importance, as Quatremère put forward an ethical principle that goes beyond the provisions of the applicable law and is relevant also today.

Relying on the support by Great Britain, Austria and Prussia, Canova was able to overcome a number of obstacles in his mission¹⁸, including the existence of an

de quoi fournir à ses artistes les moyens complets de l'enseignement sans sortir de chez eux? Ce seroit s'abuser étrangement» (*ibid.*, p. 55).

¹⁴ «Je pense aussi que dans la défense d'une cause, il y a un choix de moyens à faire: je n'aime pas, je vous l'avoue, qu'au milieu des grandes considérations morales qui abondent dans celle-ci, on s'attache à des argumens intéressés, et qu'on fasse en quelque sorte dépendre le sort des arts et de la science en Europe, des calculs partiels de la balance du commerce. Quoi de plus contraire au véritable esprit et à l'amour éclairé des arts, que ces théories fiscales, qui ne trouvent que des objets de commerce dans les monuments de l'instruction des peuples, qui ne découvrent dans les chefs-d'oeuvre du goût et du génie, que des impôts indirects sur la curiosité étrangère» (*ibid.*, p. 82).

¹⁵ «Quand cessera-t-on de regarder les objets de l'instruction publique comme des bijoux, comme des diamans dont on ne jouit que pour le tarif de leur valeur?» (*ibid.*, p. 65).

¹⁶ «L'amour de l'argent n'a jamais produit que de l'argent» (*ibid.*, p. 84). «Il est évident qu'on ne peut pas diminuer autour de soi les lumières, les connoissances, les talens, le goût et l'amour des arts, sans les diminuer aussi chez soi» (*ibid.*, p. 91).

¹⁷ «Pour quelque sujet que l'on ravage un pays on doit épargner les édifices qui font honneur à l'humanité, & qui ne contribuent point à rendre l'ennemi plus puissant; les temples, les tombeaux, les bâtimens publics, tous les ouvrages respectables par leur beauté. Que gagne-t-on à les détruire? C'est se déclarer l'ennemi du genre humain, que de le priver de gaieté de coeur, de ces monuments de l'art, de ces modèles du goût»: DE VATTEL, E. *Le droit des gens ou principes de la loi naturelle appliqués à la conduite & aux affaires des nations & des souverains*. Londres, 1758, t. III, l. III, chap. IX, paras. 168 and 169).

¹⁸ See JAYME, E. «Antonio Canova, la repubblica delle arti e il diritto internazionale». *Rivista di Diritto Internazionale*, 1992, p. 897.

apparently valid treaty provision under which the objects had been removed. While not being a lawyer, it appears that the sculptor was able to address complex legal questions, such as the validity or nullity of a treaty concluded under coercion or the termination of a treaty as a consequence of its breach¹⁹. An even stronger objection put forward by the French authorities was that the works of art in question were much better kept and made available to the public in the galleries of the Louvre Museum than in the obscurity and neglect of the Roman churches and palaces. Canova accepted this remark and undertook to have the properties collected in a properly arranged museum once they had returned to Rome²⁰. This was in fact done by the papal government. As a result of his mission Canova succeeded in recovering from France seventy-seven of the removed works of art (including the Laocoon, the Apollon of Belvedere, the Transfiguration by Raphael and the Deposition by Caravaggio²¹) and several manuscripts.

This was the first time that the practice that the victorious power can take possession of the cultural heritage of the defeated countries was so clearly reversed by the return of such heritage to the place from which it had been removed. The question was asked whether it is acceptable that the stronger takes advantage of the vulnerability of the weaker to engage in the looting of cultural properties. A negative answer was given to it as a consequence of moral and cultural considerations. The States themselves that defeated France refrained from looting the looter and chose to support the original owner to recover the properties.

3. The Manuscripts Returned to the University of Heidelberg

An interesting corollary to Canova's mission is the return of a number of manuscripts looted in 1622 in wartime by Maximilian, Duke of Bavaria, from the Palatine Library of the University of Heidelberg and donated in 1623 by the duke to Pope Gregory XV. Forty-seven of these manuscripts were among the cultural properties which had been removed under the Treaty of Tolentino from the Vatican Library in Rome and then recovered in Paris by Canova.

¹⁹ See ZUCCOLI, F. «Le ripercussioni del trattato di Tolentino sull'attività diplomatica di Antonio Canova nel 1815, per il recupero delle opere d'arte», in *Ideologie e patrimonio storico-culturale nell'età rivoluzionaria e napoleonica*. Roma, 2000, p. 617.

²⁰ «A tutte queste obiezioni ho cercato di rispondere, difendendo il nostro spirito propagatore di ogni scienza e di ogni arte, e ribattendo quelle che sono puramente false, e scusando quelle che hanno qualche fondamento di verità. Io non so quello che ne avverrà, ma certo mi pare di dover presagire fino ad ora, che uscendo a buon fine, come spero, la mia impresa, saremo obbligati ad adottare su questi due punti un nuovo ordine e regolamento» (from a letter of 15 September 1815 written by Canova to cardinal Consalvi, in D'ESTE, A. *Op. cit.*, p. 205).

²¹ Today these four masterpieces are exhibited at the Vatican Museums in Rome.

Prince Metternich, on behalf of Austria, and Prince Hardenberg, on behalf of Prussia, in two similar letters written on 26 and 31 October 1815 to cardinal Consalvi, the Secretary of State of the Pope, reminded the latter of how they had supported Canova's mission in pursuance of the needs of «justice» in order to recover objects linked to the honour and culture of a State:

La plus part des marbles, tableaux et manuscrits, enlevés à la ville de Rome et à l'Etat Romain, se trouvent entre les mains du commissaire du St. Père, et ceux, qui restent encore, continuent à Lui être remis. Si les Puissances alliées se sont cru engagées par les considérations générales les plus importantes, à donner cet exemple éclatant de justice, et à ne point souffrir que des objets qui tiennent immédiatement à l'honneur et à la culture des nations, qui forment leur patrimoine, le plus cher, et sur lesquels le droit de la guerre ne devrait jamais s'étendre, restent la possession d'une seule qui s'en était emparée injustement, Elles ont éprouvé en même temps une satisfaction bien particulière d'avoir pu témoigner par là à Sa Sainteté le Pape leur désir de protéger Ses intérêts, et de seconder Ses vues²².

At the same time, Austria and Prussia took the opportunity to plead for the claim made by the University of Heidelberg for the return of the looted manuscripts. As Heidelberg was located at that time in a third country (the State of Baden), Austria and Prussia stated they were acting in the name of the interest for German culture that was shared by different States («vu les devoirs que Leur imposent les rapports qui unissent tous les Princes de l'Allemagne, et l'intérêt qu'Elles prennent à l'honneur national, et à un rétablissement littéraire qui appartient aux plus anciens et aux plus célèbres de l'Allemagne»). They based their request on two main grounds. The first was the legal argument that the original acquisition was an illegal act to which acquisitive prescription could not bring any remedy:

Il lui [= Prince Metternich] serait facile d'entrer dans la discussion des titres qui justifient la demande l'université d'Heidelberg, de s'étendre sur l'injustice de l'acte hostile qui déplaça la propriété particulière d'un établissement entièrement étranger à la guerre, d'examiner si le laps de temps pouvait rendre légitime une possession, qui ne s'était point dans son origine.

The second argument was the cultural need to ensure that unique texts of fundamental importance for the study of the origins of German languages were returned to the country to which they were so strictly linked:

Le Soussigné [= Prince Metternich] se borne seulement à observer, que la Bibliothèque Palatine consiste pour la plus grande partie en d'anciennes poésies allemandes manuscrites, aussi étrangères par la langue, que peu intéressantes par leur contenu

²² See BASTGEN, H. «Vatikanische Dokumente zur Herausgabe der Codices an die Heidelberger Universität im Jahre 1816». *Neue Heidelberger Jahrbücher*, 1929, p. 66.

au pays, où elles existent à présent, tandis qu'il serait de la plus grande importance, même pour l'étude de la langue, de rendre à l'Allemagne ces monuments précieux de son ancienne littérature.

For both political reasons and the sake of consistency, it was difficult for the Pope to resist the claim which included not only the 47 codes returned from France but was extended also to the whole of the collection that had originally belonged to the Palatine Library (847 German, 1954 Latin, 393 Greek and 278 Hebrew manuscripts). In two letters of 30 December 1815 to Metternich and Hardenberg, cardinal Consalvi put forward a number of legal arguments that played against the request to return the codes, the strongest of which was that a period of no less than 192 years had elapsed since the Pope's acquisition of them. However, the cardinal concluded that the Pope was willing to donate to the University of Heidelberg the 847 codes which were linked to the old German literature (in addition to the 47 recovered in Paris), retaining all the others for the Vatican Library²³.

The University of Heidelberg sent one of its professors, Friederich Wilken, to Rome to receive the codes and take care of their carriage. The librarian of the Vatican Library, who wanted to keep a few of the most valuable manuscripts, went as far as to suggest granting the German representative only the possibility to obtain a copy of them²⁴. But the suggestion was not followed by the papal government.

During the time spent at the Vatican Library, professor Wilken found five other properties which were of the highest interest for the Palatine Library, namely four manuscripts in Latin on the history of the University of Heidelberg and the *Otfridi Monachi Versio Quatuor Evangeliorum*, which is a paraphrase of the Gospels in old German:

La paraphrase rimée des Evangiles par le moine Otfrid est un monument très estimé de l'ancienne langue allemande, très propre à en faire connaître et l'état primitif et les progrès de sa formation successive; mais il ne saurait être mis à profit qu'en Allemagne, le dialecte et l'ancien idiome dans lesquels cette paraphrase est composée et qui est l'idiome du temps des premiers successeurs de Charlemagne présentent des difficultés

²³ «Ad onta per altro di tutto ciò, rilevando il S. Padre dagli uffici avanzati che S.M. pone la più grande importanza nel conseguire i preziosi codici e i famosi manoscritti che formano un raro monumento dell'antica letteratura tedesca, vuol darle una nuova prova del prezzo sommo che fa dei desideri della M.S., ed è pronto a farne un dono alla università di Heidelberg, o a qualunque altro corpo piaccia alla M.S. destinarli» (*ibid.*, p. 78).

²⁴ «La Germania può provvedere alla utilità sua col farne estrarre le copie, senza che noi perdiamo gli originali che per essere unici, sono di estrema rarità e di sommo pregio. [...] Basta solo che S. Eminenza sia sempre negativo ed insista sulla libertà che si accorda di farne le copie, libertà che ampiamente provvede all'oggetto di far la storia della letteratura germanica» (letter of 28 April 1816 by Mgr. Baldi, first librarian of the Vatican Library, to cardinal Mauri, *ibid.*, p. 85).

absolument insurmontables aux littérateurs de quelque autre pays, privés des ressources pour l'entendement de notre ancienne langue, que les bibliothèques de l'Allemagne renferment. Ce manuscrit ne peut même offrir qu'un intérêt très imparfait, quand il est isolé, et il ne pourra être utile que conjointement avec les autres monuments de notre ancienne langue que la clémence du St. Père et la libéralité de V.E. nous ont restitué gracieusement²⁵.

Professor Wilken, again supported by Austria and Prussia²⁶, begged the Pope for an additional donation of the five properties in question. The Pope, despite the rarity of the five manuscripts, agreed to give another sign of his consideration for the two requesting powers and of his esteem for the University of Heidelberg²⁷.

This second aspect of the story of the Napoleonic removals confirms the birth of a trend towards the return of cultural properties and put emphasis on its ethical dimension. Objections based on the legal argument of the long time elapsed after the removal and on the practical argument of the possibility to make and return copies were disregarded. The need to preserve the integrity of cultural heritage in the context to which it was more closely linked was also upheld.

4. Canova's Journey to London

After his mission to Paris, Canova went to London, also to thank the British prince regent for his support. Here he had the opportunity to admire the Parthenon marbles that had been removed from Athens in 1801 by Thomas Bruce, Earl of Elgin. At that time, Lord Elgin was the British ambassador to the Ottoman Empire, to which Athens belonged. The removal was effected on the basis of a *firman* (decree) by the Ottoman emperor. The text of the *firman*, of which only a coeval translation in Italian exists today, is not completely clear about the rights granted to Lord Elgin²⁸.

When asked for an opinion, Canova advised the British government to purchase the marbles from Lord Elgin. What else could Canova, the most eminent neoclassical artist, have suggested with regard to a universal symbol of art, inherited from the classical age, and one of the cornerstones of European civilization? In 1816 the government purchased the marbles for £ 35,000 and donated them to the British Museum of London, where they are still exhibited today.

²⁵ Letter of 29 April 1816 by professor Wilken to cardinal Consalvi (*ibid.*, p. 86).

²⁶ See the letters to cardinal Consalvi of 29 April 1816 by Baron Ramdohr, on behalf of Prussia (*ibid.*, p. 87), and of 2 May 1816 by *Chevalier* Lebzelter, on behalf of Austria (*ibid.*, p. 88).

²⁷ Letters of 9 May 1816 by cardinal Consalvi to *Chevalier* Lebzelter and Baron Ramdohr (*ibid.*, p. 89 and 90).

²⁸ Text in ST. CLAIR, W. *Lord Elgin and the Marbles*. Oxford, 1998, p. 338.

Yet, at the time when the marbles were sold, another eminent artist, the English poet Lord Byron (1788-1824), was of a quite different opinion:

I opposed, and will ever oppose, the robbery of ruins from Athens, to instruct the English in sculpture: but why did I do so? The ruins are as poetical in Piccadilly as they were in the Parthenon: but the Parthenon and its rock are less so without them²⁹.

The case of the Parthenon marbles is today pending before the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation between Greece, on the one side, and the United Kingdom and the British Museum, on the other.

5. Conclusions

Canova's mission is the first element of an evolutionary trend towards the return of removed cultural properties to their countries of origin that has greatly developed in the last years³⁰. The trend is based on a number of principles that are located somewhere between morality and law and that can be instrumental in addressing shortcomings of multilateral treaties in force regarding the return of cultural properties, namely the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Properties (Paris, 1970) and the UNIDROIT (International Institute for the Unification of Private Law) Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995), in particular their non-retroactive character and the fact that they can create rights and obligations only for the States parties.

The principles in question include the principle of non-exploitation of the weakness of another for cultural gain, which applies to situations of persecution, war, colonial domination, foreign occupation or to situations involving indigenous peoples. Also included is the principle of preserving the integrity of cultural contexts, which is deeply rooted in the nature of cultural heritage. Other principles, having a procedural nature, relate to international co-operation against illegal movements of cultural properties and to international co-operation in settling disputes regarding the return of cultural properties.

²⁹ Letter of 7 February 1821 by Lord Byron to John Murray, in *Life, Letters, and Journals of Lord Byron*. London, 1839, p. 693.

³⁰ On this practice see SCOVAZZI, T. «Diviser c'est détruire: Ethical Principles and Legal Rules in the Field of Return of Cultural Properties». *Rivista di Diritto Internazionale*, 2011, p. 341; SCOVAZZI, T. *The Return of the Benev. VI 29 Missal to the Chapter Library of Benevento from the British Library. Art Antiquity and Law*, 2011, p. 285.

In order to reach an equitable solution for each particular case, all the relevant circumstances which play either in favour of the State of origin of cultural properties or in favour of the State of their destination should be balanced. These circumstances could include the factors surrounding the removal of the cultural property from the State of origin, in particular the substantive injustice of the removal, the importance of the cultural property for the State of origin, in particular its emblematic character, the harm to the integrity of the cultural context from which the cultural property was removed, the amount of time since the cultural property was removed from the State of origin, the appreciation for and the care used to preserve the cultural property by the State of destination, as well as the State of origin's commitment to appreciate and care for cultural property if it is returned to it. In attempting to reach an equitable resolution of the cases, the States Parties concerned should envisage means of co-operation in the field of cultural properties in general, such as loans, temporary exhibitions, joint activities of excavation, research or restoration.