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Between “colonial amnesia” and “victimization biases”: Double standards in Italian cultural heritage law

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Abstract

This article offers a critical appraisal of the evolution of Italian cultural heritage law with respect to issues of colonial and war restitution and of control over the import of potentially trafficked cultural property. As Italy is usually considered a “source country” and a victim of historical depredations, a form of “selective blindness” to its colonial past and to its role at the receiving end of both past and current misappropriations of cultural objects is discussed. Some recent restitutions of cultural property taken in times of colonial occupation are also analyzed as signs of a possible change in policy and practice, but the article also highlights the features of political expediency that have influenced them as well as the many legal and practical obstacles still to be faced by restitution and repatriation claims. Finally, the potential effects of recent (mostly international) inputs on Italy’s cultural heritage policy are presented.

Introduction

The discussion about claims for the restitution of cultural objects acquired by European countries in times of colonial rule has recently accelerated as a result, first, of the publication of the so-called Savoy-Sarr report¹ and, second, of the many ripples generated by the expanding Black Lives Matter movement.² Even Italy, a country that is still struggling to confront its colonial past, is feeling some – admittedly small – repercussions of this ever-growing international debate. A hint of this (slowly) changing attitude can be seen, for instance, in the fact that, after decades in which only claims brought up by Italy for the recovery of objects considered part of its national heritage found their way into national media and attracted supportive attention from Italian public opinion (such as those

¹ Felwine Sarr and Bénédicte Savoy, *Rapport sur la restitution du patrimoine culturel africain. Vers une nouvelle éthique relationnelle*, 2018, <http://restitutionreport2018.com/> (accessed 2 January 2021).

² See, e.g., Catherine Hickley, “How Recent Anti-Racism Protests Have Pushed a Longstanding Debate about Colonial Looting in Europe,” *The Art Newspaper*, 14 August 2020, <https://www.theartnewspaper.com/analysis/demands-to-restitute-artefacts-plundered-from-africa-blm> (accessed 2 January 2021).

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regarding the Euphronios Krater,³ the Victorious Youth,⁴ or Jan van Huysum's Flower Vase),⁵ recently at least some Italian newspapers⁶ have devoted a little space to the planned opening, in late 2021, of the Italo-African Museum in Rome, which is part of the Museum of Civilizations founded in 2016 as heir to the collections of several prior cultural institutions.⁷ The impending opening has raised a certain amount of attention to some critical issues related to the intended display of items coming from the collection of the previous Colonial Museum, an institution inaugurated in 1923 by Benito Mussolini and conceived as a showcase for Italy's colonial "empire" achievements.⁸

The level of public interest and debate surrounding the conception, location (in Rome's EUR, Esposizione Universale Roma, district, whose erection, in turn, was meant to celebrate the imperial successes of the Fascist regime), and – presently not yet very clear – policies of the new museum with respect to provenance research and (foreseeable) restitution claims is by no means comparable to the widespread discussion that has accompanied, for instance, the construction and opening of the new Humboldt Forum in Berlin,⁹ yet it is something in a country where awareness of the colonial past is still extremely rare.¹⁰ Italy, of course, was never the colonial power that other European countries were, mostly due to its becoming a unified state only in 1861. Nonetheless, the newly founded Kingdom of Italy was keen on acquiring its own colonial possessions,¹¹ not only for the usual economic and political reasons but also as a way of creating and cementing a new, and still mostly uncertain, national identity.

Apart from the small territorial possession of Tientsin, China, acquired after the end of the so-called Boxer Rebellion in 1902, and some failed attempts at expansion in the Balkans

³ In 2006, the New York Metropolitan Museum of Arts agreed to relinquish ownership of the object (looted in a necropolis North of Rome in 1971 and acquired by the Met in 1972) to Italy in exchange for long-term loans of cultural items of equal value and an absolution of liability for the illegal excavation and export of the Krater. See Briggs 2007; Amineddoleh 2020.

⁴ The dispute over the bronze statue, found by Italian fishermen in 1964 and acquired by the Getty Museum in 1977, is still ongoing, as the museum rejects the validity and enforceability of the Italian Supreme Court decision ordering the forfeiture of the object and its restitution to Italy (Cassazione penale sezione III 2 January 2019 no. 22). See Fincham 2015; Scovazzi 2019.

⁵ The painting, part of the Pitti Palace collection, was taken from its safety storage location by Nazi troops in 1943 and resurfaced in the possession of a German family in 1989. On 19 July 2019, it was officially returned to Italy by the German Federal Republic. See Gallerie degli Uffizi – Insights, "The Flower Vase by Jan van Huysum Has Returned to Pitti Palace!" 19 July 2019, <https://www.uffizi.it/en/magazine/il-vaso-di-fiori-di-jan-van-huysum-ritorna-a-palazzo-pitti> (accessed 20 January 2021).

⁶ See Flavia Amabile, "Riapre il Museo Coloniale, il gioiello di Mussolini," *La Stampa*, 1 June 2019; Federico Gurgone, "Maschere per umani da catalogo," *Il Manifesto*, 13 June 2020; Leonardo Bison, "Marmi in esilio e arte afro: il colonialismo al museo," *Il Fatto Quotidiano*, 30 January 2021. Not all newspapers have taken a favorable, or neutral, stance on possible restitution requests. See also, e.g., Valeria Sforzini, "Perché restituire le opere d'arte alle nostre ex colonie non è un bene per nessuno," *Il Foglio*, 5 December 2020.

⁷ Namely, of the National Museum of Folk Arts and Traditions "Lamberto Loria"; of the National High Middle Age Museum "Alessandra Vaccaro"; of the National Oriental Art Museum "Giuseppe Tucci"; and of the National Prehistoric Ethnographic Museum "Luigi Pigorini" (in turn, heir to part of the collections of the previous Colonial Museum of Rome, to be now fully entrusted to the new Italo-African Museum "Ilaria Alpi"). See Museo delle Civiltà – MuCiv, presentation, <https://museociviltà.beniculturali.it/muciv/> (accessed 3 July 2021).

⁸ See also James Imam, "Racist or Responsive? Italy to Exhume Mussolini's Colonial Museum Collection in 'Critical' New Display," *The Art Newspaper*, 4 December 2020, <https://www.theartnewspaper.com/news/amid-reckoning-on-race-italy-exhumes-colonial-history> (accessed 15 January 2021).

⁹ See Bach 2019.

¹⁰ See Giorgio Ghiglione, "As Europe Reckons with Racism, Italy Still Won't Confront Its Colonial Past," *Foreign Policy*, 30 July 2020, <https://foreignpolicy.com/2020/07/30/as-europe-reckons-with-racism-italy-still-wont-confront-its-colonial-past/> (accessed 16 January 2021).

¹¹ See Labanca 2004, 2018; Calchi Novati 2011.

during World War I and World War II, the targets of Italian imperialism were mostly Northern and Eastern Africa. Starting with the acquisition of Assab Bay in 1869, Italy expanded its domination over Eritrea in 1890, with the creation of a proper colony that would then be expanded through the second Italo-Ethiopian War (1935–37) and subsequent military operations into the colony of Italian East Africa, encompassing vast Somali, Eritrean, and Ethiopian territories. In 1912, following the Italo-Turkish War, the first Italian colonies in Northern Africa – Tripolitania and Cyrenaica – were established, which were then to merge in 1932 into the broader colony of Libya, which was expanded over the years by way of a combination of military campaigns and diplomatic acquisitions. The Italian colonial empire came to a sudden end after World War II, with the 1947 Peace Treaty;¹² in fact, Italy had to renounce all of its former colonial possessions as well as to commit itself, as we will see, to a set of restitution obligations.

Even today, this part of Italian history is mostly ignored, or is the object of relevant misconceptions, by the majority of the Italian population, not only due to the same colonial amnesia that affects, to different degrees, all former colonial powers,¹³ but also thanks to what we may call specific “victimization biases,” which are explored in the next section. This “ideology of the victim,”¹⁴ in fact, has even stronger effects on the general shape of Italy’s cultural heritage law as well as on Italian attitudes toward issues of restitution of cultural objects that are (perceived as) part of the national heritage. Indeed, Italy’s legislation and practice on such issues display a marked “double standard” that we are going to analyze in the third section of this article. Finally, we will try and discuss some recent, albeit ambivalent, steps ahead as well as some recent inputs – mostly of an international origin – that may lead to a more balanced and solidary approach in the future.

Colonial amnesia and victimization biases: A brief history of Italian cultural heritage law

The marked absence of colonial and postcolonial issues in Italian public discourse has several causes, which would be impossible, and even inappropriate, to try and discuss here in a comprehensive way. We will therefore focus on two issues that appear to be of direct relevance to understanding how Italy has (mostly not) dealt with questions of appropriation of cultural objects in times of colonial occupation and, more broadly, why the country still lags behind in adopting a more consistent and solidary approach to cultural heritage law – in particular, with respect to the international circulation of cultural property, where, as we will see, a strong commitment to prevent, punish, and remedy any impoverishment of the national heritage is currently not yet matched (at least at regulatory level) by a comparable commitment to support other countries in their efforts to the same effect.

The first supporting myth we need to take into account is that of the “good Italian soldier”¹⁵ or, more broadly, of Italians as “decent people”¹⁶ who were never the authors of war crimes or crimes against humanity comparable to those committed, for instance, by British, German, Belgian or French colonial occupation forces in Africa or by Nazi troops during World War II. Indeed, according to the current discourse, Italians “made the desert bloom” in Libya and brought streets, railways, schools, and hospitals to East Africa. At the same time, episodes such as the executions and mass deportations of civilians in Cyrenaica

¹² Treaty of Peace with Italy, 10 February 1947, 49 UNTS 747.

¹³ See also Fletcher 2012; Stahn 2020.

¹⁴ Giglioli 2014, 10 (our translation, as in all other occurrences of quotations from texts in Italian).

¹⁵ Focardi 2016.

¹⁶ Del Boca 2005; Cajani 2013.

and Tripolitania (with peaks in 1911 and, even more, in 1929–31),¹⁷ the 1936 massacre of Amba Aradam by Italian troops employing mustard gas as well as phosgene and arsine ammunition,¹⁸ or the 1937 lynching of Ethiopian civilians in Addis Ababa and Debrà Libanòs by Italian colonists and troops¹⁹ are all conveniently removed from Italian collective memory (suffice it to say that several Italian cities, including Rome, still have street names memorializing the “victory” at Amba Aradam and that the word “ambaradan” is commonly used, without any recollection of the historical facts connected to its origin, as a colloquial expression meaning a “mess of things” or a “confused situation”).²⁰

Accordingly, the well-known removal by Italian troops of important cultural items – such as the Venus of Cyrene or the Aksum Obelisk²¹ – has also been traditionally framed in positive terms. The former was presented as a form of rescue and safekeeping of an exemplary part of our classical, Greek-Roman heritage,²² which was endangered by the neglect and turmoil to which it was exposed in Libya and more properly contextualized and preserved in the National Roman Museum in Rome. The latter as a beautiful monument that local “uncivilized” populations had allowed to fall into decay²³ and that the Italian people would instead appreciate in its cultural and aesthetic relevance, so much so that they had recovered its scattered pieces and restored it to its full glory (in Rome, right in front of the Ministry for Colonies).

The persistence of this mythology is made possible due to a plurality of factors. A contributing element was the sudden end of the Italian colonial experience, brought forth by World War II and formally sanctioned by the 1947 Peace Treaty, which spared the country the long transition to decolonization – with its complement of armed rebellions and independence wars – which characterized other colonial powers well into the 1960s and the 1970s,²⁴ thus easing a quick oblivion of the Italian colonial “parenthesis.” Furthermore, the fact that, during World War II, Italy changed its alliances, becoming, in turn, a victim of Nazi occupation and participating, through a movement of armed resistance, in the fight against the Nazi-Fascist regime, reinforced a convenient oblivion for previous, less commendable actions.²⁵ And, even before that, the whole Italian colonial experience had been grounded – amongst other things – in the idea of Italy being owed some form of “redress” for past wrongs suffered by the Italian people at the hands of other European powers – from the foreign “oppression” over Italian pre-unitarian states to the “mutilated victory” following

¹⁷ See Labanca 2004, 2012; Del Boca 2005.

¹⁸ See Sbacchi 1997, 2005; Del Boca 2005.

¹⁹ In revenge for the failed attempt on the life of General Rodolfo Graziani. See Sbacchi 1997; Del Boca 2005; Calchi Novati 2011.

²⁰ See also Ghiglione, “As Europe Reckons.”

²¹ See the discussion later in this article.

²² The argument was actually raised also in the complaint placed by an Italian non-governmental organization against the 2002 decree ordering the restitution of the Venus to the Libyan government. See Regional Administrative Tribunal (TAR) Lazio II 20 March 2007 no. 3518 and related comment by Carpentieri 2007.

²³ Opposers to the restitution argued, amongst other things (see para. 4), that, when the obelisk had been “discovered” in Aksum by Italian troops in 1937, it was lying on the ground broken into five fragments and that only Italian efforts, resources, and technical abilities had allowed its restoration (see Acquarelli 2010). Actually, when Italy finally agreed not only to return the obelisk but also to pay for its (second) restoration, at its original site, it was to be considered as a form of reparation not only for the original illegal taking (effected contrary to the provisions of the Second Hague Convention on the Laws and Customs of War on Land and annexed Regulations, 1899, 1 AJIL 103 (1907), to which Italy was a party, as well as to the Fourth Hague Convention on the Laws and Customs of War and annexed Regulation, 1907, 187 CTS 227, to which Ethiopia was a party) but also for the almost 60-years-long delay in complying with the restitution obligations established under the 1947 Peace Treaty (see also Scovazzi 2009; Cornu and Renold 2010; Scovazzi 2011).

²⁴ For a critical appraisal, see Labanca 2018.

²⁵ See Focardi 2016.

the end of World War I (a rhetoric that also powerfully contributed to the ascent of the Fascist regime in the 1920s). All of this was considered to have given the country a right to eventually get its own “place in the sun” by participating with a clean conscience in the colonial banquet,²⁶ and it effectively fed the second powerful myth – the myth of Italy and Italians as innocent victims of history – which supports Italian colonial (as well as other forms of historical) amnesia.

Indeed, the possibility of considering oneself a victim “activates a powerful generator of identity, of rights, of self-esteem”;²⁷ moreover, just like in Fedro’s fable of the wolf and the lamb, it may effectively conceal the reasons of the strong, granting them “a stronghold, a strategic position” on the moral high ground, which “immunizes against any criticism” and allows the perpetration and/or perpetuation of injustices against the actually disadvantaged.²⁸ Interestingly, as Giglioli observes, the “ultimate reason” for the strength of any “mythology of the victim” is the “ambiguous intricacy of false and true” that lies at its roots.²⁹ Thus, only by shedding light on the partiality of this “truth” – on its ideological distortions as well as on its false assumptions, outright lies, and convenient lapses of memory, which are intertwined in any victimist rhetoric – will a critical appraisal of the status quo become possible and, with it, hopefully, also an input for change.

This is the reason why it is important to start by providing an outline of the historical evolution of Italian cultural heritage law and of the “traumatic” experiences that contributed not only to shape it in the first place but also, later on, to strengthen a form of selective blindness to Italy’s duties to redress its own crimes against the cultural heritage of other peoples; a selective blindness partly extended also to Italy’s possible role as a market state for cultural objects that are illicitly trafficked from other countries even today.

With its enormous richness in artworks and antiquities, Italy has always been, and still is, what is nowadays called a “source country” – that is, a (mostly unwilling) net exporter of cultural objects. Quite early, in the seventeenth and eighteenth centuries, Italian cultural and social élites (but, in some instances, also the population at large) started perceiving the loss of Roman antiquities and Renaissance masterpieces to foreign collectors as a wound to Italian culture. Single notorious episodes, such as the sale in 1627 by an impoverished Duke of Mantua and Montferrat of the main bulk of the renown Gonzaga Collections to Charles I of England,³⁰ as well as long-lasting and diffusive practices, such as aggressive collecting by many foreign grand tourists, diplomats, and merchants,³¹ contributed to induce the Italian states to introduce some measure of legal protection for their cultural heritage as early as in the seventeenth century. In 1602, the Grand Duke of Tuscany, Ferdinand I, issued a decree placing the Accademia del Disegno in charge over any export of artworks, while, in 1686, Pope Innocent XI forbade any export of artworks or antiquities from the Papal States unless it had governmental permission.³²

Even more traumatic, however, were the repeated experiences of lootings perpetrated by foreign troops from the end of the fifteenth century onwards. Of particular relevance was the brutal 1527 Sack of Rome and, even more, the systematic depredation perpetrated

²⁶ See Rochat 1973; Palumbo 2003; Calchi Novati 2011; Gonçalves 2021.

²⁷ Giglioli 2014, 9.

²⁸ Giglioli 2014, 9–10.

²⁹ Giglioli 2014, 13.

³⁰ See Haskell 1981.

³¹ See Haskell 1981; Corsi 2008. As an example, Sir William Hamilton, British ambassador to the Kingdom of Naples from 1764 to 1800 and a famous connoisseur and collector of antiquities, has been compared to Verres because of the amount of cultural items he removed to Britain. Cf. Blake 2015, 3; see also Ramage 1990.

³² See Haskell 1981. Actually, pieces of legislation aimed at protecting the antiquities located in the Papal States had been passed as early as 1462 (*Cum almam nostrum Urbem* Bull by Pope Pius II) and 1474 (*Cum provida* Bull by Pope Sixtus IV). See Borio di Tigliole 2018.

between the end of the eighteenth century and the beginning of the nineteenth century by French troops during the Napoleonic campaigns and subsequent domination in Italy,³³ when hundreds of artworks were taken abroad, often under the legalistic coverage of peace treaties such as the Treaty of Tolentino, imposed by the victor to the subjugated Italian states. This latter episode elicited a wide outcry not only by intellectuals – in Italy and abroad³⁴ – but also by the Italian population at large, which on occasions publicly demonstrated against the takings. After Napoleon’s fall and the Congress of Vienna in 1815, the (at least partially) successful recovery mission in France conducted by Antonio Canova on behalf of the Papal States contributed to the subsequent development of international law rules barring the looting of artworks as war booty and requesting, in case of violations, their restitution.³⁵ A few years later, in 1820, the Papal States adopted what is considered the first systematic cultural heritage legislation prior to the unification of Italy. This edict, known by the name of its proponent, Cardinal Pacca,³⁶ included a system for cataloguing and notifying protected artworks, export controls, a regulation for archaeological excavations, and the state’s right of purchase by pre-emption – all elements that, with various adaptations, would then pass into the legislation of the unified Kingdom of Italy (and, later on, of the Italian Republic).³⁷

Following a long process of coordination and rationalization of pre-unitarian legislation,³⁸ the new kingdom eventually adopted the Law no. 185 (*Legge Nasi*) on 12 June 1902 and, subsequently, the Law no. 364 (“*Legge Rosadi*”) on 20 June 1909, the first really comprehensive Italian law on “movable or immovable things” with a “historical, archaeological, paleoanthropological or artistic interest” (Article 1). Law no. 364 introduced basically all the principles that were to remain, with changes and adjustments on (mainly) technical details and procedural aspects, the core of Italian law on cultural heritage as it kept developing in the following decades.³⁹ It affirmed a general principle of inalienability for cultural property in the ownership of the state, other public bodies, or juridical persons (Article 2) and a blanket public ownership rule for all archaeological findings (Article 15). Strict limitations to, and controls over, the export of cultural objects were also provided for, including the State’s right of compulsory purchasing items presented for export (Articles 8–10). Finally, together with its implementing regulation (Royal Decree no. 363 of 30 January 1913), it introduced a coordinated system of central and local authorities (respectively, the Ministry for Public Instruction – which later became the current Ministry for Culture [MiC] – and the superintendencies),⁴⁰ charged with tasks of conserving and protecting national heritage and endowed with matching functions and powers. A system that was in turn to remain the backbone of the Italian specialized administrative organization in this field.

³³ See Haskell 1981; Scovazzi 2011.

³⁴ A well-known critic of these practices, in France, was Antoine Chrysostome Quatremère de Quincy ([1796] 1815). See also Scovazzi 2011.

³⁵ See R. O’Keefe 2006; Scovazzi 2011.

³⁶ Editto Dell’E.mo, e R.mo Sig., Cardinal Pacca Camerengo di S. Chiesa sopra le antichità, e gli scavi, 7 April 1820, followed by an implementing regulation on 6 August 1821.

³⁷ See Corsi 2008; Borio di Tigliole 2018.

³⁸ See Demuro 2002; Corsi 2008; Lenzerini 2010; Ainis and Fiorillo 2015.

³⁹ See Demuro 2002.

⁴⁰ The superintendencies had been introduced with Law 27 June 1907 no. 386 and were originally differentiated in superintendencies for monuments, superintendencies for archaeological excavations and museums, and superintendencies for galleries, medieval and modern museums, and artworks. Currently, the system distinguishes only two sets of superintendencies – that is, the superintendencies for archaeology, fine arts, and landscape, and the superintendencies for archives and libraries; there is also one national superintendency for underwater cultural heritage. See also Bondini 2019.

This system was soon to be tested and actually was proven important in reducing the damage to Italian cultural heritage during World War I, even if numerous losses were nonetheless suffered, due to military operations, removal by occupying forces, and opportunistic pillage.⁴¹ In fact, in the aftermath of World War I, Italy managed to obtain the introduction of a set of provisions (Articles 191–96) in the Saint-Germain Peace Treaty of 10 September 1919⁴² binding Austria not only to return all cultural objects taken from the occupied territories during the recent conflict but also, with specific reference to its relationship with the Kingdom of Italy, to hand over cultural objects acquired by Austro-Hungarian public collections since 1861 and having a direct relation to the ceded territories (Article 193.1) as well as all cultural objects not yet returned in compliance with previous peace treaties between Austria-Hungary and Italy signed following the wars of independence (Article 194).⁴³

With the ascent of the Fascist regime in the 1920s, it was only natural that Italian cultural heritage legislation (with the Law no. 1089 of 1 June 1939 on the protection of “things of artistic or historical interest” and Law no. 1497 of 29 June 1939 on the protection of “natural beauties”), would become even stricter and more detailed than before,⁴⁴ focusing on cultural heritage as the emblem par excellence of national identity⁴⁵ and increasing the use of criminal law provisions (both within the special legislation and new Penal Code of 1930)⁴⁶ for its protection.⁴⁷

No force of law, however, was able to protect Italian cultural heritage from the massive looting at the hands of Nazi troops that followed the proclamation of the Cassibile Armistice on 8 September 1943 and the ensuing German occupation of Northern and Central Italy. Hundreds of thousands of artworks and cultural objects were taken from Italian museums and deposits, public and private collections, churches, and monuments and transported to Germany and Austria;⁴⁸ many were recovered soon after the war, but the search for the hundreds that are still missing remains in progress to this very day.

After the end of World War II, the new Constitution, entered into force on 1 January 1948, introduced as a fundamental principle, as well as a specific duty of the Italian Republic, the safeguarding of the “natural landscape and the historical and artistic heritage of the Nation” (Article 9.2), together with “the development of culture and of scientific and technical

⁴¹ See Spiazzi, Rigoni, and Pregolato 2008.

⁴² *Traité de paix entre les Puissances alliées et associées et l'Autriche, signé à Saint-Germain-en-Laye le 10 septembre 1919*, <https://archive.org/details/traitedepaixent00puis/page/68/mode/2up> (French) and <http://www.austlii.edu.au/au/other/dfat/treaties/1920/3.html> (accessed 20 January 2021 in English). See also ISGI-CNR, *Prassi italiana di diritto internazionale – 1594/3 – La restituzione di beni artistici italiani*, <http://www.prassi.cnr.it/prassi/content.html?id=2474> (accessed 20 January 2021); Ministry for Cultural Heritage and Activities (MiBAC) – Istituto Centrale per il Catalogo Unico delle Biblioteche Italiane, 14–18 Documenti e immagini della grande guerra – La salvaguardia delle opere d'arte in Italia nella Prima guerra mondiale: la stima dei danni e il recupero dei beni sottratti, <http://www.14-18.it/bacheca/190> (accessed 20 January 2021).

⁴³ In particular, following the provisions of art. 15 of the Zurich Treaty of 10 November 1859, of art. 18 of the Vienna Treaty of 3 October 1866, of the Florence Convention of 14 July 1868.

⁴⁴ See Ainis and Fiorillo 2015.

⁴⁵ See Corsi 2008.

⁴⁶ The latter included (art. 733) a specific misdemeanor aimed at punishing any “damage to the archaeological, historical or artistic heritage of the nation” caused by the owner (but case law has expanded this concept, by including the legal representatives of juridical persons owning the object – see, e.g., Cassazione penale sezione III 19 July 1991 no. 7701; Cassazione penale sezione III 12 April 1995 no. 3967; Cassazione penale sezione III 18 November 2008 no. 42893) of a cultural property by way of destroying, causing deterioration of, or anyway damaging said object. See Demuro 2002; Manes 2011; Visconti 2017.

⁴⁷ See Demuro 2002; Ainis and Fiorillo 2015.

⁴⁸ See Siviero 1984.

research” (Article 9.1).⁴⁹ Building on this new explicit constitutional relevance of national cultural heritage, a unified text of cultural property and landscape assets legislation (Legislative Decree no. 490 of 29 October 1999)⁵⁰ was issued to rationalize the many additions made over the years to the 1939 laws. This legislation was also due to the need to implement the many cultural heritage international conventions to which Italy had in the meantime become a party⁵¹ as well as to accommodate the transposition of relevant European secondary law.⁵² The process continued with the adoption in 2004 of the Cultural Heritage Code (CHC) (Legislative Decree no. 42 of 22 January 2004), which is currently in force and which further broadened the scope of cultural objects subject to regulation and, in particular, introduced an even more complex regime for their international circulation.⁵³

Indeed, even after World War II, Italy remained – and to a lesser, but still quite relevant, extent, remains today – subject to widespread criminal offences against its cultural heritage,⁵⁴ such as clandestine archaeological excavations, art and antiquities thefts (with churches, private locations, and exhibitions as the most vulnerable targets),⁵⁵ and unlawful export of cultural items. This explains why cultural heritage regulations, as well as their enforcement, were progressively strengthened in postwar years, including by an increasing

⁴⁹ Conservation and protection remain today the primary tasks of public authorities, whose fulfillment is considered a logical, as well as axiological, priority over enhancement and the enjoyment of cultural heritage. See, e.g., Corte Costituzionale, 13 January 2004 no. 9. The constitutional relevance of cultural heritage preservation also justifies the number and extent of limitations to ownership rights as well as to freedom of economic initiatives imposed by Italian cultural heritage laws (cf. Italian Constitution, 1947, arts. 41, 42; see, e.g., TAR Lazio II 26 January 1990 no. 224; Consiglio Giustizia Amministrativa Sicilia 29 December 1997 n. 579; TAR Trento I 23 February 2012 no. 65; TAR Lazio II 28 September 1987 no. 1516; see also Marini 2002.

⁵⁰ On which, see Demuro 2002; Corsi 2008; Ainis and Fiorillo 2015.

⁵¹ Italy has also usually taken an active part in the promotion and negotiation of cultural heritage treaties. Currently, Italy is a party, amongst other, to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (14 May 1954, 249 UNTS 240) and to its First Protocol (14 May 1954, 249 UNTS 358), both ratified with Law no. 279, 7 February 1958; to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (14 November 1970, 823 UNTS 231 [1970 UNESCO Convention]), ratified with Law no. 873, 30 October 1975 (ratification officially deposited on 2 October 1978); to the Convention Concerning the Protection of the World Cultural and Natural Heritage (16 November 1972, 1037 UNTS 151), ratified with Law no. 184, 6 April 1977; to the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (26 March 1999, 38 ILM 769), ratified with Law no. 45, 16 April 2009; to the UNESCO Convention on the Protection of the Underwater Cultural Heritage (2 November 2001, 41 ILM 40), ratified with Law n. 157, 23 October 2009. See also Lenzerini 2010.

⁵² In particular, Council Directive (EEC) 93/7 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State, [1993] OJ L74; Council Regulation (EEC) 3911/92 on the Export of Cultural Goods, [1992] OJ L395. The currently in force Council Directive (EU) 2014/60 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State, [2014] OJ L159, and the currently in force Council Regulation (EC) 116/2009 on the Export of Cultural Goods, [2018] OJ L39, are in turn transposed into the 2004 Cultural Heritage Code, respectively in arts. 75–86 and in arts. 73–74. See also Frigo 2016.

⁵³ See Corsi 2008; Lenzerini 2010; Ainis and Fiorillo 2015; Visconti 2019a.

⁵⁴ Given the entity of the dark figure of crime (that is, the number of crimes that, albeit actually committed, do not get to be reported or otherwise recorded in official criminal statistics: see also, specifically, Balcells 2019) in this field, the measurement of the phenomenon relies on estimates (on whose methodology, see, e.g., Brodie, Dietzler, and Mackenzie 2013), according to which several thousands cultural objects are trafficked yearly from Italy. See Ciotti Galletti 2003; Beltrametti 2013; Natali 2015. Evidence of the thousands of objects trafficked by a single international network, such as in the case of the so-called “Cordata,” which was also involved in the unlawful excavation and export of the Euphronios Krater (see note 3 above; see also Gill and Chippindale 2007; Watson and Todeschini 2007; Lunden 2012; Campbell 2013), lend support to these estimates.

⁵⁵ See also Comando Carabinieri Tutela Patrimonio Culturale (Carabinieri TPC), *Attività operativa 2019, 2020*, https://www.carabinieri.it/docs/default-source/evento/2020/attivita%C3%A0-operativa-tpc-2019.pdf?sfvrsn=6d3b3823_0 (accessed 2 January 2021).

use of penal provisions.⁵⁶ Further specific offences, punishing any actual damage to cultural objects, were added to the Penal Code (PC),⁵⁷ while the special legislation – currently, as stated, the 2004 CHC – also includes a broad range of criminal provisions. The latter mostly punishes possible hindrances to the action of public authorities charged with the conservation and protection of national cultural heritage: thus, penal sanctions – often complemented by administrative ones – are here used mostly to prevent and punish assumed dangers to cultural heritage, usually without any need for an actual danger (and even less an actual harm) to have occurred in order to secure conviction.⁵⁸

In addition, Italy established in 1969 a specialized police force – the Carabinieri Command for the Protection of Cultural Heritage (TPC) – charged with preventing and investigating criminal offences against cultural property.⁵⁹ Placed directly under the authority of the MiC, it is articulated in regional commands covering all national territory. Its activities include, besides criminal investigations and police operations against these specific offences, periodic surveillance over archaeological sites, safety inspections to monuments, museums, places of exhibition, and so on, the monitoring of the physical as well as online market for artworks and antiquities, the keeping of the national database of stolen and missing cultural objects, as well as a set of international cooperation activities that will be discussed later in this article.

Italian cultural heritage law and its “double standard”

The effects of Italian cultural heritage legislation’s having been influenced by the episodes and phenomena of victimization sketched above are quite evident in its current shape as well as in the practices followed by Italian authorities with respect to issues of return and restitution of cultural objects. Here, we will try and outline the main points of what we may call the “double standard” affecting Italian cultural heritage law and practice. First, this double standard is apparent in the unbalanced approach taken by Italian cultural heritage law to issues, respectively, of export and import of cultural objects. Even if Italy remains mostly a source country,⁶⁰ and even if its share of the international art and antiquities market is quite small in comparison not only to well-established hubs such as the United States, the United Kingdom, and China but also to other countries such as France or Switzerland,⁶¹ Italy is nonetheless also an importer of cultural objects from other European countries, the Americas, and Middle and Far Eastern countries,⁶² as the recurrent forfeiture of illicitly trafficked items is enough to demonstrate.⁶³

Nevertheless, Italy’s cultural heritage law does not include specific import controls (or, therefore, related and specific criminal or administrative offences), while providing at the

⁵⁶ See Demuro 2002; Manna 2005.

⁵⁷ See Penal Code (PC), art. 635.2(1) – intentional damage to another’s “things of an historical or artistic interest” or “buildings set within historical inner cities”; art. 639.2 – “disfiguring and soiling” of another’s “things of an historical or artistic interest.” The former felony was born as an aggravating circumstance of ordinary intentional damage, introduced by Law 8 October 1997 no. 352; later, the behavior was made into a specific offence by Legislative Decree 15 January 2016 no. 7. The latter, introduced by the same Law no. 352, remains an aggravating circumstance of the felony of intentional disfiguring and soiling of another’s property. See also Demuro 2002; Manes 2011; Visconti 2019b.

⁵⁸ See CHC, arts. 160–66; arts. 169–80. See also Demuro 2002; Manna 2005; Manes 2011; Visconti 2019b.

⁵⁹ See Nistri 2011; Rush and Benedettini Millington 2015.

⁶⁰ See the second section of this article.

⁶¹ See Clare McAndrew, *The Art Market 2020*, <https://www.artbasel.com/about/initiatives/the-art-market> (accessed 20 January 2021).

⁶² Coppola 2014.

⁶³ See the next section of this article.

same time a detailed regime of export regulations, controls, and related enforcement.⁶⁴ In fact, with respect to exportation, the Italian system, even after the reform enacted with Law no. 124 of 4 August 2017 (which aimed at broadening export possibilities for contemporary art as well as for cultural objects of comparatively modest economic value),⁶⁵ appears quite strict as well as complex. Presently, for publicly owned (and assimilated)⁶⁶ cultural objects, for which no administrative negative verification of their cultural relevance has ever occurred⁶⁷ and which are neither the work of a living author nor produced less than 70 years prior to the intended exit,⁶⁸ permanent export is always prohibited (no national certificate of free circulation, or European Union [EU] license, can thus be obtained).⁶⁹ Consequently, any intentional permanent removal of the object from the national territory is, by definition, a criminal offence under Article 174 of the CHC⁷⁰ as it is the failure to bring back one such property after the expiry of a temporary permission (which may instead be granted, except if it could endanger the object or the integrity of the national collections).⁷¹

For privately owned cultural objects that have been subject to an administrative positive declaration of their cultural interest,⁷² any permanent export is also forbidden; infringement of this prohibition (or failure to return the object following a temporary export permit) amounts to the same criminal offence under Article 174 of the CHC. Other not (yet) positively declared cultural property can be instead permanently exported, provided that a certificate of free circulation is asked for and obtained.⁷³ All things possessing a cultural interest, to whomever they may belong, which are the work of a no longer living author, were produced more than 70 years ago, and whose financial value is above €13,500.00,⁷⁴ must be presented to the export office of a local superintendency. For the export to be lawful, the applicant needs to get an export permission (certificate of free circulation) granted by this public authority. Export offices may however deny this permission by declaring, on the occasion, the cultural relevance of the object, which can also be subject to compulsory purchase by the state or region.⁷⁵ If an export certificate is granted, but it is not produced at

⁶⁴ On Italian export rules, see broadly Lenzerini 2010; Ainis and Fiorillo 2015.

⁶⁵ On which, see Visconti 2019b.

⁶⁶ Meaning objects in the ownership of non-profit private organizations, including ecclesiastical entities with an acknowledged legal status. See CHC, arts. 10.1, 12.

⁶⁷ The cultural interest of individual objects in public ownership (and assimilated) is assumed under Italian law (see CHC, arts. 10.1, 12), while objects that are part of public collections are considered “cultural property” in the meaning of the CHC, thus subject to all its protection provisions, *ex lege* (see CHC, art. 10.2).

⁶⁸ See CHC, art. 10.5.

⁶⁹ See CHC, art. 65.1–2.

⁷⁰ The offence is a felony, punished with imprisonment of between one and four years or a fine of between 258.00 and 5,165.00 euros (which is coupled with disqualification from the profession in case the fact is committed by an art or antiquities dealer); the object of the unlawful export (or attempted export: see, e.g., Cassazione Penale sezione V 25 November 2020 no. 33151) is forfeit to the state. For further details, see Demuro 2002; Manes 2011; Visconti 2019a.

⁷¹ See CHC, arts. 66, 67, 71.

⁷² After the 2017 reform, this declaration can occur (except in the case of things falling under art. 10.3(d-bis): see below) only for objects that are not the work of living authors and were produced more than 70 years prior to export. See CHC, arts. 10.3, 10.5, 13–15, 65.1–2.

⁷³ See CHC, arts. 65.3, 68. The period of validity of the certificate of free circulation has been lengthened by Law no. 124/2017, from previous three years, to current five years (CHC, art. 68.5).

⁷⁴ But no value threshold applies to archaeological remains, parts of dismembered monuments, incunabula and manuscripts, and archives. See CHC, art. 65.3(a) referring to CHC, Annex A(B)(1).

⁷⁵ See CHC, art. 70. An object can be banned from permanent export, following a declaration of its cultural interest, without it being also purchased by the state: it will therefore remain a property of its current owner, who, however, will be prevented from ever exporting it, except on a temporary basis.

the moment of export, such action will amount to an administrative offence punished with a pecuniary sanction according to Article 165 of the CHC.

Finally, there is a set of cultural objects for which no export certificate is required, but a prior self-declaration of free exportability must be submitted.⁷⁶ However, even such objects, if they are not the work of a living author and are older than 50 years,⁷⁷ may be declared protected cultural property and thus forbidden from permanent export, in case the export office has reason to consider the item, according to Article 10.3(d-bis) of the CHC, an object of such exceptional cultural relevance that its loss would substantially harm the integrity and completeness of the national heritage.⁷⁸ If the required self-certification is not submitted, an administrative offence according to Article 165 of the CHC is committed. In addition, if the object is actually of “exceptional cultural relevance” and gets exported, the criminal offence of unlawful export (Article 174 of the CHC) will also apply.⁷⁹ In the case that false statements are made – passing as freely exportable an object that is not – the offender will incur in the general felony of false attestation by a private person in public documents (Article 483.1 of the PC), besides the aforementioned criminal offence of unlawful export (Article 174 of the CHC).

On the other hand, differently from other countries – such as, for example, Canada,⁸⁰ Australia,⁸¹ or, more recently, Germany,⁸² which, either in preparation for, or as a consequence of, the ratification of the 1970 UNESCO Convention,⁸³ have adopted specific import rules as well as offences and related penalties in case of infringements – current Italian law does not include specific provisions on the issue, except for Article 72 of the CHC. The latter establishes a right – not an obligation – to have a cultural object certified as legally imported into Italian territory. This certification will provide proof that the object is not part of the national cultural heritage and, therefore, not subject to possible future export restrictions or other limitations according to Italian cultural heritage law.⁸⁴

Naturally, in case there is evidence that a cultural item was stolen (or was the object of any other criminal offence), even abroad, it may be possible, if all other elements of the offence are also proven, to apply the general felony of receiving the fruits or proceeds of crime (Article 648 of the PC) and seize the item. To this effect, the Carabinieri TPC have developed a practice of international police cooperation, which we will briefly address in the following section. But, in point of law, what is currently missing – differently from the

⁷⁶ See CHC, art. 65.4-4bis. After the 2017 reform, this category includes, besides works deemed contemporary according to the new 70-years age standard, also things possessing a cultural interest and older than 70 years, but whose financial value rests below 13,500.00 euros (provided they are not archaeological remains and so on).

⁷⁷ See CHC, art. 10.5.

⁷⁸ See CHC, art. 65.4bis.

⁷⁹ See also Cassazione penale sezione III 8 March 2018 n. 10468.

⁸⁰ See the 1985 Cultural Property Export and Import Act, in particular arts. 37, 40–46; it is worth noticing that punishments for unlawful import and unlawful export are identical. For further details, see P. O’Keefe 2001, 2007; Mueller and Zedde 2012.

⁸¹ See the Protection of Movable Cultural Heritage Act no. 11/1986, in particular sections 9, 14; punishments for unlawful import and unlawful export are identical under Australian federal law too. For further details, see P. O’Keefe 2001, 2007.

⁸² See the Act on the Protection of Cultural Property (Kulturgutschutzgesetz), 31 July 2016, in particular sections 21–39, 83–88; also in this case intentional unlawful export and intentional unlawful import are subject to the same penalties, but in case of unlawful export negligent conducts are also punished (with a lower sanction). For further details, see Peters 2019.

⁸³ On obligations arising from the 1970 UNESCO Convention, and, in particular, from a possible interpretation of art. 3 supporting the introduction, within national jurisdictions, of a prohibition of importing cultural objects unlawfully exported from other states parties, see P. O’Keefe 2007; Forrest 2010.

⁸⁴ For further details and criticism, see also Lafarge 2009; Fraenkel-Haeberle 2019.

countries mentioned above – is a consistent regulation of the import of cultural property, including specific administrative or criminal offences, which may provide an earlier barrier to the trafficking of such objects into the country and require a lesser amount of evidence in court, as the offence(s) would basically revolve, like current export offences, around the mere intentional infringement of administrative rules.

Of course, any introduction in the future of import controls (which is due, given the gradual application of the new Council Regulation (EU) 2019/880 on the Introduction and the Import of Cultural Goods)⁸⁵ would necessitate careful consideration of the resources to be devoted to this task. In fact, it would be unthinkable to just charge existing export offices (whose personnel is, even after the 2017 reform, already stretched too thin to deal with export requests)⁸⁶ with mandatory import controls as well. A reasonable solution would most likely imply, on the one hand, an investment in reinforcing these administrative units as well as, on the other hand, a more significant lightening of the burden related to export controls than that enacted in 2017.

Finally, it is worth noting that, even if the present structure of the Italian regulation of international circulation of cultural objects is basically inherited from a long national legal tradition, other countries with a story of systematic cultural heritage protection and of an exclusive focus on export regulation and controls, like France,⁸⁷ have recently adopted a more “symmetrical” approach to the two ends of international trade, introducing import controls, backed up by specific sanctions in case of infringements.⁸⁸ This was also a consequence of the perceived need to better tackle international trafficking, including by way of a more solidary approach to the implementation of the 1970 UNESCO Convention, capable of granting better protection to the interests of the other states parties.⁸⁹

With respect to the practice on issues of return and restitution, Italy has been harshly – and rightly – criticized, particularly with respect to its attitude toward claims over Nazi-looted art:

Italy has pursued antiquities, museums, even curators⁹⁰ to the ends of the earth (even objects found in international waters),⁹¹ so one might expect a comparable effort with regard to Nazi-looted art closer to home (Italy’s established Jewish community fared

⁸⁵ Council Regulation (EU) 2019/880 on the Introduction and the Import of Cultural Goods [2019], OJ L151; see also Dehouck 2019.

⁸⁶ See Visconti 2019a.

⁸⁷ France’s history of cultural heritage regulation started with the Law on Historic Monuments, 31 December 1913; the matter is currently regulated by the 2004 Code du patrimoine (Cultural Heritage Code) and related amendments. France became a party to the 1970 UNESCO Convention in 1997. See Cornu 2010.

⁸⁸ See Law no. 925, 7 July 2016, which has added to the French Code of Cultural Heritage the new arts. L111-8 and L111-9; Law no. 925 also provided for infringements to be punished with the same sanctions applicable to unlawful exports (art. L114-1(I)). France has also recently opted for enlarging the scope of cultural objects not subject to export controls, by raising the monetary value thresholds below which no export authorization is required (see Decree 28 December 2020 no. 1718, art. 5, and related modifications to Annex I to the Code), possibly also in order to lighten the burden, on this side, for competent national authorities. See also Ivan Macquisten, “France Has Revised Its System for Exporting Art and Antiques, Removing Red Tape that Has Long Hindered Trade,” *Artnet News*, 20 January 2020, <https://news.artnet.com/market/france-export-licence-value-thresholds-art-antiques-1938215> (accessed 30 January 2021).

⁸⁹ See Peters 2019, with reference to the 2016 German Act on the Protection of Cultural Property.

⁹⁰ The reference made by the Author is clearly to the criminal proceedings initiated in 2005 against Marion True, former curator of antiquities for the J. Paul Getty Museum in Los Angeles, for her alleged involvement in the illicit activities of the trafficking ring led by Giacomo Medici (see note 54 above).

⁹¹ The reference made by the Author is clearly to the claim for the restitution to Italy of the Victorious Youth (see note 4 above).

well by comparison until late in the war and Mussolini's collapse,⁹² after which the Nazis took over the persecutions in earnest). Not so, regrettably.⁹³

Indeed, the 2014 report following the St. Petersburg ICOM Museum and Politics Conference highlighted that, even if Italy participated in the 1998 Washington Conference on Holocaust-Era Assets⁹⁴ and endorsed the 2009 Terezin Declaration,⁹⁵ "it does not appear that provenance research is taking place in Italy, nor is there a legislative background that would allow for the restitution of cultural and religious property."⁹⁶ Actually, there are some provisions in the 1947 Peace Treaty, as well as in post-Fascist and postwar Italian legislation, that can be, and have been, used in support of restitution claims by private individuals,⁹⁷ but it is also true that the current Italian legislative framework is neither clear nor consistent, so much so that other restitution claims have actually been rejected by the Italian government, to be later decided in favor of the claimant abroad (as happened in the Gentili di Giuseppe case).⁹⁸ Also, Italian scholars have long been advocating the introduction of specific, clearer, and more equitable rules.⁹⁹

But even if a parliamentary commission (the so-called "Commissione Anselmi," after the name of its chair) was instituted on 1 December 1998 to investigate and report over the spoliations¹⁰⁰ suffered by Italian Jews between 1938 and 1945,¹⁰¹ no legislation has yet been passed to ease the success of restitution claims in court (such as the 2016 Holocaust Expropriated Art Recovery Act in the United States), nor is there a dedicated advisory

⁹² Actually, limitations to property rights, expropriations, and sales or donations under duress started soon after the introduction of the first Italian racial laws in 1938, even if the Nazi occupation, from 8 September 1943 onwards, marked the moment when thefts, looting, and mass confiscations started. See Scovazzi 2018; Commissione per la ricostruzione delle vicende che hanno caratterizzato in Italia le attività di acquisizione dei beni dei cittadini ebrei da parte di organismi pubblici e privati, *Rapporto generale*, April 2001 (available in Italian and English), https://web.archive.org/web/20190331192831/http://presidenza.governo.it/DICA/7_ARCHIVIO_STORICO/beni_ebraici/index.html (accessed 2 February 2021).

⁹³ O'Donnell 2017, 343.

⁹⁴ See also Raschèr 1999.

⁹⁵ Declaration on Holocaust Era Assets and Related Issues, adopted by the representatives of the 46 states meeting in Terezin on 30 June 2009. Like the Washington Principles, it remains a non-binding declaration. It is available at <https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/> (accessed 27 November 2021).

⁹⁶ Wesley A. Fisher and Ruth Weinberger, *Holocaust-Era Looted Art: A Current World-Wide Overview*, 10 September 2014 (updated 13 November 2014), 30, <http://art.claimscon.org/wp-content/uploads/2014/11/Worldwide-Overview.pdf> (accessed 30 January 2021). Analogous criticism was voiced more recently by Stuart E. Eizenstat on the occasion of the 26–28 November 2018 conference 20 Years of the Washington Principles: Roadmap to the Future, hosted by the German Lost Art Foundation. The text of the speech is available at https://www.kulturgutverluste.de/Content/01_Stiftung/DE/Veranstaltungsnachlese/2018/Eizenstat_Stuart_Manuskript.pdf?_blob=publicationFile&v=1 (accessed 30 January 2021).

⁹⁷ See Cortese 2018; Scovazzi 2018.

⁹⁸ The collection of Federico Gentili di Giuseppe, an Italian citizen residing in Paris at the time of his death, in 1940, was abandoned by his heirs when they fled to safety and was sold at auction in 1943. Five paintings were later successfully claimed by the heirs in France. See Cour d'Appel de Paris I.A 2 June 1999 n. 1998/19209, *Christiane Gentili di Giuseppe et autres c. Musée du Louvre*. The restitution of a further painting, acquired in 1998 by an Italian public museum (Pinacoteca di Brera), was requested to the Italian government to no avail; nonetheless, when the painting was loaned to a museum in Tallahassee for an exhibition, in 2011, a US court granted the forfeiture of the item, which was then delivered to the Gentili heirs. See Frigo 2018; Scovazzi 2018.

⁹⁹ See, e.g., Cortese 2018; Scovazzi 2018.

¹⁰⁰ Not only of cultural property but also of private property in general.

¹⁰¹ Commissione per la ricostruzione, *Rapporto generale*.

committee¹⁰² and/or specific guidelines to ease out-of-court settlements, differently from what has happened in Germany, France, Austria, the Netherlands, and the United Kingdom.¹⁰³ Thus, Italy, while very active, and even aggressive, in bringing claims for the restitution of publicly owned cultural objects,¹⁰⁴ including artworks taken from public collections or other institutions by German occupying forces, has never undertaken any significant initiative to support and ease claims brought forth by private individuals, victims (or heirs of victims) of racial or political persecution under the Nazi-fascist regime and of consequent confiscations or forced sales of artworks.

When it comes to colonial cultural objects, though, Italy's backwardness appears even deeper. In fact, no parliamentary commission has ever been appointed to investigate the issue and possibly produce reform proposals, nor, therefore, is there any dedicated advisory body or set of specific guidelines for museums or any ongoing process to establish either or both of these (differently from Germany,¹⁰⁵ the Netherlands,¹⁰⁶ or the United Kingdom).¹⁰⁷ And even the few claims that eventually have resulted in a success have actually faced not only legal difficulties but also a long and strong opposition by both Italian institutions and public opinion.

¹⁰² The Inter-Ministerial Committee for the Recovery of Artworks (Commissione Interministeriale per il recupero delle opere d'arte), instituted in 1945, and its successor, the Committee for the Recovery and Restitution of Cultural Property (Comitato per il recupero e la restituzione dei beni culturali), instituted in 2008, worked as advisory bodies to the government in theory (see Ministry Decree 26 June 2008 no. 7784, art. 1(a)) with respect to requests brought forth both by Italy and against Italy but, in practice, almost exclusively on claims for the recovery of Italian cultural property abroad. Only very recently, with the Ministry Decree 17 July 2020 n. 323, a specific working group on cultural objects forcibly taken from Jewish owners between 1938 and 1945 has been created within the abovementioned committee. The group, which is composed of eight members and may invite further experts to participate in its meetings (but is not endowed with any funds), is tasked with the "reconnaissance, research, and identification of cultural objects stolen from Italian Jewish communities or individuals during the racial persecutions." It is certainly a step ahead, but it remains to be seen whether and how this activity will unfold in practice, given the scarcity of resources destined to this institution.

¹⁰³ See O'Donnell 2017; Redmond-Cooper 2021.

¹⁰⁴ See also Rose-Greenland 2016.

¹⁰⁵ See German Museums Association, *Guidelines for German Museums: Care of Collections from Colonial Contexts*, 3rd ed., 2021, <https://www.museumsbund.de/wp-content/uploads/2021/03/mb-leitfaden-en-web.pdf> (accessed 27 November 2021).

¹⁰⁶ See Nationaal Museum van Wereldculturen, *Return of Cultural Objects: Principles and Process*, 2019, <https://www.tropenmuseum.nl/en/about-tropenmuseum/return-cultural-objects-principles-and-process> (accessed 2 February 2021); Advisory Committee on the Council for Culture National Policy Framework for Colonial Collections, *Colonial Collections: A Recognition of Injustice*, October 2020, <https://dutchculture.nl/en/news/Report-Advisory-Committee-National-Policy-Framework-Colonial-Collections> (accessed 27 November 2021). The Dutch government has recently committed to appoint an independent committee to assess requests for the restitution of colonial heritage objects and advise on the matter. See Government of the Netherlands, *Redressing an Injustice by Returning Cultural Heritage Objects to Their Country of Origin*, 29 January 2021, <https://www.government.nl/latest/news/2021/01/29/government-redressing-an-injustice-by-returning-cultural-heritage-objects-to-their-country-of-origin> (accessed 27 November 2021).

¹⁰⁷ See Legget 2000. Arts Council England has recently commissioned new guidelines for UK museums on restituting and repatriating colonial cultural objects, whose publication has however been delayed, also due to the ongoing pandemic. See Gareth Harris, "New Guidelines for UK Museums Will Kickstart Nation's Long-Overdue Restitution Debate," *The Art Newspaper*, 20 March 2020, <https://www.theartnewspaper.com/news/arts-council-england-wades-into-restitution-debate-with-pledge-to-publish-guidance> (accessed 7 February 2021); Samantha Rouston, "On the Impact of Arts Council England's New Restitution Guidelines," *Center for Art Law*, 30 July 2021, <https://itsartlaw.org/2021/07/30/on-the-impact-of-arts-council-englands-new-restitution-guidelines/> (accessed 27 November 2021).

Some (ambivalent) steps ahead

Perhaps the strongest feature of the Italian “model”¹⁰⁸ is presently a well-established and effective practice of international police and investigative cooperation, mostly carried out by the specialized Carabinieri TPC.¹⁰⁹ Acting both upon requests from INTERPOL and through their systematic and widespread monitoring of the Italian art and antiquities market, the Carabinieri TPC intercept a good number of cultural items of suspicious criminal origin each year, many of which are of foreign provenance (the lack of valid and authentic export documentation is in such cases considered as a hint of possible unlawful dealings). In this latter instance, according to a standard practice developed through the years,¹¹⁰ they ask the competent Italian tribunal for precautionary seizure of the objects, have them examined by experts to determine their most likely origin, and warn the competent authorities of the presumed source country, in order for them to check, and possibly confirm, the unlawful origin and, in that case, issue a formal request for their return. On the basis of such a request, the competent judicial authority usually authorizes the release of the objects to the requesting state, through delivery to the ambassador of the country concerned. In the year 2019, Italy returned, for instance:¹¹¹ to Belgium, one sixteenth-century volume stolen in 2005 from Mons University Library; to Croatia, one seventeenth-century volume stolen from Zagreb University Library;¹¹² to Mexico, 594 *ex voto* paintings unlawfully exported from the country; to China, 796 archaeological items dating from the Neolithic to the Ming Dynasty. In addition, the Carabinieri TPC have participated in a set of other international cooperation projects,¹¹³ ranging from peacekeeping operations including protection of culturally relevant sites, to specialized training programs for police forces of other countries, to updating the INTERPOL Stolen Works of Art database (Project PSYCHE)¹¹⁴ in order to assist with the investigation and prosecution of transnational crimes against cultural heritage.

All these activities have proven useful and effective in tackling the ongoing international trafficking of cultural objects, making Italy a very cooperative partner in the prevention and prosecution of present-day offences against the cultural heritage of other countries. Of course, the problem, with respect to the specific issue of colonial artifacts, is related to the inapplicability of such practices to cases of “historical” depredations, which fall well outside the scope of applicable criminal law and criminal procedure measures. Nonetheless, Italy has, in recent years, positively addressed some requests for the restitution of cultural objects acquired in times of colonial occupation – namely, those referring to the already recalled Aksum obelisk and Venus of Cyrene. These episodes certainly suggest a shift toward a more consistent approach to cultural heritage policy,¹¹⁵ correctly paying attention to the legitimate interests and claims of other countries that have seen their heritage diminished as a consequence of Italian historical interference and domination. Nonetheless, there are ambivalences in these positive episodes as well, which signal how the road toward the full redress of colonial wrongs still remains long and winding.

¹⁰⁸ Rose-Greenland 2016.

¹⁰⁹ See the third section of this article.

¹¹⁰ See Scovazzi 2011.

¹¹¹ See Carabinieri TPC, *Attività operativa 2019*. This is the last available report whose data have not been affected by the impact of the ongoing pandemic on both criminal activities and law enforcement operations.

¹¹² Restitutions between European Union member states are of course eased by Council Directive (EU) 2014/60. See also Górka 2016.

¹¹³ See Nistri 2011; Coppola 2014; Rush and Benedettini Millington 2015.

¹¹⁴ See Coppola 2014.

¹¹⁵ Scovazzi 2011.

The Aksum obelisk was re-erected on its original site in 2008, following a bilateral memorandum signed by the Italian and Ethiopian governments on 18 November 2004.¹¹⁶ The most appreciable feature of this episode – besides the restitution itself – is the commitment, undertaken and complied with by Italy, to also take care of the complex and costly dismantling and transportation of the obelisk as well as to finance the United Nations Educational, Scientific and Cultural Organization's project for the restoration and re-erection of the monument in Ethiopia.¹¹⁷

On the other hand, though, the restitution process lasted over 60 years. Italy had committed itself in the 1947 Peace Treaty (Article 37) to giving back this object, and all other items, of Ethiopian cultural property removed since 3 October 1935 within 18 months of its coming into force (on 10 September 1947). This obligation, however, was only partially complied with in respect to “minor” items (many of which were however declared lost and never returned) but not to the obelisk,¹¹⁸ so that, almost 10 years later, its restitution was specifically addressed in an agreement between Italy and Ethiopia (signed in Addis Ababa on 5 March 1956 and entered into force on 4 July 1956)¹¹⁹ on the settlement of economic and financial matters issuing from the 1947 Peace Treaty.¹²⁰ Besides acknowledging the duty to return the obelisk under the Peace Treaty, Italy bound itself (according to Annex C) to the dismantling, removal, and transportation to Ethiopia of the monument within the six months following the entry into force of the agreement. Following the precise obligations assumed under the 1947 Peace Treaty and, even more, the 1956 Agreement, there was, therefore, no valid legal argument to prevent the actual restitution of the obelisk.

Nonetheless, Italy dragged its feet for another 50 years, and over a further joint statement signed in Rome on 4 March 1997 (detailing the stages through which the operations for the return of the obelisk to Ethiopia were to be effected within the same year), which was once again not complied with.¹²¹ The arguments brought forth in Parliament and in the media against the restitution¹²² ranged from allegations that the huge amount of money necessary for the transportation would have been better employed in providing Ethiopia, at the time (2002) ravaged by famine, with a quantity of food of equal monetary value, to the risks for the integrity of the monument related to its dismantling and transportation (mindless of the inconsistency of the argument, as the process had already been successfully enacted once, in 1937, with far inferior knowledge and technology), and even to the danger of setting a precedent for the reclamation by foreign countries of all other obelisks in Rome¹²³ (mindless, amongst other, that many of them are Roman or Renaissance replicas and that the few that actually came from Egypt as ancient Roman war booty have never been the object of any restitution request, for obvious reasons).

The restitution of the Venus of Cyrene in the same year (2008) was in some ways even more complicated. Libya had lodged the first formal request for its restitution in 1989, and it took about 10 years for Italy and Libya to reach an agreement on the issue: on 4 July 1998, the two states signed a joint declaration according to which Italy undertook to return all cultural

¹¹⁶ See Scovazzi 2009, 2011.

¹¹⁷ See Scovazzi 2009, 2011; Cornu and Renold 2010.

¹¹⁸ See Pankhurst 1999, who also highlights how another artifact that is very important to Ethiopia's cultural identity, the Lion of Judah statue, was only returned in 1969, more than 20 years after the established deadline.

¹¹⁹ Agreement between Italy and Ethiopia Concerning the Settlement of Economic and Financial Matters Issuing from the Treaty of Peace and Economic Collaboration, 5 March 1956, 267 UNTS 190.

¹²⁰ See Pankhurst 1999; Scovazzi 2009, 2011.

¹²¹ See Scovazzi 2009.

¹²² On which, see Pankhurst 1999; Acquarelli 2010; Scovazzi 2011; see also note 23 above.

¹²³ An argument particularly popular on the Internet. See, e.g., “È stata brutalmente spezzata e rimossa la stele di Axum distruggendo il ricordo ed infangando il sacrificio dei nostri militi in Africa!” November 2003, <http://foroitalico.altervista.org/axum.htm> (accessed 10 February 2021).

objects taken during and after the Italian colonization¹²⁴ (it is worth mentioning that a like provision, part of a broader commitment to compensate Libya for the former colonial occupation, was later included in Article 16.2 of the Treaty of Friendship, Partnership and Cooperation signed in Benghazi on 30 August 2008).¹²⁵ In the subsequent first meeting of the Committee for Italo-Libyan Partnership, on 11–13 December 2000, the Venus of Cyrene was identified as one of the items to be returned and, building on that promise, on 1 August 2002, the Italian MiC issued a decree removing the statue from the state's property in view of its transfer to a museum in Libya. The statue was actually returned, but only on 30 August 2008, after a long legal battle in front of the Italian administrative courts.¹²⁶

In fact, one of the oldest citizens' associations founded with the purpose of safeguarding the national cultural heritage, Italia Nostra, filed a lawsuit before the Regional Administrative Tribunal (TAR) of Lazio seeking the annulment of the decree. The main argument brought in support of the claim was that the statue was part of the inalienable cultural heritage of the state, and, as such, it could not be deaccessioned with a mere ministerial decree since a specific law, approved by the Italian Parliament, would have been required to allow the removal and subsequent transfer to a foreign state. The statue's belonging to the Italian cultural heritage was not only argued based on the fact that it had been found in what was considered to have been, at the time, Italian territory but also – from a “cultural” perspective – because of its strict connection to Italy's classical Greek-Roman roots, a connection deemed far stronger and more significant than any possible link with the culture of an Islamic country such as Libya. Finally, the plaintiff also voiced concerns that the restitution could create a precedent likely to cause further requests and, in the long run, a significant impoverishment of Italian cultural heritage.¹²⁷

In the end, the decree was upheld both in first instance (TAR)¹²⁸ and in second instance (Council of State).¹²⁹ The latter argument was dismissed by observing how Italian heritage also had suffered grievous losses during World War II and how therefore reaffirming a general duty to return cultural objects unlawfully confiscated in wartime would go to the advantage of Italy as well¹³⁰ (thus also upholding a principle of international solidarity in the protection of cultural heritage). In addition, the reductive idea of what constitutes a “cultural link” was dismissed by observing that Libya possesses even today a rich Roman heritage and that the Hellenistic culture, of which the Venus was an expression, had also profoundly influenced Islamic art and culture of the following centuries.¹³¹

Both the TAR and the Council of State (albeit with slightly different arguments and not without some inconsistency in their reasoning)¹³² considered it to be unnecessary for an act

¹²⁴ See Chechi 2008; Scovazzi 2011.

¹²⁵ Treaty of Friendship, Partnership, and Cooperation between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Italy, signed on 30 August 2008, entered into force on 2 March 2009, ratified in Italy with Law 6 February 2009, no. 7, *Gazzetta Ufficiale della Repubblica Italiana* no. 40. In fact, some authors consider both the 1998 joint declaration and the ensuing 2000 statement (on which see below) not as simplified international agreements, but as mere political declarations, as such not legally binding in international relationships; the same authors also doubt the value of said acts under Italian law, as they are not considered as acts executing prior binding and validly ratified treaties, so that they would be incapable of justifying exceptions to ordinary rules about the inalienability of cultural objects in public collections. See Carpentieri 2007; Ronzitti 2007; *contra* Acri 2007.

¹²⁶ See Chechi 2008; Scovazzi 2011.

¹²⁷ See TAR Lazio sezione II 20 March 2007 no. 3518; Carpentieri 2007; Chechi 2008; Scovazzi 2011.

¹²⁸ TAR Lazio sezione II 20 March 2007 no. 3518. See comments by Acri 2007; Carpentieri 2007; Ronzitti 2007; Chechi 2008; Scovazzi 2011.

¹²⁹ Consiglio di Stato sezione VI 23 June 2008 no. 3154. See comments by Chechi 2008; Scovazzi 2011.

¹³⁰ TAR 3518/2007.

¹³¹ TAR 3581/2007.

¹³² See Carpentieri 2007; Chechi 2008.

of Parliament to authorize the restitution of the statue to Libya. On the one hand, both did not consider Italian sovereignty legally constituted over Cyrenaica at the time the statue was taken, so that the object never legally entered the Italian state's ownership; thus, the statue was not subject to inalienability rules according to Articles 822.2 and 823 of the Civil Code and Article 54 of the CHC.¹³³ On the other hand, Italy was recognized as being under an international law obligation to return the statue to Libya: an obligation arising from the 1998 and 2000 agreements¹³⁴ or, anyway, from customary international law,¹³⁵ to which Italy is bound to conform by Article 10 of the Constitution (which, according to a well-established interpretation by the Italian Constitutional Court, implies, in turn, the prevalence of international customary rules over conflicting internal laws).¹³⁶

The Council of State, in particular, focused on the latter source,¹³⁷ referring not only to the customary rule that requires the reintegration of the cultural heritage of states victims of military occupation but also, more radically, to the two general principles of international law, respectively, on the prohibition of use of force and on self-determination of peoples. The latter, in particular, was considered to include peoples' right to the protection of both their cultural identity and their material cultural heritage.¹³⁸

As observed by some commentators, the arguments used by the Council of State to uphold the restitution of the Venus can be considered to some extent stretched, but the decision was certainly in line with the new political approach adopted by the Italian government,¹³⁹ aiming, amongst other things, at ensuring an overall consistency between Italian claims over cultural objects unlawfully removed from Italy's territory and Italian attitudes toward claims by other countries for the restitution of cultural items of questionable origin in Italian possession. On the other hand, however, it must be observed that the 1998 joint declaration, just like the following 2008 Treaty, concerned a far broader range of (much more strategic) issues, such as cooperation on trade, industry, energy, defense, the fight against terrorism, and control over illegal immigration. Therefore, it is doubtful whether an agreement over the restitution of the Venus would have been reached (or reached so quickly, when compared to the "geological" pace of the actual restitution of the Aksum obelisk), had far more compelling reasons of political expediency not entered into play.

Conclusion: New inputs and possible developments

The debate over Italy's colonial past, and, even more, over the restitution and repatriation of colonial artifacts in Italian collections, remains even today basically the province of a few experts (law and humanities scholars and professionals working in cultural institutions,

¹³³ TAR 3581/2007; Consiglio di Stato 3154/2008. *Contra* Carpentieri 2007; Ronzitti 2007.

¹³⁴ TAR 3581/2007. *Contra* Carpentieri 2007; Ronzitti 2007.

¹³⁵ The argument based on international customary law was particularly important given the actual weakness of the one based on the binding nature of the 1998 and 2000 agreements. See Chechi 2008; see also note 125 above. Some commentators, however, have argued against the idea that a customary rule prohibiting the confiscation of cultural objects in times of armed conflict was already in place at the time, considering it as dating (at the minimum) after the conclusion of the Peace Treaties following World War I. See Carpentieri 2007; Ronzitti 2007.

¹³⁶ See, e.g., Corte Costituzionale 29 January 1996 no. 15; Corte Costituzionale 7 May 1996 no. 146; Corte Costituzionale 24 October 2007 nos. 348 and 349.

¹³⁷ Explicitly stating the irrelevance of any possible problem related to the 1998 and 2000 agreements (see note 125 above), interpreted as having given recognition to a right to restitution actually based on international customary law, while simply detailing its enforcement. Consiglio di Stato 3154/2008.

¹³⁸ The decision has been considered groundbreaking under this respect. See, e.g., Campfens 2019.

¹³⁹ See Chechi 2008, who particularly highlights the nonchalant retroactive application of international customary law.

cultural activities, or the antiquities market). Nonetheless, issues of racial discrimination and former colonial oppression have been recently gathering some more attention in public discourse, thanks also to the echo, even in Italy, of the international Black Lives Matter movement; at the same time, some ripples of international media attention on questions of repatriation of colonial objects, powerfully kick-started by the political stance taken by French President Emmanuel Macron¹⁴⁰ and the ensuing release of the Savoy-Sarr report,¹⁴¹ seem to have reached the Italian press, which, as observed in the introduction, has started to display at least the occasional bout of interest. Even if a real change in the attitude of Italian public opinion, and, therefore, a shift from victimism to a more solidary approach, presently appears very slow-paced in coming at best, it is doubtlessly a start, whose momentum could be increased thanks to further input.

First, Italy actively participated in the negotiations of the new Council of Europe's Convention on Offences Relating to Cultural Property,¹⁴² which the country also signed on 24 October 2017. Also in preparation to its ratification (which is currently ongoing),¹⁴³ a draft law has been submitted in 2017 to the Italian Parliament,¹⁴⁴ proposing a comprehensive review and update of crimes against cultural heritage, which are to be almost totally transferred into the PC, with a general increase in penalties and the addition of some further, specific offences.¹⁴⁵ Amongst these, there is a new felony of unlawful import of cultural property,¹⁴⁶ which is to be punished with imprisonment of between two and six years and a fine of between €258.00 and €5,165.00 – that is, a sanction that would actually be more severe than the one provided for unlawful export.¹⁴⁷ This new offence would cover the intentional import of any cultural object that is the fruit of a prior felony, or that was retrieved by way of unauthorized excavations whenever an authorization is required under the domestic legislation of the country of origin, or that was exported contrary to the laws of the country of origin. Actually, this reform proposal has been stranded in Parliament for more than two years, but this is likely due more to the combined effect of internal political

¹⁴⁰ See Anna Codrea-Rado, "Emmanuel Macron Says Return of African Artifacts Is a Top Priority," *New York Times*, 29 November 2017.

¹⁴¹ See note 1 above.

¹⁴² Convention on Offences Relating to Cultural Property, 19 May 2017, CETS no. 221 (not yet entered into force). The Convention succeeds to the 1985 Delphi Convention of the same denomination (ETS no. 119), which never entered into force for lack of the required number of ratifications. See also Bieczynski 2017; Fincham 2019.

¹⁴³ The draft ratification law was approved by the Italian Senate on 13 October 2021 and is currently pending in the Chamber of Representatives (Atto Camera 3326, <https://www.senato.it/leg/18/BGT/Schede/Ddliter/53643.htm> [accessed 27 November 2021]). Italy's ratification will allow the Convention to reach the minimum number of five ratifications – of which at least three by member states of the Council of Europe – required for it to enter into force (art. 27).

¹⁴⁴ The draft law was approved (as Atto Camera 893) by the Chamber of Representatives on 18 October 2018 and is currently pending in the Senate. See Atto Senato 882, <http://www.senato.it/leg/18/BGT/Schede/Ddliter/50801.htm> (accessed 27 November 2021).

¹⁴⁵ For a general overview of the first draft, see d'Agostino 2018.

¹⁴⁶ The 2017 Convention on Offences Relating to Cultural Property, art. 6.2, requires states parties to "consider" introducing a criminal offence punishing intentional illegal importation of cultural property. The latter is defined under art. 5.1 as import of movable cultural property, the importation of which is prohibited pursuant to the state party's domestic law on the grounds that such property has been either (1) stolen in another state, or (2) unlawfully excavated or retained (according to art. 4 of the Convention), or (3) exported in violation of the law of the state that has classified, defined or specifically designated the cultural property as such. Actually, art. 5.1 presupposes that the state party has domestic legislation in place which prohibits the import of such objects, but does not compel it to introduce such prohibitions if they are not already provided for. See also the *Explanatory Report to the Council of Europe Convention on Offences Relating to Cultural Property*, CETS no. 221, 19 May 2017, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680710437> (accessed 27 November 2021).

¹⁴⁷ Atto Senato 882, proposed new art. 518*decies* PC. The structure and punishment of unlawful export, to be transferred to a new art. 518*undecies* in the PC, would remain unchanged. See note 70 above.

instability and of the pandemic emergency than of any active obstructionism; in fact, discussion over the draft law has recently resumed, and legislative work in the Senate currently appears to proceed expeditiously.

The second, and even stronger, international obligation that Italy will have to comply with is related to the gradual application of the abovementioned 2019 Regulation on the import of cultural objects into the EU, which entered into force on 27 June 2019. Article 3.1, prohibiting the introduction of “cultural goods”¹⁴⁸ removed from the territory of the country where they were created or discovered in breach of the laws and regulations of that country started to apply on 28 December 2020 (Article 16.2.a), for all member states, even if Italy has not yet introduced¹⁴⁹ the “effective, proportionate and dissuasive” penalties required (Article 11) for its enforcement.¹⁵⁰ Besides, by 28 June 2025, the provisions on import licenses (Articles 3.2 and 4 and Annex Part B)¹⁵¹ and importer statements (Articles 3.2 and 5 and Annex Part C) will also start to apply, and Italian authorities will therefore have to implement a measure of import controls, at least for cultural objects entering Italian borders from non-EU countries. The Italian lawmaker is also bound to introduce specific (albeit not necessarily criminal) offences, and related sanctions, for infringements of these EU rules (Article 11).

All in all, it is possible that the gradual application of Regulation 2019/880 will induce a comprehensive review of Italian rules on international circulation of cultural objects, complementing current export controls with new import controls and related enforcement – especially if Italy were also to actually ratify the 2017 Convention on Offences Relating to Cultural Property, and the latter were to enter into force.¹⁵² Of course, as observed above, in order for such a new system to work, some further adjustments to domestic law would be required, as any reform should go beyond the mere addition of new duties to the competences of (already overloaded) existing administrative authorities. Finally, even if it was mostly externally induced, such a change of approach to present-day issues of illegal trafficking could in turn propel a further change in attitudes on issues of historical deprivations and related duties of restitution and repatriation of colonial artifacts. Not a one-day-process, admittedly, nor one that will necessarily unfold; yet enough has been done to date to reasonably hope for progress in the future.

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¹⁴⁸ Matching the typologies set in part A of the Annex to the Regulation.

¹⁴⁹ As it is known, the European Union (EU) does not have direct criminal law competences (see Treaty on the Functioning of the European Union, consolidated version, [2010] OJ C83/49, art. 83), so that, even in case of a regulation, which is as such a directly applicable legal act, penalties must be introduced by each member state with domestic laws, and each state remains free to choose their nature (criminal, administrative, or civil), provided that their proportionality, efficacy, and deterrence are ensured.

¹⁵⁰ If the proposed comprehensive reform of criminal offences against cultural heritage were to be passed into law, that would also cover the requirements of Regulation 2019/880, art. 11, under this respect. Meanwhile, many cases could fit, as stated in para. 3, into the existing unspecific offence set in PC, art. 648.

¹⁵¹ An import license will have to be asked for, and granted, for the legitimate entry into the EU of cultural items deemed at greater risk of trafficking – that is, for archaeological objects and dismembered parts of monuments (including liturgical icons and statues) older than 250 years.

¹⁵² Presently, the Convention has gathered four ratifications, and nine signatures not yet followed by ratifications. Considering also Italy’s ongoing ratification procedure (see note 143 above), it appears likely that the Convention will enter into force within a reasonable time.

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