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REPATRIATION BOTH WAYS

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REPATRIATION BOTH WAYS: A
THEORETICAL APPROACH TO THE
REPATRIATION POLICIES OF TURKEY
THROUGH CASE STUDIES

A Master's Thesis

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May 2023



To my family

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The Graduate School of Economics and Social Sciences
of
İhsan Doğramacı Bilkent University

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By Özkan Atmıř

I certify that I have read this thesis and have found that is fully adequate, in scope and in quality, as a thesis for the degree of Master of Arts in Archaeology.

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ABSTRACT

REPATRIATION BOTH WAYS: A THEORETICAL APPROACH TO THE REPATRIATION POLICY OF TURKEY THROUGH CASE STUDIES

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Countries with cultural properties have always been subject to illicit trafficking and export of these items. Once a cultural property is deprived of its source country, it is also deprived of its context, roots in that land, and the culture to which it belongs. The concept of repatriation is a powerful tool in the competent hands of source countries that can be used to reattach this broken link. Even though repatriation is consulted mainly through source countries, market countries can still use this method. Any country seeking restitution for its stolen or illicitly exported cultural property is naturally working to repatriate their cultural heritage. In this sense, there is no strict definition or boundary of how repatriation should be done or what can be seen as repatriation. Any efforts dissipated to bring back the stolen or illicitly exported cultural property of a country can be seen under the umbrella of repatriation.

The methodology that is followed in this thesis is first to introduce the main terminology like illicit trafficking of cultural property and repatriation. This definitive introduction also examines the leading institutions and agencies within this field. After laying out these main concepts, it introduces the relevant national and international legislation. The international legislation listed in Chapter 2 is not exhaustive but serves as an initial toolkit to confer. For this thesis, only the most relevant legislations are chosen. For the national legislation, only one law is consulted in detail.

In Chapter 3, this thesis starts discussing the theories behind the illicit trafficking of cultural property and repatriation. Being able to discuss case studies about repatriation requires an initial knowledge of the theories behind these concepts. This chapter is also where a literature review on these concepts is done. The literature review comprises both national and international publications within the field. After laying out the prominent publications on the above-mentioned matters, Chapter 4 introduces the selected case studies to the reader. This chapter's framing is designed to see and analyze the repatriation efforts and policies of Turkey in action. Along with the initial benefit of introducing us to the repatriation policies of Turkey, all of these are being published in an academic study in this context for the first time. There are newspaper articles both nationally and internationally for some of the cases. Even though these cannot be seen as academic publications but rather as secondary sources from which I have also benefitted from time to time, in addition to my main source of information, which the Turkish Ministry of Culture and Tourism provided.

Learning about the history of events within each case is significant. Still, we cannot speak about success if we do not see them in contrast to each other and discuss how the reactions and policies of Turkey differed from case to case. In Chapter 5, the selected case studies are evaluated internally and externally, contrasting each other. With this comparison, it is realized that no single method can be applied in the repatriation of cultural property, but rather it shifts according to the case at hand. Even though there are definitive measures, the extent and time of their application vary according to the case. It is further of grave value to realize both the similarities and differences in trying to finalize the repatriation efforts in the sense that it allows the nation-states to build up a database of case studies they can consult in future cases. It is concluded by making projections regarding the future of the field of repatriation and what possible solutions might be developed for these future conflicts.

Keywords: repatriation, cultural property, illicit trafficking, antiquities

ÖZET

ÖRNEK VAKALAR IŞIĞINDA TÜRKİYE CUMHURİYETİ'NİN YASA DIŞI YOLLARLA YURT DIŞINA ÇIKARILAN KÜLTÜR VARLIKLARININ ÜLKEYE İADESİ POLİTİKALARININ İNCELENMESİ

Özkan Atmış

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Tez Danışmanı: Prof. Dr. Dominique Kassab Tezgör

Mayıs 2023

Kültürel varlıklara sahip ülkeler her dönem bu eserlerin yasa dışı ticaretine ve ihracatına maruz kalmıştır. Bir kültür varlığı, kaynak ülkesinden mahrum bırakıldığında, bağlamından, o topraklardaki köklerinden ve ait olduğu kültürden de mahrum bırakılmış olur. Eser iadesi kavramı, kaynak ülkelerin yetkin ellerinde bu kopuk bağı yeniden bağlamak için kullanılabilecek güçlü bir araçtır. Her ne kadar eser iadesi kavramına esas olarak kaynak ülkeler aracılığıyla başvurulsa da, pazar ülkeleri de bu yöntemi kullanabilir. Çalınan ya da yasa dışı yollarla ihraç edilen kültürel varlıklarının iadesini isteyen her ülke doğal olarak kültürel mirasını ülkesine geri getirmek için çalışmaktadır. Bu anlamda, eser iadesinin nasıl yapılması gerektiğine veya neyin eser iadesi olarak görülebileceğine dair kesin bir tanım veya sınır yoktur. Bir ülkenin çalınan veya yasadışı yollarla ihraç edilen kültürel varlıklarını geri getirmek için harcanan her türlü çaba eser iadesi şemsiyesi altında görülebilir.

Bu tezde izlenen metodoloji, öncelikle kültür varlıklarının yasa dışı ticareti ve eser iadesi gibi temel terminolojiyi tanıtmaktır. Bu tanımlayıcı giriş aynı zamanda bu alandaki önde gelen kurum ve kuruluşları da incelemektedir. Bu ana kavramlar ortaya konduktan sonra, ilgili ulusal ve uluslararası mevzuat tanıtılmaktadır. Bölüm 2'de listelenen uluslararası mevzuat kapsamlı olmamakla birlikte, başlangıç için bir

araç seti niteliğindedir. Bu tez için sadece konuyla en ilgili mevzuatlar seçilmiştir. Ulusal mevzuat için ise sadece bir kanuna ayrıntılı olarak başvurulmuştur.

Bölüm 3'te, bu tez, kültür varlıklarının yasa dışı ticareti ve ülkelerine iade edilmesinin ardındaki teorileri tartışmaya başlamaktadır. Eser iadesiyle ilgili vaka çalışmalarını tartışabilmek, bu kavramların ardındaki teoriler hakkında ön bilgi sahibi olmayı gerektirir. Bu bölüm aynı zamanda bu kavramlara ilişkin bir literatür taramasının yapıldığı yerdir. Literatür taraması, bu alandaki ulusal ve uluslararası yayınları kapsamaktadır.

Yukarıda belirtilen konularda öne çıkan yayınlar ortaya konulduktan sonra, Bölüm 4'te seçilen vaka çalışmaları okuyucuya tanıtılmaktadır. Bu bölümün çerçevesi, Türkiye'nin eser iadesi çabalarını ve politikalarını uygulamada görmek ve analiz etmek üzere tasarlanmıştır. Türkiye'nin eser iadesi politikalarıyla tanışmamızın ilk faydasının yanı sıra, tüm bunlar bu bağlamda ilk kez akademik bir çalışmada yayınlanıyor. Bazı vakalar hakkında yayımlanmış hem ulusal hem de uluslararası gazete makaleleri bulunmaktadır. Bunlar akademik yayınlar olarak görülemese de, Kültür ve Turizm Bakanlığı'nın sağladığı ana bilgi kaynağıma ek olarak zaman zaman benim de yararlandığım ikincil kaynaklar olarak değerlendirilebilir.

Her bir vakadaki olayların tarihini öğrenmek önemlidir. Yine de, bunları birbirleriyle karşılaştırmadan ve Türkiye'nin tepkilerinin ve politikalarının vakadan vakaya nasıl farklılaştığını tartışmadan başarıdan söz edemeyiz. Beşinci bölümde, seçilen vaka çalışmaları içsel ve dışsal olarak değerlendirilmekte ve birbirleriyle karşılaştırılmaktadır. Bu karşılaştırmayla, kültür varlıklarının iadesinde tek bir yöntemin uygulanamayacağı, aksine bunun duruma göre değiştiği anlaşılmıştır. Kesin önlemler olsa da, bunların uygulanma kapsamı ve zamanı duruma göre değişmektedir. Ayrıca, eser iadesi çabalarını sonuçlandırmaya çalışırken hem benzerliklerin hem de farklılıkların farkına varmak, ulus-devletlerin gelecekteki vakalarda başvurabilecekleri bir vaka çalışması veri tabanı oluşturmalarına olanak sağlaması açısından büyük değer taşımaktadır. Çalışma, eser iadesi alanının

geleceğine ve gelecekte yaşanabilecek çatışmalar için ne gibi olası çözümler geliştirilebileceğine dair öngörülerde bulunularak sonlandırılmıştır.

Anahtar Kelimeler: eser iadesi, kültür varlıkları, yasadışı ticaret, eski eser, tarihi eser kaçakçılığı



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TABLE OF CONTENTS

ABSTRACT.....	iii
ÖZET.....	vi
ACKNOWLEDGEMENTS.....	ix
TABLE OF CONTENTS.....	x
LIST OF FIGURES.....	xiv
CHAPTER 1: INTRODUCTION.....	1
1.1. What is Repatriation?.....	2
1.2. Main Institutions.....	3
1.2.1. UNESCO.....	3
1.2.2. ICOM.....	4
1.2.3. Turkish Ministry of Culture and Tourism.....	4
1.3. Why I selected to write this thesis.....	5
CHAPTER 2: RELEVANT INTERNATIONAL AND NATIONAL LEGISLATIONS IN FORCE.....	7
2.1. International.....	7
2.1.1. The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict.....	8
2.1.2. 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.....	9
2.1.2.1. Number of Repatriated Cultural Property by Turkey since 1980.....	10
2.1.2.2. Criminal Investigations as Supportive Evidence.....	11
2.1.2.3. Other Supportive Elements in Repatriation.....	12
2.1.2.4. The ‘Laches Principle’.....	13
2.1.2.5. Restorative Justice.....	15

2.1.3. 1995 UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects.....	16
2.1.4. 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage.....	17
2.2.National.....	19
2.2.1. Contributions of Osman Hamdi Bey to the evolution of the Turkish legislation on cultural property preservation.....	19
2.2.2. Antiquities legislations between 1874 and 1983.....	20
2.2.3. Law number 2863 on the Conservation of Cultural and Natural Property.....	21
2.2.3.1. Shortfalls of this Legislation and the issues that originate from it.....	22
2.2.3.2. Being a Registered Antiquities Collector in Turkey.....	23
CHAPTER 3: GENERAL THEORETICAL FRAMEWORKS BEHIND THE EXISTING ILLICIT TRAFFICKING OF CULTURAL PROPERTY AND REPATRIATION.....	25
3.1. Stakeholders of this issue of illicit trafficking of cultural property.....	26
3.2. Flaws in this field and possible ways of improving them.....	27
3.2.1. A Flaw of the Sector of Antiquities Trade in Turkey.....	29
3.2.2. Repatriation Strategies of Turkey.....	29
3.2.2.1. Negotiations.....	29
3.2.2.2. Lawsuits.....	31
3.3. A Critical Look at the Concept of Museums.....	31
3.3.1. Definition of Museums and ‘Code of Ethics’...31	
3.3.2. The current situation of the Turkish Museums.....	32

3.3.3. ‘Inclusive’ Museums.....	33
3.3.4. Tourism and Museums.....	35
3.3.5. Buy-back policies of Turkish museums.....	36
3.4. Theories about repatriation in publications abroad and in Turkey.....	36
CHAPTER 4: CASE STUDIES.....	41
4.1. Introduction to the Cases.....	41
4.2. A Successfully Repatriated Case: A Group of 14 Artifacts from the Collection of Michael Steinhardt.....	43
4.3. Ongoing cases.....	44
4.3.1. Sion Treasure at Dumbarton Oaks.....	45
4.3.2. Iznik Tiles at the Louvre Museum.....	47
4.4. A Case that Turkey is Asked to Return: Artifacts from Sidon Necropolis in Lebanon.....	49
4.4.1. How the Site was Discovered.....	49
4.4.2. Stimulating Perspectives on this Matter from a Sidonian.....	50
4.4.3. The Official Response of the Lebanese Ministry of Culture on this Matter.....	51
CHAPTER 5: INTERPRETATION OF CASE STUDIES.....	53
5.1. What this Chapter Aims to Accomplish.....	53
5.2. A Successfully Repatriated Case: A Group of 14 Artifacts from the Collection of Michael Steinhardt.....	54
5.3. Ongoing Cases.....	55
5.3.1. Sion Treasure at Dumbarton Oaks.....	55
5.3.2. Iznik Tiles at the Louvre Museum.....	57
5.4. A Case that Turkey is Asked to Return: Artifacts from Sidon Necropolis in Lebanon.....	58
5.4.1. Legal Aspect.....	58
5.4.2. Ethical Aspect.....	59
5.4.3. Political Aspect.....	60
5.5. Synthesis.....	61

5.5.1. Common Points of the Cases.....	61
5.5.2. Where These Cases Differ.....	61
5.5.3. What Might Have Been Done More Efficiently?.....	63
CHAPTER 6: CONCLUSION.....	65
6.1. Legislation.....	65
6.2. Theory.....	66
6.2.1. What Does Turkey Do Well in Repatriation?...	67
6.2.2. Further Results.....	68
6.3. Further Discussions.....	69
6.3.1. Provenance Research and Repatriation.....	70
6.3.2. Projections on the Outcomes of Repatriation...	71
6.4. Conclusive Remarks.....	73

LIST OF FIGURES

Figure 1.	Bar chart that displays the numbers of cultural property Turkey repatriated since 1980.....	80
Figure 2a.	Hacılar type Neolithic figurine (Copyright: Turkish Ministry of Culture and Tourism).....	81
Figure 2b.	Hellenistic Period stag's head rhyton (Copyright: Turkish Ministry of Culture and Tourism).....	81
Figure 2c.	7 pieces of cloth decoration dating to 7th-6th centuries BC (Copyright: Turkish Ministry of Culture and Tourism).....	82
Figure 2d.	Kilia-type marble idol dating to Chalcolithic Period (Copyright: Turkish Ministry of Culture and Tourism).....	82
Figure 2e.	2 bronze standards in bird shape dating to 2nd m. BC (Copyright: Turkish Ministry of Culture and Tourism)).....	83
Figure 2f.	A bronze standard in goat shape dating to 2 nd m. BC (Copyright: Turkish Ministry of Culture and Tourism)).....	83
Figure 2g.	Female figurine dating to 7th-6th centuries BC (Copyright: Turkish Ministry of Culture and Tourism)).....	84
Figure 3a.	Pieces from the Sion Treasure at Antalya Museum 1.....	84
Figure 3b.	Pieces from the Sion Treasure at Antalya Museum 2.....	85
Figure 3c.	Pieces from the Sion Treasure at Dumbarton Oaks.....	85
Figures 4a.	Iznik Tiles at the Louvre Museum.....	86
Figure 4b.	The reply that the Louvre Museum has given me.....	86
Figure 4c.	Photo of the reconstructed tile with the mark on its back.....	87
Figures 5a.	Anthropomorphic sarcophagi from Sidon.....	88
Figure 5b.	Lycian type sarcophagi dating to 5 th century BC from Sidon.....	88
Figure 5c.	Sarcophagi from Sidon.....	89
Figure 5d.	Alexander the Great sarcophagus from Sidon dating to the last quarter of the 4 th c. BC (Eastern view).....	89
Figure 5e.	Alexander the Great sarcophagus from Sidon dating to the last quarter of the 4 th c. BC (Northern view).....	90

Figure 5f.	Alexander the Great sarcophagus from Sidon dating to the last quarter of the 4 th c. BC (Southern view).....	91
Figure 5g.	Alexander the Great sarcophagus from Sidon dating to the last quarter of the 4 th c. BC (Western view).....	92
Figure 6.	The letter I sent to the Minister of Culture of Lebanon	93
Figure 7.	The letter that the Lebanese Minister of Culture has sent me.....	94
Figure 8.	The reply that the Directors Office of Dumbarton Oaks has given me.....	95





CHAPTER 1

INTRODUCTION

The issue of illicit looting and export of cultural property has long been a cause of significant deprivation for source countries.¹ There have been countless efforts to prevent these illegal activities by source countries, but these illicit activities persist. There is a term that is closely related to the illicit trafficking of cultural property, and that is repatriation. For all the source countries who suffer gravely from such activities, the repatriation process is a crucial step in ensuring the safe return of these cultural objects to their origin. Nevertheless, this repatriation process is neither smooth nor easy to see its end for the source countries.

This master's thesis will first examine the main concepts and institutions within this field of preventing illicit trafficking of cultural property and repatriation of stolen or illicitly exported antiquities. Then it will move on to examine the existing international and national legislation related to the issue of repatriation through a concise lens. After laying out the fundamentals of the regulations mentioned above, it will discuss the theoretical background of why there is still illicit trafficking of cultural property with a discussion of the main concepts of repatriation. This section will also include a focused look at the academic studies regarding the repatriation policies of Turkey. Then comes the section regarding the case studies. The format of this section will be divided into three main categories. The first section will be about

¹ Source countries are the 'source' of illicitly obtained cultural property. These are then transferred to market countries where these items are traded. Usually, the source countries are developing countries like Egypt, Turkey, Greece, and some South American countries (Brodie and Mackenzie, 2014: 421, Merryman, 1994: 62).

a case that Turkey has successfully repatriated. The second category will include two cases that are still ongoing, and lastly, it will look into a case that Turkey is asked to return.

Initially, I aimed to have a fourth category of case studies, including cases that Turkey had lost. However, after my initial discussions with the head of the Department of Preventing Illicit Trafficking of Cultural Property of Turkey, I realized that Turkey does not see such cases as 'lost' but rather as a continuing process. Turkey might have other opportunities such as finding new arguments to claim the return of such cultural property if need be, so it wants to avoid binding itself by categorizing such cases as 'lost.' Following a detailed section where information regarding the progress of each of these selected cases will be assessed, this thesis will delve into an analysis section where they will be evaluated and based on the data gathered from them, and a conclusive remark will be made. The case studies used here have been provided by the Department of Preventing Illicit Trafficking of Cultural Property at the Turkish Ministry of Culture and Tourism. By sharing the cases and allowing me to work on them at the Ministry, they have provided me with the data which have permitted me to build up this dissertation, for which I am very grateful. Another crucial aspect regarding the case studies selected for this dissertation is that many of them have never been published in an academic study before. The reason for selecting such cases is to open up new discussions and contribute to the academic field of repatriation studies.

1.1. What is Repatriation?

Repatriation in the context of this thesis can simply be bringing back the stolen or illegally exported cultural property to its source country (Roehrenbeck, 2010: 187). However, this concept harbors deeper issues and concerns that require further identification. There are steps in the repatriation process of items belonging to the cultural heritage that are stolen or illegally exported. Some methods rely on both parties' goodwill and operating the relevant principles of international legislation. Both legality and the ownership of the items are among many concerns here. There is

the ethical side of the issue as well. The legal and ethical aspects will be resorted and discussed broadly through the review of the relevant literature and the focus on the case studies, which will be disclosed in Chapter 4 of this thesis.

To address the issue of repatriation broadly, what does this concept serve, who are its most outstanding advocates and who owns the cultural property? In the essence of repatriation lies a legal problem. When discussing repatriation in the context of cultural property, we are considering such an item that was most likely stolen from its source country. To answer the main question of who owns the cultural property from a legal perspective, it is easy to conclude by saying that the stolen artifacts must be returned or restituted to the country where it was stolen from. Nevertheless, repatriation policies apply differently each time based on the case at hand. There is also the ethical discussion of where a cultural property should be displayed. Should it be in the source country where it was originated (and most likely illicitly trafficked), or should it stay in the market country where wider audiences will access it? This is the central dilemma of the issue of repatriation, and this main conflict will be referred to and tried to be resolved with the help of the case studies examined in the coming chapters.

1.2. Main Institutions

Before further investigating the relevant legislation in this field, one needs to introduce the main actors of this process. Institutions like UNESCO, ICOM, and the Turkish Ministry of Culture and Tourism require an introduction to establish their ties with this topic and dissertation.

1.2.1. UNESCO

Turkey's ties with UNESCO go a long way back. Turkey ratified the UNESCO Founding Charter on May 20th, 1946, and was among the first ten member states to do so.² Turkey is among the earliest nation-states to adopt and ratify the UNESCO

² <https://www.unesco.org.tr/Pages/509/120/UNESCO%20World%20Heritage%20in%20Turkey#:~:text=Turkey%20with%20Law%20No.,Founding%20Charter%2020%20May>

Founding Charter, which was followed by the establishment of a national committee of UNESCO in Turkey. The national committee is formed up of 77 members coming from various government branches and NGOs within Turkey.³ It is a crucial indicator of Turkey's deep and rooted relations with UNESCO.

1.2.2. ICOM

A similar relationship is also valid between Turkey and ICOM. ICOM is an international non-governmental organization (NGO) that serves as an overarching body for setting various standards for museums worldwide, of which Turkey is also a member since 1970.⁴ Being established in 1946, right after World War II, ICOM started its activities as an international body under the patronage of UNESCO over the museums⁵. Through time, it became an NGO that is more intertwined with the needs and expectations of modern museology.⁶ It also provides principles of how a museum should be operated and code of ethics which are a group of rules that are set forth to be followed by the museums, which will be analyzed in Chapter 3 of this thesis.

1.2.3. Turkish Ministry of Culture and Tourism

One other load-bearing column in Turkey's repatriation issue is the Ministry of Culture and Tourism. To mention shortly about the history of the Department of Preventing the Illicit Trafficking of Cultural Property within the Turkish Ministry of Culture and Tourism, it was first established in the 1980s under the umbrella of the Excavations Department⁷. It then became a separate department on March 2020. It houses three sub-branches: a foreign unit, a national unit, and an education unit,

%201946.

3 <https://www.unesco.org.tr/Pages/113/157/Genel-Kurul>

4 <https://icom-museum/en/about-us/missions-and-objectives/>

5 <https://kvmgm.ktb.gov.tr/TR-44442/icom.html>

6 <https://icom-museum/en/about-us/history-of-icom/>

7 <https://www.aa.com.tr/tr/kultur-sanat/heykelden-mozaige-bu-yil-3-bin-480-eser-anadolu-topraklarina-geri-getirildi/2461096#:~:text=Ankara,2020'de%20daire%20ba%C5%9Fkanl%C4%B1na%20d%C3%B6n%C3%BCr%C5%9F%C3%BCld%C3%BCr>

where specialized experts participate in the repatriation processes and public awareness projects in Turkey.

1.3. Why I decided to write this thesis

I selected to pursue writing a dissertation on the issue of Turkey's repatriation policies through case studies because of my interest. Furthermore, since this field of study is not a heavily exhausted area of research in Turkey, I hope to contribute by writing a thesis that will refer some of the main problems of why there is still illicit trafficking of cultural property and how source countries (especially Turkey) chooses a way to tackle this dire problem through their repatriation efforts by closely examining a carefully selected group of case studies.

CHAPTER 2

RELEVANT INTERNATIONAL AND NATIONAL LEGISLATIONS IN FORCE

Legality gives legitimacy. For source countries, using the relevant international law is therefore of crucial importance. For the source countries suffering from illicit trafficking of cultural property, the existence of well-founded international legislation they can apply is the first asset in repatriating what is rightfully theirs. For this reason, the following sections examine the related international legislation. Since this dissertation will focus on Turkey's repatriation policies, it will also discuss its national legislation.

2.1. International

This chapter will mention the fundamental international legislation on preventing illicit trafficking of cultural property and repatriation. After introducing this international legislation, the next section will delve shortly into the national legislation of Turkey and discuss whether the current policies are adequate in counteracting these illicit activities.

Effective and well-rounded legislation prevents and safeguards cultural property in each nation-state. Increasingly, each nation-state either adopts new legislation or updates its existing legislation. Not only is relevant legislation enough, but having the effective means of enforcing it is also of grave value (Hutt et al., 2008: 48).

Along with having an effective means to enforce these measures, establishing and facilitating a closely regulated network is also of great importance.

For instance, the ID-Art database project of INTERPOL is a suitable example for this network.⁸ By becoming a part of this project and database, the relative official branches of states (both source and market countries) can file applications for their stolen antiquities to be registered to this publicly accessible database.

2.1.1. The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict⁹

The relevant international legislation can be grouped simply as protective measures under warfare and not under warfare (Özel, 1998: 92). In the years that followed World War II, the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict was adopted in the hopes of preventing both the destruction and the illicit trafficking of cultural property from war zones (Özel, 1998: 100). The development of such an international and pluralistic convention did not happen overnight. There was an accumulation of knowledge, understanding, and a consensus on the dire need to preserve and prevent the illicit trafficking of cultural property which was prior to the adoption of the Convention (Özel, 1998: 94). The 1954 Hague Convention was adopted by 193 member states, indicating the most commonly ratified international legislation among the ones listed in this dissertation.¹⁰

The reason for starting the list of relevant international regulations with the 1954 Hague Convention is because it is the first-ever comprehensive legislation covering the safekeeping of antiquities during armed conflict. Even though the convention foresees regulation for the period of an armed conflict, the main principles it set led the way to the formation and building of the coming generation of international

8 <https://www.interpol.int/Crimes/Cultural-heritage-crime/ID-Art-mobile-app>

9 https://en.unesco.org/sites/default/files/1954_Convention_EN_2020.pdf

10 <https://en.unesco.org/protecting-heritage/convention-and-protocols/states-parties>

legislation regarding the cultural heritage. Although this convention is not the most widely applied legislation in the field, it is undoubtedly vital in understanding how the process of safekeeping of antiquities functions.

2.1.2. The 1970 UNESCO Convention of the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property¹¹

This increasing international interest and public awareness paved the way, which led to the development and adoption of the renowned 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. This single international convention is regarded as the founding base of the relevant international legislation in this field of measures during peacetime (Richman and Forsyth, 2003: 37). Being a well-thought and developed convention, it was adopted and eventually ratified by 141 nation states.¹² Even though the Convention lays out crucial and effective measures, its adoption by nation-states does not only solve the problems involved regarding the repatriation of cultural property. Since it is not a self-executing convention, its ratification does not bring forth a new regulation within the state party's legislative system (Brodie and Renfrew, 2005: 347). Not being a self-executing convention means that each state party has to adopt new legislation on the national level to be able to apply this Convention.

Turkey participated actively in the committee appointed to the process of writing the 1970 Convention (Özel, 1998: 146). The main consensus was to determine a date to form a legal barrier from which the restitution claims for any stolen or illegally exported artifacts could have been done through proper procedures foreseen by the convention, a '*terminus ante quem*' (Özel, 1998: 146).

¹¹ <https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural>

¹² <https://en.unesco.org/fighttrafficking/1970>

The 1970 UNESCO Convention is the most heavily resorted to convention by Turkish officials in their repatriation efforts. This convention sets forth a *terminus ante quem*, which means that repatriation claims which are made for incidents earlier than 1970 will not be able to be pursued through the legal channels of this convention but through other ways like diplomatic and bilateral contact.

2.1.2.1. Number of Repatriated Cultural Property by Turkey since 1980

Based on the legal process foreseen by the 1970 UNESCO Convention, since 1980, Turkey has repatriated 22.424 antiquities in 130 different cases.¹³ The data provided on the number of repatriated cultural property has been available since 1980. I have made a bar chart from the publicly disclosed numbers of repatriated cultural properties of Turkey, which are provided on the website of the Turkish Ministry of Culture and Tourism (Figure 1).¹⁴ The purpose of this bar chart was to display the increasing number of repatriated cultural property through the years. These items are not all brought back based on the regulations of the 1970 UNESCO Convention, but some are subject to return through bilateral agreements with the particular market country.

When I add up the numbers shared on the Ministry's official website, I arrive at a total of 14.004 cultural properties. For a total of 8 years the number of repatriated cultural objects was not disclosed, as can be seen in Figure 1. That may be why there is an inconsistency between the number of repatriated items this dissertation has calculated (14.004) and the number that the current Minister of Culture and Tourism provided the public during one of his latest public speeches (22.424), as mentioned at the beginning of this paragraph.¹⁵ This gap does not necessarily mean that there were

¹³ <https://www.ntv.com.tr/galeri/n-life/kultur-ve-sanat/yurt-disina-kacirilan-22-bin-424-eser-turkiyeye-dondu,9onFXmGRD0m2CYg30nu2gQ/MOQyKV6YjUaHZQjccSKbkg>

¹⁴ <https://kvmgm.ktb.gov.tr/TR-44470/yurt-disindan-iadesi-saglanan-eserler.html>

¹⁵ <https://www.ntv.com.tr/galeri/n-life/kultur-ve-sanat/yurt-disina-kacirilan-22-bin-424-eser-turkiyeye-dondu,9onFXmGRD0m2CYg30nu2gQ/MOQyKV6YjUaHZQjccSKbkg>

no cultural property repatriated during these years but simply reflects a gap in the data.

This convention is crucial for this dissertation because it is the most commonly applied international route for seeking the repatriation of illicitly exported or stolen antiquities used by Turkey. The Turkish Ministry does not disclose what methods they used in repatriating their stolen cultural heritage. That is why it is not possible to provide a solid data on what percent of the repatriated cultural heritage is brought back based on the legislation of the Convention.

2.1.2.2. Criminal Investigations as Supportive Evidence

The most challenging issue here for Turkey or any source country that suffers from such looting and illicit export activities is proving to the relevant authorities that these artifacts were indeed stolen or illicitly exported out of their country. There are various ways and methods to prove such claims. To support the claim of an illegal excavation or a looting activity, it helps significantly to have a prior criminal or civil lawsuit in that source country (Katoğlu, 2022: 45). If the local authorities catch this illicit activity during its doing, a criminal investigation starts immediately in Turkey and the items are confiscated (Katoğlu, 2022: 47). The outcome of this public prosecution may vary depending on the conditions of the particular case. However, the person involved in such illicit activities is usually punished with a prison sentence.

In some cases, even after a criminal lawsuit, the convicted person might smuggle these artifacts out of the country through various means. This person might have succeeded somehow to hide the artifacts that he/she looted and once he/she is out of the jail go back to trafficking them. When such artifacts are to be displayed at various auction houses, Turkish officials from the Foreign Branch of the Department of Preventing Illicit Trafficking of Cultural Property take action and alert these auction houses about the provenance and the legal conflict that these artifacts are involved in which shows that they are in a constant state of vigilance. In most cases,

if Turkey can prove with certainty that such artifacts are stolen and illegally exported out of Turkey, auction houses tend to pull such objects out of the auction lot and return the objects to their legal owners without a trial and through consent and mutual agreement.

2.1.2.3. Other Supportive Elements in Repatriation

Nevertheless, things do not go so smoothly each time Turkey finds such disputed artifacts. Even if Turkey proves that an artifact on the display of an exhibition of a museum or an auction is illegally exported or stolen from Turkey, it also heavily depends on the goodwill of the relevant organization on how the next step of repatriation will progress. In the case of repatriated items as mentioned above, it was possible to prove that objects were stolen from Turkey and the relevant organization had the goodwill and cooperation in returning such disputed objects.

What can be done when this is not the case? If the illicit deed happened after 1970 and it can be legally proved that these objects were stolen, then the relevant articles of the 1970 UNESCO Convention can be consulted. According to Article 7 of this Convention, any state party that faces such a claim regarding the return of a stolen or illicitly exported cultural object should do what is necessary to return or restitute the object to its source country (Özel, 1998: 105). Based on the methodology laid out by this article of the convention, Turkey or any other source country that is a party to this convention can request the opposing state to follow and execute Article 7. By doing so, relevant government officials of the contested state will notify the organization in question (museum, auction house, etc.) to see that the object shall be returned to its country of origin (Özel, 1998: 107).

Even though I outlined the two most ideal cases (direct contact with the auction houses and through negotiations) for how repatriation of cultural property functions based on the 1970 UNESCO Convention, there are many other issues at play when the subject matter is cultural property. Even though there are binding documents like the 1970 UNESCO Convention, states parties may still resist to return such objects,

leaving the museums or auction houses the comfort of retaining the object as they wish. In such cases, there is no choice but to go to court. Nevertheless, legal proceedings are hardly the initial preference of any source country since the lawsuits are quite an enormous financial burden. The process can take many years, sometimes decades, without the guarantee that it will result in favor of the source country. Nonetheless, lawsuits filed in the country where the contested antiquity is found will most likely resolve this conflict once and for all, even though it has many downsides. Moving on and talking about the continuation of the scenario at hand, which is that Turkey can prove legally that its cultural objects were stolen or illicitly exported out of the country, it is most likely to be resolved in favor of Turkey in such cases.

2.1.2.4. The ‘Laches Principle’

Here is another legal concept that has burdensome outcomes for source countries called the 'laches principle.' This legal principle rests on the assumption that a party has acted reluctant and was delayed in claiming its rights, which eventually results in the loss of this right.¹⁶ The reason for exploring a principle, in this case, of legitimate ownership from the field of law is to emphasize that Turkey has lost a lawsuit in the US based on this laches principle. The case of the Kilia-type idol, or also called as the ‘Guennol Stargazer’ was decided on June 2021, which ruled in favor of Christie's auction house and the collector Michael Steinhardt (Acar 2021). In this case, the laches principle was used against Turkey, and the court accepted it.

To indicate briefly the background of this case, a Kilia-type Anatolian marble idol whose origin is Manisa, Turkey, was obtained after an illicit excavation at the site of its discovery, and was illegally exported out of Turkey in 1966 by Alastair B. Martin, who was a famous US tennis champion and an art collector (Acar 2021). In 1993, it was then sold for 1,5. million USD to Michael Steinhardt, a renowned antiquities collector and trafficker, who we shall meet again as the antagonist of one of the

¹⁶ [https://content.next.westlaw.com/practical-law/document/10f9fe5faef0811e28578f7ccc38dcbee/lachesviewType=FullText&originationContext=document&transitionType=DocumentItem&ppcid=12f12505311d43928e73b415d4a3c477&contextData=\(sc.Default\)&firstPage=true](https://content.next.westlaw.com/practical-law/document/10f9fe5faef0811e28578f7ccc38dcbee/lachesviewType=FullText&originationContext=document&transitionType=DocumentItem&ppcid=12f12505311d43928e73b415d4a3c477&contextData=(sc.Default)&firstPage=true)

fundamental case studies in Chapter 4 of this thesis (Acar 2021). The story is told by Özgen Acar, a famous Turkish journalist that actively took part in the detection and repatriation of many cultural objects which were illicitly exported or stolen from Turkey (Acar 2021). From Acar's article, we learn that he frequently referred to the matter of the Kili-type idol in several publications between 1989 and 1997. Christie's contended that even though the Turkish government knew the whereabouts of this contested idol, it did not take any action to claim its rights, therefore claiming that the laches principle was to be executed in this case. Their notion to apply the laches principle was granted under these circumstances by the court. Unfortunately for Turkey, the court ruled in favor of Christie's and Steinhardt and decided that the idol should stay with its current owner.¹⁷

This court ruling is problematic from various perspectives. Applying the laches principle to this matter raises serious concerns for source countries like Turkey. Courts should leave space for judicial discretion if they wish to protect the stolen cultural properties in question. There should be grander concepts and expectations when the topic is preserving and preventing illicit trafficking of antiquities. For instance, applying such legal principles to cases relating to cultural objects should be approached with greater caution. Bringing time limits to particular requests might result in losing a very valuable right to the ownership of these cultural properties. In such legal cases, the courts of each country should decide what approach they seek to apply. Will it side with what the Law says strictly, or will it leave space for judicial discretion in favor of the state that owns the cultural properties? This thesis believes in the importance of developing new source country friendly perspectives, giving adequate space in terms of time limits and requirements for proving that objects were stolen from that country. If the antiquities are registered within the source country, and if these objects somehow ended up in that market country, the burden of proof regarding the ownership of such objects should be loosened. Therefore, the 'laches principle' should not be applied to cases regarding repatriation. Bearing that in mind,

¹⁷ <https://www.artcrimereasearch.org/wp-content/uploads/2017/10/christies-memo-1.pdf>

the case of the Kilia-type idol should have been concluded in favor of Turkey, with a more source country friendly approach.

In addition to this problematic aspect of the court decision, one side of the ruling is promising for future cases of Turkey. The court of New York has ruled that the 1906 decree would make Turkey the rightful owner of the Guennol Stargazer if they could prove by a preponderance of the evidence that the artifact was discovered in modern-day Turkey after 1906.¹⁸ Even though Turkey had lost this case, this aspect of the ruling is significant and groundbreaking for Turkey for the future cases in the sense that for the first time in a foreign court, a law that was in effect in a precursor state is accepted as enforceable in a modern context.

2.1.2.5. Restorative Justice

Restorative justice is a concept that is adopted from the field of criminal law that foresees rehabilitation of the offenders by reconciling them with the victims and the relevant community that the crime affects (Brodie, 2020: 99). How can we relate this concept of criminal law to repatriation and can this concept serve the purposes of this thesis? When we are talking about repatriation, there is always the legal aspect present which is usually concluded by stating that the looted artifact has to be returned to its rightful owner. But is repatriation fully serving its purpose when the public that it was split away from has no agency to be in interaction with this object (Brodie, 2020: 100; Smith, 2022: 269)?

Even after an item is repatriated, the ones who committed the crime of looting and illegally exporting that item should be required to come to terms with the culture where he/she split away this item from if we are seeking a full restoration (Smith, 2022: 264). It is in this sense that the wrongdoers need to grasp the vitality of ‘coming to terms’ with the societies and cultures that they harmed (Brodie, 2020: 100).

18 <https://storymaps.arcgis.com/stories/791adbbb05f04d42b8d7c40123ffb8ac>

Can this concept be of any value to this thesis? I believe that this concept is significant to consider in applying to cases of repatriation abroad but for the case of Turkey, I believe that it is not applicable. Among the causes of why there is still an illicit trade of antiquities in Turkey, we can list the inability of the Turkish society to form an emotional and cultural link with the past civilizations of Anatolia. When this is the case, asking the looters and dealers to come to terms with the public does not make a contribution since this apology will not be inherent and sincere, therefore bypassing the whole cause foreseen by the concept of restorative justice.

2.1.3. 1995 UNIDROIT Convention on the Protection of Stolen and Illegally Exported Cultural Objects¹⁹

The 1995 UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects was intended to answer the shortfalls and gaps in the 1970 UNESCO Convention, first and foremost being its lack of self-execution (Özel, 1998: 126). It focused on the various laws covering looted cultural property in the UK which uses common law and the countries of civil law (Brodie and Renfrew, 2005: 348). What was not foreseen in the development of this convention was the pressure apparent in most market countries, formulated by certain art lobbies (Özel, 1998: 127). This pressuring of the art lobby prevented its widespread adoption in most market countries, resulting in a more concise and well-rounded convention but one adopted by only 63 member states.²⁰

Another hurdle behind its widespread adoption was its Article regarding the time constraints for any claims regarding repatriation or restitution. Article 3 of the UNIDROIT Convention foresees a time limit of 3 years starting from the moment the claimant knew the location of the stolen artifact or the looter himself/herself and a limit of a maximum of 50 years in any case, which starts with the time of the theft (Özel, 1998: 127). The lower limit of 3 years should not be of genuine concern regarding time limits, as the convention also foresees an upper limit of 50 years.

¹⁹ <https://www.unidroit.org/instruments/cultural-property/1995-convention/>

²⁰ <https://www.unidroit.org/about-unidroit/membership-old/>

Turkey is not a party to this Convention, and it cites Article 3 as the leading cause for its unwillingness to ratify it (Özel, 1998: 128). Since many illicitly obtained antiquities originate in Turkey, it does not want to bind itself with such a short time limit by ratifying this Convention. There are many other countries, especially source countries, who are also reluctant to ratify this Convention. This time limit prevents the widespread adoption of such a well-developed international convention. Even though Turkey and some other source countries have not ratified this convention, it is still essential to this thesis because it lays the ground with fundamental principles in the field of repatriation. The principles of this convention are still heavily applied and followed by many states even though they did not officially ratify this convention within their national legislation. Some near universal policies stem from the UNIDROIT Convention, which Turkey has also adopted in this sense. For instance, Article 3 covers the restitution process for stolen or illicitly exported cultural property. Following this, Article 4 looks into repatriation, a necessary process (Özel, 1998: 129). It is also significant that this article foresees financial compensation for the *bona fide purchaser* who did not know that this artifact ended up illegally in his/her possession (Özel, 1998: 130). By doing so, the convention hoped for a broader scope of applicability.

2.1.4. 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage²¹

The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage can be seen as the latest addition to this primary set of international legislation on this matter (Brodie and Renfrew, 2005: 348). Turkey is not a party to this Convention either. The main concern of Turkey regarding this convention is based on the determination of maritime boundaries in the Aegean Sea. Since that region has long been a source of conflict between Turkey and Greece, adopting this convention would mean giving up on some vested interests in the region. The 2001 UNESCO Convention explains its relation with the 1982 United Nations Convention

²¹ <https://unesdoc.unesco.org/ark:/48223/pf0000126065>

on the Law of the Sea (UNCLOS) in Article 3, a widely accepted international legislation covering issues relating to the maritime world in various senses.²² According to this article, the 2001 UNESCO Convention stems from the UNCLOS. So what is problematic for Turkey is that it is not a party to either UNCLOS or the 2001 UNESCO Convention.

The reason for not adopting the Convention is the issue of territorial waters which is set as 12 nautical miles (22 kilometers) in Article 3 of UNCLOS, but Turkey accepts and applies a unit of 6 nautical miles (11 kilometers).²³ If Turkey is to adopt and ratify this convention, its usage and ownership in the Aegean will decrease considerably when compared with Greece.²⁴ This is primarily why Turkey has not signed and ratified this convention. Furthermore, since this is the case and the 2001 UNESCO Convention stems from the UNCLOS, Turkey cannot currently be a part of this Convention.

Despite Turkish concerns regarding its territorial waters in the Aegean, the 2001 UNESCO Convention in itself is a critical one in terms of preserving the underwater cultural heritage and dealing with the prevention of its illegal trafficking. Since Anatolia can be seen as a great peninsula, it maintains an enormous underwater cultural heritage which, unfortunately, lacks significantly in terms of its preservation. There have been attempts and scientific studies to designate and inventory these underwater cultural heritage, most of which are shipwrecks of varying chronologies. A recent example mentioned here is the ‘SIT Project’ overseen by Professor Harun Özdaş of Dokuz Eylül University in Izmir, which aims to form a digital database of the shipwrecks of Turkey.²⁵

22 https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

23 https://treaties.un.org/doc/Treaties/1994/11/19941116%2005-26%20AM/Ch_XXI_06p.pdf

24 https://www.mfa.gov.tr/background-note-on-aegean-dispute.en_mfa#:~:text=The%20fundamental%20source%20of%20tension,one%20of%20the%20coastal%20states.

25 <https://unesdoc.unesco.org/ark:/48223/pf0000189968>

Since Turkey is reluctant to ratify this convention, this writer believes that it should at least develop and come forth with national legislation explicitly focusing on preserving its underwater cultural property subject to damage, collapse, and looting. That being said, this should not be taken as implying the underwater cultural heritage of Turkey lacks legal protection. The Turkish Law number 2863 that will be examined in detail shortly lists underwater cultural properties within the protection scope of the Law, so until new and more detailed legislation is produced, issues relating to underwater cultural properties will be dealt with under the provisions of that Law.

2.2. National

In this chapter of this dissertation, the primary international and national legislation will be briefly examined to some extent concerning the repatriation efforts of Turkey. First, the achievements of Osman Hamdi Bey will be examined who is a central historical figure in the development and evolution of Ottoman legislation in this field. It is of grave importance to grasp how the relevant legislation on repatriation and prevention of illicit trafficking of cultural property evolved through the years since the end of the 19th century, leading to our current legislation. There are many elaborate publications on the life of Osman Hamdi Bey and his personality elsewhere (Eldem 2010; Eldem 2016; Mansel 1960), so this thesis will not devote a section to that, but rather it will try to examine Osman Hamdi Bey's efforts in the development of new protective measures starting with his office as the head of the then Imperial Museum, the predecessor to the present Istanbul Archaeological Museum, and to observe the evolution of its national legislation.

2.2.1. Contributions of Osman Hamdi Bey to the evolution of the Turkish legislation on cultural property preservation

Being an art historian, Philipp Anton Dethier was appointed as the first head of the Imperial Museum in 1872 and served in this post for eight years (Çelik, 2016: 61; Saatçı Ata, 2021: 459). After Dethier's sickness worsened and he passed away in 1881, a search for appointing a new head of the Imperial Museum in Istanbul was

hard at play (Sönmez, 2020: 769). There were various candidates for this post, and Osman Hamdi Bey was among them, seeing that he had a suitable academic background and adequate Ottoman bureaucracy experience (Sönmez, 2020: 769). He was appointed as the head of the Imperial Museum on September 4th, 1881, where he immediately started his efforts to develop more comprehensive legislation on art and antiquities of the Ottoman state (Sönmez, 2020: 770).

Along with his continuous and persistent efforts to improve the conditions of Turkish museology, Osman Hamdi also constantly worked to improve the current legislation of the 1874 law on antiquities (Sönmez, 2020: 771). This allowed the export of antiquities, even though it was subject to some limitations. Starting with 1882, new efforts came forward to close the loopholes of the 1874 law, and Osman Hamdi Bey took the leading role in these (Sönmez, 2020: 771). The draft of the new Law took effect with the approval of the Sultan on February 21st, 1884, and it inactivated the relevant article of the 1874 law, which foresaw giving some portion of the found artifacts to both the land owner and the excavator (Sönmez, 2020: 772). For the first time with the Law dating to 1884, it was foreseen that all the cultural property to be found belonged to the Ottoman Empire and had to stay within its territories (Sönmez, 2020: 772). With the new Law, which Osman Hamdi Bey worked tirelessly to implement it was just in time to receive a vast number of collections arriving at the Imperial Museum from the excavations around the empire, including the site of Sidon in Lebanon (Sönmez, 2020: 773). Therefore, Osman Hamdi Bey was central in developing new protective legislation regarding antiquities and preventing their illegal export.

2.2.2. Antiquities legislations between 1874 and 1983

Following the principles put forth by the 1874 law, the 1884 law was adopted in the Ottoman state. This gave a more broad and detailed description of what constitutes an antiquity (Karaduman, 2007: 75; Shaw, 2003: 111). It further foresaw the state as the sole implementer of this law (Karaduman, 2007: 76). In addition to this new

definition of antiquities, the value given to the sites was also being prioritized (Shaw, 2003: 112).

The next legislation to follow was the 1906 law which aimed to close the gap in the 1874 law (Karaduman, 2007: 77; Shaw, 2003: 126). With a few minor adoptions, this law was used by the Turkish Republic until 1973 (Karaduman, 2007: 77). In addition to closing the previously present loopholes, the law of 1906 also set a primary administrative role for the Imperial Museum (Shaw, 2003: 126). This administrative duty also saw assigning the local branches of the ministry of education to be directly responsible for the museums and the protection of the artifacts (Shaw, 2003: 126).

The year 1973 saw the adoption of Law number 1710, which basically rearranged the provisions of the 1884 and 1906 laws (Karaduman, 2007: 80). It also formalized the concept and legal basis for establishing a scientific foundation. This law served as far as it could to protect Turkey's heritage until 1983, when it served as the basis of and was replaced by the current legislation on the matter, Law number 2863.

2.2.3. Law number 2863 on the Conservation of Cultural and Natural Property²⁶

Turkey's most crucial national legislation as a protective measure for cultural heritage is Law 2863 on the Conservation of Cultural and Natural Property. Adopted in 1983, it forms the skeleton of the Turkish legal framework for establishing protective measures for the preservation of cultural property and developing measures to prevent the illicit trafficking of cultural property through extensive penal sanctions. This law code is quite comprehensive in that it gives detailed definitions of the relevant terminology of this field, along with establishing the authorized and responsible government branches. It reiterates the main principle, reminiscent of the 1874 dated Law of the Ottomans on antiquities, that antiquities are the property of the state and that in principle they are not subject to private ownership. However, exceptions exist, such as being a licensed antiquities collector under the conditions

²⁶ <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.2863.pdf>

listed in Article 26 of the same law.²⁷ Penal sanctions are also developed and listed in detail, foreseeing imprisonment of up to 12 years based on the severity of the art-related crime one commits. As these sanctions clearly illustrate, there are severe punishments for art-related crimes in Turkish legislation. However, even though we have a thoroughly established law code, there are aspects in its application which results in persisting illicit trafficking and looting.

Moving on to compare and contrast the 2863 Law of Turkey with some other European countries, we can start by reiterating that the national legislation of Turkey regarding this matter is quite strict in the preservation of antiquities along with foreseeing the procedures for their transaction by various means. Turkey is among the source countries which developed stringent measures to ensure that no cultural property is to be legally traded without its consent and oversight. These strict measures also effectively halt the legal trade of antiquities in Turkey, as we shall see below.

Unlike the common perception of the broader Turkish public which claims that the current legislation is not sufficient enough, this thesis witnesses the extent and the legal coverage this law provides. Even though the relevant law is extensive enough to answer more or less many of the shortfalls of this issue in Turkey, the problematic aspect is the need for a more efficient application of these regulations. Like most source countries, Turkey has experienced and continues to experience looting of varying degrees (Blake, 1998: 825).

2.2.3.1. Shortfalls of this Legislation and the issues that originate from it

Unfortunately, there is not one single answer to solving such enormous problems. Among the many problems for the Turkish case, even though we know, there are effective regulations in force, their meticulous application and overseeing needs to be thoroughly provided due to several other factors. To list a few of these shortfalls, we can state the lack of staff who possess specific field expertise in this area and the lack

²⁷ <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.2863.pdf>

of funding as the two of the more common ones. Providing an environment where the efficient applicability of the relevant provisions of Law number 2863 and the effective enforcement of the penal sanctions with the relevant evidence regardless of the attested value of the cultural property can change the current situation in the efforts against the illicit trafficking of cultural property in Turkey, and this could hopefully be a source of inspiration for other source countries as well.

2.2.3.2. Being a Registered Antiquities Collector in Turkey

Such harsh regulations are not present in market countries like the UK, France, Switzerland, Germany, and the US (Özel, 1998: 320). Even though these market countries regulate the art market closely and ask for legal documents regarding the provenance and export out of the source country, they also provide a wide range of opportunities for these items to be used in trade and monetized (Özel, 1998: 321). For example, online auctions on antiquities are popular worldwide, but that is not true in Turkey. It is illegal to sell an object deemed as being an antiquity and part of the cultural heritage through auction houses or other websites. If you hold a collector's license and are registered under the provisions of Law numbered 2863, you are allowed to collect antiquities in Turkey. However, even this is subject to many strict limitations. It is subject to even stricter regulations if you wish to conduct trade in antiquities.

According to Article 25 of the 2863 law on antiquities, for an antiquity to become an item of trade, it must be listed as so by the Ministry of Culture and Tourism. Then, it can become the subject of a transaction between licensed buyers according to Article 26 of the same Law. Whatever cultural property one decides to sell, one needs to notify the relevant branch of the Ministry of Culture and Tourism and let them know of this situation. The Ministry is given the initial right of ownership, which originates from this core law code. If the Ministry deems the item valuable enough for study, research, or exhibition in any of its museums, then it can buy the item from the seller. If not, the item can be sold to another licensed trader who will need to register this newly bought item to his/her inventory book for the yearly examinations done by the

Ministry. As one can understand, this is a very troubling and tiresome process for people who wish to do antiquities collecting in Turkey. One can even claim that this strict oversight might cause an increase in the black market for antiquities in Turkey. In order to prevent this, the transaction of cultural property should be overseen with less strict policies. New guidelines should be developed to allow a more straightforward process for purchasing antiquities in Turkey that the Ministry will not deem valuable enough to be exhibited in the museums. This can be achieved by observing and getting inspired by the regulations in the market countries.

Can a foreigner own a cultural property and become a licensed antiquities dealer in Turkey? This is a tricky question to answer because there is no clear regulation covering this topic. Based on the expectations and the standards set for collectors, in order for a foreigner to be a licensed collector, he/she must at least have a residency in Turkey that he/she can show as a permanent address for the yearly checks that will be done by the Ministry of Culture and Tourism. Once again, since there is no clear regulation on this topic, this is merely a projection done through analogy.

CHAPTER 3

GENERAL THEORETICAL FRAMEWORKS BEHIND THE EXISTING ILLICIT TRAFFICKING OF CULTURAL PROPERTY AND REPATRIATION

What is the driving force or the continuous motivation behind this long-lasting issue of illicit trafficking of cultural property (Brodie and Luke, 2006: 303)? There have been efforts by scholars to identify several possible thrusts behind this issue (Brodie et al., 2006). Before listing such causes, though, one needs to evaluate how this system of illicit trafficking functions. The illicitly obtained cultural property market acts just like any other legal market where commodities of sorts are traded with relevant stakeholders (Brodie, 2010: 263; Brodie and Luke, 2006: 304). This illicit market of works of art and antiquities should be understood in great detail before identifying preventive measures. In order to realize how a market functions, one needs to be able to grasp the volume of the materials that are being traded (Brodie et al., 2022: 119). There have been attempts to reconstruct the relative volume of these markets elsewhere (Brodie et al., 2019: 87-96; Sargent et al., 2020: 69-85; Brodie and Contreras, 2012: 12), so this thesis will not go into more detail on this. But to simply draw a picture of what the situation looks like in Turkey, we can state that the known number of illicit excavations in Turkey between 2007-2012 was 2.188.²⁸ When we consider this number of illicit excavations together with the official number of repatriated objects to Turkey which is 22.424, we can say that the black market for antiquities in Turkey is quite immense.

28 https://www.ntv.com.tr/turkiye/anadolunun-mirasini-mahveden-defineciler,suomODY_sEWeOpOKTQ9i5g

3.1. Stakeholders of illicit trafficking of cultural property

Five stakeholders are generally identified in studies about trafficking: They are archaeologists, looters, dealers, collectors and government employees, and lawmakers (Kersel, 2012: 258; Smith, 2022: 267). It is possible to group these stakeholders into three more broad categories and list them under production, distribution, and consumption (Kersel, 2012: 256). Each of these stakeholders contributes to the formation of this illicit market to varying degrees (Kersel and Hill, 2019: 312). Their relation to each other and the effective overseeing of this relation is often disregarded.

Nevertheless, what is the role of archaeologists on this matter as stakeholders? Does listing them as a stakeholder among looters and dealers load a negative connotation? This thesis believes the contrary. This list, in itself, does not evoke a direct link with the process of illicit trafficking but lists stakeholders who are involved in various sections of this process, both positive and negative. In this regard, having archaeologists in this group of stakeholders should not have a negative connotation.

In addition to this categorization, this thesis proposes the addition of a new group of stakeholders which is academia. This group is essential because of its close ties with the field practice. Academia might have been disregarded as a separate stakeholder because it was perhaps seen as to be encircled by archaeologists. However, this, of course, might not always be the case. Being an archaeologist does not necessarily mean that person is also a scholar or holds a position at an academic institution or vice versa. That is why it is significant to make such a distinction.

In the following paragraph, this dissertation will look into the possible flaws in developing preventive measures against the illicit trafficking of cultural property.

3.2. Flaws in this field and possible ways of improving them

What are the possible flaws or gaps in developing preventive measures against the illicit trafficking of cultural property, seeing that the black market continues to exist? The antiquities black market acts and operates based on the obscurity and liability of this sector (Smith, 2022: 266). Among many aspects, the lack of expert staff actively participating in policy-making weighs considerably (Brodie et al., 2022: 118).

Among the policymakers at the international level, intergovernmental organizations (IGOs) and international non-governmental organizations (INGOs) like UNESCO and ICOM are among the prominent institutions (Alder and Polk, 2002: 38). Even though they are among the leading institutions, their efforts in developing policies usually fail to satisfy the needs of the sector. The reason for this is shown mainly as the lack of expert staff and communication among institutions and State parties (Brodie et al., 2022: 119; Brodie, 2019: 447). Without the expertise in preventing illicit trafficking of cultural property, the policies and regulations that will be developed will likely not to succeed. The lack of expert staff in such international organizations also has to do with the lack of funding for such organizations (Brodie, 2017: 7; Brodie, 2019: 455). This gap in expert staff can be compensated by collaborating with museums, institutions, or relevant scholars. With the channeling of more funds and a better and more efficient allocation of the current funds of these organizations, their efficiency can be improved. Thus, a more effective policy-making process can be achieved.

One other significant flaw of this sector is the inapplicability of the current international regulations in national legislations (Brodie et al., 2022: 123; Brodie et al., 2013: 24). Take the most widely known and applied international preventive measure, the 1970 UNESCO Convention. Even being the most widely adopted and known convention on this topic, its legal status prevents self-executing by the member states (Brodie et al., 2022: 122; Özel, 1998: 143). Even though many of the State parties have adopted the UNESCO Convention, its application in the national legislation is prevented both due to the nature of this convention and the possible pressure that is received from the art lobbies in some such countries (Brodie et al.,

2013: 29). This legal gap is a huge one that needs to be dealt with if a potent solution is hoped to be reached. Closing this gap might be done through different methods, but this thesis sees strengthening national regulations among the leading candidates.

Being unable to develop an effective response to this illicit trade can also be considered as a flaw and is based on the expectations placed on some stakeholders (Brodie et al., 2022: 124). The greatest expectation fallacy is usually assigned to academia, which is an active part of this process. According to many IGOs, INGOs, and State parties, the scholars who are researching this subject are not putting adequate time and energy into trying to locate illicitly traded objects, especially on online trade sites (Brodie et al., 2022: 123; Brodie, 2017: 9). Firstly, this is a fallacy in the part of the organizations and the states. No scholar has an inherent duty to use their free time for staking out illicitly obtained objects on the internet black markets. Of course, they do have a duty to alert the authorities, if they naturally come across an illicitly obtained cultural property through their usual research. Nevertheless, apart from their work hours, expecting the scholars to spend their spare time trying to locate such items puts too much pressure on them. On top of that, identifying such objects online does not resolve this problem. The more challenging part starts after one identifies such illegal objects. Proving that they were illicitly trafficked is much more complicated since, in most cases, the information regarding their provenance is consciously hidden.

Nonetheless, this thesis believes that the correct method of identifying such objects on online auction sites should be through the agencies of the national governments rather than as a general burden placed on academia. Unfortunately, in most source countries, such preventive measures are trying to be tracked by a minimal number of staff with sufficient expertise. On top of the lack of staff problem, most of these agencies also lack funding, further degrading their preventive efforts. One possible solution for these flaws is to establish a permanent research group formed of experts in this field which could function as an NGO (Brodie et al., 2022: 126). This independent research group will be hosting diverse members from around the globe

without being associated to any of the existing institutions. It will be funded by the contributions from organizations like UNESCO and ICOM through the donations made by the State parties (Brodie et al., 2022: 127; Mackenzie et al., 2020: 6).

3.2.1. A Flaw of the Sector of Antiquities Trade in Turkey

The section above brought together a list of potential causes behind the persistent illicit trafficking of antiquities globally. If we are to develop a more focused approach to the case of Turkey, specifically to the case of trade in antiquities in Turkey, let us see if we will find more diverse answers apart from what is already listed.

There is a clear distinction between the approach of the Turkish law to collectors and dealers of antiquities and the international regulations on this matter. This issue is closely covered by the national regulation, Law No. 2863. It is not forbidden to buy and sell antiquities in Turkey, but they are subject to onerous legal steps, which are identified in detail in the previous sections. This strict overseeing of the transaction of cultural property is not so strict for other countries, especially in market countries where such transactions are mundane and efficiently completed even online. This is a unique application of Turkey in terms of antiquities trade within a country.

3.2.2. Repatriation Strategies of Turkey

In this section, two of the main repatriation strategies of Turkey are listed and analyzed.

3.2.2.1. Negotiations

The initial method for repatriation efforts of Turkey is through negotiations. After Turkey identifies a stolen or illicitly exported cultural property, the initial step varies depending on where this item is located. Suppose the item is identified on the website of an auction house²⁹. In that case, Turkey's initial step is to prepare a file that maintains proof that this item was looted or illicitly exported from Turkey and

²⁹ Negotiating as a repatriation strategy is discussed here through the example of auction houses. The same is also valid for museums.

try to convince this firm to stop the bidding on this item. If the auction house is open to cooperation, they can stop the bidding on this item and ask for further proof to complete the return of this item to Turkey. Moreover, once Turkey provides enough evidence to convince the auction firm, they can return this artifact to Turkey. A similar route can be valid if an item is located within a museum as well.

Unfortunately, this initial case rarely occurs. The auction houses are not always cooperative. Even though Turkey identifies an item on one of their lots and contacts them immediately to take it off the lot and stop the bidding, in most cases, they might not even hear back from the auction companies. Furthermore, unfortunately, when Turkey does not get a reply from these firms, the dialogue option is out of the picture.

In some cases, Turkey might recognize an item whose bidding has already been completed, and it is sold to a third party. This is also a common scenario that Turkey is faced with. To overcome this, Turkey asks the relevant auction house to share the information of the third party so that they can contact and let them know that they purchased an illicitly obtained cultural property. Again, the auction houses sometimes choose to cooperate and sometimes not. If they provide the relevant information, Turkey gets in touch with these third parties and ends up completing their repatriation through dialogue.

There is a different method of repatriation which is arbitration. It can be regarded as an extension of negotiations or a subgroup of lawsuits, so I did not choose to write it as a different subgroup. This is also a financial burden on the parties, but it is a faster process when compared with a lawsuit. Since arbitration is financially less burdensome, state parties can invest in public awareness campaigns and educational incentives with the excess budget.

3.2.2.2. Lawsuits

One other tool in repatriation is lawsuits. Even though this is a potent tool for conclusive repatriation efforts, it also has shortfalls. One shortfall is that it is very time-consuming. It is not possible to foresee the time frame for when a lawsuit will be concluded. It is also impossible to foresee how the case will be concluded, which maintains risks. It is also a financial burden on the source countries to pursue a lawsuit in market countries where the cost of proceedings might be enormous. For all these reasons, it is a last resort for source countries, including Turkey, to go for this option in their repatriation efforts. There can be exceptions to this depending on the value, the political or cultural significance a cultural property carries. In such cases, Turkey can choose to go to court being well aware of its shortfalls.

3.3. A critical look at the concept of museums

Museums are essential institutions created to serve the cultural and educational needs of the societies they are a part of. This understanding of museology is the dominating approach, and it is gaining more and more supporters (Luke and Kersel, 2013: 363). When we examine Turkish museums in general, however, we see that many still operate on older approaches to museology, as showcases of objects, with a negative impact on the museum-visitor relationship. This makes it necessary to discuss the shortfalls of this attitude in terms of museums providing a more comprehensive approach to the needs of the public.

3.3.1. Definition of Museums and ‘Code of Ethics’

We should begin this discussion with the widely accepted definition of museums and in particular the definition the Extraordinary General Assembly of ICOM provided in Prague on August 24th, 2022. It is quoted directly to depict what ICOM believes a museum should be: *'A museum is a not-for-profit, permanent institution in the service of society that researches, collects, conserves, interprets and exhibits tangible and intangible heritage. Open to the public, accessible and inclusive, museums foster diversity and sustainability. They operate and communicate ethically, professionally,*

*and with the participation of communities, offering varied experiences for education, enjoyment, reflection, and knowledge sharing.*³⁰

In this quite comprehensive definition of how a museum should operate, one can realize that museums are not merely buildings to showcase artifacts. They are buildings that are supposed to be much more interactive and welcoming to the broader public. This definition is significant because each member state of ICOM has an ethical duty to adapt its museums to the best of its ability with the features provided in this definition. We can also see the trend of modernizing museums in Turkey in line with the wide adoption of this definition.

Another significant recommendation is the Code of Ethics which is again devised by ICOM.³¹ This is a crucial measure covering issues like acquisition, provenance check, organization of museums, and return of items, mainly in its Articles 1 and 2.³² Since it is not a binding legislation, its recommendations merely stay as advisory. Nevertheless, still, ICOM works to promote these guidelines on every international platform in order to help museums all around the world to comply with them and to work on the same line. In this dissertation, the guidelines regarding provenance checks and returns listed in the Code of Ethics are of more value. They may serve to lead in the forming and building of new relevant legislation.

3.3.2. The current situation of the Turkish museums

Growing up in a very rich geography in terms of movable and immovable cultural and natural heritage, I had the chance to visit and experience various types of museums within Turkey. One common point in all of these museums was the lack of the presence of the public. Unless there is a special holiday, a special exhibition of some sort, or it is located in a touristic area, the museums are generally places that

³⁰ <https://icom-museum/en/resources/standards-guidelines/museum-definition/>

³¹ <https://icom-museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf>

³² <https://icom-museum/en/resources/standards-guidelines/code-of-ethics/#:~:text=The%20ICOM%20Code%20of%20Ethics,by%20the%20international%20museum%20community.>

are out of scope for the wider public. This observation may only be accurate for the case of Turkey, yet one can form parallels with other similar countries around the globe in terms of the number of visitors and the accessibility to these museums by the public.

As a source country, Turkey has long been actively working to repatriate its illicitly trafficked cultural property. However, to what extent can we talk about success in the case of repatriation of cultural property if these objects are then only seen by a very small portion of the public? The repatriated items are showcased at museums with press meetings but are they really reaching the public? Are other powers at play here, like politics and the so-called 'soft power'? Are countries like Turkey, Greece, and Italy (source countries) using their wealth in the cultural property as a winning tool against the once colonial powers of the West by pressurizing them through proper legal channels? If so, is this an unacceptable deed after all? Or rather, is it ethical to use a country's cultural heritage as a tool of politics? These are some of the main questions regarding both the concept of museums and the issue of repatriation more generally.

3.3.3. 'Inclusive' Museums

Since we started seeing many reforming developments in the field of museology, especially in the US and in Europe, it would not be far-fetched to assume that museums in the past were not accessible by the wider public due to economic and welfare reasons. Museums all around the world are now much more inclusive and developing policies to increase the inclusion of the public.

The vast majority of museums in Turkey are owned, operated, and funded by the state. The dominant principles within the Turkish museums is to display artifacts in chronological order and with a sense of a site-based approach. This is topped with the pressure to collect the most prestigious artifacts in Ankara and Istanbul's more commonly visited museums, resulting in the deprivation of input that could come from a more context-based approach.

This is still a dominant concept of exhibition that has recently been extended to local and regional museums which are getting more funding, resulting in more visitors and richer exhibitions. The increasing numbers of both foreign and local visitors can explain the choice for these museums and the increasing funding they receive over the establishment of exhibitions in less popular and less visited museums in considerably smaller cities for touristic purposes.

Since private ownership of the cultural property in Turkey is very strict, establishment of private museums was not a common practice (see the section above 2.2.2.2.). However, there is also an increasing number of private museums being established in Turkey which clearly shows a change in this trend³³.

Nevertheless, how do we decide where to display a cultural property? Do we care to display it as close as its source (preferably also *in situ*), or do we care about how widely it can be accessed and appreciated by history and archaeology aficionados? These are questions that lack a simple and single answer, and the reply one gives to such questions varies based on the policies the state prefers to adopt, seeing that museums in Turkey are primarily state-run.

Even though some issues push the answer to this question towards a negative response, there are increasing efforts to make these museums accessible to the wider public (Walczak et al., 2006: 95; Luke and Kersel, 2013: 363). These efforts have increased in the past years due to the Covid-19 pandemic. Some of the most popular and highly-visited Turkish archaeology museums can be visited virtually for free from all around the globe.³⁴ This and other developments should be taken into account when discussing accessibility and inclusion. Such efforts should be broadened, and with the incorporation of new methods and tools, museums both in

33 <https://data.tuik.gov.tr/Bulten/Index?p=Kulturel-Miras-2021-45687#:~:text=T%C3%9C%C4%B0K%20Kurumsal&text=M%C3%BCze%20say%C4%B1s%C4%B1%202021%20y%C4%B1l%C4%B1nda%202020,%C3%B6zel%20m%C3%BCze%20kategorisinde%20yer%20ald%C4%B1>

34 <https://sanalmuze.gov.tr/>

Turkey and globally can become more inclusive and readily accessible to the broader public.

3.3.4. Tourism and Museums

It has always been stated that Turkey had a policy of advertising tourism through making campaigns for its prosperous cultural heritage (Atakuman, 2017: 171). To reach that end, the Turkish state has been sponsoring almost exclusively national researchers and wanting them to excavate sites with remains of monuments that will be displayed on the site after restoration, and artifacts both for its museums and for study at the universities.³⁵

In line with this policy, the Turkish state has adopted a 12-month long excavation permit which directly conflicts with funding issues. It is not a realistic solution to boost excavations and to develop monumental sites for tourism. Even with external funding, the 12-month limit simply ignores the realities of excavation seeing that there needs to be time dedicated to study and publication of the excavated artifacts along with the climatic constraints in some regions of Turkey. As an additional positive note, this new strategy might indicate the concern that the Ministry has shown to preserve its cultural heritage throughout the year.

This concentrated approach to continuous excavations has resulted in a vast accumulation of artifacts that no museum on earth can hope to display at any time. Since also the storage units of almost all Turkish museums are full of artifacts that have never seen the face of visitors or been the subject of scientific research, why is there still a continuous effort of trying to excavate on such a massive scale which also leads to potential trafficking of these items? Unfortunately, the potential answer to this question indicates that there are most likely political motives behind these extensive artifact collection efforts. Within the same lines of this aim, the Turkish state also aims to open as many archaeological sites as possible to tourism which

³⁵ To access the number of excavations within Turkey both by national and foreign excavation teams: <https://kvmgm.ktb.gov.tr/TR-44150/kazi-ve-yuzey-arastirmalari-faaliyetleri.html>

shows that they see an economical gain from them as well. The strategy to stop illegal trafficking should also be evaluated from these perspectives.

3.3.5. Buy-back policies of Turkish museums

Buy-back policy is an effective incentive in source countries. If this method can be applied sustainably, it can serve to diminish the plunder of cultural property and illegal export of antiquities from source countries.

When a person finds an artifact in Turkey, he/she has to inform the local museums on this matter. It is regulated in the Article 64 of law 2863. This article makes a distinction on where one finds such an item and this changes the rate of the bonus that will be paid to the individual that brings this artifact to the museum.

Article 64 only lists the percentage of the bonus that will be paid based on where the artifact is found so there is no regulation that foresees what amount to pay as a bonus. When a local museum receives such a request, they form a commission with the staff of that museum which gather once in every month to discuss and decide on the amount of the bonus to be paid to these people. The bonus decided in these commissions vary based on the item that is brought. Since there is no regulation on the amount of this bonus, it is entirely up to this commission to come up with this number which shouldn't be too low or too high. The general directorate in each province regulates these bonuses in order to maintain a standard.

3.4. Theories about Repatriation in Publications Abroad and in Turkey

Repatriation is an inseparable component and, to some extent, the outcome of the broader concept of preventing the illicit trafficking of cultural property. This section of the dissertation will be devoted to the academic research and mentioning of the main literature on preventing illicit trafficking of cultural property and repatriation in Turkey. It will be followed by the general principles, widely accepted as valid by the relevant stakeholders.

In the international literature, the concepts of cultural internationalism and nationalism have been developed by Roehrenbeck (Roehrenbeck, 2010: 190). Such a distinction can be valued as valid because they form the two ends of a spectrum. One of the leading figures of the cultural internationalism movement is James Cuno, an art historian/curator who served as the former director of the J. Paul Getty Trust.³⁶ One of the strongest advocates of the cultural internationalist position, Cuno believes that the moveable cultural heritage can and should be traded internationally, on the basis that it should be regarded as the common heritage of humanity, not of a single state of nation (Cuno, 2008: 20). Given his previous position within the Getty Trust, it is not surprising that he should defend this policy.

On the other end of the spectrum comes the cultural nationalist movement, which believes that cultural property belongs with the nation or country where it was first found (Roehrenbeck, 2010: 191). After adopting the 1970 UNESCO Convention, the primary international legislation for the repatriation of stolen or illegally exported antiquities, the cultural nationalist movement became a haven for source countries like Turkey, suffering from these illicit activities. This thesis believes in the excessiveness of this argument and the necessity of finding a middle ground between these two poles.

The concept of ownership has taken on a new dimension recently with the proliferation of digital artworks (La Follette, 2013: 70). This new model of ownership of cultural property takes place online. However, it brings forth a new dimension to this discussion of ownership of cultural property which should be considered for future debates (La Follette, 2013: 73).

There is no single and broad-scale answer to the question 'who owns the past,' but we might succeed in establishing a pattern or, instead, a route that leads us to a fair and balanced outcome each time a similar conflict arises. For some case studies, the cultural internationalist movement may seem like the best fit for the preservation and

³⁶ For his biography, see <https://haas.harvard.edu/people/james-cuno>.

means of exhibition for that item. Take a cultural item that was looted from an area endangered by warfare and found in a market country. Is it then such a terrible idea to preserve and exhibit that cultural property within the confines of that market country? If we are to defend a cultural nationalist movement strictly, we would have to argue for the return of this particular item to its source country before maintaining a safe environment for the cultural item to be preserved and exhibited for the wider public.

However, there is the other side of the coin as well. Unless we are talking about a case like the one mentioned above (cultural property in times of warfare), it is almost always the cultural nationalist movement that strives and gains more supporters. Since it is the common understanding that cultural property should be exhibited in its source country, the cultural nationalist movement is expected to gain more public support.

One should also keep in mind the increasing activities in the trade of antiquities in other countries like the United Arab Emirates, Singapore and Hong Kong. The market for the trade in artifacts is increasingly becoming more popular which raises serious concerns. Such transactions should be subject to strict monitoring and regulations in order to prevent the trade in illicitly obtained cultural property. It is crucial to be strict in this case seeing that a lack of regulation in this matter could result in a growing black market for antiquities when the aim is to create new 'free ports' for the trade in antiquities. The items are still being resourced from market countries but recently the flow is increasingly towards these above-described countries.

Unfortunately, the field of preventing illicit trafficking of antiquities and repatriation is hardly examined in Turkish academia. This dissertation aims to bridge this gap and do effective academic research. Before discussing the case studies in great detail, this thesis also discusses the current literature on repatriation abroad and in Turkey. One aspect of the publications on repatriation is the list of the applicable legislation that

needs to be selected for each case study. The relevant legislation is mentioned in Chapter 2, so this section will not look into it. As briefly mentioned above, literature on repatriation and prevention of illicit trafficking of cultural property is scarce in Turkey. However, we can still distinguish the three main groups of publications. These groups are comprised of legal publications (Özel 1998; Özel 2010; Özel 2013; Katoğlu 2022), collections on illegally trafficked items from Turkey and their current whereabouts (Karaduman 2007; Yılmaz 2020), and historiography of museology and development of protective measures since the Ottoman period (Acar 2018; Bahrani et al. 2011; Sönmez 2011; Sönmez 2020). These are mainly the three topics covered by scholars working in this field in Turkey. There is also the field of cultural heritage preservation and management which produce publications in Turkish (Atakuman 2008; Atakuman 2010; Atakuman 2017; Gürsu 2015; Gürsu 2017). This list of publications can serve a reference point for further research in this field.



CHAPTER 4

CASE STUDIES

4.1. Introduction to the cases

This chapter discusses the case studies that form this dissertation's backbone. A close-up of the relevant case studies will contextualize the concepts introduced and discussed in Chapters 2 and 3.

The case studies selected for this thesis are determined in the following manner. Thanks to the goodwill and cooperation of the Ministry of Culture and Tourism and the Department of Preventing Illicit Trafficking of Cultural Property, I have been provided with a list of unpublished cases from which I selected four for this thesis, namely: a group of 14 artifacts from the collection of Michael Steinhardt, the Sion Treasure at Dumbarton Oaks, the Iznik Tiles at the Louvre Museum and lastly the artifacts from the site of Sidon.

After I completed the initial selection process of the cases and worked on the format in which I would examine them, I asked for another meeting with the head of the Department of Preventing Illicit Trafficking of Cultural Property, Mrs. Zeynep Boz, who provided me with extensive data on each of these files. Since all of them are state property, I was not allowed to take out physical files with me for study but we devised some other methods to provide me with the information I needed for this thesis.

For the case of a group of 14 artifacts from the collection of Michael Steinhardt who is a renowned art and antiquities collector and a convicted illegal antiquities importer which I study whose repatriation process was successfully completed, my initial source was a 17-minute interview that I had conducted with Mrs. Boz, who explained the case in detail to me (Boz 2022). Based on that voice recording, I could gather extensive knowledge on it. I did not see any physical file for this particular case, but instead, I progressed from the case brief that Mrs. Boz provided me with.

For the two ongoing cases, the Sion Treasure at Dumbarton Oaks and the Iznik Tiles at the Louvre, I was able to get a copy of an extensive written report on the progress of each of these cases which were not included in the official files (M1 2022; M2 2022). I am basing my arguments and the introduction of these cases on these comprehensive internal reports and some online public information that is shared on the websites of national and international newspapers and blogs. Since these are ongoing cases, I needed to examine them deeply. However, with the help of the information from these extensive reports, I can reconstruct a picture and conclude how these cases might proceed.

It would be suitable for the last group to state that it is the most disputatious case within my selection. Since this constitutes a reverse situation for Turkey, it is indeed a very intriguing case to examine within this thesis. The issue of the return of Sidon sarcophagi and other artifacts to Lebanon has yet to occupy the minds of the Turkish public since it is not a widely discussed topic within Turkish media. However, on the contrary, it has been the subject of discussion in the Lebanese and the world academia. Being excavated in 1887 by Osman Hamdi Bey himself, the site of Sidon necropolis which was then located within the Ottoman Empire, was a source of extraordinary material evidence, which the Ottomans were excited to exhibit in their Imperial Museum in Istanbul (Osman Hamdi, 1892: 13).

With this group of 4 cases, this thesis hopes to draw a framework where the concepts behind repatriation can be seen in practice in its extent in the coming paragraphs.

4.2. A Successfully repatriated case: A group of 14 artifacts from the collection of Michael Steinhardt

In January 2018, the Ministry of Culture in Turkey was contacted by the Manhattan District Attorney's (DA) office regarding a collection of artifacts belonging to the collector Michael Steinhardt (Boz 2022). The DA's office investigated whether the artifacts, suspected to have originated in Turkey, had been exported illegally (Boz 2022). The Ministry provided a report confirming the origins of the artifacts and also shared relevant Turkish legislation on the matter (Boz 2022).

The DA's office continued investigating and seized some artifacts and provenance documents from Steinhardt's apartment (Boz 2022). It was later discovered that some of the provenance documents were forged (Boz 2022). The DA's office also contacted the Ministry about two further artifacts, asking whether these were also of Anatolian origin (Boz 2022). It was later understood that they were ultimately of Etruscan origin and returned to Italy (Boz 2022).

The DA's investigation continued for three years when they requested additional proof from the Ministry regarding the claimed artifacts (Boz 2022). Among these items was a Neolithic goddess figurine of the Hacilar type, which has not been found anywhere except Turkey (Figure 2a).³⁷ The US asked for additional supporting documents, which the Ministry could provide with the help of a book by Professor Refik Duru on the illicit activities at the Hacilar site and the efforts of the Gendarmerie to prevent them (Duru, 2018: 59).

Another artifact in the collection was a stag's head rhyton that dates to the 4th-3rd centuries BC, which was made of silver and gold, for which the provenance

³⁷ We also know that many forgeries of these items are claimed to be found at Hacilar were manufactured and distributed within Turkey and abroad. However, since we have the earliest photo of these anthropomorphic figurines from the initial excavation, we can disregard this fact for this thesis (Mellaart, 1970: 189; Duru 2018).

documents included a previous owner's name (Boz 2022) (Figure 2b). The Ministry was able to match the name of this person to an illicit excavation in Milas through extensive research and provided the information to the DA's office as a supporting document (Boz 2022). After the DA's office concluded its investigation, it contacted the Ministry and informed them that they were ready to return the artifacts to Turkey (Boz 2022).

Apart from the two items mentioned in more detail within the broader repatriation narrative, there are 12 more items that needs a brief introduction. The first 7 pieces of cloth decoration made of gold which were dated to 7th-6th centuries BC (Figure 2c).³⁸ There is also a Kilia-type marble idol that dates to Chalcolithic Period (Figure 2d).³⁹ In addition to these, two bronze standards which are shaped as a bird that date to 2nd m. BC are also standard artifacts of Anatolian style and origin (Figure 2e).⁴⁰ In a similar style, there was another bronze standard that is shaped like a goat which again dates to 2nd m. BC (Figure 2f).⁴¹ Lastly, a female figurine which is made of both gold and ivory that dates to 7th-6th centuries BC is also present among these artifacts (Figure 2g).⁴² All of these artifacts were representative of the art and manufacturing techniques of their relevant time frame and region which was Anatolia.

4.3. Ongoing cases

The selection of these two ongoing cases depended on the fact that they contained features that highlighted different aspects of repatriation. The first case regarding a Byzantine treasure was more of a classical case in the sense of its progress. It carries the most common schema of how looting happens from the ground to international level antiquities dealers, a great example to contextualize this illicit looting activity.

38 <https://kvmgm.ktb.gov.tr/TR-312144/126-abd39den-iadesi-saglanan-eserler-14-adet-2022.html>

39 <https://kvmgm.ktb.gov.tr/TR-312144/126-abd39den-iadesi-saglanan-eserler-14-adet-2022.html>

40 <https://kvmgm.ktb.gov.tr/TR-312144/126-abd39den-iadesi-saglanan-eserler-14-adet-2022.html>

41 <https://kvmgm.ktb.gov.tr/TR-312144/126-abd39den-iadesi-saglanan-eserler-14-adet-2022.html>

42 <https://kvmgm.ktb.gov.tr/TR-312144/126-abd39den-iadesi-saglanan-eserler-14-adet-2022.html>

The second case is the Iznik tiles, a dispute between Turkey and the Louvre Museum. The incident dates to the 1880s, during the Ottoman period (M2 2022). Even though the arguments of the Turkish side regarding this group of tiles state they were stolen from Istanbul, it was not until very recently that this incident was recognized, and action for repatriation was taken accordingly (M2 2022).

4.3.1. Sion Treasure at Dumbarton Oaks

The Sion Treasure, a collection of 18 Byzantine artifacts dating back to the 6th century AD, has been at the center of a contentious dispute between Turkey and the Dumbarton Oaks Museum for over 50 years (M1 2022; Erbil 2020; Felch 2012). The treasure consists of silver and gold objects which had a liturgical function and include candlesticks, plaques, plates and crosses (Felch 2012) (Figures 3a-c) The artifacts were illegally exported from Kumluca, Antalya, in Turkey in 1963 (M1 2022). A shepherd discovered a portion of this treasure on site, in the ancient city of Korydalla (M1 2022). Most of them were looted and illegally exported, with only a small portion delivered to the Antalya Museum by the Gendarmerie (M1 2022). The artifacts bear the marks of being made during the reign of Justinian in Constantinople and were gifted by the benefactor bishop Eutykhianos to the Monastery of Sion in Constantinople, thus giving them their name (M1 2022). Even though they were made in Constantinople, they ended up in Kumluca, Antalya through a series of causes that are unknown.

The treasure was sold to Robert Woods Bliss and Mildred Barnes Bliss by a renowned Greek antiquities dealer George Zacos for 1 million USD in the United States in 1963 (M1 2022; Erbil 2020)⁴³. It surfaced in 1967 in Dumbarton Oaks Museum, founded by the Bliss couple (M1 2022). The description of the treasure on the website of the museum stated that it was part of a religious hoard found near Antalya (M1 2022). Provenance documents for 13 of the artifacts from the treasure

⁴³ George Zacos is an interesting character both with his ties to illicit trade in antiquities and as a scholar of Byzantine seals. He is of Greek origin but had permanent addresses both in Istanbul and in Zurich which is a further indicator of his involvement in art and antiquities trade. For more information on him, see: <https://www.britishmuseum.org/collection/term/BIOG63191>

list Zacos as the previous owner and show that he gifted another item to the museum in 1979 (M1 2022; Felch 2012). One further item within this treasure is listed as a donation by Zacos to the museum (M1 2022; Erbil 2020; Felch 2012). The provenance information for the rest of the four pieces within this collection has not shared by the museum, (M1 2022; Erbil 2020; Felch 2012) so they might have been acquired in any possible way.

Turkey has been trying to reclaim the Sion Treasure for 56 years, with initial efforts to retrieve the items dating back to 1967. In response to these efforts, Dumbarton Oaks Museum stated in 1963 that the items were purchased in good faith and would not be returned (M1 2022). However, in 1973, Harvard University decided to return illegally exported and trafficked cultural property to their source countries with an internal directive (M1 2022; Erbil 2020). Since Dumbarton Oaks was operating under the umbrella of Harvard University, Turkey hoped it would also follow this internal directive. However, the museum director at the time suggested that Turkey should send the remaining pieces of the Sion Treasure displayed in the Antalya Museum for restoration and exhibition for 100 years to Dumbarton Oaks which Turkey has rejected (M1 2022)

The initial talks of negotiations continued until 2013 (M1 2022). The Ministry visited Dumbarton Oaks with a committee led by the general director in 2013 (M1 2022). It was after this last meeting that the negotiations came to a halt (M1 2022). Until 2018, this case was on the shelf, and no action was being taken by the Turkish side (M1 2022). It was in 2018 that new action started to be taken about it hoping to change the course of the past negotiations more positively and fruitfully (M1 2022). Since Dumbarton Oaks was an institution that has contributed to many scientific projects in Turkey, the Ministry thought it was time to open a new page of the negotiations (M1 2022). Along with this shift in strategy, the change in the directorate of Dumbarton Oaks was seen as the possible start of a new page (M1 2022). To this end, the Ministry has initiated a new dialogue channel with Dumbarton Oaks in the past few months (M1 2022).

Unfortunately, there is some inconsistency regarding the number of items from Sion Treasure owned by Dumbarton Oaks. Some Turkish sources state that there are 18 items within this collection at Dumbarton Oaks (Erbil 2020), but contradictory numbers go as high as 40 according to an international source (Felch 2012).

In the publication titled ‘Ecclesiastical Silver Plate in Sixth-Century Byzantium’ which was edited by Susan A. Boyd and Marlia Mundell Mango and published by Dumbarton Oaks Research Library and Collection, the number of items from Sion Treasure is stated as high as between 53 to 58 objects (Boyd and Mango, 1992: 8). These numbers include all the items that are in the ownership of Dumbarton Oaks, Antalya Museum and a private collector (Boyd and Mango, 1992: 8). There are 38 pieces from the Sion Treasure at Dumbarton Oaks which some of them are on display (Boyd and Mango, 1992: 8). In the inventories of Antalya Museum, there are either 13 or 18 pieces of the treasure and there are two pieces owned by a private collector (Boyd and Mango, 1992: 9). In addition to the 38 pieces which are at Dumbarton Oaks, there are also 22 pieces of revetments and silver nails that are used to decorate and hang the 38 pieces (Boyd and Mango, 1992: 9).

In addition to providing the number of items within the hoard, it is also significant to share what type of items were included. The authors who published this treasure from Dumbarton Oaks grouped these into four main categories. The first group was marked as ‘liturgical objects,’ the second group was called ‘ecclesiastical furnishings: lights and chains’, and the third was called miscellaneous objects.’ The last group was called ‘revetments’ (Boyd and Mango, 1992: 19). Liturgical objects included patens, asterisks, chalices, amphorae, ewers, and centers (Boyd and Mango, 1992: 22).

4.3.2. Iznik Tiles at the Louvre Museum

The Turkish government has been actively seeking the return of a series of Iznik tiles from the library of Sultan Mahmud I and the tomb of Sultan Selim II which are

currently held and displayed at the Islamic Arts Gallery at the Louvre Museum since 2006 (M2 2022) (Figure 4a).⁴⁴ The basis for Turkey's claim is the belief that the tiles were illegally removed from their original location during restoration work conducted by Albert-Sorlin Dorigny in the 1880s (M2 2022). The Turkish party believes that Dorigny dismantled the tiles and took them to Paris, replacing them with imitations of their original (M2 2022).

This was discovered for the first time when one of the tiles fell, and the mark of a French tile company was found on its back (M2 2022). This firm was called 'Choisy le Roi Seine' and it operated as a workshop that produced tiles in France in the 19th century (M2 2022) (Figure 4c). When the Turkish minister was participating at a panel in France in 2011, he reminded this issue to his counterparts and asked for strong cooperation for the return of these tiles (M2 2022).

The French officials led by Frédéric Mitterand have argued that Dorigny ordered the company to produce reproductions of the tiles for missing pieces and that he did not steal them. French minister further claimed that this French workshop produced these aforementioned tiles but the tiles were not dismantled by Dorigny, but rather, these were ordered by him to complete the missing pieces of the panels (M2 2022). French minister further claimed that Dorigny purchased the tiles in the Louvre from independent salesmen in Istanbul (M2 2022).

However, the Turkish Ministry has reiterated that the tiles were stolen in violation of the laws at the time (M2 2022). Furthermore, the presence of the tiles from the Tomb of Sultan Selim II in their entirety at the Louvre cannot be explained by restoration work and acquisition alone, according to the Turkish side (M2 2022). The Turkish Ministry has provided documentation from Ottoman archives to support their claim, showing that Dorigny was commissioned for the restoration work and was paid for his services (M2 2022). It is not known whether Dorigny had done any further restoration work apart from replacing the missing tiles.

44 <https://www.louvre.fr/en/explore/the-palace/an-introduction-to-islamic-art>

The most recent meeting between Turkey and the Louvre occurred at the museum on June 10th, 2022 (M2 2022). Despite the evidence presented by Turkey, the French authorities have declined to return the tiles (M2 2022). The Turkish side is dedicated to sustaining the talks with the Louvre Museum, but it is always an option to go with a lawsuit, even though it may be a long and expensive process.

4.4. A Case that Turkey is asked to return: Artifacts from Sidon Necropolis in Lebanon

This is the most contested and disputed case among the selection within this dissertation. This is mainly due to the fact that it is a case that offers a counter perspective. It places Turkey to the recipient end of the repatriation request. Before introducing the background of this case, I want to outline how my efforts in gathering data have been progressing.

In my meeting at the Ministry, I also asked whether I could access the file regarding the artifacts from Sidon necropolis. I have learned with great surprise that no such file existed. Only one letter was written by the Lebanese officials, which was sent to the Ministry of Culture and Tourism through the channel of the Turkish Foreign Ministry. I have learned that Turkey has not replied to this letter. Apart from this detail and the public information available on the history of the excavations at the site of Sidon, there is nothing particular the Turkish Ministry could provide me with.

4.4.1. How the site was discovered

In 1887, Mehmet Şerif Efendi, a local man, discovered ancient tombs on his property in Sidon when doing construction work and alerted the local officials (Osman Hamdi, 1892: 13). After the local officials investigated the site, they drew a preliminary report on what the site included and sent these to Istanbul to alert the officials (Osman Hamdi, 1892: 13). The news of this enormous find even reached the Sultan, who appointed Osman Hamdi Bey to excavate the site on behalf of the state (Osman Hamdi, 1892: 14). The excavation at Sidon started on April 30th, 1887, and

ended on June 20th of, the same year. (Osman Hamdi, 1892: 13). Upon completion of the excavation, Osman Hamdi Bey requested the necessary tools and a ship to transport the discovered artifacts to Istanbul (Osman Hamdi, 1892: 30). The artifacts were eventually loaded onto the vessel named 'Asir' and brought to Istanbul under the supervision of Osman Hamdi Bey in a total of 55 crates on June 21st, 1887 (Osman Hamdi, 1892: 84). Unfortunately, Osman Hamdi Bey did not list what each of these 55 crates included (Figures 5a-g). However, we have the knowledge of which sections of the site was excavated, with a focus on the highlights of the site which were various numbers of enormous sarcophagi. The methodology of the excavation of these large sarcophagi are described in greater extent by Osman Hamdi in the same book (Osman Hamdi, 1892: 31-80). Even though he did not list the items in detail, at least in this book, the same book has a plates section where impressive details on some of the prominent artifacts from the site are published (Osman Hamdi, 1892: 87-157).

4.4.2. Stimulating perspectives on this matter from a Sidonian

To give more perspective to this issue, I would like to include the thoughts of a local Sidonian who is also a professional working in the field of cultural heritage preservation in Lebanon whom will be referred to as 'Ms. Y.'. We have shared e-mail correspondence where I asked her opinions on the issue of Sidon artifacts and whether they should be returned to Lebanon (Ms Y. 2022). Being both a local civilian and a professional from the field of cultural heritage preservation, the reply that Ms. Y. has given me is both striking and promising in the sense that it indicates the possibility of cooperation between source countries who both suffer from crime against art and antiquities.

Ms Y. has provided me with two answers in which she focused first on the legal aspect and then the ethical element. She stated that Osman Hamdi Bey excavated the site of Sidon necropolis under the permission of the Sultan of the time and that Lebanon was within the lands of the Ottoman Empire back then (Ms. Y. 2022). From

a legal aspect, she says there is little Lebanon can do for the return of these artifacts (Ms. Y. 2022).

But from an ethical perspective, she has raised intriguing points as well. She believes that these artifacts are Sidonian and that Lebanon and Turkey have to come to terms regarding either the ownership or the permanent loan of these artifacts to Lebanon so they can be exhibited at their source (Ms. Y. 2022).

4.4.3. The official response of the Lebanese Ministry of Culture on this matter⁴⁵

I have also written to the Ministry of Lebanon and asked what their official stance was on the ownership of the artifacts from Sidon (Figure 6). The response to the letter I sent to the Lebanese Ministry of Culture is significant in many senses (Figure 7). The tone of the letter is very political, as one would expect. The letter starts by sharing a brief historiography of the excavation at the site of Sidon necropolis. Even though the letter's tone is very political, a statement indicates a critique of the matter. The letter states that the Istanbul Archaeological Museum at the time imitated Western Museums by filling the museum with antiquities from throughout the empire. This statement is valid because the Ottoman Empire developed this strategy of museology in the 19th century, which mimicked the large museums in the West in making mass-scale excavations and collecting cultural property to be displayed in its museums. After this statement, the letter moves on to list the relevant legislation that is in place in Lebanon which can be seen in Figure 7.

Lastly, we move on to the essence of this letter which is the official stance of Lebanon regarding the ownership and repatriation of the artifacts from Sidon. According to the letter, the Lebanese Ministry states that they must first consider whether these items were excavated illegally, smuggled, or stolen from Lebanon. Since this is not the case and Lebanon was a land of the Ottoman Empire at the time,

⁴⁵ We do not know which artifacts Lebanon claims for their return from the site of Sidon. Currently, they do not have an open request for repatriation of these items which is seen in the official letter sent by the Lebanese Ministry of Culture.

they then moved on to propose another solution which this thesis also proposed:
negotiations and bilateral talks on the repatriation of these items.



CHAPTER 5

INTERPRETATION OF CASE STUDIES

5.1. What this chapter aims to accomplish

Following the description of the four case studies selected for this thesis in Chapter 4, this chapter aims to compile my interpretation of how each case should be concluded.

The interpretation of these four cases will consist of an evaluation of how the repatriation efforts of Turkey are finalized. This will only be valid in the case of successful repatriation. Since the cultural property is already repatriated to Turkey, this process will be discussed in its extent and entirety.

For the two ongoing cases, whatever Turkey has done in repatriating these artifacts will be discussed to its extent. Since these two cases are yet to be concluded, Turkey's steps will be discussed in detail as to what other possibilities might have been taken or still can take to finalize these cases in its favor and complete their repatriation.

The same methodology will also be applied here for the last case, which is a case where Turkey is being asked to repatriate an object. What routes were followed when asking Turkey to return these artifacts, and whether these were successful? And as a whole, should Turkey give these artifacts back?

After each case is interpreted separately yet with a similar methodology, the next step will include an interpretation section where this thesis will discuss their common and non-mutual aspects.

Following the interpretation of the selected case studies, it will also examine the outcomes and highlights of this thesis from a broader perspective in the following paragraphs.

5.2. A successfully repatriated case: A group of 14 artifacts from the collection of Michael Steinhardt

Since great detail is provided regarding this case's history and outcome in Chapter 4, this section will not go into this again. However, instead, it will focus on what methods and tools Turkey has used in successfully repatriating this group of artifacts. This case highlights the importance of cooperation between law enforcement agencies and art-crime expert units of state parties in protecting cultural property and preventing illegal trafficking. It also demonstrates the extensive research and documentation required to prove the legitimacy of an artifact's provenance. Since Manhattan DA's office has a specialized unit that specifically tracks art-related crimes, it was easier and faster for the relevant branch of the Turkish Ministry to facilitate negotiations for the return of these antiquities. Suppose such units within the US and in other market countries are to increase: in that case, it will be an excellent opportunity for source countries like Turkey to finalize the repatriation of illicitly trafficked and stolen cultural property since there will be increased cooperation between these institutions.

The case is unusual because all the correspondence occurred through e-mails instead of official letters, which were written by the Ministry of Culture and Tourism and sent to the relevant foreign offices through proper legal and diplomatic channels. Another significant point, in this case, is the fact that the officials in the US initiated the repatriation process. This is an unusual case because it is almost always the

opposite of this situation. Since almost all of the museums in Europe or the US are unwilling to return the artifacts that they own, even though they were illicitly exported out of source countries like Turkey, it is very promising and encouraging to see that there is an increasing trend in market countries in returning illicitly obtained cultural property to their source countries. Turkey has also benefitted from this trend in this case. After the officials in the US contacted the Turkish Ministry of Culture and Tourism through e-mail regarding the return of this group of artifacts, Turkey immediately responded and took the necessary steps to finalize their repatriation. Of course, things do not always go as smoothly, and it is almost always the Turkish side that is chasing after their looted cultural heritage. For this case, there is little that we can state regarding what Turkey might have done more efficiently to provide the return of these artifacts since this case was completed in a relevantly short period with the strong cooperation of the two states.

5.3. Ongoing cases

The two cases selected for this group will be evaluated within the perspective of Chapter 5. The first case is the Sion Treasure at Dumbarton Oaks and the second one is the Iznik Tiles at the Louvre Museum which will be used to better understand the interplay of repatriation efforts of Turkey in different cases.

The strategy of the market countries to exhibit these items within their museums also indicates a solid expression of their commitment to the ownership of these items and their clear intention not to return them. Having such items on display gives them a further public justification as well.

5.3.1. Sion Treasure at Dumbarton Oaks

The case of Sion Treasure at Dumbarton Oaks is in line with the vast majority of Turkey's ongoing cases regarding the repatriation of their stolen antiquities. All of the foundational information regarding this case comes from the Turkish Ministry of Culture. However, I also benefitted from the public information in national and international publications.

This case is complex in many aspects. Even though Turkey has strong proof regarding the illicit excavations at the site of Korydalla in Kumluca, Antalya, through the criminal investigations that took place after these illicit digs, it is up to the goodwill of Dumbarton Oaks to be able to finalize this in favor of Turkey unless Turkey chooses to file a lawsuit on this matter. Turkey's proof does not mean much since Dumbarton Oaks does not think of returning this treasure presently.

One other method that Turkey can follow might be to start public awareness campaigns and, through this increasing awareness, put pressure on Dumbarton Oaks and force their hand into returning these items. Turkey has a strong case for repatriating this treasure, but Dumbarton Oaks seems to have already decided not to return these items, at least for the time being.

I have also contacted Dumbarton Oaks to hear their take and official stance on the issue. I received an initial answer stating that my e-mail was directed to the relevant branch. After quite a while, the Director's Office replied me saying that they would not comment on this issue which itself is a stance; they chose not to make a statement (Figure 8).

Moreover, we also know that the hoard is on display at the museum, which shows quite strongly that they see it as an integral part of their collection, having the full title of the artifacts.

What Turkey is doing right now is continuing its diplomatic efforts and negotiating for the return of these items through dialogue. Since these efforts have been continuing for the past 56 years and there seem to be no positive steps taken by Dumbarton Oaks, Turkey should consider filing a lawsuit to repatriate its cultural properties. Even though negotiations and goodwill in the correspondence are vital in repatriating illicitly obtained or exported cultural property, they may not be enough sometimes. In such cases, which I believe Sion treasure is one, choosing to go with a lawsuit seems to be the most logical thing to do given the evidence Turkey has.

5.3.2. Iznik Tiles at the Louvre Museum

Another ongoing case with similar shortfalls and limitations for the Turkish side is the case of Iznik Tiles at the Louvre Museum. The bilateral talks between Turkey and the Louvre have been ongoing since Turkey detected this inconsistency with the tiles of the Tomb of Sultan Selim II. Like the Sion Treasure case, this case is heavily dependent on dialogue and negotiations. Turkey is dedicated to pursuing the repatriation of these tiles. However, as was previously stated, there is a limited amount of action Turkey can take through the means of negotiation. If the Louvre does not accept the claims of Turkey, they might choose not to return these tiles and continue exhibiting them in their showcases which is a clear sign of their stance on the ownership of these cultural properties.

I have also contacted the Louvre and asked about their official stance. What they told me was to give me 'approval' to use the information regarding this case, which was available in the file of the Turkish Ministry (Figure 4b). They further stated that the Turkish file contained all their official responses. I hoped to get their perspective as well, but it is pretty straightforward, both with the reply they gave me and the inconclusive bilateral talks they have had with the Turkish side for quite a while now, that they do not have the intention to return these tiles to Turkey. This is also seen in the instance that they are being exhibited within the Louvre Museum which is also a strong indicator that they see the tiles as an integral part of their collection, having a full title of the items.

What else can Turkey do? Even though I tried to lay out the gaps and shortfalls of filing an international lawsuit previously (Chapter 3.2.2.2.), it is always a viable option to pursue. Suppose Turkey thinks it possesses strong evidence to prove that these tiles were stolen and illegally exported out of the Ottoman Empire, contrary to the laws applying at the time. In that case, this lawsuit will likely resolve in favor of Turkey. In addition to the long time frame and the financial burden a lawsuit brings up, it can also be seen as an aggressive move by the opposing side. Due to this, the

option to sue is almost always seen as a 'last resort.' When the negotiation talks are no longer functional, and there is no intention or goodwill to resolve this option appropriately, filing a lawsuit seems to be the best option. At present, Turkey has not sued the Louvre Museum for the return of these tiles. This might be due to the several causes I have tried to explain or because Turkey is acting patiently. Whatever the strategy behind the repatriation efforts of these tiles for Turkey, it seems again that a lawsuit might be the best solution if the negotiation talks are to come to an end.

5.4. A Case that Turkey is asked to return: Artifacts from Sidon Necropolis in Lebanon

This case is crucial in the sense that the roles are reversed. Turkey is not the source country seeking the return of its illicitly obtained or exported antiquities but rather the recipient of the return requests by another source country, in this case, Lebanon. What is meant by saying 'reversed roles' is simply to state that the cultural heritage of another country ended up in Turkey this time, but not through illegal means, like it is the case in many of the market countries and this does not make Turkey a market country since it is not trying to sell these items from Sidon. The story here is also more complex. That is why we have to consider this case from three perspectives; being legal, ethical and political.

5.4.1. Legal Aspect

When examined from a legal perspective, the excavation was legitimate. According to the antiquities law that was in force in 1887, when this site was discovered and excavated, the antiquities that were found would be divided into three equal shares among the excavator, the land owner, and the Ottoman state (Karaduman, 2007: 73). Since Osman Hamdi Bey excavated the site, two-thirds of the total artifacts would immediately belong to the Ottoman Empire, one-third of the share going to the state and the other one third going to the excavator, in this case to the Ottoman state again. We know from Osman Hamdi Bey's book that Mehmet Şerif Efendi who was the owner of the land where the excavation took place was compensated for his efforts with a payment of 1500 Turkish liras (Osman Hamdi, 1892: 14). We do not know

what happened to Mehmet Şerif Efendi's share of the artifacts found on his land, but they were most probably transferred to the Imperial Museum in Istanbul, being stored and displayed in totality, along with the share of both Osman Hamdi and the Ottoman State. There have been various publications in the Ottoman press at the time regarding the site of Sidon and the artifacts that were brought to the Imperial Museum which shows that there was an increasing interest on this matter (Çelik, 2016: 54).

5.4.2. Ethical Aspect

There is a lot more to say from an ethical perspective. When we approach this from an ethical lens, the issue of where to exhibit these artifacts come into play. Since there is a growing trend to exhibit antiquities in their origin, or even so in situ, the argument of Lebanon to return these items to them can seem very understandable from this perspective.

Since Turkey itself is a source country that suffers gravely from illicit trafficking of antiquities and works relentlessly to repatriate these items from market countries, it can put itself in the shoes of the Lebanese side. Even though Turkey is the legal owner and has title over these artifacts from Sidon, perhaps methods can be devised that could allow all or some portion of this collection to be exhibited in its source. This can be achieved either through a temporary or permanent loan.

Turkey has returned cultural property confiscated at its customs or through legal action to its source countries. However, the critical point for these restitutions was that they were all illicitly trafficked or exported out of their source country. In the case of Sidon artifacts, they were legally excavated and transferred to the Imperial Museum in Istanbul. From an ethical perspective, displaying these items or at least a portion of these at Sidon would contribute to seeing these artifacts in their natural context.

Having said that, the current situation of the site of Sidon is also very problematic with a large metal recycling plant dominating the archaeological site. It is very unfortunate that a site loses its importance to politicians even though it maintains its value for some of the public and especially for the scholars of this field. Bearing the current conditions of the site of Sidon in mind, an in situ display of these items is not an option to pursue but perhaps other options can be devised in terms of display within Lebanon.

5.4.3. Political Aspect

In addition to the ethical aspect, there is the political aspect of this issue. For instance, in the case of successfully repatriating 14 artifacts from the Michael Steinhardt collection, what the US has done is a striking example of the exercise of their 'soft power.' Through starting the initial contact and leading the repatriation process, the US has helped the efforts to repatriate illicitly trafficked and exported cultural property. By initiating a similar effort, Turkey can both help return artifacts stripped from their origin and gain significant public and international support, which it can later use in building its other long-lasting cases of repatriation like the Altar of Zeus or Priam's Treasure, which are scattered around world museums. Even though the cases are not similar to each other, exercise of its soft power can be very beneficial for Turkey and its repatriation efforts.

Istanbul Archaeology Museum was formed around the then common concept of expressing a nation-state ideology by becoming a respectable member of the world of European museums (Çelik, 2006: 20). This ideology was supported by bringing in a group of extraordinary items from the site of Sidon. Even though this was the case, with the current state of the museum, one could even argue that the items from Sidon have lost their centrality. With a focus on items from Troy and more modern methods of display (like using QR codes and interactive displays), the museum is more diverse regarding chronology and regions.

5.5. Synthesis

Do any of these cases selected for this thesis have common points? This section of Chapter 5 will discuss them, if any, and where they differ. Questions such as what methods were followed for their repatriation and what might have been done better will be addressed. It will be finalized by developing an overarching methodology for source countries to repatriate illicitly obtained antiquities.

5.5.1. Common points of the cases

Two of the cases (the first one being the 14 artifacts from the collection of Michael Steinhardt and the second the Sion Treasure at Dumbarton Oaks) I selected for this thesis are all comprised of antiquities obtained through illicit excavations. This in itself is a valid enough justification for the return and restitution of these items to Turkey, but it is not always smooth and easy enough to provide that these items were looted and trafficked; you need to provide further proof that these items indeed originate from Anatolia and that your state has taken considerable efforts to either prevent their trafficking or investigate these illegal activities. Again, as mentioned above, the Turkish state has taken preventive and judiciary steps for these two cases. Even though Turkey did not initiate the repatriation process for the first case, Turkey has provided its counterparts with proof that the local officials had investigated these items after their illicit diggings (M1 2022). Moreover, for the second case, there are even newspaper articles written regarding this illegal excavation that took place (Erbil 2020).

5.5.2. Where these cases differ

To start with the first case again, the way the repatriation procedure has started is unique. In most repatriation cases, Turkey is the leading subject; in this case, it was not.

Another differing aspect is the third case, the Iznik tiles at the Louvre. This is a tricky case in the sense that the arguments made by the parties differ a great deal. On

one side, Turkey claims that even though the Ottoman Empire had made a contract with a French conservator to repair these tiles, they were illicitly exported and replaced with their imitations (M2 2022). The Louvre, on the other hand, states that these tiles were not stolen, and only some of the missing tiles were replaced by their imitation but not all, without the approval of the Ottoman state (M2 2022). Unlike the rest of the cases, the incident is historical and dates to the 1880s.

Nevertheless, the realization that these tiles might have been stolen and replaced by their imitations by Turkey is much more recent. So unlike the first two cases, Turkey did not take any investigation or legal action when the incident occurred because they were not aware of the situation. Even though this might be the case, if Turkey can prove that these tiles were indeed stolen and taken out of the country without the permission of the Ottoman state, it still has a strong case that can be built to return them to Turkey.

The last case that of the Sidon material in itself is unique. Turkey is now the recipient of a repatriation request, unlike the others. It is also different because this case involves a multi-dimensional discussion. Even though all of the selected cases can be discussed through a legal and an ethical lens, the discussion of their legality supersedes the ethical issues at stake, except for the artifacts from Sidon. For the first three cases, it is almost certain that they were illicitly exported or stolen, so there is no room to discuss who owns these items. Following this issue of legality comes the ethical discussion, which is again not subject to conflict, seeing that for all of the first three cases, their origin is also Turkey, so there is no debate about where they should be exhibited. The last case is different in this sense as well. The ethical aspect weighs in, and there is room to discuss the issue of where to display these objects since their origin is Lebanon, not Turkey.

Making a formal loan of a disputed item could be an option in the repatriation process. I believe it is an option to pursue when every other strategy (negotiation and

lawsuit) is exhausted⁴⁶. But Turkey does not consider including temporary or permanent loans for its illicitly trafficked or exported cultural heritage within its repatriation repertoire. Since Turkey sees itself as the sole owner of the title of these illicitly trafficked cultural property, it does not consider loans to be a viable option, which is understandable. That is why, the option to loan can perhaps be considered when trying to devise a method with Lebanon in the future, but not for repatriating its own cultural heritage.

5.5.3. What might have been done more efficiently?

Instead of seeing this section as a critique of Turkey's current repatriation efforts, this section should rather be regarded as an evaluation of how the Turkish bureaucracy acted during these repatriation processes. The case of Sion Treasure has been ongoing for the past 56 years. The length of this case is an indication of many things. First, the repatriation process can take many forms and last very long. However, more importantly, it is also a sign of how the change in the management of the relevant institutions can result with a halt in repatriation efforts. Even though the Department of Preventing Illicit Trafficking of Cultural Property in Turkey is very vigilant and alert, these shifts in the upper management of the state affects the repatriation processes and can cause them to take a hammering.

Suppose you cannot provide institutionalization in repatriation efforts and any other official government branch with each government change. In that case, the priorities of the relevant branches will also change, resulting in long-lasting cases. The repatriation efforts of Turkey for the Sion Treasure have increased and been prioritized after establishing the Department of Illicit Trafficking of Cultural Property within the Turkish Ministry of Culture and Tourism, especially after 2017. With experts working within the field, the department has channeled its focus to cases like Sion Treasure and any new stolen or illicitly exported cultural property they come across.

⁴⁶ An example to the application of this loan method is shared in Chapter 6.3.2. for further discussion, see that section.

Why can't a developing country like Turkey that invests in gigantic infrastructure projects and which is also a G20 country control and prevent this ongoing plunder of its cultural heritage? It all comes to what each state prioritizes when it comes to channelling their funds. Having the sufficient funds is not always enough in itself but there also needs to be an increasing awareness and demand from the public in the protection and preservation of their cultural heritage. Unless this link between the Turkish people and the past cultures of Anatolia can somehow be formed through various public awareness campaigns, the decisions of the state alone will unfortunately not prevent this ongoing plunder.

If we can make the market of antiquities answer to stricter regulations which include anti-money laundering, we can move towards preventing this crime (Smith, 2022: 267). In addition to stricter market regulations, civil activism should also be considered in repatriation efforts. Turkey does not benefit enough from this, unlike other source countries. There are efforts made by the Turkish state to raise public awareness, but none of these transform into international social media campaigns which could be used to pressure market countries. New methods in social awareness campaigns must be developed for future cases through cooperation with NGOs and other government organizations.

CHAPTER 6

CONCLUSION

The repatriation policies of Turkey are built around the idea that every single item of what can be considered part of the national cultural heritage removed from its home soil should be returned to its homeland. A specialized unit within the Turkish Ministry of Culture and Tourism exists to promote and deliver this primary strategy. This unit detects stolen or illicitly exported cultural property and applies national and international legislation to fulfill their repatriation processes. Based on the strategy mentioned in the previous sections, this thesis categorized the case studies into three main groups, the first one being a case whose repatriation is completed, two cases whose repatriation process is ongoing, and lastly, a case that Turkey is asked to return. The details, results, and possible outcomes for these four case studies are discussed in detail in Chapter 5. Based on the results of the selection of case studies, some final remarks can be made regarding the repatriation policies of Turkey, along with future projections into the problems and possible solutions in the field of repatriation.

6.1. Legislation

Progressing by following the outline of the thesis and understanding how the Turkish Ministry applied the relevant international and national legislation is essential.

Generally, the most referenced international legislation in repatriation matters is the 1970 UNESCO Convention. Nevertheless, we are yet to see this convention in action for the selected cases. For the completed case of a group of 14 artifacts from the collection of Steinhardt, there was no need for the Turkish side to invoke this convention since US officials initiated the talks. For the rest of the cases of the Sion Treasure, the Iznik Tiles and the Sidon artifacts, their time frame falls behind the coverage of this convention. What this means is the convention can be invoked only in cases that occurred after 1970. Even though the 1970 UNESCO Convention cannot be invoked in a possible legal proceeding relating to these cases, it is still significant to mention its principles as reminders of how repatriation should occur.

For the relevant national legislation on this matter which is the Turkish Law Code number 2863, we can say that it was applied for the completed case and then the case of Sion Treasure. We know there were judiciary investigations regarding the illicit activities at these sites for both of the cases of a group of 14 artifacts from the collection of Steinhardt and the Sion Treasure. These investigations were conducted according to the national legislation on this matter, including an initial local criminal investigation that took place which was later on followed by public prosecution.

Based on the distribution of how the regulations are being applied to the cases, it can be concluded that Turkey has benefitted from some of the principles of the 1970 UNESCO Convention even though it was not directly applicable and the Turkish Law Code numbered 2863 to some degree in almost all of its repatriation cases. Even though this thesis listed some of the shortfalls of these regulations, it is promising and impressive to see how such well-constructed regulations function in real-life cases.

6.2. Theory

Following the legal aspect of the repatriation of cultural property, the issue of ethics and theory underlies this concept. The law sets the foundation, but we need ethics and theoretical background to branch out. Based on the discussions in Chapter 3, we

can conclude by analyzing how effective these theories were seen in practice by the relevant Turkish authorities.

One of the main discussions of the field of preventing illicit trafficking of cultural property was the lack of expert staff which is especially valid for source countries. Even though Turkey employs expert staff within the Department of Preventing Illicit Trafficking of Cultural Property, their numbers are relatively low to fully track and initiate repatriation processes for stolen or illegally exported antiquities. Their numbers can be expanded by training new employees with a focused approach to the prevention of illicit trafficking of antiquities and repatriation of stolen or illicitly exported cultural property.

This lack of expert staff is of course related to funding which is the underlying reason behind many of the shortcomings within the field. Funding is vital in many aspects from hiring experts to developing effective means of combatting illicit trafficking of antiquities. If an adequate space to develop policies along with relevant funding is provided to the expert staff of each source country, a more focused approach can be developed in repatriation efforts of these countries. A similar case is valid for Turkey as well. If the funding of the Department of Preventing Illicit Trafficking of Cultural Property is to be increased, this would allow them to resolve many of their current problems.

6.2.1. What does Turkey do well in repatriation?

One of the strongest suits of Turkey with regard to the recovery of its stolen cultural heritage is its expert staff, even though their numbers are far too limited when considered alongside with the high number of repatriation cases it tries to tackle. Since Turkey has long been a center for illicit excavations and trafficking of cultural property, there is always a continuous effort to bring back stolen or illegally exported artifacts. That is why the relevant official department within the Turkish Ministry of Culture harbors experts from the field to address this issue most efficiently.

Another significant point is the determination of the Ministry in the process of repatriating such objects. Some cases can take years of work, which might hurt the repatriation efforts because time can work against the claim yet the Ministry never gives up. During my internship at the Ministry, I saw that they closely follow a large group of cases. With every new data or tip received, they build up on the case and pick up where ever they left. This requires tremendous vigilance and organizational skills, which is a challenging task.

The repatriation process requires patience and dialogue skills which the Turkish Ministry has for sure. They closely monitor all the major auction houses and other various tips that they receive through academia or other professionals working within the field to keep track of and identify stolen or illegally exported cultural property of Turkey.

Since the political aspect of repatriation efforts is mentioned in Chapter 3, it will suffice only to say that when politics are involved, this can also help increase the pace of the repatriation efforts. There are intervals within Turkish political history where we see a deliberate focus on repatriation efforts, eventually resulting in high repatriation numbers (See Figure 1). Of course, this also depends on the nature of the case and the cooperation between the Ministry of Culture and Tourism and the Ministry of Foreign Affairs.

6.2.2. Further Results

In addition to the outcomes of the selected cases studies, some further outcome are reached which are shared separately below.

The lack of expert staff is a grave problem within this industry. Even though this thesis examined the relevant legislation and the staff commissioned for repatriation, they are not the only two actors in this process. In order to prevent the illicit trafficking of cultural heritage, source countries should also employ expert law enforcers to tackle the problem at its source.

The lack of applicability is another outcome regarding the relevant international legislation. In the Turkish case, we see that Turkey had developed comprehensive national legislation that tries to bridge the shortfalls omitted by the relevant international legislation.

The display of items in museums is another issue that this thesis has tried to draw attention to in the context of repatriation. Since many source countries relentlessly work to bring back their stolen cultural heritage, the question arises of where to display them. Is there a point in repatriating the cultural property if your museums have no space to display them? Is the repatriation fully serving its purpose when the repatriated antiquities are stored away on dusty shelves? Unless there are adequate publications being made on these repatriated artifacts and that they are exhibited for the wider public, repatriation only serves to make right the unlawfulness that is present. If this is the case, we cannot speak of a true and extensive repatriation.

Even though these are valid questions, the issue's legality overcomes these secondary questions. In repatriation studies, we should first focus on the issue of repatriation and then move on to discuss the places of display and the conditions of the warehouses of the museums of source countries.

The publications within the Turkish academia on the issues of both preventing the trafficking of cultural property and repatriation of these stolen or illicitly obtained items are very scarce when compared with their equivalents abroad, especially in market countries. Even though the Turkish Ministry of Culture is organizing events to raise public awareness, it is not enough to ignite academic interest.

6.3. Further Discussions

Following the results of the thesis, it is now appropriate to conjecture about future possibilities regarding where the field and its problems might lead towards.

6.3.1. Provenance Research and Repatriation

There is an ever-increasing public awareness regarding the provenance of the artifacts on display in museums worldwide. Visitors are curious about where the item on an exhibit is coming from and whether it has reached the possession of this museum through legal means. This increasing curiosity about the provenance of the items is starting to pressure some museums to deliver conclusive answers.⁴⁷ This pressure will be coming from the public and to be more specific the visitors of these museums. In this section, we should conjecture on the next track of investigation for this research which is how the museums will start to react to the demands of the public regarding the provenance information of the artifacts on display. This singular effort should soon become a new trend and popular act. There is no doubt that there will come a time when every museum in the world, including the major ones in Europe and the US, will share information regarding their provenance in more detail than they currently exhibit.

The shift in sharing extensive provenance information will be achieved through several means. This can occur after the internal efforts of each museum to update themselves within the newly demanded standards by the public among which is more detailed and clear provenance information for the artifacts. However, for some other museums, this will happen somewhat uneasily after the long-lasting demand of their visitors, meaning they would not be willing to comply with these new developments but end up not being able to resist to pressure. Whichever might be the driving force behind this shift, it should be welcomed since it will lead to more fruitful debates regarding the provenance of each artifact and who their rightful owners are.

After extensive transparency regarding the provenance of artifacts is provided, another vital question will arise: who owns the past? If we are to tailor this question, it will become who is the rightful owner of the items whose provenance shows that these items were subject to either looting or illicit export. The answer for this question is simple. Any looted or illegally exported antiquity has to be returned to its

⁴⁷ <https://www.nytimes.com/2023/02/14/travel/museums-stolen-art.html>

source country without any conditions. Since this effort of providing transparency regarding the provenance of antiquities will inevitably lead to the demand to return these artifacts by the source countries, the reluctance to do provenance research is expected to happen. With the above-described motives, this thesis believes that this reluctance will be overcome, and eventually, the repatriation process will open up for source countries.

Detailed provenance information is a valuable step toward sustaining restorative justice in repatriation. Sharing more information and being more transparent with the provenance of the artifacts on display is also a method of reconciling past wrongdoings. The initial aim of restorative justice is to come to terms with the culture directly affected by the crime. However, in cases where the return and restitution of such artifacts cannot be achieved for the time being, sharing detailed provenance information even with the museum visitors is a step towards accepting that there has been wrongdoing in the past, which might potentially lead to the repatriation of these items.

6.3.2. Projections on the Outcomes of Repatriation

The projections in this section concerns the possible terms and conditions of restitution and repatriation. Even though there will be increasing pressure from both the public and the source countries on museums to share extensive information on the provenance of their items, the museums will not always be willing to return and reconstitute the artifacts to the source countries. What kind of arrangements can be made in such cases? Even though the museums might not be willing to return the artifacts at first glance, they might help negotiate the terms of long-term loans. Since some museums might have been built around artifacts whose provenance is questionable, they might not wish to return such artifacts, seeing that it would contradict their initial reason to exist.

What can be done in such cases might be to arrange a long-term transition of these items to their rightful owners, meaning that they would be returned to their owners

after a long period of loan at its current owner. In the meantime, the museums can still keep, conserve and exhibit the items, but the ownership would pass them to the rightful owners. During the time frame provided by these long-term loans, the museums would have the time to develop new strategies to acquire unique items or develop other projects once these items are returned.

From the perspective of the source countries, they might not always wish to accept the terms of these long-term loans even though they are given the title of the objects. Depending on the value placed on these objects, source countries might offer to provide other cultural property on loan to these museums to be displayed while receiving the initial item of conflict.

One other scenario is to develop bilateral agreements between museums and source countries. An example to this can be seen in the contract which was signed on 2011 between J. Paul Getty Trust and Greece.⁴⁸ What this contract foresees is to establish 'cultural cooperation' by exchanging scholars and joint research projects along with repatriating two antiquities. When the initial talks to convince the market country to repatriate a stolen property hits a deadlock, such bilateral agreements can be developed between source countries and museums. This is a form of repatriation but it is not unconditional which is why Turkey does not see it as a part of its repatriation policies.

All of the scenarios mentioned above are plausible and can be negotiated depending on the time and place of the event occurring. The fundamental aspect is to ensure that the cultural property that ended up in a market country through either illicit trafficking or illegal export should find a way to be repatriated to its rightful owner. By doing so, we could restore the broken link between antiquity and its context that once existed. When such connections are reconstructed, the stolen or illicitly exported cultural property is offered a way to reconnect with the actual context and the culture it belongs. When an item is deprived of that, it is impossible to provide its

⁴⁸ <https://www.getty.edu/news/getty-and-the-hellenic-republic-ministry-of-culture-sign-agreement-for-cultural-cooperation/>

equivalent even though it is exhibited in the world's most modern and prestigious museum.

6.4. Conclusive Remarks

What Turkey has been doing in its repatriation efforts is significant and instructive for all the source countries suffering from this international crime. After introducing the main concepts of the field, this thesis brings together the primary legislation referred to. Turkey's methodology in repatriating its cultural property, outlined in Chapters 4 and 5, can serve as a toolkit for both source countries that need a guide and for researchers studying similar cases. It also encloses a review of the main topics of publications, both national and international on this matter. Since the cases selected are being studied for the first time, this thesis is significant in an investigative aspect as well. Art and antiquity crimes, and especially the trafficking of cultural property, are international crimes which attract an increasing attention by both the academia and the wider public for further research. This increasing attention can be diverted to be used as a pressure mechanism in convincing museums or market countries to repatriate the stolen or illicitly exported antiquities. Therefore this thesis also aimed to examine how Turkey reacted and developed a method to repatriate its illicitly trafficked cultural heritage and restore its broken cultural and historical link. The selection process of the case studies was solely to reach this end, to create a reference work that can spark some interest for further studies of similar case studies.

These increasing repatriation efforts, thanks to the outstanding efforts of the Turkish Ministry of Culture and Tourism and the increasing public awareness and pressure will decrease illegal excavations and illicit trafficking and export of antiquities out of source countries. The museums and auction houses will be forced to be more vigilant in provenance checks and think twice before acquiring any items which have questionable backgrounds. With every repatriated cultural property, the broken ties with the past cultures are restored and through their exhibition in museums, a further link is formed with the public.

REFERENCES

- Acar, Ö. (2018). *Çoban Herkül'ü Yordu!* Arkadaş Yayınevi.
- Acar, Ö. (2021, September 21). Bir çift terliğe satılan Kilia İdolü, Türkiye zamanında harekete geçmediği için ABD'de kaldı. *Cumhuriyet*.
<https://www.cumhuriyet.com.tr/kultur-sanat/bir-cift-terlige-satilan-kilia-idolu-turkiye-zamaninda-harekete-gecmedigi-icin-abdde-kaldi-1870535>
- Alder, C., & Polk, K. (2002). Stopping This Awful Business: The Illicit Traffic in Antiquities Examined as a Criminal Market. *Art Antiquity and Law*, 7(1), 35–54.
- Atakuman, Ç. (2008). Cradle or Crucible: Anatolia and Archaeology in the Early Years of the Turkish Republic. *Journal of Social Archaeology*, 8(2), 214–235.
- Atakuman, Ç. (2010). Value of Heritage in Turkey: History and Politics of Turkey's World Heritage Nominations. *Journal of Mediterranean Archaeology*, 23, 107–131. <https://doi.org/10.1558/jmea.v23i1.107>
- Atakuman, Ç. (2017). Shifting Discourses of Heritage and Identity in Turkey: Anatolianist Ideologies and Beyon. In *In Search of Pre-Classical Antiquity: Rediscovering Ancient Peoples in Mediterranean Europe (19th and 20th c.)* (pp. 166–181). Brill.
- Bahrani, Z., Çelik, Z., & Eldem, E. (2011). *Scramble for the past: A story of archaeology in the Ottoman Empire, 1753-1914*. Salt.
<https://eds.s.ebscohost.com/eds/detail/detail?vid=1&sid=25e70dfd-f262-4731-8173-046fe7c0e683%40redis&bdata=JnNpdGU9ZWRzLWxpdmU%3d#AN=bilk.838055&db=cat00040a>
- Blake, J. (1998). Illicit antiquities and international litigation—the Turkish experience. *Antiquity*, 72(278), 824–830. <https://doi.org/10.1017/S0003598X00087421>
- Boyd, S. A., & Mango, M. M. (Eds.). (1992). *Ecclesiastical Silver Plate in Sixth-Century Byzantium*. Dumbarton Oaks Research Library and Collection.
- Boz, Z. (2022). *Interview with Mrs. Zeynep Boz, Head of the Department of Preventing Illicit Trafficking of Cultural Property within the Turkish Ministry of Culture an Tourism*.

- Brodie, N. (2010). Archaeological Looting and Economic Justice. In P. M. Messenger & G. S. Smith (Eds.), *Policies and Issues in Global Perspective* (pp. 261–277). University Press of Florida.
- Brodie, N. (2017). How to Control the Internet Market in Antiquities? The Need for Regulation and Monitoring. *Antiquities Coalition Policy Brief*, 3.
<https://ora.ox.ac.uk/objects/uuid:f2322e52-2ff9-4a08-ad9b-fe855b2444e0>
- Brodie, N. (2019). The Criminal Organization of the Transnational Trade in Cultural Objects: Two Case Studies. In S. Hufnagel & D. Chappell (Eds.), *The Palgrave Handbook on Art Crime* (pp. 439–461). Palgrave Macmillan UK.
https://doi.org/10.1057/978-1-137-54405-6_21
- Brodie, N. (2020). Restorative justice? Questions arising out of the Hobby Lobby return of cuneiform tablets to Iraq. *Revista Memoria Em Rede*, 12(23), 87–109.
- Brodie, N., Batura, G., op't H., Slot, B., Wanrooij, N. van, & Yates, D. (2019). *Illicit Trade in Cultural Goods in Europe*. European Commission.
- Brodie, N., & Contreras, D. (2012). The Economics of the Looted Archaeological Site of Bab edh-Dhra: A View from Google Earth. In P. K. Lazrus & A. W. Barker (Eds.), *All the Kings Horses: Looting, Antiquities Trafficking and the Integrity of the Archaeological Record* (pp. 9–25). Society for American Archaeology.
- Brodie, N., Dietzler, J., & Mackenzie, S. (2013). Trafficking in Cultural Objects: An Empirical Overview. *Beni Culturali e Sistema Penale*, 19–30.
- Brodie, N., Kersel, M. M., Luke, C., & Walker Tubb, K. (2006). *Archaeology, Cultural Heritage, And the Antiquities Trade*. University Press of Florida.
- Brodie, N., Kersel, M. M., Mackenzie, S., Sabrine, I., Smith, E., & Yates, D. (2022). Why There is Still an Illicit Trade in Cultural Objects and What We Can Do About It. *Journal of Field Archaeology*, 47(2), 117–130.
<https://doi.org/10.1080/00934690.2021.1996979>
- Brodie, N., & Luke, C. (2006). Social and Political Contexts of Collecting. In N. Brodie, M. Kersel, C. Luke, & K. Walker Tubb (Eds.), *Archaeology, Cultural*

- Heritage and the Antiquities Trade* (pp. 303–319). University Press of Florida.
- Brodie, N., & Mackenzie, S. (2014). Trafficking Cultural Objects: Introduction. *European Journal on Criminal Policy and Research*, 20(4), 421–426.
<https://doi.org/10.1007/s10610-014-9256-4>
- Brodie, N., & Renfrew, C. (2005). Looting and the World's Archaeological Heritage: The Inadequate Response. *Annual Review of Anthropology*, 34, 343–361.
<https://doi.org/10.1146/annurev.anthro.34.081804.120551>
- Çelik, Z. (2016). *About Antiquities: Politics of Archaeology in the Ottoman Empire*. University of Texas Press.
<https://eds.p.ebscohost.com/eds/ebookviewer/ebook?sid=dbc4f8ca-d5f0-438e-ae91-81a1c75b6b96%40redis&vid=1&rid=1&format=EB>
- Cuno, J. (2010). *Who Owns Antiquity?* Princeton University Press.
<https://press.princeton.edu/books/paperback/9780691148106/who-owns-antiquity>
- Duru, R. (2010). *Elli Yıllık Bir Arkeoloji Öyküsü Hacılar*. AKMED.
- Eldem, E. (2010). Ottoman and Turkish Orientalism. *Architectural Design*, 80(1), 26–31. <https://doi.org/10.1002/ad.1006>
- Eldem, E. (2016). *Osman Hamdi Bey: İzlenimler 1869-1885*. Doğan Kitap.
- Erbil, Ö. (2020). Türkiye 53 yıldır peşini bırakmadı; Sion Hazinesi buraya gelecek. *Hürriyet*. <https://www.hurriyet.com.tr/kitap-sanat/turkiye-53-yildir-pesini-birakmadi-sion-hazinesi-buraya-gelecek-41617299>
- Felch, J. (2012). The Harvard List: Turkey wants Dumbarton Oaks to Return the Sion Treasure. *Chasing Aphrodite*. <https://chasingaphrodite.com/tag/george-zakos/>
- Gould, P. (2019). *Public Archaeology: Theoretical Considerations and Current Practices* (I. Gürsu, Ed.). Oxbow Books.
- Gürsu, I., & Uriarte, T. (2015). A Comparative Perspective on the Discourses of “Privatization” in the ARts and Heritage Field in Turkey. In *The Ecology of*

- Culture: Community Engagement, Co-creation, Cross Fertilization* (pp. 437–445). ENTACT.
- Hutt, S., Blanco, C. M., Stern, W. E., & Harris, S. N. (2004). *Cultural Property Law: A Practitioner's Guide to the Management, Protection, and Preservation of Heritage Resources*. American Bar Association.
- Jung, Y. (2014). The Ignorant Museum: Transforming the Elitist Museum into an Inclusive Learning Place. In *10 Must Reads: Inclusion-Empowering New Audiences* (p. 376). MuseumsEtc.
- Karaduman, H. (2007). *Türkiye'de Eski Eser Kaçakçılığı*. ICOM Türkiye Milli Komitesi.
- Katoğlu, T. (2022). *Ceza Hukuku ve Kültür Varlıkları* (2nd ed.). Seçkin Yayınları.
- Kersel, M. M. (2012). The Value of a Looted Object: Stakeholder Perceptions in the Antiquities Trade. In R. Skeates, C. McDavid, & J. Carman (Eds.), *The Oxford Handbook of Public Archaeology* (p. 0). Oxford University Press.
<https://doi.org/10.1093/oxfordhb/9780199237821.013.0014>
- Kersel, M. M., & Hill, A. (Chad). (2019). The (W)Hole Picture: Responses to a Looted Landscape. *International Journal of Cultural Property*, 26(3), 305–329. <https://doi.org/10.1017/S0940739119000195>
- La Follette, L. (2013). *Negotiating Culture: Heritage Ownership, and Intellectual Property*. University of Massachusetts Press.
- Louvre Museum. (n.d.). *An Introduction to Islamic Art*.
<https://www.louvre.fr/en/explore/the-palace/an-introduction-to-islamic-art>
- Luke, C., & Kersel, M. (2013). Global Conversations: Museums, Diplomacy, and Provenance. *Journal of Field Archaeology*, 38(4), 362–363.
- M1. (2022). *Information note on the issue of Sion Treasure at Dumbarton Oaks*. Ministry of Culture and Tourism.
- M2. (2022). *Information note on the case of Iznik Tiles at the Louvre Museum*. Ministry of Culture and Tourism.
- Mackenzie, S., Brodie, N., & Tsirogiannis, C. (2020). The Structure of the Global Market in Illicit Antiquities: Actors, Drivers, Mechanisms. In *Trafficking Culture* (pp. 1–19). Routledge.

- Mansel, A. M. (1960). Osman Hamdi Bey: Ölümünün Ellinci Yıldönümün Vesilesile. *Belleten*, 24, 291–301.
- Mellaart, J. (1970). *Excavations at Hacilar I-II*. Edinburgh University Press.
- Merryman, J. H. (1994). The Nation and the Object. *International Journal of Cultural Property*, 3(1), 61–76.
- Ms. Y. (2022). *Stimulating Perspectives on this Matter from a Sidonian* [Personal communication].
- Osman Hamdi Bey. (2022). *Sidon Kral Mezarı Kazısı*. Ofset Yapımevi Yayınları.
- Osman Hamdy Bey, & Theodore, R. (1892). *Une Necropole Royale a Sidon—Fouilles de Hamdy Bey*.
- Özel, S. (1998). *Uluslararası Alanda Kültür Varlıklarının Korunması*. Alkım Yayınları.
- Özel, S. (2010). Under the Turkish Blanket Legislation: The Recovery of Cultural Property Removed from Turkey. *International Journal of Legal Information*, 38(2), 177–184.
- Özel, S. (2013). Kültür Varlıklarının İadesinde Doğrudan Uygulanma Kabiliyeti Olan Uluslararası Sözleşme: Çalınan ya da Yasadışı Olarak İhraç Edilen Kültürel Objelerle İlgili 1995 UNIDROIT Konvansiyonu. *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi*, 19(2), 237–258.
- Richman, J. R., & Forsyth, Marion. P. (2003). *Legal Perspectives on Cultural Resources*. AltaMira Press.
- Roehrenbeck, C. A. (2010). Repatriation of Cultural Property—Who Owns the Past? An Introduction to Approaches and to Selected Statutory Instruments. *International Journal of Legal Information*, 38(2), 185–200.
<https://doi.org/10.1017/S0731126500005722>
- Saatçı Ata, M. B. (2021). Müze-i Hümayun Müdürü Dr. Philipp Anton Dethier'nin Osmanlı Maarif Nazırlar Dönemindeki (1872-1881) Faaliyetleri Üzerine Bir Değerlendirme. *Belgi Dergisi*, 21, 459–482.
- Sargent, M., Marrone, J. V., Evans, A., Lilly, B., Nemeth, E., & Dalzell, S. (2020). *Tracking and Disrupting the Illicit Antiquities Trade with Open Source Data*. Rand.

Smith, E. (2022). The Ongoing Quest to Return Nepal's Looted Cultural Heritage.

Journal of International Affairs, 23(2), 264–271.

Sönmez, A. (2011). Truva Hazinelelerinin Peşinde Bir Hukuk Mücadelesi: Osmanlı Devleti ve Schliemann Davası. *OTAM*, 29, 215–228.

Sönmez, A. (2020a). Osman Hamdi Bey'in Sayda Kazısı ve Bu Kazının Müze-i Hümayun'un Gelişimine Etkisi. *History Studies International Journal of History*, 12(3), 765–788.

Sönmez, A. (2020b). *Yitik Miras Zeus Sunağı: Avrupa'nın Kıskaçında Asar'ı Atika Politikası*. İdeal Kültür Yayıncılık.

Turkish Ministry of Culture and Tourism. (2022). 126. ABD'den iadesi sağlanan eserler (14 Adet) (2022). <https://kvmgm.ktb.gov.tr/TR-312144/126-abd39den-iadesi-saglanan-eserler-14-adet-2022.html>

Turkish Ministry of Culture and Tourism. (2023a). *Antalya Müzesi Sanal Müze*. https://sanalmuze.gov.tr/muzeler/ANTALYA_MUZESI_WEB/

Turkish Ministry of Culture and Tourism. (2023b). *Istanbul Arkeoloji Müzesi Sanal Müze*. https://sanalmuze.gov.tr/muzeler/ISTANBUL_ARKEOLOJI_MUZELERI/

Walczak, K., Cellary, W., & White, M. (2006). Virtual museum exhibitions. *Computer*, 39(3), 93–95. <https://doi.org/10.1109/MC.2006.108>

Yılmaz, Y. (2021). *Anadolu'nun Gözyaşları: Yurtdışına Götürülmüş Tarihi Eserlerimiz*. Anadolu Kültürel Girişimcilik.

FIGURES

Figure 1. Bar chart that displays the numbers of cultural property Turkey repatriated since 1980

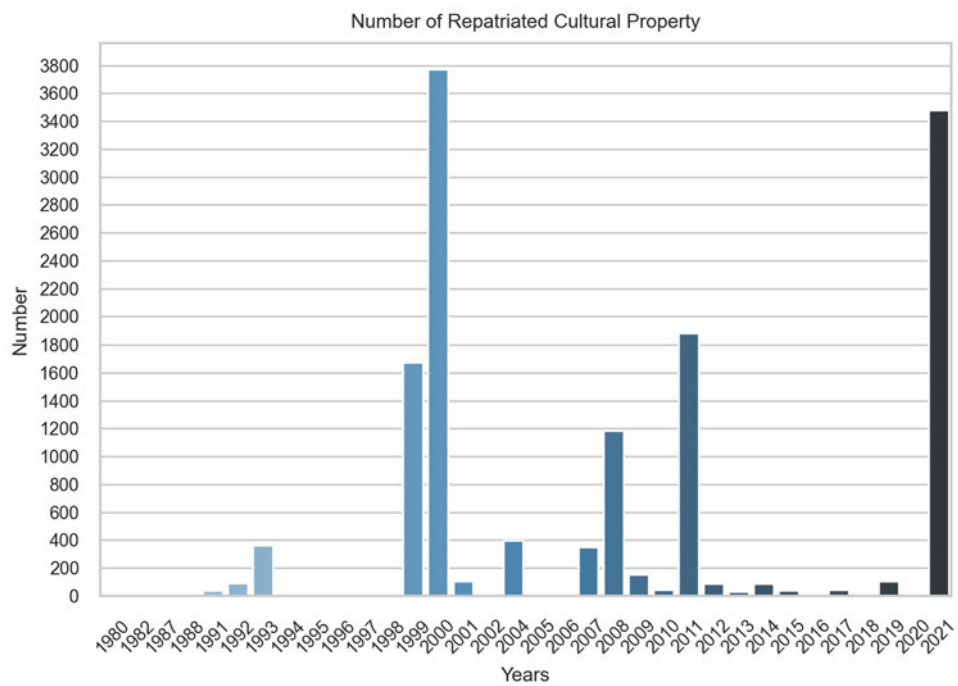


Figure 2a. Hacilar type Neolithic figurine (©Turkish Ministry of Culture and Tourism)



Figure 2b. Hellenistic Period stag's head rhyton (©Turkish Ministry of Culture and Tourism)



Figure 2c. Seven pieces of cloth decoration dating to 7th-6th centuries BC (©Turkish Ministry of Culture and Tourism)



Figure 2d. Kilia-type marble idol dating to Chalcolithic Period (©Turkish Ministry of Culture and Tourism)



Figure 2e. Two bronze standards in bird shape dating to 2nd m. BC (©Turkish Ministry of Culture and Tourism)



Figure 2f. A bronze standard in goat shape dating to 2nd m. BC (©Turkish Ministry of Culture and Tourism)



Figure 2g. Female figurine dating to 7th-6th centuries BC (©Turkish Ministry of Culture and Tourism)



Figure 3a. Pieces from the Sion Treasure at Antalya Museum (©Antalya Museum)



Figure 3b. Pieces from the Sion Treasure at Antalya Museum (©Antalya Museum)



Figure 3c. Pieces from the Sion Treasure at Dumbarton Oaks (©Hürriyet Newspaper)



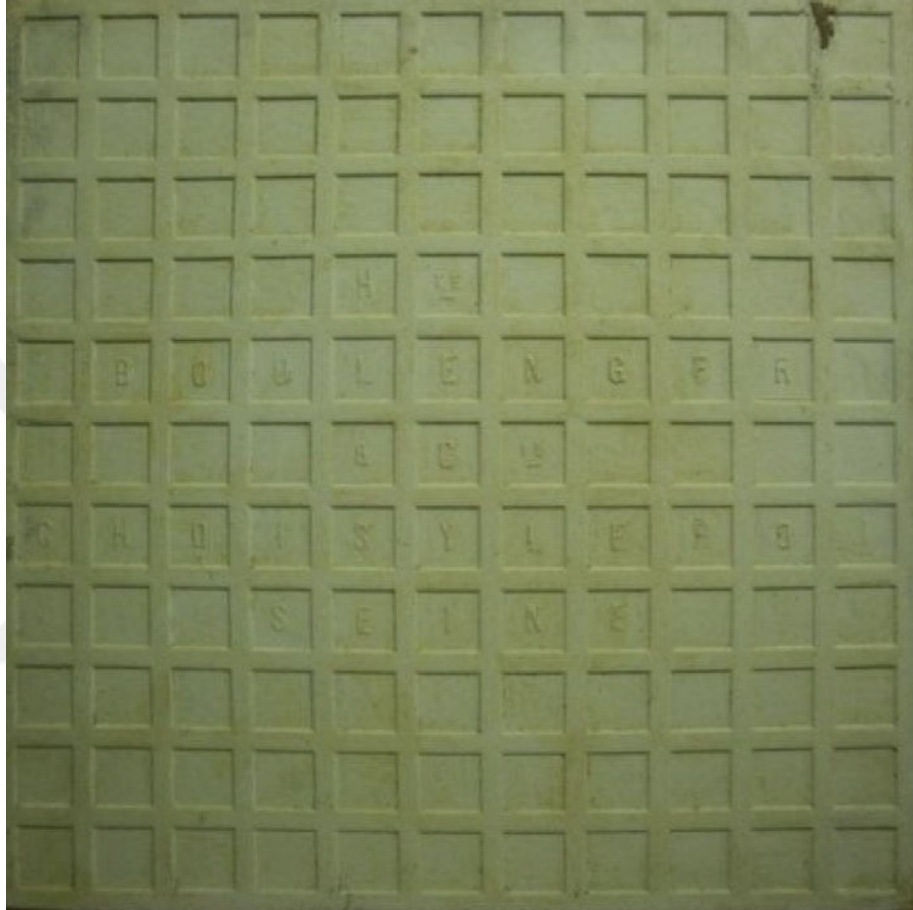
Figures 4a. Iznik Tiles at the Louvre Museum (©Louvre Museum)



Figure 4b. The reply that the Louvre Museum has given me



Figure 4c. Photo of the reconstructed tile with the mark on its back (©Turkish Ministry of Culture and Tourism)



Figures 5a. Anthropomorphic sarcophagi from Sidon (©Istanbul Archaeology Museum)



Figure 5b. Lycian type sarcophagi dating to 5th century BC from Sidon (©Istanbul Archaeology Museum)



Figure 5c. Sarcophagi from Sidon (©Istanbul Archaeology Museum)



Figure 5d. Alexander the Great sarcophagus from Sidon dating to the last quarter of the 4th c. BC, Eastern view (©Istanbul Archaeology Museum)



Figure 5e. Alexander the Great sarcophagus from Sidon dating to the last quarter of the 4th c. BC, Northern view (©Istanbul Archaeology Museum)



Figure 5f. Alexander the Great sarcophagus from Sidon dating to the last quarter of the 4th c. BC, Southern View (©Istanbul Archaeology Museum)



Figure 5g. Alexander the Great sarcophagus from Sidon dating to the last quarter of the 4th c. BC, Western view (©Istanbul Archaeology Museum)



Figure 6. The letter I sent to the Minister of Culture of Lebanon

**To His Highness Judge Mohammed Wissam el-Mortada,
Minister of Culture;**

I would like to start my letter by first briefly introducing who I am. My name is Özkan Atmıř and I am a graduate student of Archaeology at Bilkent University, Ankara/Turkey. The reason why I am sending this letter to you is to respectfully direct a question I have regarding my thesis research.

My main research focuses on the fields of preventing illicit trafficking of cultural property and the repatriation of illegally exported or stolen cultural objects. To this end, the title of my thesis is 'Repatriation Both Ways: A Theoretical Approach to the Repatriation Policy of Turkey through Case Studies'. I analyze these policies under three sub-groups being cases Turkey successfully repatriated, cases that are still ongoing and cases that Turkey is asked to return. For this last group, I am planning to write about the issue of Sidon sarcophagi which has long been a topic of discussion.

To have a scientific approach in my thesis, I am hoping to include the official stance of Lebanon on the issue of Sidon sarcophagi and where they should be held and exhibited. It would be also delightful to have the approach of Lebanon on whether they expect these items to be returned as well. I will have access to the Turkish file regarding this issue but I am hoping to have an official response from you to include it in my thesis as well.

I appreciate your precious time and help in answering my question on this delicate matter.

Respectfully yours,

Özkan Atmıř

11.11.2022

Ankara, Turkey

Figure 7. The letter that the Lebanese Minister of Culture has sent me

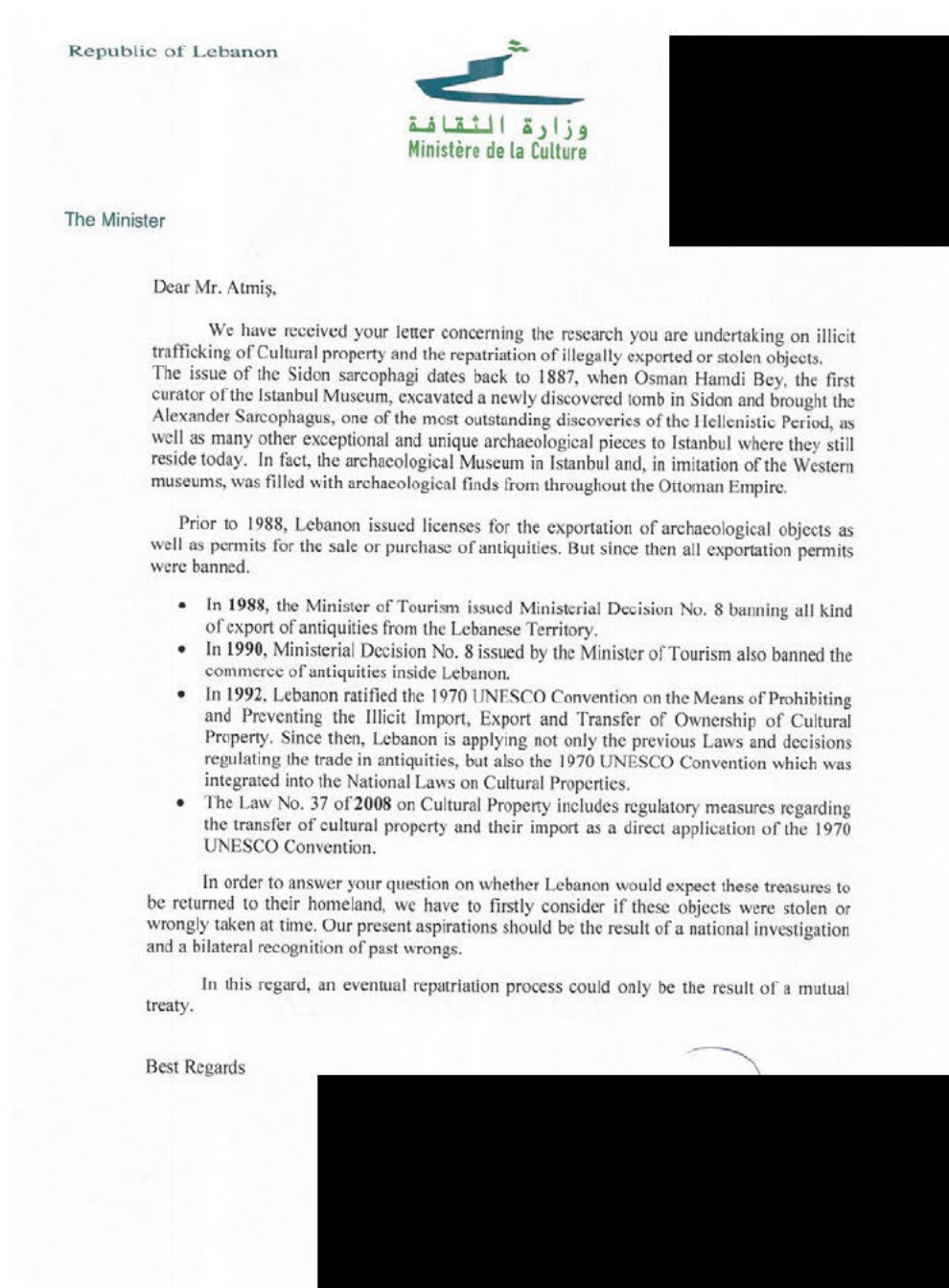


Figure 8. The reply that the Directors Office of Dumbarton Oaks has given me

