

# **The Beautiful One has Come – To Return<sup>1</sup>**

## **The Return of the Bust of Nefertiti from Berlin to Cairo**

**Kurt G. Siehr**

**M.C.L. (Ann Arbor), Dr. iur. (Hamburg), Ph.D. (Zürich)**

### **I. History**

#### **1. Ancient History**

"The queen's [Nefertiti's] bust is the best-known work of art from ancient Egypt - arguably from all antiquity."<sup>2</sup> The limestone bust of Nefertiti – her name means “The Beautiful One Has Come” - is at present exhibited in the Egyptian Museum in Berlin. Nefertiti was the wife of pharaoh Akhenaton (also known under the name Amenhotep or Amenophis IV of the 18<sup>th</sup> Dynasty) ruling from 1353-1336 B.C. in the new capital el-Amarna, about 200 km north of the old capital Thebes and the founder of the new monotheistic cult of the sun god Aton.<sup>3</sup> We do not know very much about Nefertiti. She might have been a princess of the Indo-Iranian empire Mitanni in central and northern Mesopotamia and unknown is still whether she became a co-regent under a

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<sup>1</sup> The symposium organizers requested that the author and Stephen Urice take opposing positions on the question whether the Bust of Nefertiti should remain in Berlin or be returned to Egypt. As lawyers either of us might have argued either position.

<sup>2</sup> Dorothea Arnold, “The Workshop of the Sculptor Thutmose”, in: Dorothea Arnold, *The Royal Woman of Amarna. Images of Beauty from Ancient Egypt* (New York 1997) 41 et seq., at p. 65.

<sup>3</sup> Cp. Nicolas Reeves, *Akhenaten. Egypt's False Prophet* (London 2001) 43 et seq.

different name, fell into disgrace, retired prematurely or whether she passed away rather early.<sup>4</sup>

## 2. Modern History

For a long time Akhenaton and his innovation were unknown to historians and to archaeologists as well. This is mainly due to two factors: Akhenaton had a different residence and his successors abolished most traces of the Aton-cult favoured by Akhenaton. It was he who abandoned former traditions, irritated the powerful class of priests and introduced a kind of solar monotheism.<sup>5</sup>

The site of what was later known as Tell el-Amarna was already surveyed by the engineers and savants attached to Napoleon's Egyptian expedition of 1798-99.<sup>6</sup> During the 19<sup>th</sup> century it was visited by *John Gardner Wilkinson* (1797-1875) in 1824 and 1826, by *Karl Richard Lepsius* (1810-1884) in 1843 and 1845, by *William Matthew Flinders Petrie* (1853-1942) and *Howard Carter* (1874-1939) in 1892.<sup>7</sup> At the beginning of the 20<sup>th</sup> century the Deutsche Orient-Gesellschaft (German Oriental Society) headed by the Egyptologist *Ludwig Borchardt* (1863-1938) got the permission for excavations in Egypt. This took place in Tell el-Amarna the presumed residence of Akhenaton. On 6 December 1912 the bust of Nefertiti was excavated in the workshop of the sculptor *Thutmose* together with some unfinished portrait busts of the Queen Nefertiti. As it was usual at that time the finds were divided between Egypt and the foreign holder of the excavation licence. In this partition the painted bust of Nefertiti was part of the German share. The bust was shipped to Germany, given to the wealthy wholesale merchant *James Simon* (1851-1932) as one of the sponsors of the excavations in Tell el-Amarna, lent and in 1920 finally donated to the Berlin

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<sup>4</sup> Reeves (N.3) p.157 *et seq.*; Joyce Tyldesley, *Nefertiti. Egypt's Sun Queen* (New York 1998) 139 *et seq.*

<sup>5</sup> Cp. Jan Assmann, *Ägypten. Eine Sinngeschichte* (2d ed. Frankfurt/Main 2000) 243 *et seq.*

<sup>6</sup> Cp. *Description de l'Égypte ou recueil des observations et des recherches qui ont été faites en Égypte pendant l'expédition de l'Armée française publié sous les ordres de Napoléon Bonaparte* (reprint 1995) vol. IV, plate 63 no. 6 ("une ancienne ville").

<sup>7</sup> Cp. Reeves (N. 3) p. 13-22.

museums and since 1923 unveiled and exhibited to an astonished public in the Egyptian Museum in Berlin.

Since 1939 the Berlin museums were evacuated and the cultural treasures removed to secure shelters for safe keeping. The bust of Nefertiti was ultimately sheltered in a saltmine at Merkers/Kaiseroda in Thuringia, in 1945 evacuated by the American Army and its Monuments, Fine Arts and Archives branch, shipped to the U.S. Central Collecting Point in Wiesbaden and finally made accessible for the public.<sup>8</sup> In 1956 Nefertiti returned to West Berlin. The East German Democratic Republic tried in vain to recover the bust which was formerly exhibited in a museum on "Museum Island", after 1945 being part of East Berlin.<sup>9</sup> This debate on "Who owns Nefertiti?" became mute when both parts of Berlin were reunited in 1990.

### 3. Recent Developments

When the bust of Nefertiti was exhibited in Berlin in 1923 and rapidly became one of the favourite attractions of the Egyptian Museum the Egyptian government asked Germany officially to return the bust of Nefertiti. This they did at least in four different ways:<sup>10</sup>

- Egypt declined in 1925 to grant any excavation permission to Germany unless Germany returned the bust of Nefertiti or at least agreed to arbitration on the return of this piece and on return conditions; Germany declined;

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<sup>8</sup> Cp. Walter I. Farmer, *The Safekeepers. A Memoir of the Arts at the End of World War II* (Berlin/New York 2000) p.46 *et seq.*; Thomas Carr Howe, *Salt Mines and Castles. The Discovery and Restitution of Looted European Art* (Indianapolis/New York 1946) 286-287.

<sup>9</sup> Reinhard Mußnug, *Wem gehört Nofretete?* (Berlin/New York 1977) p. 10 *et seq.*

<sup>10</sup> Cp. Rolf Krauss, „1913-1988: 75 Jahre Büste der Nofretete/Nefertiti in Berlin“, in: *24 Jahrbuch Preußischer Kulturbesitz*. 87-124, at p. 102-116 (1988) and *28 Jahrbuch Preußischer Kulturbesitz* 123-157, at p. 123-125 (1992); Gert v. Paczensky, „Der Fall Nofretete“, in: Gert v. Paczensky/ Herbert Ganslmayr (eds.), *Nofretete will nach Hause. Europa - Schatzhaus der "Dritten Welt"* (München 1984) 260 *et seq.*, at 286 *et seq.*

- Egypt offered in 1929 valuable antiquities in exchange for the return of Nefertiti; Germany declined in 1930.
- In 1933 German diplomats and politicians wanted to return the bust but Hitler declined to do it.
- Egypt tried in the 1950s to see whether Germany would be inclined to talk about the return of the bust of Nefertiti. These efforts had no success.

Apart from this there are many declarations by Egyptian politicians and cultural managers that the bust of Nefertiti should be in Egypt and exhibited in the Cairo Archaeological Museum. I think there are five very good reasons which could be pleaded in favour of a return of a prominent piece of Egyptian archaeological cultural property to the country of origin. Whether these reasons will convince a court today or in the future, cannot be predicted.

## **II. Return of Nefertiti**

### **1. Division of Spoils of 1913**

There are three different attitudes towards the finds of archaeologists excavating in foreign countries: take all, take nothing, and take half of it. In early days of archaeology before local rules on the protection of national treasures have been introduced, the permission to excavate and to keep the finds were a simple problem of the regular rules of treasure trove known almost everywhere since ancient times.<sup>11</sup> If the excavation site, as so often in Egypt of the 19<sup>th</sup> century, was uninhabited and practically no-man's land, excavations in source countries became a sort of sport and competition governed by the principle "first come, first served". In these early times of

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<sup>11</sup> Since ancient times it was a common rule that the finder who actually took the treasure into his possession became the owner of half and the other half became the property of the owner of the land. Cp. *Institutiones Iustiniani* 2, 1, 39; M.Radin, *Handbook of Roman Law* (St. Paul, Minn. 1927) 343; M.Kaser, *Das römische Privatrecht*, vol. 1 (2d. ed. München 1971) § 102 I 3 (p. 426-7); G. Hill, *Treasure Trove in Law and Practice from the Earliest Time to the Present Day* (Oxford 1936) 1 *et seq.*

the "rape of Egypt" excavation teams took all the finds and brought them to Europe or America.<sup>12</sup> When the "Rosetta Stone" was discovered in 1799 by French invaders, nobody asked anybody in Egypt whether this precious document should stay in Egypt or may be kept by the discoverers and exported to Europe. In 1801 it became only a matter between the French and the British whether the "Rosetta Stone" will go to Paris or to London.<sup>13</sup>

During the 19<sup>th</sup> century Mediterranean source countries introduced legislation protecting national cultural treasures. This was also done in Egypt, at this time again part of the Ottoman Empire governed by a viceroy.<sup>14</sup> Excavation licences had to be applied for and, if granted, the finds of the excavation campaign had to be equally divided between Egypt and the foreign licence holder. This regime of "take half of it" was still valid when in 1911 the Germans started excavating some parts of Tell el-Amarna.<sup>15</sup>

When in December 1912 the German excavation campaign was successful and on January 20, 1913 the division had to be made it seems to be very likely that *Borchardt*, anxious to preserve the bust of Nefertiti for Germany, either did not reveal the find to the Egyptian antiquities authority (headed by the French Egyptologist *Gaston Maspero*, 1846-1916, but represented at the division by the junior official *Gustave Lefebvre*, 1879-1957, with less professional competence) at all or diligently hid the bust underneath some unimportant antiquities or *Gustave Lefebvre* as an epigraphist and papyrologist did not recognize the importance of the bust of Nefertiti. Whatever might

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<sup>12</sup> Brian M. Fagan, *The Rape of the Nile* (Wakefield, R.I./London 1992); Hill (N.11) 280: Egypt – "The Eldorado of treasure hunters".

<sup>13</sup> James Cross Giblin, *The Riddle of the Rosetta Stone. Key to Ancient Egypt* (New York 1992) 25 *et seq.*

<sup>14</sup> Ordonnance du 15 août 1835 portant mesures de protection des antiquités, in: A.Khater, *Le régime juridique des fouilles et des antiquités en Égypte* (Cairo 1960) 271 *et seq.*

<sup>15</sup> Cp. Article 4 Décret du 17 novembre 1891 arrêtant les conditions auxquelles des autorisations de fouilles peuvent être délivrées, in: Khater (*supra* N.14) at 282; Article 11 Loi n° 14 du 12 juin 1912 sur les antiquités (in force since 1 July 1912), in: Khater (*supra* N. 14) at 286.

have happened in Egypt in 1913, it seems to be undisputed that the Egyptian antiquities authority did not know of the bust of Nefertiti until being exhibited in Berlin in 1923 and that they never deliberately agreed that this piece should belong to the legitimate share of the German half of the finds of Tell el-Amarna.<sup>16</sup> It is, however, a well settled principle since the early days of cultural property legislation that every export of national cultural treasures has to be expressly permitted by the country of origin. Such a permission was not given by the Egyptian antiquities authority with respect to the export of the bust of Nefertiti.

If this were true, what would be the effect of such a lack of a valid division agreement and export licence? This is a legal question. But which law has to give the answer? Is it Egyptian law, German law, international law, or have all these laws to agree? Another problem is whether the law in force in 1913 has to be consulted or whether current law has to give the answer. Of course, matters of title with respect to the bust of Nefertiti have to be decided according to conflict of law rules of the forum state. If Egypt decided to sue the Berlin Egyptian Museum for restitution of the bust, German courts had to apply German conflicts rules. Without going into the details of a complicated matter it may suffice the statement that the Museum as the donee of a donation governed by German *lex rei sitae* and *lex contractus* had to return the donated object under the German rules of unjust enrichment (§ 816 I 2 BGB) because the bust under the Egyptian *lex rei sitae* and *lex contractus* was invalidly transferred to the Deutsche Orient-Gesellschaft.<sup>17</sup> But, as so often, this claim under the German law of unjust enrichment is barred by the German statutes of limitations under which the claim had to be raised within thirty years after the donation to the Berlin Egyptian Museum. The statutes of limitations are not applied *ex officio*. They have to be pleaded and Germany as the defendant should not plead them.

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<sup>16</sup> Krauss (*supra* N. 10) at 93 *et seq.*; Gert v. Paszensky (*supra* N. 10) at 262 *et seq.*

<sup>17</sup> Another complication refers to the relation between the Deutsche Orient-Gesellschaft (DOG) and the sponsor *James Simon*. It seems to be unlikely that the DOG donated the bust to *James Simon*. The bust was either immediately transferred to *Simon* as the holder of the excavation permission or it was a contracted consideration for his money paid to the DOG for the excavation campaign in Tell el-Amarna. But also in this case the DOG could not transfer title which it did not have.

But this is not the end of the story. There are also problems of international law to be answered. International law may be the law of international conventions, customary international law, general principles of law recognized by civilized nations and, subsidiarily, judicial decisions and the teaching of the most highly qualified publicists of the various nations [Article 38 (1) of the Statute of the International Court of Justice]. Today there are some international instruments on the protection and recovery of cultural property. In relation to Egypt as a non-European country the UNESCO Convention of 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property<sup>18</sup> and the 1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects<sup>19</sup> might be helpful. But even if they were in force between Egypt and Germany, both of them do not work retroactively and apply to irregularities which happened in the past.

## **2. Cultural Treasures Lost in Times of Occupation or Dependence**

It has to be admitted that no international convention governs the request for return of the bust of Nefertiti to Egypt. Therefore the question has to be answered whether there are additional sources of international law supporting the attitude of the Egyptian government. In recent years issues of cultural property and the illegal export of cultural property have been discussed on the international, supranational and national level.

### **a) Return Claims of States of Origin**

The two most important international instruments on the return of illegally exported cultural property have already been mentioned.<sup>20</sup> Both of them subscribe to the same policy governed by the following principles:

- Every state may protect its own national heritage by prohibiting the export of pieces of the national heritage without government permission.

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<sup>18</sup> 823 U.N.T.S. 231. This convention has been implemented by the United States: Cp. 19 U.S.C.A. §§ 2601 et seq. and 19 C.F.R. §§ 12.104 - 12.109.

<sup>19</sup> 34 I.L.M. 1330 (1995); 5 *International Journal of Cultural Property* 155 (1996).

<sup>20</sup> *Supra* N. 18 and 19.

- If pieces of any national heritage have been illegally exported, the state to which the pieces have been imported shall return these pieces to the state of origin.
- If there had been a *bona fide* purchase of an illegally exported cultural object, the *bona fide* purchaser will be compensated but cannot prevent the return of the object to the state of origin.

This scheme is interesting insofar as it distinguishes carefully between title in the object and the right to decide the place where the object has to be located. This is evidenced by the principles mentioned *supra*. The state of origin need not have any title in the illegally exported cultural object. Even if the title holder himself removed the object across national borders, the state under its policy of preserving and retaining objects of national cultural importance has a claim to enforce this policy in foreign countries and require even the title holder to keep his art treasures in the country of origin and not in any other country. The same is true with respect to *bona fide* purchasers. They may have acquired good title under the respective *lex rei sitae* and they may even keep this title but they have to return the object to the state of origin. This may amount to a special kind of expropriation. But this is no objection. It is a matter of compensation and the amount of compensation to be paid by the state of origin claiming back the object as a piece of national cultural importance.

The same policy has also been adopted by the European Union. The Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State<sup>21</sup> obliges every Member State of the European Union and of the European Economic Area (Iceland, Liechtenstein and Norway) to implement this Directive and provide that illegally removed cultural objects have to be returned to that Member State from which they had been illegally removed. The old 18 member states of these supranational organizations have already passed implementing legislation<sup>22</sup> and the new 10 member states will have to do the same after 1 May

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<sup>21</sup> Official Journal EC 1993 No. L 74/74 as amended by the Directive 96/100/EC of 17 February 1997, *Official Journal EC* 1997 No. L 60/59.

<sup>22</sup> Cp. the list of national statutes in: 1999 *Aktuelle juristische Praxis* at 963 N. 14 and in: 8 *Uniform Law Review* at 556 N. 25 (2003)

2004.<sup>23</sup> Also here the member states have a separate right to ask for the return of illegally removed cultural objects. This right has no basis whatsoever in national law. It is a right under international or supranational law given to sovereign states in order to enable them to protect their national cultural heritage.

If international instruments or supra-nationally harmonized national laws do not apply as - e.g. between Egypt and Germany - , the question is whether there is an unwritten right of the state of origin to ask for the return of illegally exported or wrongfully taken cultural property. In recent years courts in Italy and in the United Kingdom have declined to recognize the right of a state to recover illegally exported cultural objects. In the case *Attorney General of New Zealand v. Ortiz* the House of Lords being asked to order the return of illegally exported Maori carvings declined to enforce in English courts the export prohibitions of a foreign country.<sup>24</sup> Because of this attitude the Kingdom of Spain as the state of origin of an illegally exported painting of Francisco de Goya did not ask the auction house Christie's to return the painting. It preferred to ask for a declaratory judgment that the painting has been illegally exported and thereby tainting the painting with an obscure and criminal provenance with the effect that it becomes almost unmerchantable.<sup>25</sup> Also Italian courts shared the same attitude and declined to return French tapestries stolen and illegally exported to Italy and sold to the *bona fide* purchaser De Contessini.<sup>26</sup>

There are, however, also trends in the opposite direction. German and Swiss courts applied the principles of the 1970 UNESCO Convention despite the fact that this Convention has not yet entered into force in these countries. The German Bundesgerichtshof (Federal Supreme Court for Civil and Criminal Matters) had to decide about an insurance contract covering the transport risk of Nigerian statues

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<sup>23</sup> This has already been done by the Czech Republic : Sbíрка zákonů Česká republika of 12 June 2003, No. 63, pos. 180, p. 3439.

<sup>24</sup> [1984] 1 A.C. 1, 35 (H.L.).

<sup>25</sup> *Kingdom of Spain v. Christie, Manson & Woods Ltd.*, [1986] 1 W.L.R. 1120 (Ch.D.).

<sup>26</sup> Tribunale di Roma 27 June 1987 (*Stato francese c. Ministero per i beni culturali e ambientali e De Contessini*), 71 *Rivista di diritto internazionale* 920 (1988); Corte di Cassazione 24 November 1995, n. 12166, 80 *Rivista di diritto internazionale* 515 (1997).

illegally exported and smuggled out of Nigeria. The court declined to enforce this contract and expressly stated: "The export of items of cultural interest contrary to a prohibition in the country of origin does not deserve to be protected under civil law, in the interest of maintaining propriety in international trade in *objets d'art*."<sup>27</sup> It is true that the German court was not asked to return the illegally exported Nigerian cultural objects which were lost *en route* during the voyage to European sea ports. This was different in the Swiss case. A painting stolen in France were located in Switzerland and the French owner asked the Swiss authorities to return the painting as the proceeds of a crime according to the 1959 European Convention on Mutual Assistance in Criminal Matters.<sup>28</sup> At the very end of the decision the Swiss Federal Court added: "Lorsque, comme l'espèce, la demande porte sur la restitution d'un bien culturel, le juge de l'entraide doit veiller à prendre en compte l'intérêt public international, comme à la Suisse et à la France, lié à la protection de ces biens [citing the 1970 UNESCO Convention for France and the 1995 Unidroit Convention signed by France and Switzerland but not yet ratified by either country]. Ces normes, qui relèvent d'une commune inspiration, constituent autant d'expressions d'un ordre public international en vigueur ou en formation. ... Ces normes, qui concrétisent l'impératif d'une lutte internationale efficace contre le trafic de biens culturels,..."<sup>29</sup> Although the Swiss Federal Court had not to deal with illegally exported cultural property, it strongly supported the policy of the two international conventions and their policy to fight

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<sup>27</sup> Bundesgerichtshof 22 June 1972, 59 *Entscheidungen des Bundesgerichtshofs in Zivilsachen* (BHGZ) 82, 88, and in 73 *International Law Reports* 226, 229.

<sup>28</sup> *European Treaty Series* No. 30; 472 U.N.T.S. 185.

<sup>29</sup> Tribunal Fédéral Suisse 1 April 1997 (L. c. Chambre d'accusation du Canton de Genève), 123 II *Arrêts du Tribunal Fédéral Suisse* 134, 143-144. The English translation of the French original reads as follows. » If, as in the present case, the claim is for the restitution of cultural property, the judge of international legal assistance should pay regard to the international public interest which, in Switzerland as well as in France, is bound to protect these objects. These provisions [of the UNESCO and the Unidroit Conventions], based on a common inspiration, express such an international public policy already in force or in the making.... These provisions demanding for an effective international fight against the [illegal] trade of cultural objects..."

international smuggle with cultural objects protected by states of origin and illegally taken or exported for sale in the international market of *objets d'art*.<sup>30</sup>

In recent years there is a clear trend favoured by qualified publicists advocating for a right of every state to protect its national cultural heritage and to enforce this right in foreign courts by asking for the return of illegally exported cultural objects. The most important contribution to this discussion is made by the Institute of International Law (IIL), the most prominent body of highly qualified publicists and conflicts scholars from all nations. At the 1991 Session of Basel the Institute passed the resolution "The international sale of works of art from the angle of the protection of the cultural heritage".<sup>31</sup> This resolution is designed as a conflict of laws - instrument and its basic provision of Article 2 provides: "The transfer of ownership of works of art belonging to the cultural heritage of the country of origin shall be governed by the law of that country." In Article 3 is added: "The provisions of the law of the country of origin governing the export of works of art shall apply." The reason for these conflicts rules substituting the old rules of *lex rei sitae* and of non-application of foreign public law becomes very clear when the above mentioned English and Italian cases *Ortiz*<sup>32</sup> and *De Contessini*<sup>33</sup> are solved by these new rules of the Institute of International Law. In the *Ortiz* case the English courts had, under Article 3 of the IIL Resolution, to apply the export prohibitions of New Zealand and the entailing obligation to return the illegally exported objects. Also in the Italian *De Contessini* case the French government as the plaintiff would be successful. The tapestries were part of the French unmerchantable *domaine public*, were stolen and illegally exported to Italy. The Italian courts had to apply Article 2 of the IIL Resolution and deny any *bona fide* purchase by the art dealer *De Contessini* because not the Italian *lex rei sitae* governed the transfer of ownership but the French *lex originis* which prohibits any alienation of pieces qualifying as part of the French *domaine public*. Therefore *De Contessini* not having acquired good title under the governing French law had to return the tapestries.

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<sup>30</sup> Switzerland just ratified the UNESCO Convention of 1970 and implemented this instrument in the Federal Act of 20 June 2003 on the International Transfer of Cultural Objects (*Bundesblatt* 2003, p. 4475) entering into force on 1 January 2005.

<sup>31</sup> 64 II *Yearbook of the Institute of International Law* at 403-407 (1992).

<sup>32</sup> *Supra* N. 24.

<sup>33</sup> *Supra* N. 26.

The policy of the IIL Resolution, passed by 24 highly qualified publicists against 3 abstentions,<sup>34</sup> can be summarized as follows:<sup>35</sup>

- The principle of freedom of circulation of goods also applies to cultural property.
- Every country has the right and the duty to take measures to preserve its cultural heritage by restricting free trade with *objets d'art* and by prohibitions to export these objects without government licence.
- These protective measures of the country of origin shall be recognized by every country.
- As most cases concerning the return of stolen and/or illegally exported cultural property are tried in state courts and not before international tribunals, the rules governing such return claims in state courts have to be revised and adjusted to the needs for the protection of cultural property.
- Because the state of origin has the most interest in preserving its cultural heritage, the law of that state (the *lex originis*) should govern the transfer of ownership and the possibility of free export.
- The result of this change is that objects of cultural property get a special regime in private international law insofar as the *lex originis* governs and not the traditional conflicts rules of *lex rei sitae* and non-application of foreign export prohibitions.
- Under the IIC Resolution of 1991 the right of every state to restitution of stolen or illegally exported cultural property is recognized. This right does not exempt from the obligation to compensate *bona fide* purchasers.

The 1991 Resolution of eminent publicists of the Institute of International Law is not the only manifestation of an already existing or still emerging rule of international law. Several younger scholars not yet being members of the Institute of International Law have ascertained a clear trend in international law to establish a right of every nation to ask for restitution of cultural property which was removed without permission of the

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<sup>34</sup> Cp. 64 II *Yearbook of the Institute of International Law* at 338 (1992).

<sup>35</sup> This summary is based on the final report of Antonio de Arruda Ferrer-Correia, “La vente internationale d'objets d'art, sous l'angle de la protection du patrimoine culturel”, in: 64 I *Yearbook of the Institute of International Law* at.90 et seq., 140-186 (1991), and the Resolution itself (*supra* N. 31).

country of origin and has been located in a foreign country.<sup>36</sup> Also these scholars do not exclude the obligation of the country of origin to compensate *bona fide* purchasers or other persons *bona fide* seized of the cultural object.

### **b) Application to Situations of the Past**

The Institute of International Law, according to the preamble of the 1991 Resolution, underlined that "this Resolution is without prejudice to situations which have occurred prior to its adoption."<sup>37</sup> This is correct for an international instrument to be submitted to a diplomatic conference and to be ratified by states. Also the 1970 UNESCO Convention (Article 15)<sup>38</sup> and the 1995 Unidroit Convention (Article 10)<sup>39</sup> do not work retroactively. But what about general principles of customary international law? Do they apply to situations which originated in the past and continue to be unsolved in the present? With respect to the bust of Nefertiti it has to be asked whether Egypt's right to restitution of the bust (which does not question the title of the present title holder) can be enforced because after almost 100 years since the removal of the bust from Egypt such a right of restitution has emerged. This is a problem of intertemporal public international law with regard to customary international law to be enforced *ex nunc* without retroactive effect questioning title or possession and exploitation of the bust by exhibiting it. There are no international treaties on the general problem of intertemporal international law. General principles also apply here. Without going into

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<sup>36</sup> Christiane Freytag, "'Cultural Heritage': Rückgabeansprüche von Ursprungsländern auf 'ihr' Kulturgut?" in: Frank Fechner/Thomas Oppermann/Lyndel V. Prott (eds.), *Prinzipien des Kulturgüterschutzes. Ansätze im deutschen, europäischen und internationalen Recht* (Berlin 1996) 175-200; Stefan Turner, *Das Restitutionsrecht des Staates nach illegaler Ausfuhr von Kulturgütern. Eigentumsordnung und völkerrechtliche Zuordnung* (Berlin/New York 2002) 9 et seq.; Martin Philipp Wyss, „Rückgabeansprüche für illegal ausgeführte Kulturgüter. Überlegungen zu einem kulturpolitischen *Ordre public*“, in: Fechner/Oppermann/Prott (*supra*) at 201-223.

<sup>37</sup> 64 II *Yearbook of the Institute of International Law* at 405 (1992).

<sup>38</sup> *Supra* N. 18.

<sup>39</sup> *Supra* N.19.

details of a very complicated matter the basic principles may be summarized as follows:<sup>40</sup>

- A legal transaction is governed by the law at the time of the transaction. Any right acquired at this time is protected as a vested right.
- The exercise of any vested right is governed *ex nunc* by the law applying at the time of the respective exercise.
- If the law valid at the time of exercise devaluates the vested right, the title holder has to be compensated by the party taking advantage of this devaluation.
- These principles are subject to the requirements of *bona fides*, public policy and estoppel.

### c) *Bona fides*, Estoppel, Prescription and Public Policy

According to the principles mentioned *supra* the right of Egypt to restitution also applies to the bust of Nefertiti. Any vested right will not be questioned. The title holder is, however, obliged to return his object and enjoy it while being located in Egypt. Whether the *Stiftung Preußischer Kulturbesitz* will be compensated for such a loss of possession (in money or antiquities), may be doubtful because the foundation's predecessor received the bust as a gift from *James Simon* who must have been aware of the irregularities which happened at the division of finds in 1913. For the same reason the *Stiftung* is not allowed to decline restitution as an unfair and unreasonable reaction to events which happened almost 100 years ago. The *Stiftung* would be estopped to plead these irregularities on the German side as a defence. Also lapse of time is no defence. There are no statutes of limitation in public international law. A

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<sup>40</sup> This summary is based on the following studies: Anthony D'Amato, "International Law, Intertemporal Problems", in: Rudolf Bernhardt (ed.), 2 *Encyclopedia of Public International Law* 1234-1236 (1995); Hans Baade, "Intertemporales Völkerrecht", in: 7 *Jahrbuch für internationales Recht* p. 229-256 (1957); T.O.Elias. "The Doctrine of Intertemporal Law", 74 *American Journal of International Law* 285-307 (1980); Wolf-Dietrich Krause-Ablaß, *Intertemporales Völkerrecht* (Hamburg 1970); Max Sørensen, "Le problème dit du droit intertemporel dans l'ordre international", in: 55 *Annuaire de l'Institut de Droit International* 1-98 (1973).

claim, however, may be precluded because of extinctive prescription.<sup>41</sup> This general principle of international law applies if the creditor was inactive for a certain time so that the debtor relied on the extinction of the claim.<sup>42</sup> But Egypt never gave up any claim but insisted on the return of Nefertiti.<sup>43</sup>

The only defence to be raised for a certain time is the objection that the bust of Nefertiti will not be exhibited in Egypt and diligently preserved. Until such an adequate physical preservation of the bust is guaranteed the *Stiftung*, according to a special kind of *ordre public culturel*, may postpone the restitution of the bust of Nefertiti.<sup>44</sup>

#### **d) Intermediate Summary**

Under the emerging principle of customary international law Egypt has a right to restitution of the bust of Nefertiti. Such a claim does not affect the title of the present title holder. Whether the title holder will be compensated (in money or antiquities) may be doubtful. But he may insist that restitution must be postponed until the bust of Nefertiti will be safely and diligently preserved and exhibited in Egypt.

### **3. Protection of Cultural Property Ensembles**

The bust of Nefertiti was discovered in the workshop of the Egyptian sculptor Thutmose of Amarna.<sup>45</sup> This was not the only object found in the excavation compound of houses P 47.1- 47.3. Many other items were discovered, registered,

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<sup>41</sup> Carl-August Fleischhauer, "Prescription", in: Rudolf Bernhardt (ed.), 3 *Encyclopedia of Public International Law* 1105-1108 (1997); Roger Pinto, "La prescription en droit international", in: 87 *Recueil des Cours* at 387 *et seq.* (1955-I).

<sup>42</sup> Cp. Article I of the Résolution concernant la prescription libératoire en Droit International public, in: 32 *Annuaire de l'Institut de Droit International* 558-560 (1925).

<sup>43</sup> *Supra* at I 3 text after N. 10.

<sup>44</sup> Cp. Kurt Siehr, "International Art Trade and the Law", in: 243 *Recueil des Cours* 9-292, at 278 (1993-VI).

<sup>45</sup> As to Thutmose cp. Arnold (*supra* N. 2); Rolf Krauss, "Der Bildhauer Thutmose in Amarna", in: 20 *Jahrbuch Preußischer Kulturbesitz* 119-132 (1983).

analysed and finally preserved and exhibited. At the division of spoils on 20 January 1913 the responsible persons already took care that correlated pieces should not be separated. Nevertheless many different items of Thutmose's workshop were dispersed to several museums and collectors.

Since a very long time it is recognized by archaeologists, art historians, museum curators and even politicians that objects of cultural property should not be dismembered and, if this had happened in the past, such a mutilation of *objets d'art* should be stopped and dispersed pieces of an *ensemble* should be reassembled. Such a policy has been supported in some international instruments. Under the Peace Treaty of Vienna of 3 October 1866 between Austria-Hungary and Italy<sup>46</sup> which had joined Prussia in the German War of 1866 between Prussia and Austria, Austria had to give up the Kingdom of Lombardy-Venetia and to return certain pieces of cultural property to Italy. In execution of Article 18 of the Peace Treaty Austria delivered the cup of Queen Theodolinde († 627/28 A.D.) to the Cathedral of Monza (Italy) in order to be reunited with the "Iron Crown" of Lombardy, the traditional crown of the kings of Italy.<sup>47</sup> The same policy worked in favour of Austria in the Peace Treaty of St. Germain-en-Laye of 10 September 1919 between the Allied and Associated Powers of World War I.<sup>48</sup> According to Article 195 (1) of this Treaty a Committee of three jurists appointed by the Reparation Commission were obliged to examine the conditions under which certain objects (i.e. the regalia of Norman kings made in Palermo, Sicily) were carried off by the House of Hapsburg. In the Special Convention of 4 May 1920 Italy gave up all claims regarding the regalia of Palermo in order not to disperse the whole collection of the Imperial Regalia exhibited until now in the Imperial Treasury (Weltliche Schatzkammer) in Vienna.<sup>49</sup> Best known is Article 247 § 2 of the Peace Treaty of Versailles of 28 June 1919 between the Allied and Associated Powers of

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<sup>46</sup> 133 *Consolidated Treaty Series* at 209.

<sup>47</sup> Cp. Article 7 of the Convention du 14 juillet 1868 entre l'Autriche et l'Italie, pour la restitution de certains documents et objets d'art, in: Martens (ed), *Nouveau Recueil Général de Traités* vol. XVIII (1868) 428-432.

<sup>48</sup> 226 *Consolidated Treaty Series* at 9 *et seq.*

<sup>49</sup> Article 4 (2) of the Convention spéciale du 4 mai 1920 afin de résoudre les controverses relatives au patrimoine historique et artistique de l'ancienne Monarchie austro-hongroise, in: Martens (ed.), *Nouveau Recueil Général de Traités*, 3e sér. , vol. 19 (1928) 682 *et seq.*

World War I and Germany.<sup>50</sup> Germany assumed to deliver to Belgium (1) the leaves of the triptych of the "Mystic Lamb" by the *van Eyck* brothers, formerly in the Church St. Bavon at Ghent and then in the Berlin museums. and (2) the leaves of the triptych of the "Last Supper" by *Dierick Bouts*, formerly in the Church of St. Peter at Louvain and then in the Berlin museums and the Old Pinakothek at Munich. These leaves were sold in former times by Belgian authorities and legally acquired by the German museums. The Peace Treaty of Versailles took the chance to "enable Belgium to reconstitute two great artistic works" (Article 247 § 2).

Even those scholars who are in favour of international art trade, international exchange and internationalism in the field of cultural property and who object to any policy of selfish and nationalistic retentionism are concerned about the integrity of works of art.<sup>51</sup> Of course, the main concern is to prevent any destruction of works of art. But also the restoration dismembered masterpieces should be supported. The only problem is whether the dispersed parts of a sculptor's workshop as a kind of *Gesamtkunstwerk* can be reunited, whether it is a *Gesamtkunstwerk* at all and who is authorized to answer these questions. As there is no professional body of archaeologists authorized to solve these problems, it is the country of origin which regularly has the best information about *ensembles* of its culture and the principal interest in restoration of a dismembered masterpiece formerly located in this country. In the case of Nefertiti it is Egypt which has to make up its mind and to decide whether the workshop of Thutmose and the contents of the workshop (including the bust of Nefertiti) can be re-established in a museum. It can be anticipated that such a re-arrangement will be possible in the new Egyptian Museum to be built in Giza close to the pyramids or somewhere else.

#### **4. Nationality or Home of Cultural Property**

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<sup>50</sup> 225 *Consolidated Treaty Series* at 189 et seq., at p. 304.

<sup>51</sup> John Henry Merryman, "Thinking about the Elgin Marbles", 83 *Michigan Law Review* 1880 et seq., at 1918-1919 (1985); reprinted in: id., *Thinking About the Elgin Marbles. Critical Essays on Cultural Property, Art and Law* (The Hague/London/Boston 2000) 24 et seq; at 59; id., "The Retention of Cultural Property", 21 *University of California Davis Law Review* 477 et seq. (1988), reprinted in: id., *Thinking (supra)* p. 122 et seq.

The basis of any national policy to preserve and retain cultural treasure is the unspoken conviction that there is some sort of a "genuine link" between art objects and a nation. Such a link may be called "nationality" of an *objet d'art*<sup>52</sup> or its "home". International instruments on the return of illegally exported cultural objects do not use any specific term in order to determine the link between the object and the country asking for return. They assume that every art object which should not be exported without government permission is part of the cultural heritage of the protecting state and this attribution should be respected and, upon application, enforced by state parties or member states.<sup>53</sup> There are good reasons to be very critical about the notion of nationality of an *objet d'art* and the attribution of a territorial home to works of art created for mankind and for a common cultural heritage.<sup>54</sup> Must every painting of Raffaello be in Italy, every masterwork of Dürer in Germany, every canvas of Goya in Spain and every portrait of Frans Hals in the Netherlands? There are also good arguments against the modern conventions designed to preserve the *status quo* rather than to encourage trade, exchange and internationalism in cultural policy.<sup>55</sup> And yet it

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<sup>52</sup> Erik Jayme, *Kunstwerk und Nation: Zuordnungsprobleme im internationalen Kulturgüterschutz* (Heidelberg 1991), and reprinted in: id., *Nationales Kunstwerk und Internationales Privatrecht* (Heidelberg 1999) 54-74; id., „Die Nationalität des Kunstwerks als Rechtsfrage“, in: Gerte Reichelt (ed.), *Internationaler Kulturgüterschutz - Wiener Symposion 18./19. Oktober 1990* (Wien 1992) 7-29, and reprinted in: Erik Jayme, *Wiener Vorträge. Internationales Privat- und Verfahrensrecht, Rechtsvergleichung, Kunst- und Kulturrecht* (Wien 2001) 129-153; id., „Antonio Canova und das nationale Kunstwerk - Zur Ideengeschichte des europäischen Kulturgüterschutzes“, in: id., *Nationales Kunstwerk (supra)* 1-15, and reprinted in: id., *Wiener Vorträge (supra)* 171-186.

<sup>53</sup> Cp. Article 5 of the 1995 Unidroit Convention (*supra* N.19 ) and Article 1 (1) of the 1993 EEC - Directive 93/7/EEC (*supra* N. 21).

<sup>54</sup> Cp. John Henry Merryman, „The Nation and the Object” 3 *International Journal of Cultural Property* 61-76 (1994) , reprinted in: id., *Thinking (supra* N. 51) 158-173.

<sup>55</sup> Cp. the basic study of John Henry Merryman, „Two Ways of Thinking About Cultural Property”, 80 *American Journal of International Law* 831-853 (1986) , reprinted in: id., *Thinking (supra* N. 51) 66-91.

makes sense to attribute especially to archaeological finds a special regime and a special link to the country of origin and excavation, and this for several reasons:

- Archaeological objects are more than any other pieces of cultural property attached to the *territory* of the country of origin.
- Most archaeological finds are *connected* with objects discovered on the same site or neighbouring sites.
- Many archaeological objects were *manufactured* in the country of origin, are the *expression* of the local culture and evidence of the *history* of the country of origin.
- In order to fight *illegal excavations* and to preserve the *context* of archaeology *preventive measures* have to be taken, this is done by recognizing a territorial link to the country of origin more than with any other piece of cultural property.

This special regime for archaeological objects is well recognized by national legislation, by national courts and by international instruments on the protection of cultural property. Many source states with a rich archaeological past provide in their domestic statutes on the protection of cultural property that all archaeological finds are *ipso facto* and *ipso iure* state property.<sup>56</sup> This policy of state property has been recognized and enforced in European countries<sup>57</sup> and recently in the United States as well.<sup>58</sup> The earliest convention recognizing state property in archaeological finds is the

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<sup>56</sup> Cp. the somewhat outdated list of national legislation in: Lyndel V. Prott/tPatrick J.O'Keefe, *Law and the Cultural Heritage*. Vol.1: *Discovery and Excavation* (Abingdon,Oxon. 1983) at 34 *et seq.* The most recent statute of this kind is the Greek Statute No. 3028 of 28 June 2002 on the Protection of Antiquities and the Cultural Heritage in General, 2002 *Ephimeris tis Kyberniseos* at 3003.

<sup>57</sup> Cp., e.g., Oberlandesgericht Schleswig 10 February 1989, 1989 *Neue Juristische Wochenschrift* at 3105 (return of ancient coins excavated in Greece from Germany to Greece); Tribunale di Torino 25 March 1982, 18 *Rivista di diritto internazionale privato e processuale* at 625 (1982) ( the collector Danusso had to return pre-Columbian antiquities to the Republic of Ecuador).

<sup>58</sup> *United States v. Schultz*, 178 F.Supp. 2d 445 (S.D.N.Y. 2002); affirmed by the U.S. Court of Appeals on 25 June 2003 (return of Egyptian antiquities from New York to Egypt). Cp. Martha B.G.Lufkin, "End of the Era of Denial for Buyers of State-Owned Antiquities: United States v. Schultz", 11 *International Journal of Cultural Property*

German-Greek Convention of 1874 on the German excavations in Olympia. Article 6 of this Convention provides that Greece becomes the owner of all archaeological objects which will be discovered in Olympia.<sup>59</sup> The result of this agreement is that all important archaeological objects excavated in Olympia are exhibited in Greece (Olympia, Athens). Almost 100 years later the Council of Europe prepared the European Convention of 6 May 1969 for the Protection of the Archaeological Heritage<sup>60</sup> revised in 1992.<sup>61</sup> Also the United States recognized the interest of several source countries to preserve and retain their archaeological heritage. All nine agreements with foreign state parties (Bolivia, Canada, Cyprus, El Salvador, Guatemala, Italy, Mali, Nicaragua and Peru) imposing American import restrictions on articles of cultural property refer to *archaeological* material of these foreign countries.<sup>62</sup> The latest special provision for archaeological objects is Article 3 (2) of the 1995 Unidroit Convention.<sup>63</sup> This rule provides that "for the purpose of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place."<sup>64</sup> This qualification ensures that archaeological objects enjoy the more effective and less unsafe regime of "stolen cultural objects" under Chapter II of the 1995 Unidroit Convention.

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305-322 (2002); ead., "Criminal Liability for Receiving State-Claimed Antiquities in the United States: The 'Schultz' Case", 8 *Art Antiquity and Law* 321-342 (2003).

<sup>59</sup> "La Grèce aura la propriété de tous les produits de l'art antique et de tout autre objet dont les fouilles amèneront la découverte." Article 6 sentence 1 of the Convention du 13/25 avril 1874 relative à des fouilles archéologiques à entreprendre sur le territoire de l'ancienne Olympie, *Reichs-Gesetzblatt* 1875 at 241 et seq., at p.243.

<sup>60</sup> *European Treaty Series* No. 66; 8 *International Legal Materials* at 736 (1969).

<sup>61</sup> European Convention of 16 January 1992 on the Protection of the Archaeological Heritage, *European Treaty Series* No. 143.

<sup>62</sup> Cp. the list at 19 Code of Federal Regulations § 12.104g (a) (2003).

<sup>63</sup> *Supra* N. 19.

<sup>64</sup> As to this departure from the *Urtext* cp. John Henry Merryman, "The Unidroit Convention: Three Significant Departures from the *Urtext*", 5 *International Journal of Cultural Property* 11-18, at 13-15 (1996), reprinted in: id., *Thinking* (*supra* N. 51 ) 270-277, at 273-275.

Summarizing the present legal situation it can be said that archaeological objects have their "home" in the country where they have been excavated and should stay in this country and, if removed without the expressly given consent of this country of origin, should return to this country.

## 5. Support of Countries Suffering from Imperialism

All states are treated equally and should not be discriminated.<sup>65</sup> They have the same rights and obligations under international law. Despite these principles of equal treatment and non-discrimination the question has still to be answered whether states which suffered under colonization, imperialism and dependence should be treated differently with respect to problems arising from decolonization and achieving independence. Egypt has been one of those states which suffered severely from Ottoman and European imperialism.<sup>66</sup>

- ~1650 - 1551 BC : invasion and rule of the Hyksos
- 525-404 BC: province of Persia
- 332-30 BC: Macedonian and Ptolemaic Egypt
- 30 BC - 642 AD: Roman and Byzantine Egypt
- 639- 868 : Arab and Turkish rulers
- 1517 - 1798 : Egypt as part of the Ottoman Empire
- 1798 - 1805 : French occupation
- 1805 - 1882: Muhammed Ali and successors as viceroys of the Sublime Port
- 1882 - 1922: British occupation and protectorate.

Not very often the Egyptians were masters in their own house, For a long time the Egyptian Antiquities Authority was headed by French archaeologists (*Maspero* and *Lefebvre* responsible for the 1913 division of spoils in Tell el-Amarna were Frenchmen and *Borchardt* was a member of the Comité d'Egyptologie in charge of

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<sup>65</sup> Günther Jaenicke, "States, Equal Treatment and Non-Discrimination", in: Rudolf Bernhardt (ed.), 4 *Encyclopedia of Public International Law* at 660-669 (2000).

<sup>66</sup> This abbreviated chronology follows the history of Egypt as set out in: 18 *The New Encyclopaedia Britannica* 91 et seq., at 104 et seq. (15<sup>th</sup> ed. Chicago 2003).

giving advice to the Egyptian authorities) and the United Kingdom even after 1922 exercised certain rights with respect to the Suez Canal.

The status of decolonized nations succeeding the former colonial power is regulated either in bilateral agreements between the predecessor state and the successor state or in multilateral conventions. In bilateral agreements only bilateral problems can be solved.<sup>67</sup> The two multilateral conventions on state succession deal with problems in respect of treaties<sup>68</sup> and of state property, archives and debts.<sup>69</sup> There are no special provisions on cultural property in general and even less on cultural objects removed in times of occupation and dependence. The only conclusion to be drawn from these instruments is the general idea that the successor state should not be blamed for those acts, transactions and omissions for which the predecessor state is responsible. Therefore it is not inconsistent that the Republic of Egypt is asking for the return of a cultural object which has been removed to Germany at a time when Egypt was still under control of foreign powers and local authorities dominated by foreign personnel under dubious circumstances gave the permission for the export of important Egyptian cultural treasures.

Another conclusion to be drawn from these instruments is the well recognized policy to support successor states as newly independent states in their effort to become self-conscious and stable members of the international community with equal rights and obligations. Therefore it has been argued that the successor states may adjust their economy to new conditions and may even expropriate and compensate foreigners in order to get rid of their domination in the local economy.<sup>70</sup> Also in cultural affairs the newly independent states deserve a preferential status in order to establish or re-establish a new and distinct cultural identity. For this reason some international conventions on the return of stolen or illegally exported cultural property require only "just" or "reasonable" compensation because newly independent states and developing

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<sup>67</sup> Werner Morvay, "Decolonization: British Territories", in: Rudolf Bernhardt (ed.), 1 *Encyclopedia of Public International Law* at 976-983 (1992).

<sup>68</sup> Vienna Convention of 23 August 1978 on Succession of States in respect of Treaties, 1978 U.N.T.S. 3; 17 *International Legal Materials* at 1488 (1978).

<sup>69</sup> Vienna Convention of 8 April 1978 on Succession of States in respect of State Property, Archives and Debts, 22 *International Legal Materials* 306 (1978).

<sup>70</sup> Cp. Hans Dölle/Fritz Reichert-Facilides/Konrad Zweigert, *Internationalrechtliche Betrachtungen zur Dekolonisierung* (Tübingen 1964) at 21 et seq.

countries cannot afford to pay full compensation.<sup>71</sup> The United Nations and the Unesco have constantly encouraged and supported every effort to return cultural objects to the country of origin formerly governed by colonial powers.<sup>72</sup>

The general conclusion can be easily drawn. The newly independent states should be supported in their efforts to collect and recover their cultural heritage dispersed within their country and, in times of colonialism, removed to foreign countries. Against reasonable compensation on money or in kind the removed cultural objects should be returned and exhibited in the countries of origin and thereby contribute to the cultural identity of these decolonized states.

### III. Summary

If Egypt decided to ask for the return of the bust of Nefertiti, it should plead and argue as follows:

1. The bust of Nefertiti should be returned to Egypt.

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<sup>71</sup> Guido Carducci, *La restitution internationale des biens culturels et des objets d'art volés ou illicitement exportés. Droit commun, Directive CEE, Conventions de l'Unesco et d'Unidroit* (Paris 1997) 425 et seq., at 433 et seq.; *Diplomatic Conference for the Adoption of the Draft Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects. Acts and Proceedings* (Roma 1996) p.39; Patrick J. O'Keefe, *Commentary on the UNESCO 1970 Convention on Illicit Traffic* (Leicester 2000) at 66; Lyndel V. Prott, *Commentary on the Unidroit Convention on Stolen and Illegally Exported Cultural Objects 1995* (Leicester 1997) at 42 at N. 12.

<sup>72</sup> Cp. the preliminary study of the Unesco Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation in regard of three national situations (Bangladesh, Mali, Western Samoa), CC-79/CONF.206/5 of 14 March 1980, also reprinted in: Dorothee Schulze, *Die Restitution von Kunstwerken. Zur völkerrechtlichen Dimension der Restitutionsresolutionen der Generalversammlung der Vereinten Nationen* (Bremen 1983) at 199.

2. This return is supported by the emerging rule of international law that cultural treasures lost in times of occupation or dependence have to be returned to the countries of origin. Such a claim is neither time barred nor barred by any other exception.
3. This claim for restitution is strengthened by four additional arguments:
  - a) The 1913 division of spoils was incorrect insofar as the Egyptian Antiquities Authority never consciously agreed to remove the bust of Nefertiti to Berlin.
  - b) Cultural property *ensembles* should not be dismembered and, if dismembered, should be united.
  - c) Archaeological finds have their "home" in the country of origin and should be preserved in this country.
  - d) States which suffered under imperialism or colonialism should be supported in their efforts to collect their cultural treasures and to recover them from foreign states to which they had been removed in times of dependence.
4. Germany will be compensated in money or in kind with Egyptian antiquities.

