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# Armed conflicts and the repatriation of cultural property: global democratic challenges

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**Abstract:** Claims over the repatriation or restitution of cultural property, particularly property taken as war trophies, have emerged in recent decades as one of the major democratic challenges in the field of Cultural Heritage. This paper discusses two specific cases involving the repatriation of cultural property taken in war contexts: one in the northern hemisphere, from World War II, and another in the southern hemisphere, involving the Paraguayan War. Through an interdisciplinary research project, mobilizing the fields of Cultural Heritage, History and Law, based on documentary and bibliographic sources, this paper seeks to understand the different discourses, memories and values activated by those who want the return of those cultural properties and also by those who advocate that they should remain where they currently are. As a result, it was possible to state that different values are attributed to cultural property, which are activated through power struggles in the political field in defense of specific interests of the parties involved, which culminates in constant (re)significations of cultural heritage in the present time.

**Keywords:** cultural heritage; cultural property; repatriation; war trophies.

**Resumo:** As reivindicações sobre a repatriação, ou restituição, de bens culturais, particularmente aqueles tomados enquanto troféus de guerra, emergiram nas últimas décadas como um dos grandes desafios democráticos do campo do Patrimônio Cultural. Este artigo discute dois casos específicos que envolvem a repatriação de bens provenientes de guerras: um no hemisfério Norte, derivado da Segunda Guerra

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Mundial, e outro no hemisfério Sul, proveniente da Guerra do Paraguai. Através de uma pesquisa interdisciplinar, mobilizando os campos do Patrimônio Cultural, da História e do Direito, com base em fontes documentais e bibliográficas, este trabalho objetivou conhecer os diferentes discursos, memórias e valores que são acionados por aqueles que desejam a devolução desses bens culturais, e também daqueles que defendem a permanência dos mesmos onde estão atualmente. Como resultado, foi possível afirmar que diversos valores são atribuídos aos bens, acionados através das lutas de poder que ocorrem no campo político na defesa de interesses específicos das partes envolvidas, fato que culmina em constantes (re)significações sobre o patrimônio cultural no tempo presente.

**Palavras-chave:** patrimônio cultural; bens culturais; repatriação; troféus de guerra.

## INTRODUCTION

The 20<sup>th</sup> century was defined by a growing concern about the safeguarding of cultural property in the context of wars – especially after the First and Second World War. This concern led different countries to establish legal frameworks aiming to reduce or to prevent the destruction of cultural property of world relevance during armed conflicts, such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict (known as the 1954 Hague Convention); the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), by UNESCO; and the Convention on Stolen or Illegally Exported Cultural Objects, created by the International Institute for the Unification of Private Law (UNIDROIT), in 1995. However, despite these initiatives, problems involving cultural property in times of war have persisted until the present time. Perhaps one of the most complex of them is the restitution of objects taken as war trophies, especially those that were looted before these international conventions came into being.

From a perspective that encompasses the northern and southern hemispheres, this paper aims to discuss the complexities surrounding the return of war trophies from the standpoint of the fields of Cultural Heritage, History and Law. It presents and discusses two cases that currently promote intense debates: the claims for restitution of the trophies plundered during the Paraguayan War (1864-1870) and World War II (1939-1945), the latter specifically by the Soviet Union (USSR). By analyzing the different values and meanings attributed to these objects, this paper seeks to understand the impact of those factors on the resolution of requests for the trophies' return. Thus, this issue leads to a discussion about the uses and (re)significations of cultural heritage in the present, in addition to the global democratic challenges in the search for a solution to this impasse.

## THE PLUNDER OF WAR TROPHIES

The Paraguayan War was one of the largest armed conflicts in South America and involved Argentina, Brazil, Paraguay and Uruguay. The origins of the conflict go back to two main issues: the border dispute between the countries (a problem that had existed since the colonial period) and the attempt to achieve unimpeded navigation in the Río de la Plata Basin – the only access to the sea for Paraguay, a route of communication with the interior of the Brazilian Empire and a strategic point for trade to the ports of Buenos Aires, in Argentina, and Montevideo, in Uruguay. As a result of the construction and consolidation process of these national States, the War lasted six years, during which

several battles were fought between the Triple Alliance (Brazil, Argentina and Uruguay) and Paraguay, ending only in March 1870 (DORATIOTO, 2002).

The trophies looted by Triple Alliance after the battles comprised largely cannons, weapons, flags and banners. Uruguay, for example, took three Paraguayan flags, several rifles, swords and other objects from the Paraguayan military arsenal (REALI, 2016). These items are similar to those also taken by Argentina (SILVA, 2015) and Brazil. A balance sheet accounts for a total of 328 cannons; 94 national flags; and 17 banners taken by the Brazilian army (CARNEIRO, 1961). Other objects, some with symbolic value, were also captured as trophies: the Golden Album, with the signature of Paraguayan women who contributed to the war efforts; the sword of Marshal Francisco Solano López, the Paraguayan leader; some items of personal use of López, his wife, Elisa Lynch, and his brother, Benigno López; precious and semi-precious stones, silver and gold rings, among others (FERNANDES, 2010). Many of these objects were part of the collection of the National Historical Museum (NHM) of Brazil. Nowadays, however, only three trophies from the Paraguayan War can still be found in this museum: the *Criollo*, *Acá Verá* and *El Cristiano* cannons.

The context of looting undertaken by the Soviet Union, on the other hand, goes back to the methodical and systematic policy of appropriation of cultural property developed by Adolf Hitler during World War II (FELICIANO, 2013), which resulted in a huge volume of items accumulated in different castles and mines on German territory (CRONIN, 2017). At the end of the War, the Allies had to decide how to proceed in the face of the great number of items of cultural property found. While the United States, Great Britain and France sought to return the objects to their countries of origin (KURTZ, 2010), the Soviet Union took a different approach. According to the idea of restitution in kind, the Soviets took the objects they found in their occupation zone as financial compensation for the losses suffered due to Nazi army action in their territory. Reeves and Garreau (2016) point out that 427 museums, more than 43 thousand libraries as well as 84,000 schools and universities were looted in the Soviet Union. This action resulted in 180 million books destroyed. Historic monuments were also reportedly damaged throughout the Soviet territory: precisely 2,439.

A decree signed by Joseph Stalin created Trophy Brigades authorized to carry out the work of removing the cultural property to the Soviet Union. At first, the action aimed to take objects of specific interest compiled in lists of “equivalents”<sup>4</sup> (AKINSHA, 2010). However, the Trophy Brigades traveled through the Soviet occupation zone and removed about 2.5 million works of art and 10 million books and manuscripts, in addition to drawings, prints, sculptures and archives, without selecting or sorting them in any way (SANDHOLTZ, 2010).

## HISTORY OF CLAIMS AND RETURNS

The trophies looted in the Paraguayan War were, and still are, a frequent topic in the discussions and relations established between the countries that fought in the conflict. Uruguay, in the 19<sup>th</sup> century, was the first to address the issue more directly. During the administration of Máximo Benito Santos Barbosa, president of Uruguay between 1882 and 1886, the National Congress signed a special law that authorized the return to Paraguay, considered as a sister nation, of all the trophies acquired in the War (REALI, 2016).

Argentina, in 1954, during the administration of Juan Domingo Perón, returned flags, cannons and swords to Paraguay when Alfredo Stroessner was sworn into office as President. This restitution occurred at a time when both nations sought to rebuild the

4 A kind of “wish list” and a cultural property catalog from the enemy countries’ museums with items that could be taken to replace the losses of Soviet museums (AKINSHA, 2010).

“Argentinian-Paraguayan fraternity” (SILVA, 2015). The last known Argentinian restitution happened in 2014. At that time, Argentina returned to Paraguay a set of German furniture in neo-Gothic style (Figure 1) that had been ordered by Solano López and confiscated at Buenos Aires port after the war started. Later on, at the beginning of the 20<sup>th</sup> century, the furniture became part of *Martiniano Leguizamón* Provincial Historical Museum’s collection, located in the Argentine capital, where it could be found until its restitution to Paraguay in 2014 (EFE, 2014).

**Figure 1** - Set of furniture ordered by Solano López in the 19<sup>th</sup> century



Source: Paola Martínez, Hoy, August 18, 2014.

Regarding Brazil, the first time items were returned was in the 1970s, amid negotiations to construct the Itaipu hydroelectric plant on the border between Brazil and Paraguay. Between 1975 and 1980, several objects of the National Historical Museum (NHM) collection returned to Paraguay, the most symbolic of them being Solano López’s sword (FERNANDES, 2010). Since 2009, however, new restitutions could not be made, despite the claims by Paraguay. By that time, the National Institute of Historic and Artistic Heritage of Brazil (IPHAN) had listed<sup>5</sup> the whole NHM collection on the national heritage list, due to its importance for national history (BRASIL, 2016). The Brazilian Legislation, through Decree-Law n° 3,866 (BRASIL, 1941), states that only the President has the power to review an act of listing, which renders the process complex due to the political issues involved.

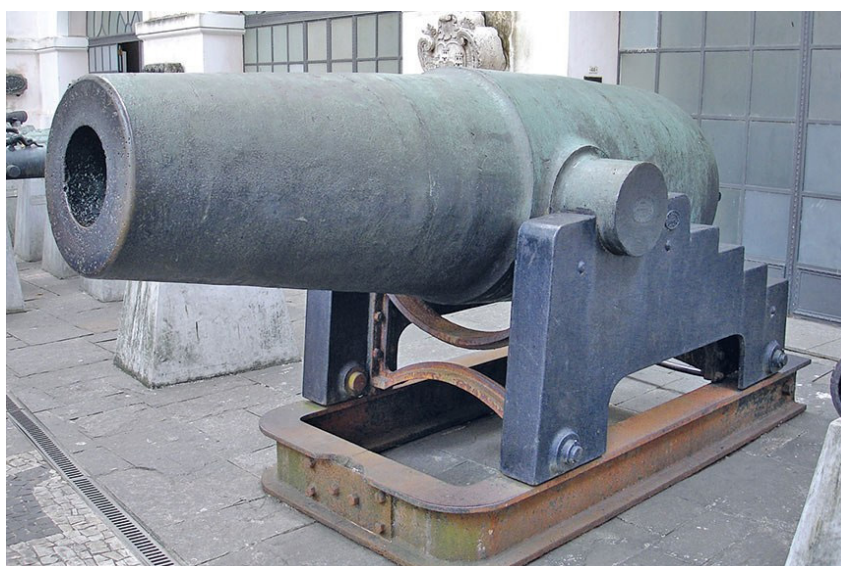
This information is necessary to understand the complications regarding the latest case of a trophy claimed by Paraguay from Brazil, viz the *El Cristiano* cannon (Figure 2). The item was taken after the conquest of *Humaitá* Fortress, on the Paraguay River, and taken to Brazil, where it became part of the NHM collection. The cannon received the name *El Cristiano* (The Christian) because it was forged with bronze bells from several churches and was, consequently, a significant object for that country (FLECK, 2018). In 2010, after negotiations through diplomatic channels between Brazil and Paraguay, the

<sup>5</sup> In Portuguese, the word used to refer to this process is tombamento. It is the legal instrument used to protect cultural heritage in Brazil created by Decree-Law no. 25, of November 30, 1937.

Brazilian Ministry of Culture started the cannon repatriation process as part of the actions of cooperation and interest between the “sister nations”. However, in order for *El Cristiano* to be returned to Paraguay, the President of Brazil would have to sign a decree to unlist it.

This had great repercussions in civil society. The latter even filed a class action to prevent the cannon from being returned to Paraguay (BRASIL, 2011a). Cultural heritage professionals were also fearful about what such an unlisting could mean, not only concerning the cannon but all the cultural heritage protected by this legal instrument in Brazil. In 2016 the draft of a decree was submitted to the Presidency to proceed with the *El Cristiano* repatriation (BRASIL, 2011b), and a meeting between representatives of the two countries was held in 2018 to discuss the matter (FLECK, 2018). However, currently the case of *El Cristiano* remains unsolved.

**Figure 2** - *El Cristiano* cannon exhibited at the National Historical Museum of Brazil



Source: Agência Senado/NHM, 2020.

Brazil has no legal obligation to repatriate the cannon to Paraguay. The reason is that the 1899 Hague Convention, the first legal document to prohibit the practice of looting, was ratified only 29 years after the end of the Paraguayan War (SALIBA; FABRIS, 2017). Also, Brazil was not a signatory to this first Convention, which means that the removal of the cannon from Paraguayan territory would not have violated any norms of international law at that time. Attention is drawn to the fact that the new conventions created aiming to protect cultural property in times of war are not retroactive, so they cannot be applied to this specific case.

In the Russian case, the origin of the claims goes back to the 1990s, especially after the end of the Soviet Union, when news revealed to the world the secret storage sites where the looted objects under litigation were kept (GRIMSTED, 2010). At first, Russia and Germany attempted negotiations to solve this issue, but they failed. Over time, the Russian government adopted an anti-restitution position, which culminated in the creation of the Federal Law on Cultural Valuables Displaced to the USSR as a result of the Second World War and Located in the Territory of the Russian Federation, signed in 1998. By this act, Russia nationalized the trophies taken as compensation and limited their return (REEVES; GARREAU, 2016). The law prohibits the return of cultural property to Germany and other Axis countries. However, there are exceptions for specific cases – notably those items of Holocaust victims or those belonging to those who fought against the Nazi regime (GRIMSTED, 2010). Nonetheless, determining restitution in such cases is complicated.

It should be mentioned that, before the 1998 Federal Law, base diplomacy dealt with the return of some objects to the German Democratic Republic between 1950 and 1980: one of the most famous was the frieze of the Pergamon-Altar, shown in Figure 3 (EICHWEDE, 2010). Recently a case-by-case approach has been adopted since the objects looted in German territory were first looted by the Nazis. In other words, many of the trophies that were taken by the USSR were objects originally from other countries, many of them considered non-enemies. The law is clear in establishing that Russia cannot claim cultural property from allies or Axis victims' countries as restitution in kind, because those nations had not caused damage to the Soviet cultural heritage. In fact, with the looting prohibition in the 1889 and 1907 Hague Conventions, both ratified by the Soviet Union, no cultural property could be seized as restitution in kind, as a trophy, or for any other purpose (SANDHOLTZ, 2010). That is the argument used to delegitimize both the Soviet removals and the recent nationalization of those objects as compensation.

**Figure 3** - Pergamon-Altar exhibited at Pergamon Museum located in Berlin



Source: Berlin.de, 2020.

## RESTITUTION OF WAR TROPHIES: ANALYSES AND REFLECTIONS

This paper seeks to undertake some analyses and reflections about the restitution of cultural property taken as war trophies based on two main concepts: memory (particularly the collective memory) and identity. In the Paraguayan War case, especially concerning the *El Cristiano* cannon, both Paraguay and Brazil have a symbolic connection with this object. Regarding the collective memory of Paraguayans, that is, the representation that this group produces about a memory supposedly common to all (CANDAU, 2011), the cannon represents a significant moment. The forging of *El Cristiano* from church bells marked a kind of sacrifice in the name of the nation and, at the same time, it became a symbol of a difficult context for Paraguayans, whose memories are still painful today.

It is by this identity connection, in other words, based on the process between subjects and discursive practices that also needs the “other” to exist, that the valuation of *El Cristiano* is solidified and expanded (HALL, 2000). In this case, when the other, also considered the enemy, took possession of the cannon, it assigned to it a new meaning. For Brazil, the cannon became a trophy, the symbol of a victory achieved at a crucial moment of the

conflict, and it is so significant to the history and the collective memory of Brazilians, that it was even listed as part of the Brazilian cultural heritage. *El Cristiano* can be a significant object for a number of Brazilians given that at the time of its almost repatriation a class action was filed to prevent its return. A popular movement also started to work actively on social media through the campaign *O Canhão é Nosso* (The Cannon is Ours), aiming to collect signatures for a petition asking to keep *El Cristiano* in Brazil (FLECK, 2018).

When the return of the cannon was requested, it triggered a fear of loss and what would be just another museum object took on importance also for Brazilians (CHOAY, 2001). *El Cristiano* turned into an object of dispute between two countries that, in the past, had been protagonists of some of the bloodiest battles that ever occurred in South America. Since the cannon was present in some of them, it assumes a place in the memory of the War. In other words, the War memory is materialized in it (NORA, 2012). Temporal detachment is no longer a problem once the cannon becomes a tangible reference: first, for the dedication of Paraguayans to their nation; also, for the victory won, despite all the difficulties, by the Brazilians. It is in this game of remembering and forgetting that the dispute is justified (RICOEUR, 2007).

In the Russian case, this game can be analyzed from a different perspective, especially by the idea of restitution in kind. In addition to the issues of legitimacy and the financial calculation of losses for those who want to receive the compensation, there was also another problem: defining which cultural properties, located in Germany, could compensate those that were lost by the USSR during the War. It should be highlighted here that the Soviets had different standards and values from Westerners, and the cultural property destroyed throughout the course of the war was unique in representing the Slavic culture and identity (REEVES; GARREAU, 2016). So, how to carry out compensation in which what is replaced is originally from other cultures? Would people accept an object from the “other”, from outside their group, with which they cannot identify themselves and which is not part of their collective memory? What values would be assigned to the cultural property in this situation?

Considering that the values discussed here are historical constructions defined by disputes involving moral and political regimes (RIEGL, 2014), it is necessary to consider how this is constituted in the Russian case. It is noticeable that the objects looted by the Soviet Union have a symbolic value related to the victory won in the conflict. The memory of the Great Patriotic War of the Fatherland, strategically exploited in the post-war period by the Stalinist regime, is still present in public opinion (GRIMSTED, 2010). However, an economic value often exceeds the symbolic one attributed to these trophies. After all, the objects were taken as compensation, and being mainly works of art, they add up to a significant amount. In fact, the law signed in 1998 appears to seek to legitimize the possession of such trophies to maintain this monetary compensation. This indicates that the economic value of this cultural property is of greater interest to the Russian government than its symbolic value.

In the *El Cristiano* case, there are several possibilities of interpretation for this “will” to keep its possession and the attempt to recover the cannon. Both Brazil and Paraguay attribute to the object not only a historical value but mainly a symbolic one. For Paraguayans, it symbolizes the efforts made in the war, and its repatriation would also mark it as a symbol of the healing of the scars still open in the Paraguayan people due to the consequences of the war for their nation (FLECK, 2018). For Brazil and the Brazilians, the symbolism attributed to the cannon comes from the patriotism that links it to the important victory won in the war. Thus, the dispute over *El Cristiano* can be understood through the symbolic value attributed to it, and not really due to its economic value, as we can see in the Russian case.

However, the claims and disputes surrounding these cultural properties should not be analyzed only on the basis of the memories and the values attributed to them. These are certainly important factors for those seeking to conquer and legitimize the possession of the trophies, but at the same time they are elements of a broader game: that one that takes place in the political field, which, as explained by political realism, ultimately aims at power (MORGENTHAU, 2003).

In the case of the *El Cristiano* cannon, the power struggles involve three main agents. The first of these is the Brazilian government, which decided to return this trophy as part of the cooperation strategies with Paraguay, a neighboring nation and partner in the Southern Common Market (MERCOSUR). Here, the symbolic value attributed to the cannon by the Paraguayans becomes the argument used to legitimize its return, and this decision can be understood in the face of the political and economic relations established between Brazil and Paraguay. This decision, however, goes against the ideas advocated by groups of civil society and by professionals of the cultural heritage field: the former motivated by what the cannon represents for the country's history, and the latter concerned about what an unlisting (an unusual practice) of the cannon could mean for the protection and safeguarding of the Brazilian cultural heritage as a whole, especially if this is done for merely political reasons.

By analyzing the situation identified in Russia, the power struggles seem to develop in a more direct perspective among the political actors. On the one hand, the Russian government, through the federal law of 1998, seeks to maintain power over the cultural property in its territory, to defend it as its property. On the other hand, the representatives of the countries interested in recovering these objects try to delegitimize this determination, relying on the conventions and other treaties previously signed by Russia. Thus, both sides make use of legal instruments to try to win this conflict.

Therefore, the return of war trophies both in the Southern Hemisphere, as is the case of the Paraguayan War, and in the Northern Hemisphere, with the perspective faced by Russia, introduces complex and difficult problems to be solved between the involved parties. However, in addition to presenting such problems it is also important to point out some of the alternatives already discussed that can be seen as democratic solutions in the face of the primarily legal and political impasse encountered in both cases.

Reeves and Garreau (2016) believe that in the future cultural property could be seen as the key to a reconciliation between Russia and Germany, an opinion similar to Eichwede (2010), a historian and researcher of Soviet and Russian-German relations in the 20<sup>th</sup> and 21<sup>st</sup> centuries, who considers these objects as cultural ambassadors in favor of dialogue. Among some of the alternatives already considered, Reeves and Garreau (2016), both law researchers, mentioned: the mutual abandonment of claims; the construction of a museum located in neutral territory to exhibit these objects; financial compensation to Russia so that Germany will be able to receive some of its most important works of art in return; or even set up exhibitions that make these objects available to the general public alternately between Russia and Germany.

The idea of building a museum in a neutral zone was also one of the alternatives considered for the Brazilian and Paraguayan case. The idea came up at a meeting of the Consultative Council of the National Institute of Historic and Artistic Heritage. A binational organization would be created to manage a common museum on the border between both countries. The collection of this museum would be composed not only by *El Cristiano*, but also by other objects and documents about the Paraguayan War (IPHAN, 2010). Another suggestion, proposed by Santos (2018), a military science researcher, that considers cultural property as an instrument for dialogue and peace, based on good intentions and reciprocity, is the following: Brazil would return *El Cristiano* to Paraguay, and the latter would return



the Brazilian objects that were plundered throughout the war and that are currently in Paraguayan territory. This is the case, for example, of the *Anhambay* ship, currently exhibited in *Vapor Cué* National Park (Figure 4).

**Figure 4** - *Anhambay* ship exhibited in *Vapor Cué* National Park, Paraguay



Source: Carlos Mey, *Historia y Arqueología Marítima*, 2020.

## FINAL CONSIDERATIONS

The repatriation or restitution of cultural property taken as war trophies is one of the great challenges currently facing democracies in the field of cultural heritage, especially in the sphere of international law, as shown above. Despite international conventions and treaties recently created aiming to protect the cultural heritage in times of war, there are still gaps regarding the solution of cases involving conflicts prior to the creation of those instruments. Due to the specificities and complexities of such cases, it is difficult to reach a consensus or solutions that satisfy all the parties involved. As a result, they remain in a long impasse, especially those presented here.

In the case of the Paraguayan War, the objects returned by Argentina and Brazil in the second half of the 20<sup>th</sup> century were part of the political negotiations aimed at a rapprochement between governments of that time and there was no social participation in the discussions. The same, however, does not apply to the case of the *El Cristiano* cannon, in which various sectors of society were mobilized in an attempt to keep this trophy in Brazil, because of the recognition of its importance for collective memory and the country's history. Also, the case of *El Cristiano* is much debated, especially due to the possibility of its unlisting, which is a matter of concern for professionals in the field. There is fear that, if this process takes place, other objects that are now protected by this instrument would be unlisted as well. Consequently, this instrument of protection might lose its meaning and the Brazilian cultural heritage might become vulnerable to destruction and mischaracterization.

Regarding the case of trophies taken by Russia at the end of World War II, there is a legal impasse motivated by the political and economic interests surrounding these cultural property items. While this impasse is not solved, a case-by-case approach has been the alternative used to try to solve the claims, but restitution, in this case, can be a slow and

bureaucratic process. Besides being a challenge to international law, this issue is also an example of how cultural heritage can be used to benefit the interests of a particular group in power struggles.

Despite the different solutions considered to solve the cases presented, there are difficulties in putting them into practice. This problem seems to result from the different values attributed to cultural property, which dictates the dynamics of the power struggles around them. Therefore, the issues related to cultural heritage seem to invariably revolve around such factors.

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