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Evolution of the Customary International Law on Cultural Property Plundered in War

Ewolucja międzynarodowego prawa zwyczajowego w zakresie dóbr kulturalnych w czasie konfliktu zbrojnego

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Abstract: This article presents an unambiguous evolutionary sequence of historical events leading to the development of customary international law, seen with reference to the mutual influence and transformation of legal philosophy, practice and codification on plundering cultural property during wars. The contemporary legal rules and customs working against taking cultural property as spoils of war are rooted in the eighteenth century, and were consistently developed in the nineteenth and twentieth centuries. Restitution appears the best remedy for the country of origin, especially in the condition where the plundered cultural property is existent and identifiable. Achieving this goal depends on the cooperation and coordination throughout the world, based on a wider customary international law space.

Keywords: cultural property, plunder of cultural property, customary international law, spoils of war

Abstrakt: Artykuł niniejszy prezentuje w sposób chronologiczny ewolucję międzynarodowego prawa zwyczajowego w odniesieniu do zaboru dóbr kulturalnych. Autor opierając się na przedstawionych wybranych wydarzeniach historycznych mających wpływ na tę sferę prawa wojennego, wskazuje na wzajemne zależności i przeobrażenia w prawniczej filozofii, praktyce i kodyfikacji. Obecnie obowiązujące prawne regulacje i obyczaje zabraniające zaboru dóbr kulturalnych jako łupów wojennych zrodziły się w wieku osiemnastym i były konsekwentnie rozwijane w wieku dziewiętnastym i dwudziestym. Zwrot zagrabionych dóbr państwu, które

jest ich właścicielem, wydaje się najlepszym wyjściem, szczególnie w sytuacji, gdy zrabowane przedmioty pozostają w stanie nienaruszonym i są identyfikowalne. Osiągnięcie tego celu jest uzależnione od współpracy i koordynacji działań na całym świecie, realizowanych w szerszej przestrzeni prawa międzynarodowego.

Słowa kluczowe: dobra kulturalne, zabór dóbr kulturalnych, międzynarodowe prawo zwyczajowe, zdobycze wojenne

1. Formation of rules prohibiting looting of cultural property initially in modern international law in Europe

Originally, beginning with the Westphalian Peace Treaty (Penna 1997: 258) of 1648, European monarchs started to give up plundering enemies' cultural property during wars. Thus, from the mid-17th to the 18th centuries, plundering cultural property across Europe was almost completely abandoned during armed conflicts (Bordwell 1908: 62). Until the end of the 18th century, European states had avoided plundering cultural property in wars on this basis. This was the earliest foundation of modern international law in which European sovereign states took unified action on the protection of cultural property. This practice of determining common regional rules through the form of treaties and implementing them and obeying each other among these European countries, is one of the necessary conditions for customary international law.

Technically speaking, if a country is capable of participating in a war and winning, thus this country would never lack in the possibility of plundering the wealth of invaded territory. Even if some countries were too weak to participate in robbery during the war, it was not a common reason for all sovereign states that gave up plundering of cultural property. Naturally, when sovereigns have a strong interest in art and are capable of plundering these treasures, they have no reason to abandon plunder. Third, although the winning countries could plunder cultural properties based on the conventional right to conquer, they give up plundering. Obviously, the giving up looting does not result from the lack of a legal basis. The author believes that abstaining from looting is due to changes in the concepts of the right to conquer, which had been limited by the ideal of justice in war. The changes to the right to conquer are mainly reflected in the areas outlined below.

Because of the impact of the Enlightenment thought, since the middle of the 17th century, some leading scholars in the area of international law have initiated in-depth discussions on the restrictions on war and on the right to conquer. Most of these statements link the looting of cultural property with the doctrine of Military Necessity, which determines whether cultural property can be looted, or what kind of property can be looted in war. Pufendorf, for instance, claimed that humanitarian law requires us not to destroy any enemy's

property except in the condition of necessity (1931: 256). Huge Grotius argued that there is no need to use armed force with reference to spheres that are not threatening the army during the war and which provide the spiritual support for society, like temples and church properties (1925: 751). And on the basis of Huge Grotius's idea, De Vattel proposed to make further restriction on the properties which should not be confiscated, precluding more kinds of cultural property from the scope of the booty (1758: 168). The military necessity doctrine later became a basic principle of the law of war, laying the foundation for the basic legal rules concerning protection of cultural property in the 19th-century wars.

As we all know, historically, the tendency of preference and appreciation for works of art and cultural objects, was intensively aroused by the thriving of humanism from the Renaissance era (Biroy 1997-1998: 205-206). This tendency also affected the interest of later jurists when they paid attention to the safeguards of cultural property. According to de Vattel, international law absolutely negated savage and unlimited vandalism of cultural property (1797: 370). Cicero's remarks, along with De Vattel's, played a vital role in reversing public legal thoughts and social ideal from plundering of cultural property. Gradually, European countries began to avoid plundering enemy's artworks and cultural objects, and through the Westphalian Treaty, they established rules to prevent plunder of cultural property during war at the level of international law. Following that, European monarchs complied with the Westphalian Treaty agreements for more than 100 years, thereby overturning the brutal custom of plundering cultural property in wars and establishing new international customary law standards through national practice. Consequently, by the end of the 18th century, rules prohibiting the looting of cultural property were formed regularly in the international law as the status of international custom in wars.

2. Deepening of the forbiddance on the looting of cultural property in the nineteenth century in Europe

From 1794 to 1814, the sovereign of France Empire, Napoleon, carried out a well-planned and long-lasting pillage of works of art and cultural relics across the then Europe. (For the details of Napoleon's confiscation of artistic treasures consult Gould (1965: 31, 34, 48.)). His predatory behavior is strictly violated and traitorous for the rules against the plunder of cultural property that had been formulated earlier and generally adhered to by European society. Nevertheless, the author believes that the rules of banning cultural property looting in Europe in those unbearable days, was strengthened, but not weakened, by Napoleon's action. The reasons are as follows: first of all, Napoleon's predatory plunder showed that he had clearly understood and recognized that in the scope of legal feasibility, the right to conquer in Europe at that time did not permit to

plunder anymore; secondly, the public held a seriously negative attitude to his uncivilized behavior in Europe, which revealed that the degree of civilization in Europe at that time could no longer accept such predation; and finally, the response of other countries proved the existence of the rules against plundering, and further enhanced these rules. Countries insisted, as long as the plundered cultural property was supervised and identifiable, that return of these cultural objects was to be the sole way to remedy.

The first main method of looting cultural property by France is secret looting supported by the government. As the monarch, Napoleon secretly dispatched cultural experts with his armed forces to plunder artifacts during the Belgian campaign and kept them secretly (Mainardi 1989: 156). There was no need to do it in secret if Napoleon thought he had the right to do so. His actions precisely showed that plundering cultural relics and works of art was not an unrecognized area or judged as the right to natural warfare at that time (Mainardi 1989: 156). The second method of looting cultural property by France is by treaty to confiscate it. During the Italian campaign that began in 1796, on conduct of their monarch, Napoleon, France started to transfer the ownership of the looted artwork by signed treaties, for instance, the armistice with the Duke of Modena on 17 May 1796, the treaty with the Duke of Parma on 18 May 1796, the armistice with the Pope's representative in Bologna on 23 June 1796, and the Treaty of Tolentino with the Pope in February of 1797 (Treue 1961: 149-150). Based on these treaty provisions that infringed the basic principles of the previous law of war, Napoleon more confidently seized artefacts, beautified his plunder, and used treaties to justify the confiscation. These actions show that Napoleon was well aware of the basic rules of the law of war that no longer allowed the plunder of cultural property.

Citizens of defeated states are naturally outraged by their loss of cultural property. Additionally, the robbery by France provoked great rage out of France, which spread widely and fast among groups of artists, art dealers and patrons from all over the world (Treue 1961: 149-150). The exception were the Italian people at that time, who actively protested against Napoleon's looting, numerous scholars, and even some French troops who stood up against the dealings and asserted that the deed of France and Napoleon was illegal and should be punished. French soldiers also argued that the French government should return all such criminal gains. Despite the force of opposition to such a crime, it would not put an obstacle to the continuous plunder by French troops. Still, it was the first time for the whole society to express their extreme voice of objection to the legitimacy of the plunder by France (Treue 1961: 149-150). The uncivilized behaviors made by France and Napoleon, sparked the international outcry and strong condemnation. The notable French archeologist, Quatremere de Quincy, was opposed to Napoleon's predatory behavior and insisted that

countries should not hold the special right to obtain the property from the defeated (Mainardi 1989:156). In addition, he suggested that art should not be used as a war collection (Quynn 1945: 439). According to his standpoint, the departure of artworks from the country of origin is a kind of destruction; the artworks which had been looted from original space to another place, equaled to be destroyed, because their artistic, historical, aesthetic value could only be entirely displayed in their original environment (Quynn 1945: 439). Quatremere's ideas provided a philosophical basis for the rules against plundering cultural property, and further provided a legal basis for returning plundered artifacts to their original environments.

A strong voice of objection to Napoleon's predation was heard not only in European civil societies, but also in other sovereign states of Europe. The Duke of Wellington in Britain, who was arguing vigorously against Napoleon and later served as a diplomat in France, believed that the looted cultural property should be returned to its original states, because Napoleon's plundering had violated the basic rules of the law and the ethic of war (See the Letter of the Duke of Wellington to Viscount Castlereagh, dated in Paris on 23 September 1815, as reprinted in *3 British & Foreign State Papers (1815-1816)*: 207). Besides, Lord Castlereagh, a British parliamentary diplomat, also stated that Napoleon's plundering was "contrary to every principle of justice and the usage of modern warfare" (Letter from Viscount Castlereagh to Plenipotentiaries of Austria, Prussia, and Russia (Sept. 1815), as reprinted in *3 British & Foreign State Papers (1815-1816)*: 204) and insisted that the plundered cultural property should be returned to its original homeland.

Based on the general rules prohibiting the looting of cultural property, the return of looted cultural property is the most natural and reasonable remedy. Richard Zouch believes that as long as the looted artwork is restored, returning to the country of origin and restitution should be the only accepted solution. No matter whether the relevant compensation would be supported by law, the compensation cannot substitute the role of status quo ante. Upon request, Britain returned the American art as a trophy to the Pennsylvania Academy of Fine Arts during the American-British War of 1812 (Letter from Viscount Castlereagh to Plenipotentiaries of Austria, Prussia, and Russia (Sept. 1815), as reprinted in *3 British & Foreign State Papers (1815-1816)*: 204).

The practice of returning cultural property after Napoleon's failure proved that this relief method is generally accepted. The return of cultural property is not an arbitrary exercise of power by the winner, but an expression of international law against the plunder of cultural property. Thereafter, the second Paris Treaty signed on 20 November 1815, officially confirmed the right of restitution, and France was obliged to return the plundered cultural property (Chapman 1998: 55). As long as the plundered cultural property is still unmissed

and identifiable, it should be returned to the original country. This idea was once again practiced by the sovereign states and became a generally believed ideal which, in the process of establishing the rules of customary international law, got constantly strengthened.

Since the second half of the 19th century, countries started to codify the law of war, and these legislations existed in customary international law in the form of domestic law (Kalshoven 1973: 24). Naturally, customary regulations prohibiting the plunder of cultural property also should be classified into the scope of codification. The regulation against plundering of cultural property was initially stipulated in the Lieber Code of 1863 of the United States, then reflected in the Brussels Declaration of 1874 and the Oxford Handbook of 1880, and it was finally stipulated in the 1899 and 1907 The Hague Conventions. Compared with the Code of Lieber, these subsequent international legal documents did not create new rules against the looting of cultural property but articulated the old rules clearly and specifically again. Since the development of the state of natural law to the universal recognition of various countries, the rules prohibiting the plunder of cultural property have had the binding force on customary international law.

In the world at large, The Lieber Code of 1863 was the earliest officially codified law of war (Carnahan 1998: 215), which included the regulation of prohibiting plunder of cultural property. It took the fine arts as the private property of churches. Accordingly, Article 35 specifically required protection of classical artworks, libraries, scientific collections and precious tools; Article 36 provided an exception to the principle against the plunder of cultural property: "The ruler of a conquering country or nation can order the detention and removal of them for the benefit of that nation. The ultimate ownership will be settled by a subsequent peace treaty"; similarly, property belonging to churches and art museums should not be confiscated, except for military necessity (Article 38) (The Instructions for the Government of Armies of the United States in the Field, General Order No 100, 14 April 1863 (the Lieber Code of 1863), Articles 34, 35, 36, 38 in: 3 U.S. Department of War, *The War of The Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* 1902: 148).

The above clauses from "Lieber Code", revealed the plain customary rules against the looting of cultural objects in the mid-nineteenth century. Because Lieber drafted the code, based on the regulations and customs relating to war in that century. In the design of the regime for protecting cultural property, Lieber's thoughts on military necessity specifically enlarged the criteria of previous military necessity principles into three aspects: ongoing, urgent, and subversive (Lieber 1995: 34). Equally, he believed that unless the necessary

military criteria were met, art of monuments, churches, religious temples, and libraries, should not be destroyed in a war.

The “Liberian Code” greatly promoted the codification of the custom rules in war in the 19th century, especially in promoting the prohibition of plunder of cultural property (Carnahan 1998: 215). The rule had a huge impact on groups of government legal counselors, diplomats, jurists, and many more (Sandholtz 2008: 115). Eventually, these legal professional practices affected their countries in which they worked, which in turn influenced the development of international treaties in the field of the law of war. Therefore, the “Liberian Code” is an important milestone and turning point in the development of international customary law on plunder of cultural property during wars. Essentially, it offered the basic thoughts and materials for the regulation of international customary law with reference to war, including The Brussels Declaration of 1874 and the Oxford Handbook of 1880.

The Brussels Conference was originally initiated by Russia in 1874. Fifteen European countries participated in the conference and adopted the International Declaration on the Law of War and Customary Law (the Brussels Declaration) (Project of an International Declaration Concerning the Laws and Customs of War, adopted by the Conference of Brussels, 27 August 1874, as reprinted in 1 AJIL Supp. (1907): 6-107). The Brussels Declaration was the first legal document of war compiled by the international community, including rules against looting of cultural property. Similar to the Libre Code, the Brussels Declaration treated the special property belonging to art museums and churches as private property (Project of an International Declaration Concerning the Laws and Customs of War, adopted by the Conference of Brussels, 27 August 1874, as reprinted in 1 AJIL Supp. (1907): 96-107). Different from the Lieber Code, the Declaration provided for stricter rules against predation, which argued that the principle of military necessity could not make the exception to the confiscation of private property (Project of an International Declaration Concerning the Laws and Customs of War, adopted by the Conference of Brussels, 27 August 1874, as reprinted in 1 AJIL Supp. (1907): 96-107). Although the Brussels Declaration was not universally accepted by the participating States because they were not prepared to accept its strict legal obligations. However, the relevant provisions set for the protection of cultural property adopted by symbolized regulations of prohibiting plunder of cultural property, which were generally accepted by all the countries at that time as international customs.

In 1880, the Institute of International Law organized a committee to research the Brussels Declaration of 1874, and then issued *The Oxford Handbook* in February 1880 (Institute de Droit International, *Les Lois De La Guerre Sur Terre*, 1880 [The Laws of War in Land] (The Oxford Manual of 1880), The U.S. Committee of the Blue Shield (uscbs.org/1880-oxford-manual.html). At

that time *The Oxford Handbook* stipulated the strictest rules for prevention of looting of cultural property. Article 53 directly stated that the property of institutions devoted to art and religion cannot be taken away. It also stipulated that “any damage or intentional damage to the institution, historic monuments, archives, artwork or science is strictly prohibited unless it is urgently required by the military necessity. The provisions on cultural property also proclaimed the establishment of rules of customary international law at the time. The preamble of the Handbook aimed to comply with the law of war by “compiling feasible ideas that have been accepted in our time” and “in line with the progress and needs of civilized armies.” (Institute de Droit International, *Les Lois De La Guerre Sur Terre*, 1880 [The Laws of War in Land] (The Oxford Manual of 1880), The U.S. Committee of the Blue Shield (uscbs.org/1880-oxford-manual.html preface).

The Oxford Manual was copied and distributed to various governments, with the declaration that it was the duty of each government to issue the copies to their armies. Most governments accepted this initiative at that time.

The Hague Peace Conferences of 1899 and 1907 signed the considerable achievement of codifying the laws of war and customary law in the form of conventions (Martel (ed.) 2012: 1-2). These conferences respectively adopted two conventions on the laws and customs of the Army. Both conventions provided rules prohibiting plunder of cultural property. Article 56 of the Second Hague Convention of 1899 stipulated that “the property of religious, charitable and educational institutions and artistic and scientific institutions, even state property, shall be considered private property” (The Hague Conventions II of 1899, *ibid.*, Article 56). Most of the regulations of the two conventions merely reaffirmed rather than established rules of international law, and the provisions related to the protection of cultural property were also some of the provisions of restating international law of war. The unanimous adoption of the rules in accordance with the Brussels Declaration reflected the fact that the major powers participating in the Hague Peace Conference accepted that the regulations established in the Brussels Declaration were the main rules of the law of war and remained in force at the time.

By the end of the 19th century, most of the countries had accepted the conventional obligations of the regulations codified in the Brussels Declaration, which led to the convoking of the Hague Conventions of 1899 and 1907. The two Hague meetings aimed to define the laws and customs of war applicable to all countries. The first Hague Conference (1899) was attended by representatives of 26 countries (Martel [ed.] 2012: 3), including all the major European states, and the countries from America and East Asia. The second Hague Conference (1907) included all the participants in the first Hague Conference and seventeen other countries in Central and South America (Martel [ed.] 2012: 3).

3. Advancing of the ban on looting of cultural property in the twentieth century

The development and advance for protection of cultural property in the twentieth century was also accumulated during the war. In response to criticism of cultural property looting and destroying during World War I, Germany started to send full-time personnel to the army and the occupied government in 1914 to protect art treasures, historic buildings, and monuments under its control (Posner 1944: 215-216). Germany also sent professionals to protect the archives of the occupied France, Belgium and Poland from destruction in the early 1915 (Posner 1944: 215-216). The practice that Germany also employed experts to protect archives, art treasures and monuments reflected the requirements of customary international law and the regulations prohibiting the looting of cultural property in the Hague Convention.

Afterwards, the restitution after the war made the significant influence on the international customary law in the scope of cultural protection. The relevant provisions for the return of looted cultural property were promulgated through a series of inter-State peace treaties after the war as the format of bilateral or multilateral treaty. This process began in the 1919 Treaty of Versailles, which required Germany to return plundered cultural property to France, Belgium and other countries (The Treaty of Versailles, Articles 245, 246, 247, 225 CTS (1919): 303-304). The peace treaty reiterated that as long as looted or stolen cultural property was retained and identifiable, return was the only remedy (Marchisotto 1973-1974: 699).

The law of war during World War II put an emphasis on the military's responsibility to protect cultural property in combat; in particular, special agencies were established and professionals were hired to work with the military to protect cultural property (General Eisenhower issued an order in 1943 to place the responsibility of protecting cultural property "squarely upon the shoulders of every commander and, in turn, every officer and every soldier" - as quoted by Robert M. Edsel (Edsel 2013: 66). For instance, the U.S. government established a specialized agency called the Roberts Commission in June 1943 to preserve fine art works and monuments; in the fall of that year, the U.S. government also developed a military plan called "Monuments, Fine arts and Archives" (MFA&A). To prevent unnecessary damage to cultural sites, MFA&A engaged the Roberts Commission to hire art professionals who provided the armed forces with maps that could identify churches, palaces, museums, historic buildings and monuments to protect them from war damage (Sandholtz 2008: 115). The efforts of these specialized agencies to protect cultural property during the war and to collect information identifying these cultural properties not only consolidated

the rules for preventing the plunder of cultural property during the war, but also laid the foundation for the return of plundered cultural property after the war.

Afterwards, the Allies first established the principles on the return of plundered cultural property in the London Declaration (Declaration Regarding Forced Transfers of Property in Enemy-controlled Territory (the London Declaration of 1943), 8 Department of State Bulletin (1943): 21-22) of 1943, and issued formal adoption to all relevant powers, including neutral nations. The Allies declared that any illicit transfer or transaction of plundered cultural property during war was void (Declaration Regarding Forced Transfers of Property in Enemy-controlled Territory (the London Declaration of 1943), 8 Department of State Bulletin (1943): 21-22). The “Declaration” set out the legal basis for the post-war plundering of the country of origin of cultural property. The Declaration was implemented through a series of international treaties and domestic legislation all around the world, and this enforcement had the distinctive features of customary international law. The widespread return after the war showed that no matter how serious the plunder of cultural property was, the rules prohibiting the dealings were deeply rooted in the international community.

During the Second World War the plunder of cultural property became more complicated and hidden, so the London Declaration of 1943 offered a broad interpretation of the use of “force or duress” (Declaration Regarding Forced Transfers of Property in Enemy-controlled Territory (the London Declaration of 1943), 8 Department of State Bulletin (1943): 21-22). The interpretation included all forms of transfer of property and even transactions that appeared to be legal in form. Subsequent international agreements and domestic regulations also acted up to this broad interpretation. Furthermore, according to the Bonn Convention of 1952, cultural property given as a gift should also be found in the scope of restitution; if the gift is obtained through direct or indirect coercion or the use of an individual’s public office, it shall be returned; in this Convention, the scope of return also included the cultural property acquired by common purchase, unless it had been brought into another country and used for sales purpose (The Bonn Convention of 1952, chapter IV, Article 1.2(a), *ibid.*, p. 90-91).

In the aspects of criminal regulation, according to the verdict of the Nuremberg trial, looting of cultural property was not only illegal during World War II, but also criminal (International Military Tribunal (Nuremberg), Judgment of 1 October 1946, p. 55 (crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf)). For example, Rosenberg, a group led by Einsatzstab Rosenberg, was found guilty of “robbing cultural property.” (International Military Tribunal (Nuremberg), Judgment of 1 October 1946, p. 55 (crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf), p. 114-115). The Nuremberg Tribunal opposed the looting of cultural property under Article 56

in the Hague Conventions of 1899 and 1907. The court held that the article was based on customary international law recognized by all civilized nations.

After the entry into force of the Fourth Hague Convention in 1907, another convention devoted to protection of cultural property in war strengthened the rules dealing with looted cultural property: The Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Treaty of Rollich 1935), which was the first attempt to formulate the convention in Americas. It proclaimed that cultural property and all institutions devoted to art, culture and education, should be treated as neutral and be protected absolutely, unless these were used for the military purposes. Unfortunately, this process was suspended by the Second World War. After the war, the UNESCO General Assembly continued its efforts and eventually developed the 1954 Hague Convention and its first protocol. The 1954 Hague Convention and its first protocol represented the official birth of the first special convention for the protection of cultural property in armed conflicts.

4. The choice between recourse and retention

Despite international consensus today on the ban on illicit trafficking in cultural property, there are still many voices of opposition to the return of cultural property looted during the 19th- and the 20th-century wars. First, as mentioned earlier, some scholars mistakenly believe that general international law did not prohibit the plunder of such cultural property in international armed conflicts in the 19th and the 20th centuries. Therefore, the institutions that hold these cultural properties now believe that these collections belong to them due to ownership, so they do not open channels for dialogue or negotiation on return of the cultural properties in their possession.

Moreover, the concept of “internationalism” of cultural property regards cultural property as the common heritage of the world. Therefore, people of all countries should have a common voice when determining the fate of such cultural property. This argument is often used as a defense against return of cultural property. In the cases where the country of origin of the looted cultural property is determined, it often causes widespread controversy.

Mere asking for a return for moral or political reasons is not enough to dismiss the reasons current holders consider the trusteeship or legitimate commercial purchases; however, customary international law provides new ideas to solve this problem. As mentioned earlier, the ban on plundering of cultural property during a war began in the mid-17th century. After continuous development, it has evolved into established rules of customary international law and has been established as a universal customary international law. At the beginning of the century, this rule applied to all countries and has continued to do so until today. Relying on this rule, restitution is the only remedy for

illegal acts of robbery or confiscation of cultural property during a war. This rule applies as long as the protected stolen work is retained and identifiable. Various peace negotiations and returns in the 18th and the 19th centuries have repeatedly proven that the passing of time will not make the right to return the pillaged cultural relics disappear. This reason provides a strong legal basis for a return request from the country of the looted cultural property origin.

5. Conclusion

The practice of not plundering cultural property, which began in the middle of the seventeenth century, confirmed the general understanding of the simple natural laws of the world. By the end of the twentieth century, rules of customary international law prohibiting plunder of cultural property had been established. Although the practice of the rule appeared mainly in Europe, it reflected the natural laws of modern military behavior and has found universal applicability. Wartime rules prohibiting looting of cultural property were initially established in the second half of the 17th and the 18th centuries and were deeply consolidated in customary international law of war in the 19th and the 20th centuries. Therefore, the traditional right to conquer cannot survive in the new pattern of international law. History showed that Napoleon tried to restore this special right, but ultimately failed. A century later, Hitler tried again to reinstate this practice, but also failed. The evolution of the rules prohibiting plunder of cultural property during a war showed that the rule was not limited to the rules of war on European territories, but should also apply to general customary international law in the rest of the world in the nineteenth and early twentieth centuries. As long as the looted cultural property is retained and identifiable, returning the restored material is the only way to obtain relief for the rights and interests of the country of origin. For example, during the Second Opium War in 1860, the British and French forces looted China's Old Summer Palace and took away countless valuable art treasures; even more than a century afterwards the Chinese government must still demand the return of the looted objects for legitimate reasons. Based on international customary law generally accepted by the international community, establishing a consultation mechanism and formulating bilateral and multilateral treaties is the best way to return cultural property at the legal level. This expectation depends on the joint efforts of the future international community.

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