



ISS Seminar Report

Title: Arts and Cultural Heritage Restitution – Issues between Europe and Africa
Place: ISS Conference Room, Pretoria
Date: Wednesday, 17 June 2009, 11h00 – 13h00
Speaker: Stefan August Lütgenau, Historian
Respondent: Issake Souaré, ISS
Chair: David Zounmenou, ISS
Rapporteurs: Jesper Kleingeld & Jimmi Larsen (Interns, ASAP), and Them bani Mbadlanyana (Junior Researcher, Office of the ED)

About the speaker

Mr. Lütgenau, a historian, has worked, among others, on Holocaust Era Assets, NS-forced foreign and slave labour, restitution and compensation in Austria post-1945, and restitution and compensation in Europe post-1989 and has published on these subjects. He has also engaged in the Working Group on Palestine, Israel and Palestinians (WG PIP) of the Euro-Mediterranean Human Rights Network (EMHRN: www.Euromedrights.net) on the Israeli-Palestine conflict and its human rights dimension. He is also a former programme coordinator of the Bruno Kreisky Foundation for Human Rights. The trip of the speaker and thus his presentation were facilitated by the Austrian embassy in Pretoria.

Presentations

The speaker began by outlining the two main focus areas of his presentation. First was to elaborate on the Austrian restitution and compensation discourse post-1945 and why restitution with regard to art and cultural heritage in the aftermath of the Second World War has been delayed. The second point related to the Austrian experience in the period between 1945 and 2008 and the aspects of the subject matter that he thought have not been covered in the discussion.

According to the speaker, by the end of the Second World War, the Austrian political elite had no concept on restitution. This evolved during 1945/46 mainly focusing on NS victims at the exclusion of those that were forced to leave the country or had vanished in Shoa (holocaust) and war. Referring to the Moscow Declaration of 1943, Austria adopted the

position that it was the first victim of Hitlerism and therefore not responsible for any unlawful acts under the Nazi-regime (victim theory). The speaker highlighted the dimension and function of NS policies of dispossession and noted that this policy substituted/financed a racist social policy for “Arians”. It focused on transferring goods, housing and wealth from “Jews” to “Arians”.

The speaker argued that three aspects characterised the Austrian discourse on compensation and restitution:

- 1) The Victim-theory, declaring Austria not responsible for Hitlerism;
- 2) The huge dimension of NS policies of dispossession, structurally underestimated by Austrian decision makers since 1945;
- 3) Outside pressure triggering the internal Austrian debate (i.e. 1946, US pressure; 1955 state treaty regulations in § 26; “Legacy of shame article” by A. Decker 1984 related to the Mauerbach treasure; class actions filed (or threatened to be filed) against banks and industries in Austria demanding restitution and compensation for “dormant accounts”; unpaid insurance policies and the exploitation of forced foreign and slave labour 1998; the confiscation of Schiele paintings in New York 1998) and contributing to a relativisation of the victim theory since the mid 1980s.

Soon after the war, when restitution questions came to the fore, partly induced by the United States and the Jewish Diaspora, the first response by Austrian policymakers and those responsible was not to re-establish a Jewish community in Austria, by returning wealth and evoking re-immigration again. The Socialist (SPÖ) and communist Party (KPÖ) had drawn concepts of a “social restitution” for NS victims in the country. This was financed by “heirless” or “unclaimed” property that had been deposited in a special fund. This policy would have denied the property rights of those NS-victims who were forced into exile or heirs of those murdered in the Shoa. This concept was given up already in 1946 when the first of seven subsequent restitutions laws were passed by parliament (1946 -1949).

Thus, restitution was very much limited to those properties that were present in Austria and could be identified as illegitimately confiscated, such as real estate. Restitution took the form of in-kind restitution. Under the laws, such properties could now be expropriated and returned to their rightful owners or their heirs. Whereas identifiable artefacts and movables were more or less successfully restituted, companies could often not be restituted as the majority of small and medium enterprises had been liquidated between 1938 and 1945. Restitution of companies was by thus limited to some major companies. Nor was there any possibility for reinstating licenses and copyrights until 1956. It was the same situation for tenancy and leasehold rights until 2001. In 2001, Austria set up new restitution and mainly compensation process dealing with those cases that had been neglected so far, such as dormant accounts, leasehold and tenancy rights, movables and forced and slave labour. This was again formalised through an international treaty with East European states, the USA and interest group and lawyers from the victims’ side.

Jumping to the present, Mr. Lütgenau pointed out how in 1998 a discussion related to art and cultural objects started in Austria following a confiscation of important modern Austrian artworks in New York, demanding the restitution of works stolen from Austrian NS-victims. In the same year, Austrian parliament passed an art restitution law that brought fundamental changes to the Austrian policies of compensation and restitution. Federal collections and museums were now obligated to research their holdings for objects with a NS looting history (provenance research). They then had to submit objects identified for restitution by the Federal Minister for Culture. Now the federal state is obligated to apply this injunction in 8 of 9 provinces while some cities joining the policy have their own laws and regulations.

The speaker noted that some areas have been phased out by the present policies and would not be dealt with except by a new amendment to the 1998 art restitution law that is expected to be passed by the end of 2009. He pointed out that other important art looting policies such as the Stalinist lootings and confiscations in Eastern Europe (1924–1989), and Maoist and communist expropriations in China from 1946, as well as colonial looting and unethical art transfer has not been addressed so far.

Related to colonial unethical transfer of art and cultural objects from Africa, for example, Mr. Lütgenau pointed out that due to Austria's denial of having any "colonial history", it is unlikely to see any movement on this issue in the near future, if at all. Referring to Austria's substantive part in the "scientific" and economic penetration of Africa in the 19th and 20th century, the speaker presented two cases in Austria:

- 1) The Mexican "penacho de Montezuma" in the Museum für Völkerkunde (Anthropology) in Vienna (known as "Montezuma's crown"), that was "presented by Hernan Cortez to Emperor Charls V. in 1519. The case concerning this piece, together with four feather mosaics (one of the last remaining pieces of pre Columbian feather art demanded by Mexico) has been pending since the early 1990s and there is still no solution is in sight.
- 2) The issue of the human remains from the South African people of the San, which were unlawfully taken by a leading Austrian anthropologist and his colleagues before World War I. those are still held in the Museum of Natural History and the Institute of Anthropology.

Two South African scholars, Martin Legassick und Ciraj Rasool – from the University of the Western Cape – have brought this case to the attention of Austrian anthropologist. Following a similar case where human remains from indigenous ethnic groups in Australia were successfully returned to their country, restitution of these human remains, that in fact are neither Art nor cultural objects, is expected in the near future.

The response of Mr Issaka Souaré

Mr Souaré began his response by noting that any type of occupation tends to be accompanied by looting and that that care must be taken in classifying what objects fall within the realm of restitution, who are the rightful beneficiaries and who are the true culprits.

Talking specifically about Africa, he identified three situations in which the question of restitution arises: 1) the practice of enslavement; 2) the occupation of the continent by various European colonial powers and the systematic looting and dispossession that accompanied it; and 3) public funds that certain corrupt African leaders have siphoned out of their national treasuries and deposited in foreign bank accounts, mainly in Western capitals.

With regard to the first situation, he highlighted the difficulty in identifying the true beneficiaries given that boundaries have dramatically changed. As for the second situation, the problem there lies with multiple culprits, given that certain parts of the continent were occupied by different colonial powers at the same time and/or at different times, such as territories that were under German occupation (e.g. Namibia, Cameroun and Togo) before World War I and changed hand under the League of Nation's so-called mandate system. As for the third situation, he noted that responsibility was shared between African leaders that stole these funds and the governments of Western countries in whose banks the funds are kept. In this regard, he regretted the lack of cooperation by the Tony Blair administration in the UK to return stolen funds by the Sani Abacha regime to Nigeria despite credible evidence reportedly produced by the Nigerian authorities that such funds exist in British banks. Yet banks in Switzerland and the British island of Jersey have cooperated in this matter and returned about US\$400m to Nigeria.

Discussion

After the presentations, Dr David Zounmenou, the chair of the seminar, opened the floor for discussion and all participants were eager to ask questions and make comments on the subject. It came out in the discussions that attempts by South African diplomats to reacquire the remains of Saartjie Baartman from France were initially met by threats from the French, who eventually after two years invited the diplomats to see her. Some noted the concept of restitution was not yet satisfactorily defined, as it was still unclear whether the intangible aspects of restitution were included in its definition. A question was asked: why, for instance, do governments easily restitute human remains whereas the restitution of cultural artefacts is problematic? It was argued that reparation should be given more focus while schemas hereto did not function as desired. The jurisdiction by courts remained fuzzy and also the calculation of the amount of financial compensation needed clarified guidelines.

It was furthermore noted that the current close (and often corrupt) ties that certain African leaders entertain with their ex-colonial powers impeded the restitution process. In this regard, it must be determined whether cultural artefacts were given or stolen and how 'gifts' could possibly be re-acquired. The speaker noted that this was an intricate issue since while time has passed, reinterpretations of what classifies as stolen cultural objects has changed.

It was suggested that there exists no proof that all artefacts were given as gifts by African leaders. A scheme could be set up where countries possessing African objects should pay for

the 'renting' of objects until they were returned to the continent. But on the other hand arguments from these same countries sometimes claim that Africa should pay for the maintenance of the objects since Africa would not have been able to take care of these themselves. African countries have the will to protect the objects but only few are able to do so because of lack of funds. Since everybody cannot receive restitution, the South African experience has shown that solutions can be found where general society is restituted communally with memorials, such as the Freedom Park.

Finally, the need to pursue certain cases in courts was emphasised, particularly that the relative success of the Jewish experience was made possible thanks mainly to this approach and that some African countries or communities are using the same mechanism. Those include the court cases now in the US and involving American companies that allegedly contributed to certain repressive policies of the Apartheid regime in South Africa.

Report completed on 22 June 2009.