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Returned Books to Germany Taken after the World War II and Its Implications on Ukraine

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On June 27th, 2013, in a public ceremony, Ukraine hands over to Germany 713 books from the so-called “Sugar Library” relating to the sugar industry.¹ The Ukrainian troops seized them shortly after the World War II allegedly from the Sugar (Zucker) Museum in Berlin.² Automatically, in a reader’s mind certain questions arise: why the troops specifically took those books and not for example some trade secrets about the Mercedes Benz and why the country decides to give them back now and not earlier and in fact for free.

As to the first question, a representative from the Sugar Museum clarifies that these 713 books are taken from “the library of the [the Sugar Institute] ‘Institut für Zuckerindustrie’ not the Sugar Museum.”³ At the time, the Sugar Museum was a part of that institute, separate from the library.”⁴ Currently, the owner of the books is Berlin Institute of Technology (the Technische Universität Berlin or simply the TU Berlin).⁵ A librarian from the TU Berlin explains that the article simply describes the signing of the contract, but they expect to receive these 713 books in the second half of August.⁶ The library of the sugar institute contained 13350 volumes of which 11500 volumes were confiscated.⁷ In 1951, the institute merged with the TU Berlin, and now the library is a part of the department of food technology.⁸ The history of the institute goes back to 1867.⁹ From the very beginning, it developed a specialty library that considered one of the most

¹The First Channel, *Ukraine to return to Germany over 700 books taken during WW-II* (July 2013) (available at <http://www.nrcu.gov.ua/en/148/535041/>).

² Id.

³ E-mail from René Spierling, Christine Keruth, and Volker Dr. Koesling, *Returned Books*, the Sugar Museum in Berlin (July 2013).

⁴ Id.

⁵ Federal Foreign Office, *Books Returned to Germany* (July 2013) (available at http://www.auswaertiges-amt.de/EN/Aussenpolitik/KulturDialog/Aktuell/130625_Zuckerbibliothek.html).

⁶ E-mail from Angelika von Knobelsdorff, *InfoDesk*, the TU Berlin (July 2013).

⁷ Id.

⁸ Id.

⁹ Id. E-mail from the TU Berlin.

important in the field of sugar industry.¹⁰ Today, the library holds a collection of "sugar technology, sugar chemistry and sugar industry" which is again the most extensive in the sugar industry in the world.¹¹ The librarian also pointed out to the lost art database, where I suspect the rest missing books are listed.¹²

The sugar library used to be accessible only to the faculty members until 2004, but now, they are integrated in the university central library and available through the online catalogue.¹³ The library staff is working on a website to digitalize the collection.¹⁴ Thirty books have already been digitalized, and two hundred seventy books are on their way.¹⁵ This fall the university plans to have a ceremony and small exhibition.¹⁶ By the fall of 2014, they expect to receive even more books.¹⁷

A digitalized database contains ninety five books both in English and German obviously. Some of the English written books involve England not Germany. They are "Account of a new Method of cultivating the Sugar Cane" published in 1779 by Charles Casaux and more comparatively recent books "[The] history of sugar and sugar yielding plants" published in 1866 by William Reed, "Sugar-beet growing in England, as a profitable crop" published in 1891 by Henry Mirehouse, and "A treatise on the manufacture of sugar cane" published in 1872 by Peter Soames.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

All these books discuss different aspects of sugar manufacturing such as weather, different cane plants, cost, machinery, and prevalent social issues. For example, in 1780, on the Barbados Island, a hurricane occurred and caused 3,000 deaths and 1,000,000 pounds to property.¹⁸ Another example involves manufacturing. One book goes so deep into detail that describes how to build the whole factory.¹⁹ Since it is the only one book available, I suspect that the troops took more of its type. Germany introduced the manufacture of refined sugar to England somewhere in 1600.²⁰ A prevalent social issue that all the books describe is slavery. Since the sugar cane grows in a hot climate, only slaves could work in such an environment.²¹ On one account in Berbice, Guyana, slaves revolted, and the colony almost escaped destruction. One problem was harsh condition, and the other was that not all colonies had supplies such as fresh water and fuel.²²

Currently, the Museum of London Docklands at the location where in fact originally hogsheads were processed dedicates the whole exhibition called Sugar and Slavery, and they put the whole history in the perspective which was described in the books in parts. What special about sugar, it was cash crop.²³ Under the right climate conditions, the crop can be harvested several times each season.²⁴ As a result, the import had increased by eight hundred percent, and the profit was fantastic almost twenty percent on return on investment from a successful trip.²⁵ Slavery is directly related to sugar because again those cultivating the cane endured high

¹⁸ William Reed, *The history of sugar and sugar yielding plants*, 19, 1866 (available at http://ubsrvgoobi2.ub.tu-berlin.de/viewer/image/BV024438813/1/LOG_0000/).

¹⁹ Peter Soames, *A treatise on the manufacture of sugar from the sugar cane*, 90, 1872 (available at http://ubsrvgoobi2.ub.tu-berlin.de/viewer/image/BV024500791/1/LOG_0000/).

²⁰ L. J., *Sugar*, 11, 1844 (available at http://ubsrvgoobi2.ub.tu-berlin.de/viewer/image/BV024498522/1/LOG_0000/).

²¹ Id. L. J., 6.

²² Id. Reed, 84-85.

²³ Caroline Bressey, *Reading the London Sugar & Slavery Gallery*, 17, Museum of London Docklands Guidebook.

²⁴ Id. Bressey, 17.

²⁵ Id. 17, 21.

temperatures, and to provide such workforce for such environment, London was the fourth trading port in the world.²⁶ Success in trading led to social elevation either in a political office such as the Bank of England or a directorship in Lloyds, an insurance group.²⁷

During the harvesting period, the boiling house was in operation twenty four hours a day, six days a week. The dangers created inside furnaces were an equivalent to an industrial factory.²⁸ The victims were subjected to brutality inside such houses and plantations, so they revolted. The cost to suppress rebels among colonies was higher and higher.²⁹ An outstanding army needed to be kept an average of 14,000 – 18,000 soldiers.³⁰ Also, special privileges in custom duties and protectionist measures related to slavery and sugar industry were causing an imbalance within British commerce at the expense of other trade areas.³¹ For example, the same resources could be spent to build the railroad.

The Abolition Act was passed on August 7th, 1833 and approved by the House of Lords two weeks later.³² As a part of the deal, the period of additional employment was reduced six years of work after passing the Bill, and the amount of government compensation increased from fifteen to twenty million to slaveholders.³³ In colonies such as Antigua and Bermuda, the legislature had already decided to accept total and unconditional liberation.³⁴ Not surprising, after the abolition of slavery, most members were of ordinary working class as well as their

²⁶ Id. Bressey, 17, 20.

²⁷ Id. 24.

²⁸ Id. 17.

²⁹ Id. 32.

³⁰ Id. 31.

³¹ Id. 38.

³² Id. 37.

³³ Id.

³⁴ Id.

children and grandchildren.³⁵ Although they did not leave their written experiences, in London, domestic service became increasingly important, and most women worked as babysitters, washerwomen, needlewomen.³⁶

Perhaps, it did not make much difference for the troops whether it was the sugar institute or the museum, they wanted to take away something practical such as sugar manufacturing. Perhaps, they even knew about the library. The *means rea* requirement is present. Therefore, it was not simply a random pick similarly to an indecisive reader not knowing what to read picking up a random book from the bookshelf in the library. In comparison, in *U.S. v Lynch*, 233 F.3d 1139 (2000), the *means rea* was lacking. The defendant found a skull which turns out to be at least 1400 years old.³⁷ To criminalize the defendant, the State has to show “at least minimal traditional *means rea* principles.”³⁸ In other words, the Government has to show that “a defendant knows or had reason to know that he was removing an ‘archeological resource.’”³⁹

The books will be brought from Kyiv to Berlin by a truck in a similar way to transport furniture.⁴⁰ The company is specialized in transportation from Eastern Europe, so there will be no issue with custom declarations.⁴¹ There is no special or additional insurance to cover the loss of shipment besides the standardized coverage.⁴² The carrier’s policy is the following: “Please note that all activities of the company in the course of business, are undertaken subject to the German forwarders standard terms and conditions (ADSp), latest edition. According to chapter 23 of the ADSp the liability of the German forwarders for loss or damages of goods is limited to

³⁵ Id. Bressey, 54.

³⁶ Id. Bressey, 54, 56.

³⁷ *Lynch*, 233 F.3d at 1140.

³⁸ Id. *Lynch*, 233 F.3d at 1140.

³⁹ Id. at 1146.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

Euro 5 per kg of the gross weight. For transport services by using various means of transportation or in case of huge damages more over the liability of the German forwarders is limited to 2 SDR per kg.”⁴³

These 713 returned sugar industrial books are German cultural property. The term cultural property speaks for itself: simply put items that belong to the German tradition. These items need to be of a significant value, not necessarily of a monetary value. The monetary value of these 713 books is not very high because otherwise they would be more reasonably transported than a furniture truck and insured than per weight of furniture. It is less the monetary value of the books important but more their intellectual value as a part of the comprehensive, specialized sugar library as well as the historical-cultural value. The cultural value is not in the invention of sugar but rather in the manufacturing process similarly to Henry Ford’s car manufacturing process. That’s why there is the Sugar Museum in Berlin similarly to the Henry Ford Museum in Detroit.

A more rhetorical question is why there is the museum as an institution in the first place. As true 250 years ago as it is today, museums’ mission is to “collect, preserve, and present things in the public’s interest.”⁴⁴ In other words, a museum such the Sugar Museum in Berlin or the Henry Ford Museum in Detroit exists because the public wants them to be. There, each individual piece of art tells its own story. Then, the question becomes why not to display the same art at restaurants, cafes or at a private residence home. In the beginning, that was the case: the paintings were hanging in churches and theaters, but with time, museums evolve. This

⁴³ Id. E-mail from the TU Berlin.

⁴⁴ James Cuno, *Museums Matter in Praise of the Encyclopedia Museum*, 34, The University of Chicago Press.

evolution is similar to the introduction major soccer league (MSL) in Queens, New York.⁴⁵ New York does not have a home league. The New York Red Bulls is located in Harrison, New Jersey. After a stadium is built, a team is formed, and local soccer players, who perhaps used to play on the streets before, would be preferred. A perfect example could be someone like Matt Eliason, a banker by profession, from Lombard, Illinois who scored a breath taking goal in a charity game "The Rest of the World vs. Lionel Messi and Friends".⁴⁶ Public interest in soccer games or any ball game is not different from its interest in museums. This interest is a utility that unites people despite their multi-different views.

Any item of the German origin will not qualify as cultural property. For example, a simply wheel from a 1940 Mercedes-Benz will not qualify. German representatives can easily determine whether certain items fall under this magic category of cultural property. The test is subjective. That's why the definition section of cultural property under UNESCO's Convention on the Property Protection in the Event of Armed Conflict is very broad:

- (a) movable or immovable property of great important to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical, or archeological interest; as well as scientific collections and important collections of **books** and archives or of reproductions of the property defined above.⁴⁷

⁴⁵ The New York Times, *M.L.S. Promotes Stadium at a Town Hall Meeting*, (December, 2012) (available at <http://www.nytimes.com/2012/12/06/sports/soccer/mls-sets-sights-on-team-and-stadium-in-queens.html>).

⁴⁶ MSN, *Matt Eliason Financial Analyst Scores Goal against Pros in Lionel Messi Charity Soccer Match* (July, 2013) (available at <http://now.msn.com/matt-eliason-financial-analyst-scores-goal-against-pros-in-lionel-messi-charity-soccer-match>).

⁴⁷ UNESCO, *Final Act of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict* (July 2013) (available at <http://unesdoc.unesco.org/images/0008/000824/082464mb.pdf>).

The books easily satisfy the Convention's terms of "important collections of books and archives." First of all, the librarian from the TU Berlin explains that they want the books back not because now they don't know how to manufacture certain types of sugar but because of "their historical importance", and they also want to enrich the current collection for educational purposes.⁴⁸ The negotiations started back in 1991, since Ukraine declared independence twenty two years ago.⁴⁹ Apparently, 713 books out of 11500 volumes are just a tiny fraction.⁵⁰ They believe that the Ukrainian authorities have more of these books which they expect to receive from them by 2014.⁵¹

Second, the news of the returned books is published at the German Federal Foreign Office, a body to maintain relationship with other states and international organizations.⁵² In the U.S., an equivalent office is the Department of State. Third, Cornelia Pieper, the German Minister of State at the Federal Foreign Office, herself called the books "war-displaced cultural property."⁵³ Fourth, during the signing agreement ceremony, with two country representatives present, the Deputy Culture Minister of Ukraine Bronislaw Stytschynsky constructively handed over the books to German Ambassador Christof Weil.⁵⁴ Important to notice this is not the first exchange of cultural properties between two countries. For example, in 2001, Ukraine returned to Germany the Bach archive followed by the 2008 return of a drawing by G.F.A. Lucas.⁵⁵ Subsequently, in 2011, Germany returned 210 hand-painted Easter eggs.⁵⁶

⁴⁸ Id. E-mail from the TU Berlin.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Id. Federal Foreign Office; Federal Foreign Office, *Purpose/Activities*, (July 2013) (available at <http://www.deutsche-kultur-international.de/en/org/organisations/federal-foreign-office.html>).

⁵³ Id. Federal Foreign Office.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

Although the troops looted the books from the institute, they did not breach any international convention. There was none concerning art preservation. The Nazi themselves were great thieves.⁵⁷ They stole paintings, sculptures, furniture, and religious objects. Among them were well known paintings such as Klimt's Adele, Vermeer's Geographer, da Vinci's Lady with an Ermine, Rembrand's Landscape with the Good Samaritan, just one out of twenty seven paintings, and Raphael's Portrait of a Young Man.⁵⁸ Hitler collected them for his planned enormous museum in his home town Linz, also planned to be an imperial city in Europe.⁵⁹ The museum expected to contain 1000s of galleries.⁶⁰ To fill these 1000s of galleries, he had a wish list of paintings he wanted.⁶¹ The list corresponded to the invasion of countries.⁶² Not only Adolf Hitler collected art but also his deputy Hermann Goring and other Nazi members.⁶³ At the end of the war, Goring's collection contained 1700 pieces of 700 pieces from the National Museum of France in total bigger than London's Nation Gallery of Art European Painting Collection.⁶⁴ His collection had grown more than 10 times since the war provoked.⁶⁵

As a result, Poland was missing 59,000 pieces including mentioned Raphael's Portrait of a Young Man that was never found.⁶⁶ In Paris, fifteen leading art Jewish dealers lost their 16,000 piece collections. France was missing 22,000 items.⁶⁷ Russia was missing 35,000 works of art and 5,000 pieces of furniture.⁶⁸ The Nazi also looted Italy, its ally.⁶⁹ After the war, just from one castle to ship the looted arts back to their country of origin took one year and forty nine train car

⁵⁷ The Rape of Europa (2006), DVD.

⁵⁸ Id. The Rape of Europa.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id.

loads packed tightly.⁷⁰ In a salt mine, the vast of the art collection for the Linz museum was two or three balconies high: 6500 paintings, 3000 drawings and sketches, and over 100 sculptures.⁷¹ Moreover, simply taking a collection of books from the institute in Germany perhaps as an act of recidivism did not look that evil to what the World War II has done.⁷² Fifty millions died in six years, and cities such as Warsaw and Florence almost ceased to exist.⁷³

Earlier discussed UNESCO's Convention on the Property Protection in the Event of Armed Conflict was promulgated after and triggered by the World War II in 1954 as an international effort to prevent a similar art disaster.⁷⁴ To preserve national art heritage means to preserve a nation from destruction by war for future generations. A much stronger way to preserve a nation is through keeping its traditions. This is exactly how people live in tribes in Iraq today despite various wars and despite looters destroying their own cultural objects.⁷⁵ Famous American lawyer Gerry Spence of the Native American origin would have approved such settlements as opposed to the large city-like integration what he called shoe boxes. He himself lives in Jackson, Wyoming which has population close to 10,000 people probably less than at Union Square in New York City at typical Sunday afternoon.

Finally, had the Convention been in place during that time, it would initially apply to the 713 returned books as "important collections of books and archives". Its article 4(1) asks the contracting parties to respect cultural property.⁷⁶ However, Article 4(2)'s waiver would apply where "military necessity imperatively requires such as a waiver."⁷⁷ Although the library of the 'Institut für Zuckerindustrie' is located in Berlin, Berlin did not much differ from other

⁷⁰ Id. The Rape of Europa.

⁷¹ Id.

⁷² Id.

⁷³ Id.

⁷⁴ Id. UNESCO.

⁷⁵ Joanne Farchakh-Bajjal, *Who Are the Looters at Archaeological Sites in Iraq?*, 51 (July 2013).

⁷⁶ Id. UNESCO.

⁷⁷ Id. UNESCO.

battlefield cities, from the first look, the waiver would probably apply.⁷⁸ In fact, just the British Royal Air Force itself unloaded one million tons of bombs on German cities.⁷⁹ As a result, the main buildings in the cities were missing roofs.⁸⁰ However, if England and its allies were the signatures of the Convention, they would be bound its terms and therefore required to preserve the library of the Sugar Institute from bombing and looting.

As to choosing the Mercedes Benz's trade secrets instead of the sugar industry books, there were a few problems. There were only six models available from 1920 to 1943, and between 1937 and 1942, Mercedes-Benz built type 320s only a total of 6861 vehicles.⁸¹ Generally, there was a little global market in 1945 for these cars to reach Ukraine but the concept of import and export always existed since the early empires. In other words, at that time, in Ukraine, people did not drive the Mercedes Benz because of the mentioned reason, because they had their own models, and because cars were not commonly used as it is nowadays. Just recently, a 1954 Mercedes Benz was sold for a record \$29.65 million.⁸² Let's assume the concept to build that model existed in 1945 somewhere in the development room in the factory. However, it was hard to predict that Mercedes Benz will survive and become one of the best selling luxury automakers in the world. However, with sugar, it was just the opposite.

Then, the question becomes why seizing sugar and not instead coal or oil industrial books. The evidence indicates the books are not only in German, but also in English, French and Italian languages.⁸³ The reason for that is perhaps the soldiers could not distinguish languages or

⁷⁸ Id. The Rape of Europa.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Myautoworld, *Mercedes-Benz Historical Models (1945-1920s)* (July 2013) (available at <http://myautoworld.com/mercedes/history/cars1930/cars1930.html>).

⁸² Business Insider, *A 1954 Mercedes-Benz Racecar Just Sold For A Record \$29.7* (July 2013) (available at <http://www.businessinsider.com/a-1954-mercedes-benz-racecar-just-sold-for-a-record-297-million-2013-7>).

⁸³ The First Channel, *Ukraine to return to Germany over 700 books taken during WW-II* (July 2013) (available at <http://www.nrcu.gov.ua/en/148/535041/>).

more probably were subject oriented. Moreover, there is no evidence that coal or oil industrial books were not ceased as well, but the Ukrainian side assured to look further to “return valuable property lost or illegally seized during the Second World War.”⁸⁴

While sugar has little or no significance now, in 1945 it was a commodity like the TV set or car is nowadays, and before 1945 it was even a luxury. During the 17th and 18th centuries, in Europe, the demand for sugar arose substantially almost by 800%.⁸⁵ In comparison, in the 1600s it was regarded as a luxury commodity only available to the wealthy.⁸⁶ What special about sugar as a commodity, there are many forms of it. Sugar is typically made of sugar beet and sugar cane.⁸⁷ Cane quickly grows under the right climate condition, so it can be harvested several times per season.⁸⁸ From the cane derives the sucrose solution, and after boiling the solution derives the sugar crystal solution.⁸⁹ Then, it is good to import either as a solution in its brow form or the sugar crystal solution to a refinery such as Tate & Lyle here in London.⁹⁰ Tate & Lyle is the largest sugar refinery in the world capable to process up to 170 tons of raw sugar per hour.⁹¹ It also is a manufacturer of renewable food and industrial ingredients.⁹² It uses innovative technology “to transform...sugar into value-added ingredients for...food, beverage, pharmaceutical, cosmetic, paper, packaging and building industries.”⁹³

There are different ways sugar used in variety of industries. For example, granulated sugars are to sweeten hot drinks. At Tate & Lyle, this type of sugar performs well with cakes,

⁸⁴ Interfax News Wire, *Ukraine gives back to Germany books taken during WW-II* (July 2013) (available at <http://www.interfax.co.uk/ukraine-news/ukraine-gives-back-to-germany-books-taken-during-ww-ii/>).

⁸⁵ Id. Bressey, 4.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Tate & Lyle, *Introduction* (July 2013) (available at <http://www.tate-lyle.co.uk/NR/rdonlyres/eptmecru35umqhcezbp47v7tkif4w4r7lhxh5d7etp5izjercq65ohpk7ix77cnmqecpevd5vhsru5bnizp5ts4goqg/TateLyleSugars.pdf>).

⁹² Id. Tate & Lyle.

⁹³ Id.

candies, jam, baked products, soft drinks, frozen foods, and canned goods.⁹⁴ Typically, milled sugars are used to dust foods and to bake. At Tate & Lyle, it is used in the same way for soft confectionery and as “a topping for buns and pastries” and also in making tables perhaps because of its powder form.⁹⁵ Liquid sugars are to produce beverages, ice cream, and jams. At Tate & Lyle, it is also used similarly for soft drinks, ice creams, whipped sugar confectionery and dairy products.⁹⁶ Invert sugars are used to produce breads, cakes and beverages for adjusting sweetness. At Tate & Lyle, it is used in a variety of ways from suspension medicines to breakfast and cereal bars and in its syrup form, to develop and enhance flavors.⁹⁷ Brown sugars are used to produce confectionery and toffees. At Tate & Lyle, this type of sugar is used in toffees, fudges, gingerbread, puddings, cakes, cereal bars, flapjacks, and chutneys.⁹⁸

There are also other types of sugar that Tate & Lyle does not mention such as screened sugars to blend in dry mixes, sugar cubes to sweeten drinks, sweeteners to produce low calorie sugar, sugar alcohols in chewing gums to prolong a flavor taste, and fruit alcohols to produce wine. In addition, U.S. based Domino Sugar produces the following additional types: Brown Rice Syrup for cereals, prepared foods, snacks, seasonings and sauces; Flavor and Texture Modifiers, unique sugar, to control the sweetness for texture, structure and dispersion without added sweetness; Icing Sugars to yield a soft, velvety texture in icings and high quality glazes; Honey Dry, Liquid, and Powder for honey-based options; and Malted Barley and Liquid organic and natural, a flavorful natural sweetener extracted from the whole barley grain for breads,

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

bagels, cereals, crackers, cookies, confections, pretzels, and snacks.⁹⁹ Clearly, there was a reason to see German's books for the usage of sugar.

Now, the question becomes why Ukraine decides to give back these 713 books. Has Ukraine become so generous? Yet, under a similar situation, its neighbor Russia refuses to give back art to Germany.¹⁰⁰ In fact, Russia holds tens of thousands of art taken from Germany.¹⁰¹ Keeping trophy art is very popular and publicly supported.¹⁰² In fact, in 1995, the Parliament declared it a state property.¹⁰³ The other justification is to keep the art that these works are the price for millions who died.¹⁰⁴ Russia claims that there is no international basis that would require giving back looted art.¹⁰⁵ In 1990, Russia and Germany signed a Good-Neighborliness Treaty that requires returning to each other country "unlawfully removed art treasures."¹⁰⁶ Twenty-three years later, the treaty seems to have been written on sand.

Similarly to the Good-Neighborliness Treaty, the U.S. has enacted the National Stolen Property Act (NSPA) and the Convention on Cultural Property Implementation Act (CPIA). To transport stolen items in interstate and foreign commerce violates 18 U.S.C. § 2315 of the National Stolen Property Act (NSPA).¹⁰⁷ The statute states:

Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more... which have crossed a State or United

⁹⁹ Domino Specialty Ingredients, *Ingredient Overview* (July 2013) (available at <http://www.dominospecialtyingredients.com/?pageid=1087>)

¹⁰⁰ News Yahoo, *Merkel tells Putin Germany wants looted art returned* (June 2013) (available at <http://news.yahoo.com/spat-over-looted-art-overshadows-merkels-visit-russia-134448593.html>).

¹⁰¹ Id. The Rape of Europa.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ ARTnews, *The German-Russian Stalemate*, (Feb 2011) (available at <http://www.artnews.com/2011/02/01/the-german-russian-stalemate/>).

¹⁰⁷ U.S. v. Schultz, 333 F.3d 393, 395 (2003).

States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken...shall be fined under this title or imprisoned not more than ten years, or both.¹⁰⁸

Moreover, since the NSPA has a “broad purpose”, and “the statute should be broadly construed”, a violation of similar type law like the Good-Neighborliness Treaty or a violation of the Treaty itself in either Russia or Germany could be construed as a violation of the NSPA.¹⁰⁹ The court came with the same conclusion with the Egyptian Law 117.¹¹⁰ In the Good-Neighborliness Treaty context, a country may be treated like a person for the legal purposes. Likewise, a corporation is treated as a person for the criminal purposes. Furthermore, the NSPA applies to stolen property even though the person may not be the true owner.¹¹¹ This is a stretch from the common law rule of the lost property that states that the founder could keep it until and unless the original owner comes forward to claim it.¹¹² Under this scenario, in the Good-Neighborliness Treaty context, Germany could claim the looted art from Russia although the true owner is Italy.

As to the Convention on Cultural Property Implementation Act (CPIA) is the U.S.’s ratification of the 1970 UNESCO Convention to deal with illicit trafficking of cultural property.¹¹³ Russia is a signature of the 1970 UNESCO Convention on illicit trade.¹¹⁴ Although it is an import law not a criminal law, it still gives authority to seize items but not to criminalize.

¹⁰⁸ Id. Schultz, 333 F.3d at 399.

¹⁰⁹ Id. at 402.

¹¹⁰ Id.

¹¹¹ Id. Schultz, 333 F.3d at 402.

¹¹² Legal Information Institute, *Lost Property* (July 2013) (available at http://www.law.cornell.edu/wex/lost_property).

¹¹³ Archeological Institute of America, *Convention on Cultural Property Implementation Act (CPIA) of 1983: Fact Sheet* (April 2010) (available at <http://www.archaeological.org/news/sitepreservation/75>).

¹¹⁴ State Parties to the 1970 UNESCO Convention by Region (July 2013) (available at <http://dosfan.lib.uic.edu/usia/E-USIA/education/culprop/unesco02.html>).

Section 18 USC §2609 of the CPIA Seizure and Forfeiture states: “Any designated archaeological or ethnological material or article of cultural property, as the case may be, which is imported into the United States in violation of section 2606 of this title or section 2607 of this title shall be subject to seizure and forfeiture.”¹¹⁵ Although the UNESCO Convention is not specifically targeted the German stolen art in 1945, there is authority there to return it.

There is a supplement to the 1970 UNESCO Convention called UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects enacted in 1995.¹¹⁶ It considers monetary remedy of restitution as an alternative for the return of the property.¹¹⁷ As in the case with the sugar books, the monetary value may not be effective because it may not be high. Also, under the Convention, the statute of limitation never tolls or under Article 3 (5), tolls within 75 years or higher for the claim of restitution except three years from the time of the claimant’s knowledge.¹¹⁸

The Ukrainian position is different: the country wishes to join the European Union and find a favor in Germany, who is the founder of the union. The signing of the Association Agreement is the first step of integration. The agreement was initiated with Ukraine in 2012 under the Eastern Partnership protocol and was not ratified due to the claim of tipping judicial scale in Ukraine. The next try will be this November at the Vilnius summit, it already generates a buzz, and all documents are ready including the approved text of the EU agreement.¹¹⁹

The Eastern Partnership protocol in the first place means an acceptable cultural configuration between the Union and a member country. Apparently, Eastern and Western

¹¹⁵ Legal Information Institute, *19 USC §2609 – Seizure and forfeiture* (July 2013) (available at <http://www.law.cornell.edu/uscode/text/19/2609>).

¹¹⁶ UNESCO, *Text of the UNIDROIT Convention* (July 2013) (available at <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.pdf>).

¹¹⁷ Id. UNESCO, *Text of the UNIDROIT Convention*, Chapter II – Restitution of Stolen Cultural Objects, Article 3.

¹¹⁸ Id. UNESCO, Article 3(4).

¹¹⁹ Carnegie Europe, *A Successful Vilnius Summit: Mission Possible* (June 2013) (available at <http://carnegieeurope.eu/2013/06/04/successful-vilnius-summit-mission-possible/g88t>).

Europe differs culturally. For example, under the Ukrainian law, to be gay or lesbian is not a crime, but there is an outstanding bill in the Parliament stating that promoting homosexuality is a punishable offense up to 5 years.¹²⁰ Perhaps, the reason for the law is not to change natural law and not to drag other people with “pride” parades to what always are considered immoral. This kind of law derives from the church influence from an endless battle of ecclesiastical and secular worlds’ line drawing. Therefore, if a homosexual couple, for example, from England decides to tour Chernobyl’s site in Ukraine and in the mean time, wearing rainbow t-shirts, they give away small rainbow flags, they are highly likely going to be arrested and tried. The law applies to all areas respectively including adoption. For example, when Elton John wanted to adopt a child from Ukraine, he couldn’t because his “civil partnership with David Furnish would not be recognized as a marriage in Ukraine..., and foreign citizens who are single have no right to adopt.”¹²¹

The geographic scope of the Eastern Partnership will include Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine. The protocol will include visa, free trade, and strategic agreements but don not mention accession to the European Union. The visa category itself has certain phases. Ukraine has fulfilled phase one so far. The next phase is planned to be implemented after the Vilnius summit.¹²² The second and final phase defines the conditions for lifting visa requirements for short-term visits to the Schengen union. The Schengen area is a group of 26 European countries sharing common territories as one country for traveling purposes.

¹²⁰ Euronews, *Landmark law set for Ukraine to ban promotion of homosexuality* (Oct 2012) (available at <http://www.euronews.com/2012/10/03/landmark-law-set-for-ukraine-to-ban-promotion-of-homosexuality/>)

¹²¹ BBC New, *Elton ‘cannot adopt in Ukraine’* (September 2009) (available at <http://news.bbc.co.uk/1/hi/entertainment/8255327.stm>).

¹²² Interfax News Wire, *EU could allow Ukraine to switch to second phase of visa regime action plan at Vilnius summit* (April 2012) (available at <http://www.interfax.co.uk/ukraine-news/eu-could-allow-ukraine-to-switch-to-second-phase-of-visa-regime-action-plan-at-vilnius-summit-says-foreign-ministry/>).

The tipping judicial scale that holds back Ukraine from signing the Association Agreement relates to Prime Minister Yulia Tymoshenko's imprisonment. The EU's claim is the following: we have seen and known Yulia personally here in the European Parliament. She is a prominent leader and socially approved and desirable person, and the fact that she lost an election ended her in jail. Therefore, it is all politically initiated. The Ukrainian current government administration's position is the following: you may have met and known Yulia personally, and she may be a socially approved and desirable person, but we have evidence that she was involved in a murder of a member of parliament in 1994. However, for the sake of the people, we would like to do you a favor the EU and try her for a less crime such as abuse of power for signing an unfavorable natural gas contract with Russia. Otherwise, if she is tried for a murder and convicted, she may never get out of jail. Also, it may be socially undesirable to pardon a convicted individual of a murder. Currently, she serves a seven-year term.¹²³ Since 2011, the case went both directions: she was charged with tax evasion, and the current President indicated that he could pardon her if the agreement with the EU stalls.

The situation is not much different with other politicians in Europe. Italian Prime Minister Silvio Berlusconi was found guilty of a sexual misconduct and sentenced also for seven years.¹²⁴ Former French President Nicolas Sarkozy was tried over illegally accepting political contributions.¹²⁵ The IMF chief Christine Lagarde went court for fraud relating back from the time when she was the French finance minister in 2008.¹²⁶

¹²³ Wire Update, *Ukraine's Tymoshenko transferred to prison to serve 7-year jail term* (Jan 2012) (available at <http://wireupdate.com/local/ukraines-tymoshenko-transferred-to-prison-to-serve-7-year-jail-term/>).

¹²⁴ CNBS, *Berlusconi Sentenced to 7 Years for Abuse of Power, Sex with Minor* (June 2013) (available at <http://www.cnbc.com/id/100838036>).

¹²⁵ US Today, *Lawyer: Former French President Sarkozy facing charges* (March 2013) (available at <http://www.usatoday.com/story/news/world/2013/03/21/sarkozy-charges-france/2007443/>).

¹²⁶ Yahoo News, *IMF chief Lagarde in court in fraud probe* (May 2013) (available at <http://news.yahoo.com/imf-chief-lagarde-court-fraud-probe-194822394.html>).

As for me individually, a Ukrainian immigrant who moved to New York at the age of seventeen, Ukraine's accession to the EU plays a significant role. It is not mainly because of the European community's prestige, but also, for educational and career reasons. I graduated with a J.D. degree from Thomas M. Cooley Law School in 2012. My dream job is to become a judge.

Because of competition, at least to stay on the judicial path, I need to do something extra such as an LL.M degree. An LL.M program needs to directly target the profession. In my thesis paper, I would need to come up with a formula and describe how to become a judge. Therefore, it cannot be an LL.M in Employment Law, Environment, Tax, or Human Rights. There are a few judges out there who previously were tax attorneys, but it does not mean it works all of the time.

A respectable LL.M program is quite competitive and expensive too. In New York City, there are only a few of them no more than four, but for very limited seats, they accept lawyers who already practice in the field. For example, for an LL.M in legal research and writing at NYU Law School, a potential candidate would be someone who works at Thomas Reuters frequently writing and analyzing legal articles. It was merely by fortune that I got accepted to the Notre Dame Summer Program. Other similar programs from Florida State University and Santa Clara University are one half or two times more expensive and with no or little further prospect in the judicial career.

In comparison, Notre Dame Law School runs the one-year, two semester LL.M program in International and Comparative Law at the same facility. This program established in 1986 and is still the only graduate American program outside the United States.¹²⁷ Its focus is on international and comparative law, and the program is designed for students like me from

¹²⁷ Notre Dame Law School, *LL.M in International and Comparative Law* (July 2013) (available at <https://law.nd.edu/international/study-in-london/ll-m-in-international-and-comparative-law/>).

common law countries who seek to advance their training.¹²⁸ Although the International and Comparative Law does not sound the same as legal research and writing, in fact it is even better because it opens up opportunities. Apparently, the International and Comparative Law is a legal research and writing program. As the writing part, it requires working with a faculty member and submitting a thesis paper for LL.M Thesis.¹²⁹ The paper ranging from one to four credits or ten to forty pages is about comparing different legal systems or again inventing a formula how to become a judge under such systems.¹³⁰ As the research part, LL.M. Seminar is dedicated to LL.M students' interest such as lectures and discussions with visiting speakers.¹³¹

The question may arise why I care about this legal research and writing program, or why it matters as supposed to write something on my own and save the cost for the program. First of all, the program creates links with other professionals. I would have never started a conversation with the TU Berlin's librarian and a few others in the future and would never be invited to see the sugar exhibition because on my own, I would not know why I should talk to her in the first place. Perhaps, this person will play a crucial role in my judicial career by giving a positive reference. Second, the successful completion of the program gives you recognition as an LL.M graduate, one level higher than a J.D degree. Third, it shows an effort and consistency to achieve a goal to become a judge.

As the program name sounds the International and Comparative Law, the comparison of different legal systems becomes realistic especially when you are attached in certain ways to such systems. For example, under the Michigan state judicial system, Proposal B amended in 1996 to Article 6, Section 19 of the Michigan Constitution which now requires an attorney to be

¹²⁸ Id.

¹²⁹ Notre Dame Law School, *Academics- Course Descriptions*, (July 2013) (available at <http://law.nd.edu/international/study-in-london/year-and-semester-programs/academics/>).

¹³⁰ Id.

¹³¹ Id.

admitted to practice law for at least five years before assuming a judicial position.¹³² However, before 1996, there was no such proposal, and if there happens to be a retiring judge friend who is willing to recommend someone for his vacant position for the Governor's appointment, the plan gains a realistic turn.

In comparison, under the Federal law there is no such proposal. However, there is no way to escape the experience requirement, so a different strategy needs to be employed. I have one formula in mind to share called call back. That's when a candidate goes clerking to a federal court for a one year, later goes to work for a private law firm, and then is called back to be a judge within a very a short period of time. In such a combination, there is no magic but political connection. For example, Senator William Roth (R-DE) secured his wife Jane Roth's appointment to a District Court in Wilmington, Delaware.¹³³

In the case of Ukraine joining is the EU is another story. The Court of Justice of the EU has one judge per member country. Such a scenario is quite extreme for a realistic approach because then you need to explain why you are so special that the country's government needs to appoint you. It does not mean that the brightest person will be selected but probably the most trusted. Then, the question becomes as in the state and federal courts why certain names and not others make to the list, and then certain candidates advance and not others, and finally one wins. A more realistic approach is when there are two judges per country. Then, one judge may be educated from the country of origin and the other from abroad. However, there are other ways. The EU is directly linked to its parent Germany which opens up the whole spectrum. First, as the name sounds the Federal Republic of Germany should be similar judicially to the U.S. Federal

¹³² Michigan Legislative Website, *Michigan Constitution, Article VI §19* (July 2013) (available at <http://www.legislature.mi.gov/%28S%28latj3v55wz2huqyub1xxpb55%29%29/mileg.aspx?page=getObject&objectName=mcl-Article-VI-19>).

¹³³ Mitchel A. Sollenberger, *Judicial Appointments and Democratic Controls*, 194, Carolina Academic Press (2011).

Courts and so do their election and appointment systems. On the other hand, Germany as well as Ukraine is a civil law country, and to become a judge there, it is a career path.

The LL.M in International Human Rights is the other program that Notre Dame Law School runs though at its home facility in South Bend, Indiana.¹³⁴ The total number of graduates from both programs this year is just fifteen, which means an average seven students per program, considering the number of J.D. graduates is 184.¹³⁵ Nevertheless, the credits earned during the Summer Program contribute to the LL.M in International and Comparative Law, since the same classes are on the list to choose to satisfy the twenty-four-credit requirement.

The cost of tuition alone is \$ 45,500 comparing to \$44,000 previous year.¹³⁶ However, the program requirements are European Union Citizenship and a judicial degree.¹³⁷ It means that without the EU citizenship, there is no way to get into the program. However, if Ukraine signs the Association Agreement this November, at least, I may argue with the admission that although the country is not a member of the EU, it is on its way and soon will become one. In other words, it is just a matter of time. I have brought up this argument before to see what the admission will say, and they did not answer. However, there are two short-term alternatives. In order to make the EU citizenship requirement contradictory, either the U.S. and the EU will reach some kind of a trade deal to encourage other law schools open their graduate programs oversea, or the U.K., where Notre Dame Law Centre is located, pulls out from the European Union. With recent news that Senators reach a deal to cap student loan interest rates until the 2015 academic year, the year

¹³⁴ Notre Dame Law School, *LL.M Program in International Human Rights Law* (July 2013) (available at <https://law.nd.edu/international/center-for-civil-and-human-rights/academic-programs/llm-program-in-international-human-rights/>).

¹³⁵ Notre Dame Law School, *2013 Notre Dame Law School Commencement Awards* (May 2013) (available at <http://law.nd.edu/news/40123-2013-notre-dame-law-school-commencement-awards/>).

¹³⁶ Id.

¹³⁷ Id.

of completion the program, gives even more incentive, justification, and courage to implement such a strategy.¹³⁸

¹³⁸USA Today, *Senators reach deal on student loan interest rates* (July 2013) (available at <http://www.usatoday.com/story/news/politics/2013/07/17/student-loans/2530965/>).