

Committee: Legal (GA6)

Issue: The Challenges of Ownership and Restitution of Cultural Artifacts

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PERSONAL INTRODUCTION

Dear Delegates,

My name is Angeliki Apostolopoulou and I am attending the 12th grade of Arsakeio School of Patras. I am delighted to be serving as one of the deputy presidents in this year's Legal-GA6 committee, since it is my first-time chairing, but my 5th conference overall.

This study guide has been prepared by me and its aim is to help you enrich your work for the upcoming conference. I have tried to include a generous amount of information regarding the topic, with it being as objective as possible for you to be properly informed. I, however, feel the need to ask you not to use this document as your only source. This is a study guide and is not adequate for the entire course of the conference.

I sincerely hope that you find this useful for your studying. For any information, do not hesitate to contact me at apostolopoulouang@icloud.com. I cannot wait to meet you all in November!

Best Regards,

Angeliki Apostolopoulou

INTRODUCTION

The challenges of ownership have been prominent for countless years, even centuries. If we take into consideration the ongoing battle between Greece and Britain, regarding the marbles of Parthenon that were taken by the Lord of Elgin between 1799 and 1803, we have a rough idea of the actual very vague law system regarding artifacts. For more than four centuries, Great Britain established a presence on different continents in its quest for imperial power and economic prosperity. For the indigenous populations, it led to violence, racism and exploitation. Many of the objects sourced from this colonial era, some prized in UK museum collections, were seized by violent force, looted as ‘trophy of war’ or auctioned off to finance these military expeditions. This is because acts of seizure were then considered a right of occupation. But today, as society's values change, no museum would consider accepting an object acquired under the same violent conditions.



Figure 1: The British Museum¹

The market of art and antiquities represents a potential antagonist of appropriate cultural preservation. In the process of looting, monumental pieces are sawed off into fragments for their transportation and many of them are destroyed in the process. Authorities do not have knowledge of most pieces until they are auctioned or displayed. Looting destroys archaeological sites and the information therein. Besides the lack of information around the provenance or the context of the

¹ Brennan, Ailis. "Our Guide to London's Best Museums: From British Museum to the V&A." Evening Standard, 26 Jan. 2023, www.standard.co.uk/culture/complete-guide-london-best-museums-british-museum-va-natural-history-museum-a3805951.html.

pieces, complicate law-enforcement efforts need to occur both nationally and internationally.

DEFINITION OF KEY TERMS

Provenance

“Provenance (from the French *provenir*, 'to come from/forth') is the chronology of the ownership, custody or location of a historical object. The term was originally mostly used in relation to works of art but is now used in similar senses in a wide range of fields, including archaeology, paleontology, archives, manuscripts, printed books, the circular economy, science and computing.”²

Restitution of artifacts

“Art restitution is the return of stolen or improperly traded cultural property to its rightful owner. Critical to determining whether a work of art should be restituted is if it was subject to a transfer that was unlawful or invalid, such as a theft, expropriation, illicit trafficking, or a sale made under duress.” There may be many people, groups and organizations with different connections and interests in these items. While cases can therefore be complex and time-consuming, they often present rich opportunities for enhancing understanding for all involved. Considering a claim for restitution can offer the opportunity for museums to develop their collections knowledge and research, to build relationships with originating communities, to open up dialogue around contested items and to create opportunities for discourse and discussion around cultural heritage.³

Repatriation

Repatriation is the return of cultural property, often referring to ancient or looted art, to their country of origin or former owners (or their heirs).⁴

² Wikipedia contributors. (2023). Provenance. *Wikipedia*. <https://en.wikipedia.org/wiki/Provenance>

³ *Art restitution*. (n.d.). Obo. <https://www.oxfordbibliographies.com/abstract/document/obo-9780199920105/obo-9780199920105-0173.xml>

⁴ Wikipedia contributors. (2023a). Repatriation. *Wikipedia*. <https://en.wikipedia.org/wiki/Repatriation>

Cultural Artifacts

A cultural artifact is a two-meaning term. It can refer to an ancient find, for example archeological finds in Greece. However, it is often used for art objects of any era, even recent times. Artifacts are often associated with objects projected in museums.⁵

Ownership

“Ownership is the state or fact of legal possession and control over property, which may be any asset, tangible or intangible. Ownership can involve multiple rights, collectively referred to as title, which may be separated and held by different parties.”⁶

Art Looping

The stealing of discovered artifacts right from the place they were found. Done by not only criminal organizations but also individuals.⁷

BACKGROUND INFORMATION

Origin and identification of the issue

The provenance (history of ownership and physical movement) of the object in question, as well as any applicable laws that may regulate ownership, import and export and other ethical and policy frameworks, are key factors in the restitution process. Art ownership issues have existed for a long time, but in the 20th century, when several countries created laws to stop the transfer of culturally valuable artifacts from their borders, the issue became more prominent. Following the catastrophic destruction of cultural property under the National Socialist dictatorship and during World War II, artwork was returned on a vast scale. Following the 1970 signing of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import,

⁵ *Cultural artifact*. (n.d.). DBpedia. https://dbpedia.org/page/Cultural_artifact

⁶ *ownership*. (2023). <https://dictionary.cambridge.org/dictionary/english/ownership>

⁷ “Art Crime.” Federal Bureau of Investigation, 27 Feb. 2019, www.fbi.gov/news/stories/fbi-seeks-owners-of-recovered-cultural-artifacts-022719.

Export, and Transfer of Ownership of Cultural Property, the legal ownership of archaeological artifacts came under close scrutiny.⁸

Well-known stolen artifacts

In the course of the years, the British are acknowledged as the nation that has the largest possession of stolen artifacts. Some examples are:

The royal palace of the Kingdom of Benin, now Nigeria, was embellished with thousands of bronze sculptures that date back to the 13th century. But in 1897, the British Empire sent troops to punish Benin rebels who were resisting imperial power. Imperial soldiers sacked the city, ending the Kingdom of Benin.⁹

The Parthenon Marbles, also known as the Elgin Marbles, are another source of heated debate about repatriation to the British Museum. The marbles, depicting participants in a festival celebrating the birthday of the goddess Athena and centaurs and Lapiths participating in battle, were taken from the Parthenon in Greece between 1801 and 1805.¹⁰

The Rosetta Stone, which is currently located in the British Museum, is considered a monumental object that allows researchers to decode and learn about the culture and history of ancient Egypt.

Tipu's Tiger is a nearly life-sized wooden semi-automaton figure that mauls a soldier of the East India Company. Turning a handle makes the soldier's arm lift up and down and produces noises imitating his dying moans, made by an organ hidden in the tiger.

Forms of Looping

The majority of sales and purchases of stolen items is made in cash, which contributes to the growth of the antique market and the expansion of the shadow economy. World heritage sites that have been swept clean run the danger of losing visitors because of stolen artifacts being shown in museums. At the same time, other

⁸ Home | UNESCO. (n.d.). <https://www.unesco.org/en>

⁹ Marshall, A. (2021, October 29). This art was looted 123 years ago. Will it ever be returned? *The New York Times*. <https://www.nytimes.com/2020/01/23/arts/design/benin-bronzes.html>

¹⁰ Wikipedia contributors. (2023a). Elgin Marbles. *Wikipedia*. https://en.wikipedia.org/wiki/Elgin_Marbles

nations with historical landmarks and artifacts are misplacing their historical identities with outsiders. In museums, churches, private collections, public institutions and archaeological sites, thousands of artifacts vanish every year. Tens of thousands of items that are part of the world's archaeological and cultural history are stolen or plundered, including antique weaponry, artworks, coins, timepieces, religious artifacts and archaeological finds. Trading of items from earlier generations started thousands of years ago. But over the last two decades, the tendency has regrettably grown into an epidemic-sized concern. Although estimates of the scale and profitability of the black markets for stolen, plundered and smuggled works of art and antiquities are notoriously incorrect, experts concur that these markets represent one of the largest criminal businesses in the world, with a value of billions of US dollars.

Art laundering and financial purposes-actions against it

Over the years, the purchase and sale of cultural property has been the means for many financial crimes, including money laundering and tax fraud. More recently, a series of United Nations Security Council resolutions have identified the trade in cultural property as a source of funding for terrorist activities. The European Union's Fifth Anti-Money Laundering Directive (5AMLD) came into force on January 10th, 2020.¹¹ Expanding the scope of previous legislation, 5AMLD requires art businesses in member states to EU, including dealers, galleries, auction houses, warehouses and any other person or business engaged in buying, selling or storing works of art, to carry out programs risk-based AML/CFT process.

The Sixth Anti-Money Laundering Directive (6AMLD) followed a year later and is regarded as the EU's toughest set of measures to deter money laundering to date. 6AMLD essentially made Anti-Money Laundering (AML) screening and customer due diligence (CDD) compulsory for all participants in the art market and provided harsher penalties for any violations moving forward.¹²

¹¹ *5th EU Anti-Money Laundering Directive (5AMLD)*. (n.d.). Sanction Scanner.
<https://sanctionscanner.com/knowledge-base/fifth-anti-money-laundering-directive-323>

¹² Cameron, S., & Cameron, S. (2023). How does art money laundering work? *ComplyAdvantage*.
<https://complyadvantage.com/insights/art-money-laundering/>

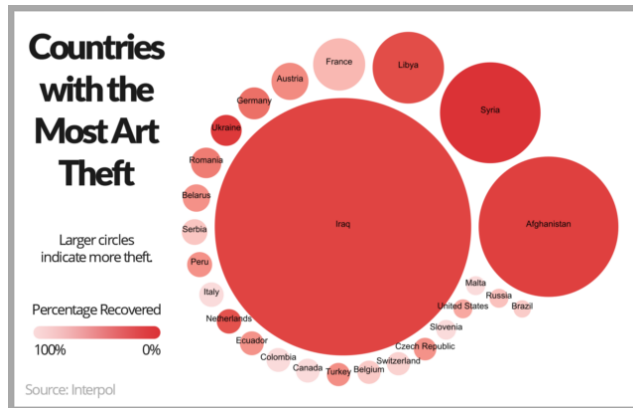


Figure 2: Countries with the most thefts¹³

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

Afghanistan

Afghanistan is also a victim of the British Museum. Throughout the 20th and 21st century, thousands of artifacts were stolen, mostly through wars. In 2021, 33 of those artifacts were returned to Afghanistan, worth 1.8 million. In the case of Afghanistan, particularly in response to the Taliban's destruction of heritage, UNESCO has established a unique initiative to aid in the rescue of cultural assets of Afghan origin. UNESCO is currently taking Afghan cultural property found on the international art market into protective custody, in collaboration with the Foundation for Cultural Heritage in Japan, the Society for the Preservation of Afghanistan's Cultural Heritage (SPACH) based in Kabul, the Swiss Afghanistan Museum in Bubendorf and the Archaeological Museum of Henri Prades in Lattes.

Greece

Greece has been a target of art theft for ages on end. The most known case is the one of the Elgin Marbles, the theft of which was conducted by Lord Elgin in the 19th century. Many parts of the Acropolis are displayed to this day in the British

¹³ Redirect notice. (n.d.-b).

https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.jdsupra.com%2Flegalnews%2Fdata-analysis-reveals-some-shocking-art-89347%2F&psig=AOvVaw3MEwf71P_eEIs1N06s4Nh&ust=1691100301893000&source=images&cd=vfe&opi=89978449&ved=0CBAQjhXqFwoTCNiO-N79voADFQAAAAAdAAAAABAD

museum, even though there are constant requests for their restitution. According to Greek law, which integrates the principles of international law and the law of the European Union, the Greek State guarantees the protection of cultural property originating in Greek territory, whenever they may have been removed from it. It also ensures the protection of cultural objects historically linked to Greece, regardless of their location. The repatriation of cultural objects to Greece concerns objects that have been illegally excavated, illegally exported or stolen from Greece, in violation of Greek law, European Union law and international conventions. In addition to products resulting from clandestine excavations, illegal export or theft, as defined in international conventions on the protection of cultural heritage, there are also antiquities of particular importance to humanity that have been removed from a country's territory in a questionable manner, detrimental to the monuments and archaeological contexts to which they belong. These antiquities must be returned on the basis of fundamental principles enshrined in international conventions, regardless of time limits or other constraints. They must also be returned on the basis of legal, customary and ethical principles arising from cultural heritage law. This necessity is also dictated by the growing ecumenical concern as well as the public interest to restore the integrity of the monument in its historical, cultural and natural environment. The repatriation of such antiquities is also determined by the need for completeness of the information they carry within the whole from which they have been separated and isolated. No researcher or visitor can fully appreciate these artifacts outside of their context, fragmented and displayed only as individual works of art. A good example of this is the Parthenon Marbles.¹⁴

United Kingdom

The UK is arguably one of the most responsible nations regarding art theft. The British Museum in London holds thousands of stolen artifacts on display. There have been trials of returning the artifacts to the origin sources, many of which were unfortunately unsuccessful. With today's emphasis on the concept of 'unfit' and the rise of digital collections, removing things is no longer fatal to their study worth,

¹⁴ Greek Position on the Return of Cultural Objects to Their Country of Origin.
www.culture.gov.gr/en/parthenonas/SitePages/view.aspx?iID=12.

section 5(c) of the 1963 Act may provide long-awaited restitution prospects. However, an alternative to this strategy is on the horizon. The Charities Act 2022, which is expected to go into effect by the end of the year, includes two significant revisions to museum trustees' ability to reconstitute objects. The 2022 Act adds a new section 331A to the Charities Act, allowing trustees to undertake ex gratia transfers of low-value objects in cases where the trustees might be properly recognized to have a moral obligation to act. In section, the value threshold is defined by a sliding scale.

Art for the world

ART for The World, is a non-governmental organization (NGO) affiliated with UNDP/Department of Public Information of the United Nations, headquartered in Geneva. In 2005, the NGO ART affiliated with The World Europa was founded in Turin and has since been very active in Italy and Europe. The NGO was founded in 1995/1996 as part of Dialogues de Paix, an international contemporary art exhibition organized with the support of the AFAA/French Association of Artistic Action of the French Ministry of Foreign Affairs celebrating the 50th anniversary of the founding of the United Nations, within the grounds of the UNOG building and its grounds.

UNESCO (United Nations Educational, Scientific and Cultural Organization)

UNESCO is the United Nations Educational, Scientific and Cultural Organization. UNESCO and its partners have developed many practical tools to prevent, raise awareness and encourage the fight against illicit trafficking. UNESCO emphasizes greater awareness amongst police, customs officials and other people who may be unwittingly and thereby innocently involved. It plays a major part in fighting art looping and art theft.

TIMELINE OF EVENTS

Date	Description of Event
2006	The G'psgolox totem pole belonging to the Haisla First Nation tribe was returned to Canada by the Museum of Ethnography in Stockholm, Sweden. It was the first totem pole to be restituted by a European state.
2010	A Makonde mask, stolen in 1984 from the National Museum in Dar es Salaam, was returned by the Barbier-Mueller Museum in Geneva, Switzerland, to the United Republic of Tanzania.
2014	Two maithuna bas-reliefs from the ninth and tenth centuries, depicting intertwined lovers and stolen from a temple in Rajasthan in 2009, were returned to India by the United States.
2020	A Sumerian limestone votive wall plaque, dating to 2400 BC and looted from Iraq, will soon be returned by the British Museum in the United Kingdom to Iraq.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

Government trials

The Native American Graves and Protection Repatriation Act (in the US) and the Indigenous Repatriation Program (in Australia) were both passed as legislative responses to this kind of repatriation requests. Through these two projects, legal frameworks for repatriation were developed, and countless items and human remains have been returned to Indigenous communities. Here, they once again play a significant role in the construction of spiritual, communal, and individual significance. A well-known instance is The Ancient One's (also known as Kennewick Man) reappearance, after five tribes in the Pacific Northwest contested the identity of the human remains as an ancestor. However, only when Danish scientists' genetic testing supported the Indigenous peoples' claim did the successful repatriation take place, demonstrating how imperialist legacies are still present today.

Elgin Marbles

The heated topic of the Elgin Marbles has been tried to be resolved in the past, but with no success. The Elgin Marbles were requested by the newly independent Greek government in 1835 and the architectural fragments were requested by the Greek minister in London in 1890. The Greek government officially requested the restitution of the marbles to Greece from the UK government in 1983, and the controversy was recorded by UNESCO in 1984. The only thing the Greek government is asking for is the sculptures Elgin removed from the Parthenon back. A UK select committee looked into the marble controversy as part of its investigation into the unlawful trade in cultural property.

Trials of the Netherlands

The Netherlands had trading posts and colonies in Asia, Africa and North and South America from the beginning of the 17th century and maintained a presence in some locations for more than four centuries. The committee's report described this era as "a time characterized by exploitation, violence, racism and oppression." The Dutch National Museum of World Cultures, one of the first museums in Europe to develop structures and procedures for repatriating artefacts removed from former colonies, estimates that about 40% of the 450,000 items in its collection was acquired in colonial contexts.

"The government's new policy puts the Netherlands—at least for now—at the forefront of European efforts to repatriate colonial-era acquisitions," says Jos van Beurden, the author of an influential 2016 doctoral work published in English as *Treasures in Trusted Hands*.¹⁵

¹⁵ <https://www.theartnewspaper.com/2021/02/04/netherlands-takes-lead-in-europes-efforts-to-return-artefacts-to-former-colonies>

POSSIBLE SOLUTIONS

Digital Reunification

The concept of "digital reunification" refers to the digital depiction of scattered objects and archive documents from geographically separated heritage collections. It reassembles and combines cultural artifacts and related data that come from the same area or have a similar provenance. Successful digital restitution offers a method for thoroughly visualizing and studying a collection. A "robot sculptor" would create nearly exact reproductions of the original set of sculptures using 3-D scans of the Parthenon sculptures, which the British Museum has been under increasing pressure to allow.

Raising awareness

It is crucial that the people of affected countries take action as soon as possible, both individually and as a whole. There is plenty of information online, which is a great start for everyone to get informed on the matter of stolen artifacts. It is also crucial that lectures are presented on the matter, in order to make it known and hopefully end up with the artifacts returned. These lectures should be free and presented to people of all ages. They can be held at schools, libraries or offices.

Donations

It is crucial that money is donated to the home countries of stolen artifacts, in order to get them back. Since this matter is constantly overlooked, the nation itself should take action. The donations can either be just traditional websites, or art related competitions in which the donor wins something, so this can be a motive for more people to donate.

FURTHER READING

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