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Katelyn Goetten

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Trafficked: The British Museum's Role in the Illicit Art Trade

By: Katelyn Goetten



Museums in the United States and around the world deal in the legal art trade. Private collectors and organizations loan items for museums to show in galleries, museums purchase items from collectors, or art is donated to draw visitors and gain press attention. These are all common practices that boost institutions' popularity and crowd attendance. However, some cultural institutions have been accused of obtaining items illegally off the black market. Scandals are broadcasted throughout the world, accusing museums of displaying artifacts that do not belong to them. For example, the British Museum in London is has recently come under fire for displaying Elgin Marbles originally from the Pantheon in Athens. Despite pressure from the Greek government to return the sculptures, the British Museum argued that they are the rightful owners of the art and refuse to remove them from the museum's collection. The British Museum argued that Lord Elgin acquired the Greek sculptures for the United Kingdom in 1801 when Lord Elgin was the ambassador in the Ottoman Empire for Britain.[1] Therefore, the British Museum holds that Greece has no current legal claim to the sculptures.[2]The British Museum further argues that the London museum is the best location to display the Elgin Marbles because the art would be available to a more international audience.[3] This raises the questions: who owns art and who has the right to display it?

There is no universally followed international law that all museums follow. However, institutions such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) provide valuable legislation for museums on how art and antiquities may be traded. UNESCO's twenty-second session, which concluded on October 3rd, 2021, declared two groundbreaking recommendations concerning the British Museum's possession of the Elgin Marbles. First, the committee released a recommendation on the poor conditions the statutes are in at the museum. Second, the committee released a decision from the Intergovernmental Committee asking the British Museum to change its position on the matter and communicate with Greece to negotiate for the right to display the Elgin Marbles in the British Museum or return it to its Greek homeland.[4] This is a major step in the fight for the Elgin Marbles because the UNESCO committee admitted that this dispute is intergovernmental and not just a private institutional fight.[5] The British Museum previously argued that the matter did not concern either the Greek or English government but instead was only a dispute for the British Museum. The Greek delegation fired back, arguing that the responsibility rests on the government to ensure that cultural property is returned to the proper entity or country.[6]

Any legal battle in the United Kingdom concerning the return of the Elgin Marbles will be very difficult. In 2016 a lawsuit brought by the Athenians Association in an attempt to force the United Kingdom to return the Elgin Marbles was thrown out by the European Court of Human Rights over a technicality. [7] The court argued that the Athenian Association did not have a right to bring this issue as an organization cannot bring a case arguing for a breach of a country's human rights.[8] The court held that "... it is clear from the nature of the applicant's complaints that its underlying grievance is the allegedly unlawful removal of the marbles from Greece. The removal having occurred some 150 years before the Convention was drafted and ratified by the respondent state, the applicant's complaints would appear to be inadmissible." [9] The court further held that the Athenian Association did not have "any right ... to have the marbles returned to Greece." [10] Although this case was not successful, it leaves open the possibility for the Greek government to bring a lawsuit against the United Kingdom in the future. The Greek government is not a private association like the plaintiffs in this case and has a stronger claim for a human rights violation against the British Museum and UK government.

The new developments in the years-long battle between the Greek and UK government sheds new light on UNESCO's position in the matter. Although the British Museum has not come out with any new positions concerning the Elgin Marbles, the mounting pressure for not only the museum but for the UK government might be enough to bring the UK to the negotiation table with Greece. The lack of globally recognized international law concerning who can own cultural property and who should display it remains an important question in the art and international legal community.

Katelyn Goetten is a Staff Editor for CICLR. Prior to law school, Katelyn CUNY's College of State Island, majoring in History and English. Katelyn was also a student in the Verrazano Honors Program.

[1] *UK Government Rejects UNESCO Plea to Redress Ownership of Parthenon Marbles*, Artforum (Oct. 7, 2021), <https://www.artforum.com/news/uk-government-rejects-unesco-plea-to-readdress-ownership-of-parthenon-marbles-86890>.

[2] Vivienne Chow, *The U.K. Has Rejected UNESCO's Call on British Authorities to Reassess Their Position on the Contested Parthenon Marbles*, Artnet News (Oct. 5, 2021), <https://news.artnet.com/art-world/british-museum-reassess-parthenon-marbles-2016998>.

[3] *The Parthenon Sculptures: The Trustees' Statement*, Brit. Museum, <https://www.britishmuseum.org/about-us/british-museum-story/objects-news/parthenon-sculptures/parthenon-sculptures-trustees> (Last visited Oct. 22, 2021).

[4] Archaeology Newsroom, *Parthenon Sculptures: UNESCO Requests the United Kingdom to Revise its Position*, Archeology Wiki (Oct. 4, 2021), <https://www.archaeology.wiki/blog/2021/10/04/parthenon-sculptures-unesco-requests-the-united-kingdom-to-revise-its-position/>.

[5] *Id.*

[6] Chow, *supra* note 2.

[7] *Parthenon Marbles Legal Case Rejected on Technicality by ECtHR*, Elginism (Oct. 4, 2021), <http://www.elginism.com/elgin-marbles/parthenon-marbles-legal-case-rejected-technicality-ecthr/20160720/8110/>.

[8] *Id.*

[9] *Id.*

[10] *Id.*