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# Considering Legal Methods for the Restitution of Displaced Historical Artifacts

UNESCO - Zofia Sobotkowska



**Forum:** United Nations Educational, Scientific and Cultural Organization (UNESCO)

**Issue:** Considering legal methods for the restitution of displaced historical artifacts

**Name:** Zofia Sobotkowska

**Position:** Deputy Chair

## **Introduction:**

Throughout human history dating back to antiquity, the adversarial relation between different states has led to the frequent thievery and displacement of historical artifacts such as paintings, sculptures, literary works, documents, and various other culturally or intellectually significant objects. In hopes of improving international relations, promoting cultural awareness and supporting various groups that fell victim to exploitation of an invader, many policies and institutions were established in the past century. However, as a consequence of the historically formed but continuously existing tensions between different parties involved, the newly established policies pose as soft law rather than strict regulations, limiting the success rate of the restitution of artifacts to their original and rightful place. This research report aims to provide guidelines that will ensure this issue is peacefully and swiftly resolved and hopes that the UNESCO Forum remains determined and engaged to settle the matter in question.

## **Key terms:**

**Looted objects:** Objects seized and plundered, most commonly in a period of war, natural disaster, or political riots. Most famous examples include the Egyptian Rosetta Stone seized by the British during their colonization of Africa, and the Nazi plunder of over 20% of European art during WWII, including the famous Portrait of Adele Bloch-Bauer.

**Decolonization:** The process of regaining independence from an invasive colonial power, focusing on stabilizing the economy, forming a new independent government, and reestablishing cultural values and heritage.

**Restitution:** The restoration of something stolen or seized to its rightful owner, in this context most commonly used to describe the stolen historical artifacts during wars and colonization.

**Prohibition and prevention:** Aversion through implementations of laws and policies.

**Cultural Heritage:** Includes artifacts, monuments, a group of buildings and sites, museums that have a diversity of values including symbolic, historic, artistic, aesthetic, ethnological or anthropological, scientific and social significance.

**Soft law:** Set of agreements and declarations that are not legally binding and serve more as a guideline and recommendation; often applied in international forums such as the EU and UN which often remain vague in imposing their laws due to the sensitivity and fragility of international relations.

**Historical Artifacts:** Culturally significant man-made objects such as: paintings, sculptures, literary works, documents, and various other culturally or intellectually significant objects. For example: Mona Lisa, Rosetta Stone, Portrait of Portrait of Adele Bloch-Bauer etc.

## Overview:

Dating back to ancient times plunder accompanied the victors of battles for whom looting the defeated cultural heritage was humiliation of the highest rank. The most significant "lootings" that still affecting the world today include the Colonization Era, the Scramble for Africa, and the WWII Nazi Plunder. The victims of the colonial exploitation who finally emerged as global economies began to speak up and demand justice and return of their cultural heritage. In the case of WWII the issue is fresh enough to easily determine the origin of the objects and the return of it to its rightful owners. On the other hand, the colonization era and the European exploitation of African and Asian regions has been spread over the past centuries making it difficult to establish a clear origin. Additionally, as a consequence of wars and outside influences many cultural groups have been exterminated or lost the connection to the roots of their cultures once again challenging the determination of the nowadays rightful wonders of historical artifacts that date back to centuries ago. These problems led to the continuously growing tensions between the first world countries and the rest of the globe. The aim of the UN and UNESCO is to create new policies that will allow for peaceful negotiations between Member States in need of assistance in terms of restitution of historical artifacts, however they face many challenges due to the complexity of human history.

Despite the various efforts of States at the restitution of historical artifacts the cooperative states face many difficulties in implementing international law to solve the issue.

Firstly, different states have various and inconsistent responses to claims for restitution of art looted during armed conflicts, as they consider different perspectives and interests when resolving issues. The present international legislation for issues of stolen cultural property during times of war is clear and consistent, thus no new policy is needed. However, countries have a responsibility to enforce international law more effectively with clear policy and action.

Individuals or institutions that attempt to have looted art returned to them face a multitude of legal problems, such as the burden of proof when it comes to the ownership of the artifacts and the context of its theft, time limitations to provide claims and difficulty with navigating international law. Claims of looted art can be very difficult to settle in court, therefore resolving the disputes through alternative pathways such as mediation, might be a better course of action. Although some European states and their museums have employed programs to verify if the artifacts in their possession are stolen art, they still struggle to determine and locate all looted artifacts.

The inconsistency in the process of returning stolen art is a huge problem. In hopes of making it easier, uniform rules about which laws to apply to individual cases should be set up. National law also has to be improved to reflect international agreements. In the European Union, it could be highly beneficial to establish a group or advisor body that would suggest long term-solutions and give guidance to states and institutions on individual cases.

It is vital to debate this topic and further work to resolve any restitutions issues as the continuing displacement of historical artifacts only fuels the past tensions and constitutes as an obstacle on the path toward global peacefulness and cultural appreciation and awareness. Through development of restitution laws and policies the UN aims to de-escalate past tensions and create a collaborative peaceful global community. However, the increase in international relations and collaboration also has its downside. The international forum has been strongly encouraging globalization and transnationalism which led to a high increase of the global population's opinion that the

plan of restitution is in fact depriving them access to iconic objects that belong not to individual nations, but to the humankind.

## **Major Parties Involved:**

Considering the nature of humankind it's safe to say that all groups and regions of the world have experienced looting of historical artifacts, either as the aggressor or the victim. Due to the increased transnational diplomacy and communication many minorities began to demand the return of what has been lost. Most commonly known are the African countries who faced decades of colonial exploitation, however other nations such as European countries who suffered from the Nazi art looting, or the Pacific theater regions who were exploited during both the colonial era as well as post WWI era by Japan or the USA, have experienced the consequences of looting and loss of cultural heritage. Parties that continuously play a big part in the forum of restitution include:

**UNESCO** - 'United Nations Educational, Scientific and Cultural Organization' as stated in 'mission is to contribute to the building of a culture of peace, the eradication of poverty, sustainable development and intercultural dialogue through education, the sciences, culture, communication and information'.

**ICPRCP** - The UNESCO 'Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation' formed in 1978 serves as a final resort for negotiations when two Member States cannot come to an agreement concerning restitution of artifacts.

**UK** - Highly criticized for their collection of historical artifacts which they acquired during their colonial heyday and that they refuse to return. The British Museum Act of 1968 bans the museums from removing an artifact from its collection unless it is a duplicate, is damaged or is deemed "unfit" for the collection. They only agreed to loan the stolen artifacts, directly, escalating the tensions with their old colonies that fell victim to their colonial exploitation (Bossoh)(Folk).

**European Countries** - Known for their colonial expansions and exploitation of their colonies created multiple laws and policies to aid in the restitution of the stolen artifacts; as stated by the journalist Devorah Lauther '**France, Germany, the Netherlands, Belgium**, and recently, **Switzerland** have created national guidelines or panels to evaluate restitution claims and return artifacts acquired during the respective colonial periods. In addition, **Belgium** and **France** have adopted laws in recent years to facilitate the process and, in 2024, Austria and France are expected to propose new legislation along the same lines.'

**USA** - Currently the American museums face public and governmental pressure into returning their looted exhibits to the country of origin. However, although the museums might be suffering, the American government in support of the UNESCO treaties has begun to more strictly apply the restitutions laws clearing the American conscience of their looting from the past.

**African Countries** - All countries involved in the Scramble of Africa who suffered because of Western Empires colonization and exploitation have much to gain through supporting the development of restitution laws as they are the primary victims of misplacement and thievery of historical artifacts.

### **Timeline of Key Events:**

**1970 Convention** - was the 'culmination of a long process of reflection on the fight against the illicit traffic of cultural property'.

**1976** - Establishment of a branch of UNESCO focused on restitution of historical artifacts as a response to the continuously existing tensions created as a result of past conflicts such as WWII and colonization



**1978** - Establishment of ICPRCP; a non-governmental 'international body responsible for finding ways to facilitate bilateral negotiations between the countries concerned for the return or restitution'.

**1995** - UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

**>2000** - Further establishing the previously created resolutions and continuous work of ICPRCP and UNIDROIT

### **Relevant UN Treaties, Resolutions and Reports:**

<https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural> (1970 Convention)

<https://whc.unesco.org/en/conventiontext/> (1972 UNESCO)

<https://www.unidroit.org/instruments/cultural-property/1995-convention/> (1995 Convention)

<https://unesdoc.unesco.org/ark:/48223/pf0000388847> (2005 UNESCO Diversity and support of minority cultures )

<https://www.unidroit.org/un-general-assembly-unanimously-adopts-resolution-on-return-or-restitution-of-cultural-property-to-the-countries-of-origin/> (UN GA 2021)

### **Previous Attempts to Resolve the Issue:**

**1970 Convention** - The first step on the fight against illicit trafficking and displacement of historical artifacts taken on by UNESCO. It became the basis of all following resolutions which further explore the global state of displaced artifacts and adapt to the current changes and needs of the Member States.

### **1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects**

**(Dubois)** - Mainly focused on the illegal trafficking of historical and cultural artifacts which cannot be as easily prevented and addressed as well as collaboration with 'member states on the issue of return or restitution of cultural property to the country of origin'(Dubois). Raising awareness on the issue through the various resolutions made as well establishing an International Day against Illicit Trafficking in Cultural Property.

### **UN General Assembly - Return of Restitution of Cultural Property to the Countries of its Origin (Dubois)-**

Recognizes that all regions and groups on the globe have been affected by illicit traffic of artifacts and further pressed the importance of the 1995 UNIDROIT Convention which focused on creating a forum for communicating and resolving of any issues and tensions that include the restitution of artifacts. However, due to a small number of parties involved in this convention it has not been successful at implementing its principles.

### **Possible Solutions:**

**Policy recommendations:** In order to achieve a solution, policies have to be implemented uniformly so that there is consistency in the process of different parties handling claims of looted art and reinstating artifacts. Clear law, and international agreements are needed, as well as a governing body to ensure the successful and long-term resolution to this issue.

**Uniformity of Solutions:** When resolving disputes about looted art, the principle of applying the law of the place of the object's location at the time of an acquisition can cause a loss of ownership of the rightful owner, which is counterproductive to resolving the issue. Instead, it is proposed to apply the law of the place of origin of an artifact, especially if the origin of the artifact is a clear historical fact.

**Uniformity of Legislation:** The establishment of clear laws regarding the ownership of cultural property and the legal context for making claims about looted art is highly encouraged. All parties should focus efforts on ratifying existing conventions and



protocols, instating preventative measures and ensuring that laws can be directly used in courts.

**International Advisor Body:** In order to deal with such a sensitive and controversial issue riddled with complexities, it is suggested that reinstatement claims will be more effectively resolved with the help of an unbiased, flexible and non-bureaucratic international advisor body rather than national courts. This body could assist all parties in implementing international legislation, act as a mediator and conciliator, and assist in settling disputes.

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