GENERAL ARTICLES

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Dealing with Illicit Trade in Cultural Objects in the Context of Cultural Heritage Management for Museums

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Irini Stamatoudi and Konstantinos Roussos

Abstract: Cultural Heritage Management (CHM) is the main ve-
hicle for helping museums to face challenges, secure sustainable
competitiveness, and redefine themselves in a constantly changing
world. In this context, CHM can support museums in their efforts to
play a vital role in fighting the illicit trafficking of cultural property.
This article focuses on how museums can benefit from the various
advantages offered by CHM, specifically with respect to the fight
against the illicit trade of cultural property and its return and resti-
tution to its countries of origin. In this light, it deals with both proac-
tive and repressive policies, discussing how museums can maintain
their credibility and ensure that they operate in accordance with high
legal and ethical standards. Finally, the article discusses how mu-
seums and countries have dealt with return and restitution claims
in recent years. In this context the use of cutting-edge technologies,
such as 3D printing, is also discussed. This work derives from the
research project "Redefining the future of cultural heritage, through
a disruptive model of sustainability" (ReInHerit), which has received
funding from the European Union's Horizon 2020 research and inno-
vation programme.

Keywords: ReInHerit project, Cultural Heritage Management,
fight against illicit trade of cultural property, return and restitution
of cultural objects, provenance research, due diligence

Introduction

This article presents some outcomes of the research project "Redefining the fu-
ture of cultural heritage, through a disruptive model of sustainability" (ReInHerit),
which has received funding from the European Union's Horizon 2020 research and
innovation programme. The ReInHerit project (currently in progress) aims at cre-
ating a model of sustainable Cultural Heritage Management (CHM) that will fos-
ter a digital and dynamic European network of cultural heritage (CH) stakeholders
and will assist museums in responding to the challenges of the era.[1]

The recent COVID-19 pandemic and the current energy and cost of living cri-
ses due to the war in Ukraine have compounded the challenges already faced by
the CH sector, as well as created new ones. Museums are called upon to successful-
ly respond to the rapidly changing reality and act timely and effectively in a manner
and form that corresponds to their social role, responsibilities, and the challenges

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[1] For more on this research project (grant agreement No. 101004545), see https://www.reinherit.eu/.

arising.[2] The wide field of CHM is the main vehicle for assisting museums to face these multiple challenges, secure sustainable competitiveness, and redefine themselves in a constantly changing and complex world. One of the challenges that the international museum community faces today and will continue to face in the foreseeable future is the increased threats arising from the illicit trafficking of cultural objects worldwide.[3] Due to their special place within modern societies and their duty to collect, preserve, and disseminate tangible and intangible CH while taking into account high legal, ethical, and professional standards, museums are expected to play a decisive role in combating the illicit trafficking of cultural property and facilitating its return and restitution to its countries of origin.[4] However, there are many differences between museums in terms of how they respond to the issue of illicit trafficking of cultural goods, as well as to claims for return and restitution. This may be the result of the different sizes (small or large) and types (public or private) of museums; the different circumstances under which they were established and have evolved to date; their funding support, etc. Given its wide and interdisciplinary nature, CHM can establish a common ground on which museums can build policies designed to face the challenges, to actively engage in solutions, and to develop programmes and policies that foster trust and transparency through processes such as due diligence, provenance research, cooperation with law enforcement agencies, international cooperation and networking, education, training, and dispute resolution.

The aim of this article is to discuss how museums should act in the context of CHM to fulfil their role as key actors in fighting the illicit trafficking of cultural property and facilitating its return and restitution to its countries of origin. While it is not possible to cover every possible aspect of this complex issue in this study, some of its most crucial aspects are examined, as follows: The first section of the article sets out a general framework by which museums can benefit from the various advantages offered by CHM, specifically with regard to the fight against the illicit trade of cultural property and its return and restitution to its countries of origin.

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2   The text of the UNESCO Recommendation concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society (17 November 2015, UNESCO Doc. CLT/HER/MHM/2015/PI/H/1) recognizes the complex and essential role of museums in modern societies.

3   According to UNESCO, the recent COVID-19 pandemic, armed conflicts, and natural disasters have led to an escalation of the illicit trafficking of cultural property. See https://events.unesco.org/event?id=2193495500&lang=1033 [accessed: 12.10.2022]. As Interpol points out, despite the restrictive measures against COVID-19 criminals involved in the illicit traffic of cultural property managed to find alternative ways to steal, illegally excavate, and smuggle cultural property. For more, see Interpol, *Assessing Crimes Against Cultural Property 2020: Survey of Interpol Member Countries*, September 2021.

4   The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation in its recent *Report on the Role of Museums in the Fight Against Illicit Trafficking of Cultural Property and the Facilitation of its Return and Restitution* (April 2022, UNESCO Doc. ICPRCP/22/23.COM/11) recognizes museums as "essential actors for the fight against illicit trafficking of cultural property and facilitating return and restitution".

Irini Stamatoudi and Konstantinos Roussos

The second section deals with proactive policies and discusses what issues need to be taken into account so that a museum does not find itself in an awkward situation; for example by purchasing, obtaining in the form of a donation or gift, or exhibiting cultural objects that have not been legally acquired or whose provenance cannot be safely established. The third section emphasizes repressive policies, discussing how museums should deal with the cultural objects in their collections in order to maintain their credibility and ensure that they operate with high legal and ethical standards. The fourth section explores how museums and countries have dealt with return and restitution claims in recent years. In this light the use of cutting-edge technologies, such as 3D printing, is also discussed. Particular emphasis is also placed on the importance of building deep relationships and an atmosphere of mutual understanding between museums and communities of claimants. Finally, the fifth section discusses the crucial role of museums in raising public awareness of the dangers threatening CH, with a special focus on engaging young people.

Combating Illicit Trade in Cultural Objects through CHM

Museums play a fundamental role in modern societies and their management is of great importance in this role. CHM refers to the complex, dynamic, and ever-changing process through which museums manage tangible and intangible CH. It requires using a wide array of tools and practices, including identification, excavation, recording, documentation, protection, conservation, restoration, interpretation, enhancement, promotion, presentation, dissemination of CH production, distribution, exhibition, education, communication, economics, monitoring, marketing, evaluation, strategic management, ICT, risk management, law, and others.[5] Dealing with the inclusive and extensive concept of CH, the field of CHM has become by its nature interdisciplinary, since it crosses the boundaries of many disciplines and fields (social sciences, humanities, architecture, law, management, marketing, economics, restoration, conservation, curatorship, ICT, museology, etc.). CHM should guarantee the long-term protection of CH by considering its sustainability and taking into account the current needs of the public. It is intricately connected with managing the past and current culture of humanity for the sake of the present and future generations. This complex process requires different approaches to what CH actually is; how it can be used, protected and interpreted; and by whom and for whom.[6] In addition to providing tools to protect and conserve CH, CHM helps museums to act as an important resource for resilience, connection, recovery, and positive change. Through CHM, museums can raise public awareness not only

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[5] For a general discussion on the CHM *modus operandi* and its effectiveness, see K. Roussos, I. Stamatoudi, *Management Issues for CH Institutions*, in: I. Stamatoudi (ed.), *Research Handbook on Intellectual Property and Cultural Heritage*, Edward Elgar Publishing, Cheltenham 2022, pp. 413-416.

[6] E. Avrami, R. Mason, M. de la Torre, *Report on Research*, in: E. Avrami et al. (eds.), *Values and Heritage Conservation: Research Report*, Getty Conservation Institute, Los Angeles 2000, p. 7.

about CH, but also about major issues of global interest such as sustainable development, climate change, environmental pollution, sustainable water management, the energy crisis, etc.

As the fight against the illicit trade of cultural property and its return and restitution to its countries of origin is one of the most complex challenges that the CH sector faces, it should not be seen as an additional task not linked to museums' CHM. Instead, CH professionals can benefit from the various advantages offered by CHM to develop strategies, actions, policies, and initiatives to support the role of museums as essential actors in preventing and countering the illicit trade of cultural property. The first step that all museums should take in this direction – regardless of whether their collections are large or small, public or private – is to clearly articulate in their vision and mission statements[7] their commitment to combating the illicit trafficking of cultural goods and to facilitating their return and restitution to their countries of origin. This will help them in pursuing their aims, understanding their obligations, and fulfilling their role in society by taking into account high legal, ethical, and professional standards.

The next step for museums is to start designing effective policies and plans in the context of a sustainable CHM, i.e., one that consistently and comprehensively supports their commitment to the fight against the illicit trafficking of cultural property and its return and restitution to its countries of origin. In this respect, it is essential to set up a CHM plan[8] which explains management issues, approaches, and requirements; helps museums to design their long-lasting involvement in the fight against the illicit trafficking of cultural property; helps to develop cooperative actions with other actors and instruments and evaluate the tools available to them; and assesses the potential impact of the proposed activities. As such, among many other issues a CHM plan should include a clear strategy on Collections Management, which encompasses a wide range of activities, including acquisition, provenance research, accountability, inventory, documentation, digitization, preservation, conservation, protection, care, storage, movement, exhibitions, and the loan and use of cultural objects.[9]

Collections Management is the core activity of any museum. Museums, which hold different types of collections, should establish a Collections Management Plan (also known as collections development policy, museum collections policy, collection management policy, etc.). It outlines the scope of their collections; explains

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7   The American Alliance of Museums has published a guide for "developing a mission statement", see http://www.aam-us.org/wp-content/uploads/2018/01/developing-a-mission-statement-final.pdf [accessed: 10.10.2022].

8   For a definition of the term "CHM plan", see UNESCO et al., *Managing Cultural World Heritage: Resource Manual*, UNESCO, Paris 2013, pp. 122-145; Organization for Security and Co-operation in Europe, *Guidebook on Standards for Drafting Cultural Heritage Management Plans*, July 2020, p. 20.

9   For more on Collections Management for museums, see F. Matassa, *Museum Collections Management: A Handbook*, Facet Publishing, London 2011.

Irini Stamatoudi and Konstantinos Roussos

how they care for them and make collections available to the public; clearly defines the roles of the parties responsible for managing their collections; and specifies the themes and priorities for future collecting as well as what types of cultural objects they intend to collect.[10] In addition, museums should adjust their Collections Management Plan in such a way that they can successfully meet the challenge of combating the illicit trafficking of cultural goods and dealing with return and restitution claims. Given the fact that a number of important museums in Europe and the US have received restitution claims for cultural objects in their collections, the Collection Management Plan can work as a vehicle for adopting legal and moral policies in this respect.

While Collections Management is clearly a quite broad topic and is not limited just to aspects related to the illicit trade in cultural property and return and restitution claims, this study however focuses on the specific parts of Collections Management policies which concern what museums should do before acquiring a cultural object (proactive policies); how they should deal with cultural objects already in their collections (repressive policies); and how they should treat claims for return and restitution (implementation policies).

Proactive Policies

Acquisitions and due diligence

Museums not only have the important task of taking care of the objects already existing in their collections, but also of developing and enriching them. In this sense, museums should enhance their collections by taking all necessary precautions to ensure that they only acquire or borrow for exhibition or other purposes cultural objects which have been legally obtained and do not contravene the law as well as good and ethical practices.[11] On the one hand, this is an important effort on the part of museums to support their commitment to combat the illicit trafficking of cultural goods, as should be clearly stated in their vision and mission statements. On the other hand, enriching collections with items that have been acquired legally

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[10]   For more on this, see the website on Ethics, Standards, and Professional Practices of the American Alliance of Museums: https://www.aam-us.org/programs/ethics-standards-and-professional-practices/collections-management-policy/ [accessed: 01.10.2022]. See also the website of the Collections Trust: https://collectionstrust.org.uk/wp-content/uploads/2016/10/Collections-Management-Policies.pdf [accessed: 01.10.2022]. Some illustrative examples in Europe are the Museum of London: https://www.museumoflondon.org.uk/application/files/7115/5240/9439/Collections_Development_Policy_2018_final_formatted_v1.0_EXTERNAL.pdf [accessed: 01.09.2022]; the University of Edinburgh Collections: https://www.ed.ac.uk/files/atoms/files/uc_collections_management_policy_final_approved_22_june_2015-_0.pdf [accessed: 01.09.2022]; and the Toledo Museum of Art: https://web.archive.org/web/20210818225730/https://www.toledomuseum.org/sites/default/files/collections_management_policy_tma_2015.pdf [accessed: 01.10.2022].

[11]   This is clearly underlined by the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231.

is a critical step for museums to develop new experiences and deepen their relationships with existing audiences; open their doors to new audiences (especially young people); and engage with local communities.[12] Furthermore, it can strengthen the profile of museums, improve their image as institutions that respect the nations of origin and local communities and are therefore anthropocentric and humane, and give them an impetus for a sustainable development.

Due diligence has a key role to play as a preventive measure against the acquisition of illegally appropriated cultural property. It is a practice that encompasses a set of required verifications concerning the legal provenance of a cultural object or specimen offered for purchase, gift, loan, bequest, or exchange.[13] It precedes the acquisition or loan and intends to clarify the full history and ownership of the cultural item, ideally looking back from the time of its discovery/excavation or production to the present day. In this respect, provenance research is one of the steps to be taken to comply with the obligation of due diligence.[14]

For a number of reasons, due diligence is important for all actors involved in the process of acquiring the object in question, and especially for museums. First of all, a museum does not want to be open or vulnerable to restitution claims or claims for damages.[15] Litigation can be costly and damages not only harm the museum in the pecuniary aspect, but also harm its social image. On top of this, contributing by purchase or otherwise to illicit trade may assist international terrorism, money laundering, and other illegal activities, and as well promotes and maintains further illicit trade as it raises demand, which is linked to offers.[16]

Museums need to set up a clear due diligence policy, which can either be part of the broader Collections Management Plan mentioned above or operate as a stand-alone policy.[17] In this way, museums should specify how their collections

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[12]   One of the main challenges for the CH sector is that museums still face adversities in sustaining and inspiring actual audiences, as well as attracting potential audiences and engaging local communities. See *D2.6: A Sustainable Model of CH Management: State of the Art Report*, written by I. Stamatoudi et al. as part of the ReInHerit project.

[13]   For a definition, see International Council of Museums, *ICOM Code of Ethics for Museums*, 2017, p. 9 and Glossary, https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf [accessed: 27.02.2023].

[14]   While due diligence and provenance research are two independent concepts and different in nature, at the same time the practical steps to be followed in provenance research and due diligence are the same. Furthermore, the search for provenance is a critical step that must be taken in the exercise of due diligence. For more on the interconnections between provenance and due diligence, see Subsidiary Committee of the Meeting of States Parties to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970), *Links between the Concepts of Due Diligence and Provenance*, 28 September 2020, UNESCO Doc. C70/20/8.SC/9.

[15]   V. Reed, *Due Diligence, Provenance Research, and the Acquisition Process at the Museum of Fine Arts, Boston*, "DePaul Journal of Art, Technology & Intellectual Property Law" 2013, Vol. 23(2), p. 363.

[16]   L. Amineddoleh, *The Role of Museums in the Trade of Black Market Cultural Heritage Property*, "Art Antiquity and Law" 2013, Vol. 18(3), p. 229.

[17]   F. Matassa, op. cit., pp. 202-203; L. Amineddoleh, op. cit., pp. 229, 254.

are defined and what type of cultural objects they intend to collect. Additionally, they should clearly emphasize that they have an ethical acquisitions policy in accordance with the law and international codes of ethics (such as the ICOM Code of Ethics) and will not accept any illegally obtained or ethically disputable item. This process will allow them to consider a wide range of factors that are of great importance when exercising due diligence research, including: consideration of the character of the parties; the price paid; and consultations and access to reasonably accessible tools, documentation, and information; as well as accessible agencies. In this context, many museums, in Europe and the US in particular, have published on their websites policies explicitly stating that they will undertake due diligence research.[18] Museums should develop guidelines with details about the necessary procedures in order to facilitate their staff when undertaking due diligence research.

Due diligence should be a priority for museums that engage in transactions concerning cultural objects. According to the ICOM International Observatory on Illicit Traffic in Cultural Goods "even today many heritage professionals and art dealers are not made aware of the due diligence concept and requirements, and its ethical framework".[19] Therefore, it is the responsibility of museums to train their employees on the complex, extensive, and multifaceted issue of illicit trafficking of CH in order to avoid mistakes and failures in implementing the CHM plan. Training gives CHM professionals the opportunity to increase their operational efficiency and effectiveness, particularly when conducting due diligence and provenance research.

Furthermore, the fact that antiquities which were not considered legal and were yet offered for sale at famous auction houses highlight the need for more rigorous due diligence searches, with a strict commitment to high ethical standards.[20] Some scholars correctly point out important dangers concerning the due diligence procedure.[21] Some antiquities have been acquired as a result of defective searches or due to highly unethical and selective collecting history, support the illicit market in many ways, either directly or indirectly. As a result, there is a pressing need for controls in order to ensure that all parties involved are engaged in proper due diligence.

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[18] Some illustrative examples in Europe include the British Museum: https://www.britishmuseum.org/sites/default/files/2019-10/Due-diligence-procedures-08-04-03.pdf [accessed: 01.10.2022] and the National Portrait Gallery in London: https://www.npg.org.uk/about/corporate/gallery-policies/due-diligence-policy [accessed: 10.09.2022].

[19] See ICOM International Observatory on Illicit Traffic in Cultural Goods, *Due Diligence / Good Faith*, https://www.obs-traffic.museum/due-diligence-good-faith [accessed: 10.09.2022].

[20] D. Gill, *Context Matters: Learning from the Herm. The Need for More Rigorous Due Diligence Searches*, "Journal of Art Crime" 2014, Vol. 12, pp. 57-62; I. Stamatoudi, *Cultural Property Law and Restitution: A Commentary to International Conventions and European Union Law*, Edward Elgar Publishing, Cheltenham 2011, p. 224.

[21] C. Tsirogiannis, *Due Diligence? Christie's Antiquities Auction, London, October 2015*, "Journal of Art Crime" 2015, Vol. 14, p. 28.

Law and ethics

There is a framework of conventions and international codes of ethics on conduct relating to due diligence in the CH sector.[22] As early as in 1970, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property[23] adopted by UNESCO dealt – albeit indirectly – with issues related to due diligence. According to Article 6 of the Convention, the State Parties are required "to introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized". In Article 7, the State Parties are invited "to take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned". Finally, in Article 10, the State Parties are required to "oblige antique dealers to maintain, subject to penal or administrative sanctions, a register recording the origin of each item of cultural property; names and addresses of the supplier(s); a description and price of each item sold; and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject".

Later, in 1995, the practice of due diligence became one of the key concepts of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.[24] In Article 4.4, it is clearly stated that

> in determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.[25]

Due diligence is also mentioned – albeit as "due care and attention" – in Directive 2014/60/EU of the European Parliament and of the Council,[26] which in fact takes into account the 1995 UNIDROIT provisions in this respect.

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[22] For a detailed analysis, see I. Stamatoudi, *Cultural Property Law...*, pp. 51, 83, 86-89, 99-100, 108, 111, 154-155, 160, 163-166, 173, 203, 223-226, 239, 250-251.

[23] 14 November 1970, 823 UNTS 231.

[24] 24 June 1995, 34 ILM 1322. The Convention's due diligence model derives from the draft Uniform Law on the Acquisition in Good Faith of Corporeal Movables (LUAB).

[25] Rather than the Convention focusing on the already known concept of "good faith possessor", it opted to create its own autonomous concept of due diligence.

[26] Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No. 1024/2012 (Recast), OJ L 159, 28.05.2014, p. 1.

Soft law instruments are also of relevance, such as the UN Security Council Resolutions condemning the illicit trafficking in objects from Iraq and Syria: Resolution 1483 (2003)[27] and Resolution 2347 (2017);[28] the Washington Principles,[29] and generally guidelines on Nazi-looted art.

Finally, a set of international codes of ethics or conduct[30] include provisions on due diligence and these usually set out a higher standard of diligence, as it is assumed that professional actors have better knowledge of the art market than non-professionals, i.e. consumers.

Apart from law and ethics, searches on governmental and non-governmental lists and databases are also of extreme importance. Some examples include the ICOM Red Lists; the UNESCO Database of National Cultural Heritage Laws (Natlaws); the Art Loss Register; Interpol's Database of Stolen Works of Art; the World Customs Organization's ARCHEO; and the UN Office on Drugs and Crime's SHERLOC. Also, initiatives such as the UNIDROIT Convention Academic Project (UCAP), the Responsible Art Market, or the Social Platform on endangered CH and on illicit trafficking of cultural goods (a Horizon 2020 project), are also useful.[31]

Repressive Policies

Auditing of collections

An integral part of museums' mission is to conduct research on the provenance of cultural objects in order to identify any unlawfully appropriated artefact in their collections. Provenance research involves the meticulous investigation of the history of ownership of an object in a museum collection, when possible from the moment of its creation or discovery/excavation to the present day.[32] Most museums pay considerable attention to cultural objects – especially paintings and sculp-

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[27] 22 May 2003, S/RES/1483 (2003).

[28] 24 March 2017, S/RES/2347 (2017).

[29] Washington Principles on Nazi-Confiscated Art, 3 December 1998, https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/ [accessed: 16.10.2022].

[30] The ICOM Code of Ethics for Museums; the UNESCO International Code of Ethics for Dealers in Cultural Property; the AIAD Code of Conduct; the Rules of the IADAA; the CINOA Code of Ethics; or the ILAB Code of Ethics. See also ICOM International Observatory on Illicit Traffic in Cultural Goods, *Due Diligence…*

[31] See the Subsidiary Committee of the Meeting of States Parties to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970), *Due Diligence*, April 2019, UNESCO Doc. C70/19/7.SC/8a, pp. 3-4.

[32] For more definitions, see the websites of the Getty Research Institute: https://www.getty.edu/research/tools/provenance/ [accessed: 26.09.2022] and the Yale University Art Gallery: https://artgallery.yale.edu/collections/provenance-research [accessed: 26.09.2022]. See also Subsidiary Committee…, *Links…*

tures – that were looted during the Nazi/Second World War era (1933-1945).[33] However, provenance research should include all objects in a museum collection (e.g., antiquities and archaeological material[34]), especially those that are related to a colonial context. Researching their provenance is a complex and laborious task, since it requires research into various types of resources (catalogues, photo archives, sales receipts, inventories, personal papers, gallery stock books, registrar records, correspondence from collectors, art dealers, and scholars, etc.) and involves the physical examination of the object to trace labels or markings that offer information about previous owners. In most cases, establishing a complete chain of ownership can be extremely difficult or even impossible due to the destruction, withholding, and dispersal of many archives and records of ownership. As such, provenance research is almost always a work-in-progress for most objects, as it is frequently updated with new information. In addition, much archival information is incomplete, and/or remains undiscovered or difficult to attain. All available information on ownership should be treated with caution and museums' professionals should maintain a critical attitude given the fact that gaps or mistakes are often encountered, especially for objects with a long period in their ownership history.[35]

Provenance research serves many purposes, as it supports art historical research; offers information about the condition, function, or value of an object; illustrates the biography of previous owners; sheds more light on the history of the art market and the taste of collectors; provides proof of title, etc. The crucial role of provenance research, however, is to strengthen museums' role in the fight against illicit trafficking, creating transparency and ensuring that their collections are built up in accordance with universally-recognized ethical principles. It also helps estab-

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[33]   See the websites of the Metropolitan Museum of Art: https://www.metmuseum.org/about-the-met/policies-and-documents/provenance-research-project [accessed: 26.09.2022]; the Princeton University Art Museum: https://artmuseum.princeton.edu/collections/provenance-research [accessed: 26.09.2022]; the Museum of Modern Art: https://www.moma.org/collection/provenance/ [accessed: 26.09.2022]; and the Minneapolis Institute of Art: https://collections.artsmia.org/info/provenance-research [accessed: 10.09.2022].

[34]   Antiquities and archaeological material deserve special mention, as these categories of cultural objects from various countries of origin are scattered in many museums around the world. The provenance of these objects is the location of the object at the time of its discovery and may or may not be associated with a secure excavation context or a standing historical monument (e.g., the Parthenon Marbles at the British Museum that are integral part of the Parthenon). Where objects have been excavated using sophisticated and scientific methods, all relevant archaeological information is included in their provenance. However, in most cases, the antiquities and archaeological material are associated with illegal excavations and looting from archaeological sites through colonial appropriation, armed conflicts, terrorism, or organized crime. Thus, the provenance of these objects is mainly based on stylistic studies.

[35]   It is worth noting that an independent group of experts studying the historical, legal, and political aspects of the presence of colonial collections in Belgium has recently proposed the creation of an independent provenance research institute to supplement known provenance information and to enable potential restitution requests, in close collaboration with museums holding collections and with communities and countries of origin. For more, see Restitution Belgium, *Ethical Principles for the Management and Restitution of Colonial Collections in Belgium*, June 2021, https://restitutionbelgium.be/en/report [accessed: 10.09.2022].

Irini Stamatoudi and Konstantinos Roussos

lish the basis for future negotiations on the return and restitution of cultural goods to their countries of origin.

Tools which are absolutely essential parts of Collection Management include digitization; the creation and maintenance of professional inventories and detailed databases using the Object-ID Standard;[36] regular control of collections; and specialized training for museum professionals. These constitute important steps for the taking of repressive measures such as provenance research. All these tools, and in particular the inventories, can provide a basis for decision-making in CHM, supporting museums' role in the fight against illicit trafficking. Digital technologies and other innovative tools may facilitate the rapid exchange of information, enhance the monitoring of illicit transactions, and increase the transparency of collections; thus enable experts, communities, and the public to access information on the provenance of cultural goods exhibited or held in museums. It is also of immense importance for museums to develop research partnerships and regular communication with the communities of origin. This can be achieved through the creation of forums for open discussion and long-term relationships.

How to handle the results

A crucial question is how museums should handle the results of the provenance research of the items in their collections. First of all, museums should publish the final results of the provenance research conducted. The publication of catalogues and databases of their collections on their websites, including provenance, exhibition history, bibliography, and other information, makes accessible all the available documentation records (e.g., details of sales, previous exhibitions, international travel, or cases of disputed ownership, museum archives, auction catalogues, scientific studies, directories and catalogues of collections, dealer records, photographic archives, etc.). By making this information available to the public, museums actively participate in the worldwide effort to combat the illicit trafficking of cultural goods and strive to fulfil their role as important resources for resilience, connection, recovery, and positive change. Furthermore, they meet their mission to responsibly manage their collections in a sustainable way for both present and future generations. They also affirm their commitment to the ethical acquisition, study, and exhibition of CH while respecting the applicable laws, regulations, standards, and guidelines. A number of important museums in Europe and the US have published the results of provenance research on the history of their collections in the form

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[36] The usage of the Object-ID Standard is highly recommended by the *Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970)*, https://en.unesco.org/sites/default/files/operational_guidelines_en_final_final_1.pdf [accessed: 10.09.2022]. It provides a rapid exchange of information on lost and stolen cultural objects, thus facilitating their identification. For more, see Art. 5(b), paras. 35-36.

of an online digital index.[37] It goes without saying that due to the fact that provenance research is an ongoing process, museums should expand, update, and enrich their online databases on a regular basis with any information that may further clarify the provenance of the objects in their collection, especially those with incomplete provenance. Aspects of an object's provenance history may change as new information becomes available.

Another key issue in CHM is what to do with illegal cultural objects that have already found their way into a museum's collection. If a museum identifies, through provenance research, that an object in its collection is related to looting, theft, or illegal export, it might – in the best-case scenario – be subject to potential return and restitution claims in the future; and in the worst-case scenario might be liable (also including criminal liability) for accepting or dealing with illegal objects and be subject to claims for damages. This may also discredit a museum's image and reputation. The best option is the return of the artefact to its place of origin. Museums should also consider requests for the return of cultural objects without a full provenance history, particularly in cases where the objects have cultural, historical, or religious significance for the country of origin.

A museum may also use the information and documents collected during the provenance research to define the basis for future negotiations in the case of return and restitution claims. If a museum receives return or restitution claims for any unlawfully appropriated artefact in its collection, it should foster a fruitful and trusting dialogue as well as a mutual understanding with the claimant communities, rather than create conflicts and tensions.[38] It should resolve the issue in a fair, appropriate, and mutually acceptable manner. If necessary, the museum should make proper return or restitution to the rightful owners.

Claims for Return and Restitution

Return and restitution

The discussion on illegal cultural objects which already found their way into a museum's collection provides another major challenge faced by the CH sector. These objects should be returned to their countries of origin. "Restitution" or *restitutio in integrum* are terms with origins in Roman law, which are nowadays often found in both civil and common law legal systems. The main meaning behind these terms is the complete (or almost complete, if complete is not possible in the circumstances) restoration of the previous state of affairs (*status quo ante*) and reparation for

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[37]   For interesting examples, see the websites of the Getty Research Institute: https://www.getty.edu/research/tools/provenance/search.html [accessed: 28.09.2022] and the Smithsonian Institution: https://collections.si.edu/search/ [accessed: 28.09.2022].

[38]   P. Bienkowski, *A Critique of Museum Restitution and Repatriation Practices*, in: C. McCarthy (ed.), *The International Handbooks of Museum Studies: Museum Practice*, John Wiley & Sons, Chichester 2015, p. 435.

any injury inflicted. This means that the term "restitution" presupposes that an unlawful act has taken place, which has created an injury that needs to be restored.[39] If this is transposed to cultural objects, alienated from their countries of origin (especially during periods of colonization or under dubious legal circumstances), restitution should mean that the object should either be returned to the dispossessed owner or (where this is not possible) an object identical or equivalent should be given back.[40]

The term "restitution" evolved in the 19th century, when claims for the repatriation of cultural objects emerged more energetically. Restitution was based on the principle of identification, which provided for the return of the cultural object that had been removed; and on the principle of territoriality, according to which an item is returned to the place from which it was taken. This latter principle was also connected with the protection of the integrity of national CH, and has increasingly influenced both bilateral and multilateral international agreements.[41] Apart from the Peace Treaties signed after the First World War, it is also found in the 1970 UNESCO Convention with regard to cultural objects which were illicitly imported, exported, and had their ownership illegally transferred.[42] It is also used in the 1995 UNIDROIT Convention, but only with regard to cultural objects that

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[39] According to Elazar Barkan, restitution includes "the entire spectrum of attempts to rectify historical injustices", including not only "the return of the specific actual belongings that were confiscated, seized, or stolen, such as land, art, ancestral remains, and the like", but also "reparations [which are] some form of material recompense for that which cannot be returned, such as human life, a flourishing culture and economy, and identity", and "apology [which refers to] an admission of wrongdoing, a recognition of its effects, and, in some cases, an acceptance of responsibility for those effects and an obligation to its victims". For Barkan the concept means something more like "making amends" as the result of guilt. He sees restitution not just as a legal but also as a cultural concept: E. Barkan, *Making Amends: A New International Morality?*, in: L.V. Prott (ed.), *Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects*, UNESCO Publishing, Paris 2009, p. 80. See also L.V. Prott, *Note on Terminology*, in: L.V. Prott (ed.), *Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects*, UNESCO Publishing, Paris 2009, p. xxii.

[40] According to Wojciech Kowalski, the term "restitution", as a term usually used for the return of property looted in times of war, should be distinguished from the term "reparations". The latter is only used to compensate for the loss in an approximate manner and is usually accomplished by handing over money or goods of equivalent value: W. Kowalski, *"Restitution": Art Treasures and War*, in: L.V. Prott (ed.), *Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects*, UNESCO Publishing, Paris 2009, p. 163. See also E. Barkan, op. cit., p. 80.

[41] "As early as the nineteenth century, [the obligation of the restitution of looted art] was based on the principle of identification, which provided for the return of exactly the same and only the same objects which had been removed, as well as on the principle of territoriality, according to which an item is returned to the place from which it was taken. In many cases, when claims were examined the period of time that had passed since the loss of the object was not taken into account. From the beginning of the nineteenth century, claims relating to cultural heritage emerged, indicating the development of the principle of the special territorial bonds attaching to works of art, which had previously applied only to archives. This principle is connected with the protection of the integrity of national cultural heritage, and has increasingly influenced both bilateral and multilateral international agreements". W. Kowalski, op. cit., p. 164.

[42] See, e.g., Arts. 13(b) and 15 of the 1970 UNESCO Convention.

are stolen.[43] In both the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, however, the notion of restitution allows for the return of the removed cultural object, irrespective of the particular requirements applying in each case. Despite the fact that in many national systems the term "restitution" is closely linked to ownership, it is argued that in modern cultural property law a restitution claim should not be seen "as one of ownership but as one of justice; not as a matter of legality, but as one of legitimacy".[44] That means that "restitution" is gradually being taken out of its narrow legal context, whilst ethical values and principles (as well as cultural arguments)[45] are being attached to it.

The term "repatriation" is however firmly based on the principles of cultural integrity and territoriality, which dictate the return of the cultural object to its place of origin. In that sense it relates to the territory rather than the dispossessed owner, and in these instances claims by countries of origin are based on this particular principle, i.e., the return of the object to its place of origin, and not on "ownership". Repatriation however is not a concept relating solely to inter-state relocation of cultural objects, but to *intra-state* relocation too. An example of such a case is the Stone of Scone – used for centuries in the coronation of monarchs of Scotland and returned from England to Scotland in November 1996. Another example is the 2006 return of manuscripts from the canton of Zurich to the canton of St Gall, from which they were taken during the Toggenburg War of 1712 when the Prince-Abbot of St Gall was defeated by the forces of Zurich and Bern. The manuscripts were returned to St Gall on a long-term loan and on the condition that it would digitize them and make them available on the Internet by the end of 2007. In that sense, the concept of "repatriation" carries with it cultural values and principles. There does, however, exist a potential problem with this terminology. This lies in the fact that it does not cover cases of return which relate to people and their connection to history, religion, and identity, as is the case with Indigenous communities and human remains. However, there is nothing to preclude the term "territory" from being conceived broadly so as to include people, their contribution to their identities, and their role in time and history.

"Return" is the most neutral term of all and, to a certain extent, incorporates the interests of both the requesting and the requested party. It takes into account a) the need for repatriation of the object, and b) the ethical, moral, archaeological, ethnographical, or other values in order for such repatriation to take place. The term "return" is widely used in requests for relocation, and specifically in the sphere of illegal trade in cultural property (as is the case, for example, with the 1970

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43   See, e.g., the Preamble to the 1995 UNIDROIT Convention and Arts. 1(a), 3(3), 3(4), 3(5), 3(8), 4(1), 8(3), 9(1), 10(3), 16(1), 16(2), and 19(3).

44   See also L.V. Prott, op. cit., p. xxi.

45   Lyndel V. Prott mentions that "restitution" is not a question of reparation of injury but rather one of ensuring adequate national collections of local cultures. Ibidem.

UNESCO Convention, the 1995 UNIDROIT Convention, and Directive 2014/60/EU of 15 May 2014 [see the corrigendum published on 12 June 2015], which is a re-cast of Directive 93/7/EEC). As was the case with Directive 93/7/EEC,[46] the new Directive provides for cooperation mechanisms and return proceedings against the possessor to secure the return of a cultural object unlawfully removed from the territory of one EU country to the territory of another EU country, on or after 1 January 1993. In these cases, return is justified on the basis of an illegal act having preceded the request. However, this term is not generally associated with making right a "wrong" or the rectification of an "injury". Rather, it unequivocally signifies an obligation for the physical return of the displaced object with the ultimate aim of achieving the integrity of the site or that of the cultural context from which the object has been removed. Obviously, such an outcome cannot be achieved if the displaced cultural object no longer exists. It is not, therefore, the unlawful act as such that dictates the return (which can be considered as a form of restitution) but the ethical and moral principles attached to it. These principles are particular to cultural property law, because they have been directly or indirectly recognized in international conventions. Therefore "return" is subject to a "cultural philosophy", which puts forward the protection of national CH as a vehicle for the protection of the world's heritage, in the sense that countries of origin are the best placed trustees for such property (irrespective of issues of ownership), particularly by reason of the fact that cultural objects are best conceived in their cultural context and they should not be accessed merely on the basis of their aesthetic values. Cultural objects also serve as information for archaeological, historical, ethnographic, or other finds. On top of that, the unequivocal and unreserved return of cultural objects which have been illegally displaced works as a means of discouraging the illegal trade in art. The neutrality of the term "return" is also indicated by the fact that this term is used in cases of relocation of cultural objects – irrespective of time limitations or other legal constraints – when the objects have been displaced under unethical circumstances. These circumstances include cases where the object's removal may not have been illegal at the time it was removed but was nonetheless unethical (for example removals during periods of war, belligerent occupation, colonization, or when a nation had no control over its cultural treasures).

Museums' practices/industry standards

As indicated above, the return and restitution of cultural property is a complex issue that encompasses a plethora of moral, ethical, political, and legal considerations. Despite the extensive bibliography on the topic, the increasing number of calls for return and restitution from individuals, groups, and source communities

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[46] Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, OJ L 74, 27.03.1993, p. 74.

all over the world, as well as the numerous international conventions, committees, and panels dealing with this issue,[47] there is still no cohesive and generally-accepted approach on how museums should deal with claims for return, restitution, and related issues. Given this state of affairs, CH professionals are looking for guidelines on how they should approach and deal with the complexities of return and restitution. This has led many museums, particularly the larger ones, to develop and implement their own guidelines and policies for return and restitution as an important aspect of the broader CHM of their institutions. Conversely, other museums, particularly the smaller ones, still lack such policies. Furthermore, most European countries have not developed comprehensive procedures for the return and restitution of cultural property, and even where such a framework of policies and guidelines exists it needs to be updated. The fact that there are so many different ways in which museums and other cultural institutions are responding to calls for return and restitution of cultural property has created a fragmentation in approaches. There is thus a pressing need for a new framework that would be based on a democratized and people-centred approach regarding the issue of return and restitution, enabling CH professionals to navigate certain moral, ethical, political, and legal challenges. The focus not only on how museums should care for collections but also on how they should care for people is a trend that has been reflected in the entire CHM.[48]

In recent years, some European countries and the UK have taken significant steps to respond to this challenge, opening up new paths on how the museum sector should address calls for the return and restitution of cultural property. Some of these initiatives are still ongoing, while others have already been published.

For instance, in the UK the government-funded Arts Council England, in association with the Institute of Art and Law of the University of Leicester, recently published (August 2022) new guidelines that cover the ethical and legal considerations relating to restitution claims and provide CH professionals with the necessary information to deal with them.[49] The new guidelines replace the measures created by the Museums and Galleries Commission 22 years ago, which are now considered outdated.[50] This guidance is underpinned by the existing policy and legislative frameworks and is intended to facilitate museums in making decisions and managing cases in a legally appropriate and ethically responsible manner.

[47] A.F. Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, Cambridge University Press, Cambridge 2006, pp. xx-xxviii.

[48] See *D2.6: A Sustainable Model of CH Management: State of the Art Report*, written by I. Stamatoudi et al. as part of the ReInHerit project.

[49] For more, see Arts Council England, *Restitution and Repatriation: A Practical Guide for Museums in England*, 5 August 2022, https://www.artscouncil.org.uk/supporting-arts-museums-and-libraries/supporting-collections-and-cultural-property/restitution-and [accessed: 12.10.2022].

[50] J. Legget, *Restitution and Repatriation: Guidelines for Good Practice*, Museums & Galleries Commission, London 2000.

It is interesting to note that the debate on the potential impact of the guidelines started even before their publication.[51]

At the European level, the Dutch government recently adopted new guidelines on the return and restitution of colonial-era artefacts from former colonies, following recommendations contained in a report issued by an advisory committee led by experts from the country's leading museums.[52] According to this report, the Dutch nation should recognize "that an injustice was done to the local populations of former colonial territories when cultural objects were taken against their will".[53] As such, Dutch public museums and galleries should unconditionally return looted cultural objects to the countries from which they were stolen. Going one step further, the Committee proposes that museums should also consider requests for the return of cultural objects without a full provenance history, particularly in cases where the objects have cultural, historical, or religious significance for the country of origin.[54]

Recently, the German Association of Museums published a new guide on how the country's state-managed museums should deal with collections acquired during colonial periods.[55] This initiative is intended to develop processes that would facilitate the return and restitution of objects that were taken from former colonies in legally or morally unjustifiable ways. This reflects the German government's attempt to build and reshape its policy to deal with its colonial past. Emphasis is placed on the return of human remains and on documentation and provenance research for other objects in museums' collections. Another interesting example of cooperative engagement and positive partnerships between Indigenous communities, museums holding artifacts, and national governments is the Utimut agree-

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[51]   For a debate on the forthcoming guidelines, see R. Atkinson, *Arts Council England Appoints Firm to Produce Repatriation Guidance*, Museums Association, 18 March 2020, https://www.museumsassociation.org/museums-journal/news/2020/03/18032020-arts-council-england-appoints-firm-to-produce-repatriation-guidance/ [accessed: 10.09.2022]; S. Ruston, *On the Impact of Arts Council England's New Restitution Guidelines*, Center for Art Law, 30 July 2021, https://itsartlaw.org/2021/07/30/on-the-impact-of-arts-council-englands-new-restitution-guidelines/ [accessed: 10.09.2022]; G. Harris, *New Guidelines for UK Museums Will Kickstart Nation's Long-Overdue Restitution Debate*, "The Art Newspaper", 20 March 2020, https://www.theartnewspaper.com/2020/03/20/new-guidelines-for-uk-museums-will-kickstart-nations-long-overdue-restitution-debate [accessed: 10.09.2022].

[52]   C. Hickley, *Netherlands Takes Lead in Europe's Efforts to Return Artefacts to Former Colonies*, "The Art Newspaper", 4 February 2021, https://www.theartnewspaper.com/2021/02/04/netherlands-takes-lead-in-europes-efforts-to-return-artefacts-to-former-colonies [accessed: 10.09.2022]; S. Cascone, *The Dutch Government Just Promised to Return Any Stolen Colonial-Era Objects in Its Collections Back to Their Countries of Origin*, "Artnet News", 4 February 2021, https://news.artnet.com/art-world/netherlands-restitution-guidelines-1941734 [accessed: 10.09.2022].

[53]   See K. Brown, *The Netherlands Should Return Cultural Objects Looted From Former Colonies, a New Report Says – and Major Museums Agree*, "Artnet News", 9 October 2020, https://news.artnet.com/art-world/netherlands-report-cultural-objects-restitution-1914398 [accessed: 10.09.2022].

[54]   See C. Hickley, op. cit.

[55]   See Deutscher Museums Bund, *Leitfaden zum Umgang mit Sammlungsgut aus kolonialen Kontexten*, 2021, https://www.museumsbund.de/publikationen/leitfaden-zum-umgang-mit-sammlungsgut-aus-kolonialen-kontexten/ [accessed: 10.09.2022].

ment between Denmark and Greenland.[56] This ongoing process has established a fair distribution of Greenland art and artifacts between Denmark and Greenland.

Finally, in 2017 French President Emmanuel Macron commissioned Felwine Sarr and Bénédicte Savoy to produce a report on the return of African CH to Africa. The report, entitled *The Restitution of African Cultural Heritage. Toward a New Relational Ethics*, was delivered by the authors in 2018.[57] The authors define colonization as a "crime against humanity", while restitution of art is considered as a step in "building bridges for future equitable relations". They recommended the return of a large number of sub-Saharan African artefacts currently in French public museums, while proposing a process to ensure this return. Although the Sarr-Savoy report has been criticized for being too ambitious to be feasible, it nonetheless has inspired a debate on the return and restitution of cultural property in the museum sector, both in France and abroad.[58]

The examples discussed above show that the number of initiatives related to the return and restitution of cultural property is steadily increasing, setting up a new framework and reflecting a significant shift in the policy of several countries and museums towards a more legitimate and morally correct attitude. This is a trend that has also been reflected in CH law.[59]

Technology at the service of return and restitution

In this new context – which has emerged over the last few years – the advantages offered by the development of digital technology are being used to facilitate the resolution of return claims. A characteristic example in this respect is 3D imaging and 3D printing. This technology allows the scanning, 3D modelling, and printing of

[56]   M. Gabriel, J. Dahl (eds.), *Utimut: Past Heritage – Future Partnerships. Discussions on Repatriation in the 21st Century*, International Work Group for Indigenous Affairs and the Greenland National Museum and Archives, Copenhagen 2008, https://www.iwgia.org/images/publications/0028_Utimut_heritage.pdf [accessed: 10.09.2022].

[57]   F. Sarr, B. Savoy, *The Restitution of African Cultural Heritage. Toward a New Relational Ethics*, November 2018, https://www.about-africa.de/images/sonstiges/2018/sarr_savoy_en.pdf [accessed: 02.03.2023].

[58]   See K. Fitz Gibbon, *Arts Council England: Guidelines for Museum Repatriation*, "Cultural Property News", 8 April 2020, https://culturalpropertynews.org/arts-council-england-guidelines-for-museum-repatriation-policy/ [accessed: 10.09.2022]; *Savoy-Sarr Report on African Art Restitution: A Summary*, "Cultural Property News", 30 January 2019, https://culturalpropertynews.org/the-savoy-sarr-report-for-president-macron-a-summary/ [accessed: 10.09.2022]; A. Herman, *One Year after the Sarr-Savoy Report, France Has Lost Its Momentum in the Restitution Debate*, "The Art Newspaper", 12 November 2019, https://www.theartnewspaper.com/2019/11/12/one-year-after-the-sarr-savoy-report-france-has-lost-its-momentum-in-the-restitution-debate [accessed: 10.09.2022].

[59]   I. Stamatoudi, *Cultural Property Law...*, pp. 216 ff.; eadem, *Alternative Dispute Resolution and Insights on Cases of Greek Cultural Property: The J.P. Getty Case, the Leon Levy and Shelby White Case, and the Parthenon Marbles Case*, "International Journal of Cultural Property" 2016, Vol. 23, p. 446; eadem, *Return of Cultural Treasures to Their Countries of Origin: Principle or Trend in Cultural Property Law?*, in: P. Pazartzis et al. (eds.), *Reconceptualising the Rule of Law in Global Governance, Resources, Investment and Trade*, Bloomsbury Publishing, Oxford 2016, p. 153.

Irini Stamatoudi and Konstantinos Roussos

accurate copies of artefacts, offering visitors the opportunity to study and interact with them more closely than ever before.[60] Therefore, museums do not have to keep controversial CH artefacts, whilst at the same time they need not empty their collections, opening a new path for the return and restitution of such objects to their communities of origin.

Although the debate is ongoing, two interesting cases illustrate two opposite approaches to the issue. The first is the cooperation between the Smithsonian National Museum of Natural History in the US and the Tlingit native community of southeast Alaska.[61] The latter requested the return of several objects that were sacred to them, among which was the Killer Whale clan crest hat. This effort was successful and led, on the one hand, to the return of this object to the community of origin, and on the other hand to the development of a collaborative project for creating digital 3D scans and replicas. A digital 3D copy of the original object was created and replaced the original artefact in the museum, while the original artefact was returned to the claimant community. This case perfectly illustrates how digital technology can facilitate the resolution of such claims and promote mutual understanding and collaboration between museums and local communities, resulting in a win-win situation. It also demonstrates how the advancement of new technologies can open new opportunities for synergies and collaborations which assist museums in fulfilling their social role. It raises important issues regarding intellectual property rights. In these cases, certain intellectual property implications that are related to a wide range of issues need to be considered. For instance, who owns or controls the data files, or who decides when, why, and how future replicas can be made.[62] According to the agreement between the Smithsonian National Museum of Natural History and the Tlingit native community, the intellectual property rights relating to the hat belong to the tribe, while the replica could be used for museum purposes only. Furthermore, new replicas would not be produced without the permission of the tribal chief. Finally, it was also agreed that the object cannot be downloaded and printed through the museum's 3D online gallery.[63]

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[60]   For a discussion about the advantages offered by 3D technology in CH, see M. Ballarin, C. Balletti, P. Vernier, *Replicas in Cultural Heritage: 3D Printing and the Museum Experience*, "International Archives of the Photogrammetry, Remote Sensing & Spatial Information Sciences" 2018, Vol. 42(2), pp. 55-62; C. Balletti, M. Ballarin, F. Guerra, *3D Printing: State of the Art and Future Perspectives*, "Journal of Cultural Heritage" 2017, Vol. 26, pp. 172-182; M. Neumüller et al., *3D Printing for Cultural Heritage: Preservation, Accessibility, Research and Education*, in: M. Ioannides, E. Quak (eds.), *3D Research Challenges in Cultural Heritage*, Springer-Verlag, Berlin–Heidelberg 2014, pp. 119-134; R. Scopigno et al., *Digital Fabrication Techniques for Cultural Heritage: A Survey*, "Computer Graphics Forum" 2017, Vol. 36, pp. 6-21; F. Wilson et al., *Evaluation of Touchable 3D-printed Replicas in Museums*, "Curator: The Museum Journal" 2017, Vol. 60(4), pp. 445-446.

[61]   For more on this project, see E. Hollinger et al., *Tlingit-Smithsonian Collaborations with 3D Digitization of Cultural Objects*, "Museum Anthropology Review" 2013, Vol. 7(1-2), pp. 201-253.

[62]   For a discussion on this issue, see C. Elias, *Whose Digital Heritage? Contemporary Art, 3D Printing and the Limits of Cultural Property*, "Third Text" 2019, Vol. 33(6), pp. 687-707.

[63]   G. Isaac, *Perclusive Alliances: Digital 3-D, Museums, and the Reconciling of Culturally Diverse Knowledges*, "Current Anthropology" 2015, Vol. 56(S12), pp. 286-296.

The second case concerns the Oxford-based Institute of Digital Archaeology (IDA),[64] which had 3D scanned the Parthenon Marbles at the British Museum as part of a project to create copies of the marbles to support the case for the return of the originals.[65] Even though the British Museum turned down the IDA's formal photography request,[66] the effort had gone ahead. After the scan was complete, the museum deemed the activity "unauthorized". This position seems to contradict the visitor guidelines – which explicitly allow the use of 3D imaging software in its galleries – and undermines its mission and vision. The British Museum's reaction clearly demonstrates that the use of digital technology as a means of resolving return and restitution claims is still in a transitional stage. Despite its great potential and opportunities for both museums and claimant communities, there are still many museums, such as the British Museum, that refuse to engage in such practices. According to the IDA the British Museum, as a state-funded institution, should offer unhindered access to its premises.[67]

Collaborations and mutual understanding as a response to a complex challenge

The text of the UNESCO 2015 Recommendation concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society[68] strongly supports the creation of deep relationships, collaboration, and interaction between museums (as well as other cultural institutions and sites) and the local communities whose culture is represented in their collections.[69] This matters most when museums have to deal with claims for return, restitution, and related issues. By fostering a fruitful and trusting dialogue and resolving the issue in a fair, appropriate, and mutually acceptable manner, museum profes-

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[64]   See The Institute for Digital Archaeology, *Our Purpose*, http://digitalarchaeology.org.uk/our-purpose [accessed: 12.10.2022].

[65]   See T. Knowles, *Robot "with Human Touch" Could Carve Replica Elgin Marbles*, "The Times", 14 February 2022; S. Jenkins, *Give the Parthenon Marbles Back to Greece – Tech Advances Mean There Are No More Excuses*, "The Guardian", 20 November 2021, https://www.theguardian.com/commentisfree/2021/nov/20/parthenon-marbles-greece-british-museum [accessed: 10.09.2022].

[66]   The British Museum turned down the request without any justification. In fact, it replied that "we are not in a position to approve your request. However, the reasons for the decision shall not be disclosed, nor shall any justification for declining the request be provided". See *British Museum Refuses Access to the Athens Acropolis Parthenon Marbles*, "Tornos News", 23 March 2022, https://www.tornosnews.gr/en/greek-news/culture/46754-british-museum-refuses-access-to-the-athens-acropolis-parthenon-marbles.html?print [accessed: 10.10.2022].

[67]   See *British Museum to Face Court after Rejecting Request for 3D Scan of Parthenon Marbles*, "Neos Kosmos", 23 March 2022, https://neoskosmos.com/en/2022/03/23/news/greece/british-museum-to-face-court-after-rejecting-request-for-3d-scan-of-parthenon-marbles/ [accessed: 10.10.2022].

[68]   17 November 2015, UNESCO Doc. CLT/HER/MHM/2015/PI/H/1.

[69]   See Art. 18 of the UNESCO 2015 Recommendation.

sionals increase the relevance and sustainability of their organizations and fulfil their social role and responsibilities towards modern societies. Regardless of the results of the claim, this process will develop sustainable relationships between communities, cultures, museums, and other cultural institutions. Erich Matthes has supported the view that "rather than thinking that the aims and values of museums are contrary to repatriation claims, [...] coupled with principles of distributive justice, they actually entail the need for repatriation as part of a wide redistribution of cultural goods".[70]

There are many ways in which individual museums or other cultural institutions (e.g., libraries, university museums, etc.) can work effectively and sustainably with claimant communities to assess their relevance and create the basis for deepening their relationships.[71] An illustrative example of how a joint relationship between an institution and claimant community can be established is the return of one thousand Machu Picchu artefacts from Yale University (USA) to Peru in 2010.[72] Initially these artefacts, which were taken in 1912 from the Inca site, were the subject of a long and bitter litigation between the Government of Peru and Yale University. The latter realized that this conflict was damaging its social image, while reaching an agreement was in the interest of both sides. After negotiations, Yale agreed to return to the University of Cusco at Peru the collection of antiquities from the Inca site of Machu Picchu. But this interesting case was not concluded just by the return of the objects. Yale and the University of Cusco worked jointly to establish a museum and a research centre (the International Center for the Study of Machu Picchu and Inca Culture), where scholars and students from around the world can study these artefacts and Inca culture.[73] On the one hand, this solution fulfils Yale's mission to preserve and study the collection, as well as to disseminate and share knowledge. This is highly recommended by Article 6.1 of the ICOM Code of Ethics for Museums, which promotes the "sharing of knowledge, documentation and collections with museums and cultural organisations in

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[70]   E.H. Matthes, *Repatriation and the Radical Redistribution of Art*, "Ergo" 2017, Vol. 4(32), p. 950.

[71]   For example, the Smithsonian recently established a new collections policy that requires collaboration between museums and the communities represented by their holdings and the return or shared ownership of items that might have been previously stolen or acquired under duress. For more, see P. McGlone, *Human Bones, Stolen Art: Smithsonian Tackles Its "Problem" Collections*, "The Washington Post", 27 July 2022, https://www.washingtonpost.com/arts-entertainment/2022/07/27/smithsonian-collection-policy-update/ [accessed: 12.10.2022].

[72]   For more on this case, see *Peru-Yale Partnership for the Future of Machu Picchu Artifacts*, "Yale News", 4 June 2015, https://news.yale.edu/2015/06/04/peru-yale-partnership-future-machu-picchu-artifacts [accessed: 28.09.2022].

[73]   For more on the museum and the International Center, see *Peru-Yale Center for the Study of Machu Picchu and Inca Culture Opens*, "Yale News", 6 October 2011, https://news.yale.edu/2011/10/06/peru-yale-center-study-machu-picchu-and-inca-culture-opens [accessed: 10.09.2022]. See also the "Utimut" Project for the Repatriation of CH from Denmark to Greenland. See the discussion later on in the article.

the countries and communities of origin".[74] This same Article also calls upon museums to explore every possibility for establishing partnerships with museums or other institutions in countries that have lost a significant part of their heritage. At the same time it can be used as a vehicle for strengthening museums' social role and relevance, as well as for working together with communities, exchanging experiences, and promoting solidarity.

Museums' Crucial Role in Raising Public Awareness

Due to the complex nature of illicit trafficking, the fight against it must be based on effective collaborative and participative efforts between museums, academic researchers, universities, communities, research institutions, the public, law enforcement agencies, government authorities, NGOs, intergovernmental organizations, and other stakeholders. Cross-sectorial cooperation, synergies, and networks are valuable and necessary to support museums in their fight against illicit trafficking, in particular for museums located in areas facing high risks and threats. Promoting synergies today will contribute to preventing the illegal trade of cultural property in the coming years.

As was mentioned in the introduction, CHM can be the main vehicle for museums to raise public awareness about various issues. In this sense, CH professionals should use all the advantages offered by CHM to make the general public aware regarding the fight against the illicit trade of cultural property and the need for its return and restitution to its countries of origin. In doing so, they can turn the challenge into an opportunity and act as catalysts for stimulating positive change in modern societies. Using available communication channels (social media, etc.) as well as digital technologies, they should convey the message to both local and global audiences that illicit trade in cultural goods is a serious crime. According to the ICOM International Observatory on Illicit Traffic in Cultural Goods "in order to efficiently fight the illegal trade of cultural property, it must be considered as a serious crime by the general public".[75] By conveying this important message museums will act as both agents of change and leaders, positively influencing public opinion, especially in local communities where the population is often not well informed about the illicit trafficking of cultural goods.

Particular emphasis should be placed on raising awareness among young people, which is a target group that museums are particularly keen to attract.[76]

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[74]   See also ICOM International Committee for University Museums and Collections, *Guidance for Restitution and Return of Items from University Museums and Collections*, December 2021, http://umac.icom.museum/wp-content/uploads/2022/03/UMAC-Guidance-Restitution-2022.pdf [accessed: 10.10.2022].

[75]   See ICOM International Observatory on Illicit Traffic in Cultural Goods, *How to Fight It?*, https://www.obs-traffic.museum/how-fight-it [accessed: 10.09.2022].

[76]   See *D2.6: A Sustainable Model of CH Management: State of the Art Report*, written by I. Stamatoudi et al. as part of the ReInHerit project.

Irini Stamatoudi and Konstantinos Roussos

This category includes many adolescents and children who are considered digital natives and use computers, social networking services, and text messaging as their main means of communication and learning. First of all, museums should promote a real-time dialogue between young people and the CH professionals. A recommended tool is to create webinars and chat rooms for discussions between young people and CH professionals on the organizations' websites, or interact with them on social media. Furthermore, they can develop a set of outreach activities, education projects, seminars, and themed exhibitions targeted at local schools, universities, and youth organizations and aimed at raising awareness among children and adolescents, making them positive stakeholders of CH. In this sense, it would be helpful to promote dialogue and collaboration between CH professionals, school teachers, and university professors in order to develop a common strategy on how young people should be connected to CH. It is critically important to bring schools, universities, and museums together in the context of a fruitful interaction. They can also involve people who are working with music, sound, and acting to create new languages for communicating with young audiences. Considering that youth is a bridge between the past, present, and future generations, young people can be key actors in promoting the values and respect for the CH property. Engaging them in the protection of CH means developing positive attitudes and practices in both local and global communities. This could be an important step in disrupting the illicit trafficking of cultural property in the future.

Conclusions

Museum statements condemning the illicit trade in CH do not suffice to render museum practices ethical. Theory and practice must go hand in hand, otherwise making statements and publishing them online is just paying lip service to the issue, and nothing more. The fact that many museums have started realizing the importance of both acquiring objects legitimately and ethically and returning those objects that have found their way into their collections in an ambiguous manner (on many occasions irrespective of time limitations, as is often the case with objects removed during colonial periods) is an encouraging sign. However, it is crucial for every museum to integrate such concerns within the broad scope of CHM. This article has underlined the need to constantly redefine the management of museums' collections based on the evolving ethical and professional standards and new trends. In the upcoming years every museum – regardless of whether their collection is large or small, public or private – should draft efficient and implementable Collections Management Plan aimed at harnessing the full potential of every available tool in the context of CHM. This can render the institution extremely effective, facilitate decision-making, support its positive impact in combating the illicit trafficking of cultural property, and facilitate its return and restitution efforts in the countries of origin and promote the values and respect for the CH property.

Any Collections Management Plan should be based on an anthropocentric and humanitarian approach to CH, and start paying more attention to the people and cultures from which objects originate, and not just focus on the objects themselves. In this context, museums should turn their attention to promoting connections between people and heritage, as well as to fostering intercultural dialogue and understanding, sustainability, and well-being. Particular emphasis should be placed on attracting young people and convincing them to become positive stakeholders of CH. At the same time, it is of immense importance for museums to deepen their relationships with the claimant communities or states. Innovations and technologies can also work as a vehicle for museums to deal with return and restitution claims.

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