

OF ALL THE THINGS I'VE LOST,
I MISS MY MARBLES THE MOST!
AN ALTERNATIVE APPROACH TO THE EPIC
PROBLEM OF THE ELGIN MARBLES.

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I. PURPOSE

The Elgin Marbles have been the subject of debate for nearly 200 years.¹ Competing claims from Greece, where the marbles originated,² and England, where the marbles are now held,³ have continued unabated despite attempts by the international community⁴ to quell the dispute. This Note will explore the various types of dispute resolution as they can be applied to the Elgin Marble controversy, sift through various reconciliation ideas and make a recommendation as to which of the methods is likely to be most effective. In furtherance of that goal, the Note will examine past attempts at dispute resolution in the fields of art and cultural property, both successful and unsuccessful, as well as examine the failed attempts in this particular controversy, to determine how this conflict can be resolved and to set forth a program through which future cultural property conflicts can be resolved.

Section II will introduce the history of the marbles, tracing their origins, removal from Greece, and status as cultural property. Section III will review previous attempts at resolving this dispute. Section IV will detail England's arguments for retaining the marbles, while Section V will give an overview of Greece's past attempts at recovering the marbles. Sections VI and VII will discuss cultural property restitution as it has been applied in other cases, and consider whether any of those cases are applicable to the Elgin

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¹ See, e.g., Christine K. Knox, Note, *They've Lost Their Marbles: 2002 Universal Museums' Declaration, the Elgin Marbles and the Future of the Repatriation Movement*, 29 SUFFOLK TRANS-NAT'L L. REV. 315 (2006).

² See generally The Parthenon Frieze, <http://www.ekt.gr/parthenonfrieze/introduction/temple.jsp> (last visited Feb. 17, 2007); see also The Parthenon, <http://academic.reed.edu/humanities/110Tech/Parthenon.html> (last visited Feb. 16, 2007).

³ See generally The British Museum, <http://www.thebritishmuseum.ac.uk/gr/grhome.html> (last visited Feb. 18, 2007).

⁴ See *infra* Section III for a detailed discussion of previous attempts.

Marble dispute. Section VIII will consider the different types of dispute resolution available for use by the parties before Section IX gives an ultimate conclusion and suggestion for this case, namely that the marbles should be returned to Greece either as part of a loan-agreement with England or as an outright return.⁵ By considering one of the most prominent cultural property disputes⁶ through the lens of alternative dispute resolution, hopefully an answer can be found which is agreeable to both countries.

II. INTRODUCTION: WHAT ARE THE ELGIN MARBLES?

A. Origins of the Marbles

i. Parthenon: Building and History

The Parthenon,⁷ built in the 5th Century B.C.E. as a temple to the goddess Athena,⁸ marked the beginning of classical development in Periclean Athens.⁹ This period is considered the heyday of Athenian civilization,¹⁰ and the Parthenon is emblematic of the immense progress that took place during this time.¹¹ “When work began on the Parthenon in 447 B.C., the Athenian Empire was at the height of its power. Work on the temple continued until 432; the Parthenon, then, represents the tangible and visible efflores-

⁵ See *infra* Section IX.

⁶ David Rudenstine, *Lord Elgin and the Ottomans: The Question of Permission*, 23 *CARDOZO L. REV.* 449 (2002) (explaining that the Elgin marbles are the subject of the most renowned cultural property dispute).

⁷ The Parthenon, *supra* note 2 (“[t]he Parthenon is a Doric peripteral temple, which means that it consists of a rectangular floor plan with a series of low steps on every side, and a colonnade (8 x 17) of Doric columns extending around the periphery of the entire structure.”).

⁸ The Parthenon Frieze, *supra* note 2.

⁹ Richard Hooker, *The Athenian Empire*, <http://www.wsu.edu/~dee/GREECE/ATHEMP.HTM> (last visited Feb. 15, 2007) (explaining that Pericles is credited with developing the great democracy for which Athens is famous). “There is no question that the democratic reforms of the Age of Pericles owe their existence to the energy of this political figure. He was a man of immense persuasiveness and an orator of great power.” *Id.* “[I]t was in the Athens shaped by Pericles that the greatest achievements of the Greeks took place.” Donald Kagan, *Periclean Athens and Modern Democracy*, Jun. 8, 1993, available at http://www.aei.org/publications/pubID.17960,filter.all/pub_detail.asp.

¹⁰ Hooker, *supra* note 9. During his reign, Athens underwent its “Classical” period. The great Greek tragedies and comedies, including the works of Sophocles, Euripides and Aeschylus, were written during this time. *Id.*

¹¹ The Parthenon Frieze, *supra* note 2.

cence of Athenian imperial power, unencumbered by the depredations of the Peloponnesian War.”¹²

The Parthenon is decorated with a marble frieze¹³ depicting what is thought to be the PanAthenaic procession.¹⁴ This frieze¹⁵ has had a rather tumultuous history.¹⁶ “Carved by Phidias in the 5th century B.C., the Parthenon sculptures are [now] scattered throughout several European museums, including the Louvre in Paris.”¹⁷ From its completion in 432 B.C.E. to the seizure of Athens by the Ottomans in 1458 C.E., the Parthenon was subject to conversions to a church¹⁸ and a mosque,^{19,20} and ravaged by fire.²¹

¹² The Parthenon, *supra* note 2; *see generally* http://www.laonia.org/gen_info_literature/Peloponnesian_war.htm (last visited Feb. 19, 2007) for an overview of the Peloponnesian War.

¹³ “[I]n Greco-Roman classical architecture, the middle of the three main divisions of an entablature (section resting on the capital). The frieze is above the architrave and below the cornice. The term also refers to any long, narrow, horizontal panel or band used for decorative purposes” ENCYCLOPAEDIA BRITANNICA, *available at* <http://www.britannica.com/eb/article-9035441/frieze#154701.hook>. For purposes of this note, the latter definition is used. The frieze decorated the upper part of the cella – the main part of the temple closest to where the statue of Athena stood. <http://www.ekt.gr/parthenonfrieze/introduction/frieze.jsp> (last visited Jan. 26, 2007). A bas relief “is a method of sculpting which entails carving or etching away the surface of a flat piece of stone” <http://www.stonerevival.com/page.asp?navid=18> (last visited Feb. 19, 2007).

¹⁴ The PanAthenaic procession was an annual Athenian festival, which took place at the beginning of the Athenian calendar year (midsummer) – the Parthenon frieze depicted both gods and mortals in the procession. Parthenon Frieze, <http://www.mcah.columbia.edu/parthenon/flash/main.htm> (last visited Feb. 16, 2007) [hereinafter Parthenon Frieze Columbia]. “Parthenon is the only temple whose frieze depicts religious ceremony procession, the Great Panathenaia, the most ancient and important festival of Athenians.” http://www.sikyon.com/athens/Parthenon/frieze01_eg.html (last visited Feb. 17, 2007); *see also* The Parthenon, *supra* note 2.

¹⁵ TED Case Studies – The Elgin Marbles, <http://www.american.edu/TED/monument.htm> (last visited Feb. 19, 2007): “The [nintety-two] metopes portrayed the victories of Greek gods and heroes over their enemies and thus the victory of civilization over barbarism. The friezes displayed citizens as close to the gods, which to an Athenian of the time signified the glorification of all of Greece’s people.” *Id.* In classical architecture, a frieze consisted of triglyphs “projecting rectangular blocks, each ornamented with three vertical channels and metopes (spaces).” ENCYCLOPAEDIA BRITANNICA. <http://www.britannica.com/eb/article-9035441/frieze> (last visited Feb. 17, 2007); *see generally* Michael J. Reppas II, *The Deflowering of the Parthenon: A Legal and Moral Analysis on Why the “Elgin Marbles” Must be Returned to Greece*, 9 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 911, at 919 (1999) [hereinafter Reppas].

¹⁶ The Parthenon Frieze, <http://www.ekt.gr/parthenonfrieze/introduction/history.jsp> (last visited Feb. 18, 2007) (detailing the different ordeals the Parthenon and its frieze were exposed to).

¹⁷ Rosella Lorenzi, *Elgin Marbles Dispute Takes a New Twist*, DISCOVERY NEWS, Dec. 3 2004, *available at* <http://dsc.discovery.com/news/briefs/20041129/elginmarbles.html> [hereinafter Rosella Lorenzi].

¹⁸ *See* The Parthenon Frieze, *supra* note 16 (discussing that during the conversion to a church between 450 and 500 B.C.E., part of the east end of the frieze was removed. During the 12th century B.C.E., six additional sections were removed to make room for windows); *see also* Reppas, *supra* note 15, at 919 (“[t]he first major change to the building itself came in the sixth century when the Parthenon was converted to a Christian church under the Byzantine Emperor

Each of these occurrences caused damage to the sculptures on the frieze.²² The late 17th Century brought war to Athens, causing the Parthenon to suffer further damage.²³

ii. Parthenon Marbles become the ‘Elgin’ Marbles

In the early 19th Century, Lord Elgin²⁴ visited Athens and expressed an interest in studying the marbles. After his initial study, he continued on to obtain permission from the then-ruling Ottomans²⁵ to copy the marbles.²⁶ Subsequently, and without proper permission,²⁷ he removed as many pieces of the frieze as he could and shipped them back to England.²⁸ These pieces, known as the “Elgin Marbles,” are currently displayed in the British Museum²⁹

Justinian (A.D. 527-65) . . . [as a result, the] northwest and east metopes were defaced because of their pagan images.”)

¹⁹ Reppas, *supra* note 15, at 919 (explaining that the Parthenon was transformed into a mosque in 1458 B.C.E.).

²⁰ *Id.* (“[t]hese were almost the only changes in 2,000 years.”).

²¹ The Parthenon Frieze, *supra* note 16 (indicating that the frieze was damaged during a large fire at the Parthenon in the 3rd Century B.C.E. The full extent of the damage caused by this fire is unknown).

²² *Id.*

²³ The Turko-Venetian war in 1687 caused a large amount of damage to the frieze. *Id.* During the war, the Parthenon suffered extreme amounts of damage:

The Parthenon has also endured physical damage as a result of foreign occupation. Under the command of Francesco Morosini, the Venetian forces laid siege to the Acropolis in September 1687 and one of their salvoes ignited a powder magazine which the Turks kept in the Parthenon. The resulting damage to the building was tragic and irreparable. Subsequent events did little to redeem Morosini’s reputation; having employed stones from the ancient monuments to repair the city walls, he attempted to remove the central sculptures of the Parthenon’s west pediment in order to take them home with him to Venice His workmen were casual and callous; their clumsiness allowed the statues to fall and shatter, whereupon the shards were left where they lay. Considering all this, it is indeed “a wonder that the Parthenon still stands.” Though these acts marked the end of the first period of the destruction of the Parthenon, as Greenfield wrote, “Following this, the building succumbed to the passion of collectors” beginning with the removal of one detached piece of the frieze by the Comte de Choiseul-Gouffier to France in 1787.

Reppas, *supra* note 15, at 919–20 (citations omitted).

²⁴ Lord Elgin was the British Ambassador to the Ottoman Empire. The Parthenon Frieze, *supra* note 16.

²⁵ *Id.*

²⁶ Reppas, *supra* note 15, at 924 (citations omitted).

²⁷ See *infra* Section IV. B. for a consideration of permission; see Reppas *supra* note 15, at 921 (citations omitted) (explaining that Turkish “permission” form was translated to Italian rather than English because the Italian word for permission was more vague and therefore allowed him more leeway).

²⁸ The Parthenon Frieze, *supra* note 16.

²⁹ *Id.*

and constitute more than half of the entire frieze.³⁰ According to David Rudenstine, Dean of Cardozo School of Law,³¹ “[t]his dismantling of the Parthenon—the most prominent contemporary icon of Western civilization—was done at the behest of Lord Elgin, a Scottish Earl and the British ambassador to the Ottoman Empire in Constantinople from 1800 to 1803.”³²

Although it was not his initial plan,³³ once he decided to take the marbles, Elgin pursued them very aggressively.

Lord Elgin simultaneously hired over three hundred workmen to dismantle the Acropolis Gangs of carpenters, diggers, porters, and others were taken on to Elgin’s payroll, and his agents gathered in inscriptions, vases, coins, and other antiquities. . . . It took these men one full year to dismantle the frieze alone, and by 1803 hundreds of pieces of sculptured marble . . . were boxed for shipping to Scotland.³⁴

There is evidence, however, that Elgin was not confident that he had the permission he needed to take the marbles: “For the duration of their work, Elgin continued to provide ‘showers of gifts’ to the Turks, to ensure their compliance.”³⁵

Not long after Elgin returned to England with the frieze marbles, they were purchased by the British Parliament, and placed in the British Museum.³⁶ There is no explanation for why Elgin did not take the marbles back to his mansion.³⁷ However, once they were bought by the government and placed in the museum, the

³⁰ Parthenon Frieze Columbia, *supra* note 14 (explaining that of the surviving pieces of the original frieze, about 420 feet of the original 524, half are held by England in the Duveen Gallery); see also Marbles Reunited, <http://www.marblesreunited.org.uk/campaignstory/whymatter.html> (last visited Feb. 12, 2007).

³¹ Benjamin N. Cardozo School of Law Directory, available at <http://www.cardozo.yu.edu/MemberContentDisplay.aspx?cmd=ContentDisplay&ucmd=UserDisplay&userid=10540> (last visited Feb. 18, 2007).

³² See Rudenstine *supra* note 6, at 449 (emphasis added).

³³ Reppas *supra* note 15, at 924 (citations omitted).

³⁴ *Id.* at 924–25 (citations and quotations omitted).

³⁵ *Id.* (citations omitted) (indicating that, had Elgin been confident in his permission, he would have continued with his work without constant bribes and reassurances).

³⁶ “The British Parliament purchased the entire collections from Lord Elgin in 1816, by a vote of eighty-two for and thirty against, for 35,000 pounds. The Marbles were then officially called “The Elgin Marbles,” and have remained in the British Museum as one of its most important collections.” *Id.* (citations omitted).

³⁷ *Id.* at 924 (citations omitted) (explaining that Elgin had initially wanted to copy the marbles for his mansion). If we accept Elgin’s asserted reason as true, it does not make sense for him to have sold the marbles to the government. There is no indication as to a definitive reason.

government began its campaign to argue that the marbles were part of British patrimony.³⁸

B. Place in Greek Culture

Despite the long lapse of time since their removal,³⁹ Greece's continued demands for the return of the marbles indicates their importance to Greek culture. The prevailing belief that the marbles belong to Greece can be better understood when one examines the extreme importance that the frieze, and more generally, the Parthenon, play in Greek culture.⁴⁰ As Minister Mercouri⁴¹ stated, "They are the symbol and the blood and the soul of the Greek people."⁴²

From an artistic standpoint as well, the reunification of the marbles is important.⁴³ The marbles tell a story about religious belief and life in ancient Athens; a story only truly understood when the frieze is viewed as a whole.⁴⁴ Historian/Journalist Christopher Hitchens highlights this point by drawing a comparison between the marbles and other famous works of art:

[I]t is wrong that "a brilliant frieze, which was carved as a unity, and tells a narrative story, should be broken in two and exhibited in separate cities. Suppose that the Mona Lisa had been arbitrarily sawn in two, with one half in a gallery in Budapest and the other in Barcelona. Who would resist the call to reunite the two parts?"⁴⁵

Hitchens seems to be drawing on the hypocrisy of the situation: People in almost any international community would be horrified by the idea of the destruction of a masterpiece like the Mona Lisa, and would be unlikely to accept any justification for separation of the pieces. However, many people are willing to adopt the position of the British government, to wit, that the marbles do not lose any-

³⁸ See John Henry Merryman, *Thinking About the Elgin Marbles*, 83 MICH. L. REV. 1881, 1915 (1985); see also Rudenstine, *supra* note 6, at 450.

³⁹ Reppas, *supra* note 15, at 931-32 (citations omitted).

⁴⁰ See *supra* Section II.A.i for a discussion of this topic.

⁴¹ Melina Mercouri was Greece's Minister of Culture from 1981-1989 and from 1993-1994. http://en.wikipedia.org/wiki/Melina_Mercouri (last visited Oct. 14, 2007).

⁴² Merryman, *supra* note 38, at 1883.

⁴³ Marbles Reunited, *supra* note 30.

⁴⁴ *Id.*

⁴⁵ *Id.* (emphasis in original).

thing in their form, substance, or meaning, by being separated in this way.⁴⁶

In his article *The Deflowering of the Parthenon: A Legal and Moral Analysis on Why the “Elgin Marbles” Must be Returned to Greece*, Michael J. Reppas II sets forth an illustration of the reasons for Greece’s demand for the return:

Greece demands the return of the Parthenon Marbles to Athens for four primary reasons. First, because the monument to which they belong, namely the Parthenon, is in Athens. Second, because in Athens the Marbles will be exhibited within sight of the Parthenon, and the visitor can form a complete picture of the temple in its entirety. Third, because they form an inseparable part of the monument—the symbol of Greek Classical civilization at its apogee. The restitution of the Marbles will restore the unity of the decoration and the architectural cohesion of the monument. Fourth, because the British have an obligation, not to Greece but to the cultural heritage of the whole world, to restore its symbol, the Parthenon, which is also the emblem of UNESCO.⁴⁷

C. Marbles as Cultural Property

i. What is cultural property?

The Elgin Marbles fall under the category of cultural property.⁴⁸ Although the term has no strict definition, it is generally understood as:

[A]ny item that may be regarded as being of significance for archaeology, prehistory, history, literature, art or science on both religious and secular grounds. Cultural property includes art, artifacts, antiques, historical monuments, rare collections, religious objects of importance to the cultural identity of a group of people and other items representing significant historical, artistic and social accomplishments.⁴⁹

⁴⁶ See Rosella Lorenzi, *supra* note 17 (describing the position of Neil McGregor, the director of the British Museum, who claims that the marbles are in better condition and best seen in the museum even though they are separated from the entire storyline which is presented when the frieze is viewed as a whole).

⁴⁷ Reppas, *supra* note 15, at 917 (citations omitted).

⁴⁸ Merryman, *supra* note 38, at 1888 (citations omitted) (“[t]he Marbles are a familiar and glamorous example of a class of objects called with increasing frequency ‘cultural property.’”).

⁴⁹ Knox, *supra* note 1, at 316–18 (citations omitted). UNESCO has also defined the term: “‘Cultural property’ denotes historical and ethnographic objects and documents.” *Promote The Return or the Restitution of Cultural Property*, (Second Legal Development, II. Functions and

The legal ownership of cultural property is a sore subject for many, creating conflicts in the international community.

One of the most basic issues that divides scholars and laymen alike is that of who owns cultural property, or put in a more philosophical manner, “who owns the past?” There are two main schools of thought on this subject which view Cultural Property as either the property of the country where it was created, or the property of all of mankind.⁵⁰

The Elgin marbles are a strong example of a piece of cultural property that has affected more than just nationals; the controversy led to the coining of a new term “Elginism,”⁵¹ used to describe the theft of cultural property. The effect of this type of theft is felt by more than just Greeks; scholars and others in the art world are likewise affected.⁵²

Due to the dichotomy between the ways cultural property can be viewed,⁵³ the marbles need to be classified as either an item of cultural nationalism or cultural internationalism⁵⁴ before their fate can be determined. In order to justify giving the marbles back to the Greeks, the marbles must be determined to be pieces of cultural nationalism rather than cultural internationalism.⁵⁵

scope of application of the Committee), <http://unesdoc.unesco.org/images/0013/001394/139407eb.pdf> (last visited Feb. 19, 2007) [hereinafter *Promote*].

⁵⁰ Reppas, *supra* note 15, at 925 (citations omitted).

⁵¹ “An act of cultural vandalism. A term coined by the destructive actions of Lord Elgin who illegally transported the Parthenon Marbles from Greece to London between 1801 and 1805. Now also applies to other cultural objects. Usually refers to artifacts [sic] taken from poorer nations to richer ones.” This type of theft is still present in our time – widespread “Elginism” took place in Baghdad in 2003. <http://www.elginism.com/definition/> (last visited Feb. 14, 2007).

⁵² *Id.* Scholars feel the loss of the marbles through their lack of ability to study the sculptures as a whole and do accurate and complete historical research. Artifacts are often destroyed or changed when taken out of their original context, and in some cases – like the Elgin Marbles – they are renamed and associated with their taker rather than their place of origin. *Id.*

⁵³ Reppas, *supra* note 15, at 925 (citations omitted).

⁵⁴ Knox, *supra* note 1, at 320–21 (explaining that cultural nationalism emphasizes the property’s importance in its nation of origin, while cultural internationalism focuses on the preservation of the property for the benefit of all mankind).

⁵⁵ Reppas, *supra* note 15, at 925.

III. GIVE ME BACK MY MARBLES! PREVIOUS RESOLUTION ATTEMPTS

A. Overview

For the past 150 years, the presence of the marbles in England has been ridden with controversy and a continued demand for their return to Greece.⁵⁶ Although Britain has been steadfast in its decision to keep the marbles,⁵⁷ recent developments concerning other sections of the frieze⁵⁸ present an opportunity for analysis of the long-standing debate. Earlier attempts to address this problem by UNESCO⁵⁹ proved unsuccessful,⁶⁰ however, the international community is still concerned with this topic.⁶¹ The case of the Elgin Marbles offers an interesting and contemporary opportunity to explore the ways that alternative dispute resolution can resolve international conflicts.

Previous attempts at addressing the problem have been unsuccessful. International conferences and conventions such as the Hague Convention (and other parts of UNESCO) and the 2002 Universal Museums' Convention have made suggestions as to what to do about the marbles;⁶² however, none of these options has managed to have staying power. In order to consider a better alternative, the failed attempts of the past should be reviewed.

i. The Hague Convention

The 1954 Hague Convention dealt with the issue of cultural property peripherally, discussing only the protection of cultural

⁵⁶ See Knox, *supra* note 1.

⁵⁷ See *id.*

⁵⁸ On September 5, 2006, a piece of the frieze that had been held by Heidelberg University in Germany was returned to Greece. Piece of Parthenon frieze handed back to Greece, <http://www.elginism.com/20060905/526/> (last visited Feb. 16, 2007).

⁵⁹ United Nations Educational, Scientific and Cultural Organization (UNESCO), an organization which states as its goal "to build peace in the minds of men." www.unesco.org (last visited Jan. 28, 2007). In furtherance of that goal, "UNESCO is working to create the conditions for genuine dialogue based upon respect for shared values and the dignity of each civilization and culture." *Id.*

⁶⁰ See Knox, *supra* note 1; see also <http://www.elginism.com/definition/> (last visited Feb. 14, 2007).

⁶¹ "Politically, there is increasing activity . . . to encourage the voluntary repatriation of cultural property, independently of any legal obligation to do so." Merryman, *supra* note 38, at 1893. This seems to be the type of action Greece desires most, namely, for England to return the marbles without the need for legal action.

⁶² See *infra* Parts III A1-3.

property from damage, “irrespective of origin or ownership,” in the event of an armed conflict.⁶³ Although recognizing the importance of preservation of cultural property, the Convention sidestepped the larger issues: who owns the property and (if not the current possessor) how will the property be returned?⁶⁴

ii. The 1970 UNESCO Convention

In 1970, UNESCO held a “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.”⁶⁵ Unlike the 1954 Hague Convention,⁶⁶ the UNESCO Convention considered restitution of cultural property during times of peace.⁶⁷ It determined that “the acquisition and import of cultural property, stolen from a museum or a religious or secular public monument . . . in another State party to the Convention” is illicit.⁶⁸ The frieze was part of the Parthenon, a religious monument in Greece;⁶⁹ this fact makes the UNESCO Convention’s decision appear favorable to Greece. However, the Convention went on to make the regulation only prospectively applicable.⁷⁰ Therefore, although it is persuasive for the Greeks, it cannot be used to force England into returning the marbles.

Although the issue of ownership has still not been directly addressed, in 1999, UNESCO launched a new fund to facilitate the return of cultural property.⁷¹ This fund is aimed at reducing some of the points of contention in cultural property restitution. The money is used to help the transportation of cultural property back to the source nation,⁷² thereby facilitating restitution.⁷³

⁶³ Promote Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html [hereinafter *Armed Conflict*].

⁶⁴ *Id.*

⁶⁵ *Promote, supra* note 49 (First Legal Development, II. Restitution in peace time).

⁶⁶ *Armed Conflict, supra* note 63.

⁶⁷ *Promote, supra* note 49.

⁶⁸ *Id.*

⁶⁹ The Parthenon Frieze, *supra* note 2.

⁷⁰ *Promote, supra* note 49.

⁷¹ *Id.*

⁷² A source nation is the nation from which the article of cultural property originated. *See generally id.*

⁷³ *Id.*

a. England's Interpretation and Application of UNESCO

“In 2002 the United Kingdom acceded to the 1970 UNESCO Convention but made a number of reservations relating to the definition of the term ‘cultural property,’ limitation periods and the application of EU legislation as between the UK and EU member states.”⁷⁴ In December 2003, the UK passed the Cultural Objects (Offences) Act, which made it illegal to deal in tainted cultural objects.⁷⁵ It was very careful to try to only include objects that were taken illegally at the time when they were removed.⁷⁶ In this way, England adopted a law that was facially favorable to cultural property while at the same time avoided inclusion of the Elgin Marbles (since the UK maintains that it took the marbles lawfully).⁷⁷ However, if it can be shown that the frieze sections were removed illegally at the time,⁷⁸ England will be subject to its own cultural property laws.⁷⁹ “In May 2004, it was announced that the UK government intend[ed] to ratify the Hague Convention and its protocols.”⁸⁰

iii. 2002 Universal Museums' Declaration

In 2002, the leaders of world museums⁸¹ met⁸² to discuss the fate of the Elgin Marbles and other issues of cultural property.⁸³ At the close of the meeting, they issued a Declaration which, though condemning the theft of cultural property, had virtually no discussion of possible repatriation. “The Declaration . . . is a carefully constructed attempt by the directors of the world's foremost

⁷⁴ Institute of Art & Law, www.ial.uk.com/artlaw/international.php?property=1 (last visited Feb. 15, 2007).

⁷⁵ *Id.*

An object is tainted if it has been: excavated, or removed from a building or structure of historical, architectural or archaeological interest where the object has at any time formed part of the building or structure; or removed from a monument of historical, architectural or archaeological interest, and such excavation or removal constituted a criminal offence at the time of the excavation or removal.

Id.

⁷⁶ *Id.*

⁷⁷ *Opening Stokes Elgin Marbles Dispute*, Dec. 6, 2000, <http://news.bbc.co.uk/1/hi/uk/1057301.stm> [hereinafter *Opening*].

⁷⁸ Reppas, *supra* note 15, at 976 (citations omitted).

⁷⁹ Institute of Art & Law, www.ial.uk.com/artlaw/stolenworks.php?artlaw=1 (last visited Feb. 15, 2007).

⁸⁰ *Id.*

⁸¹ Known as the Bizot Group. Carol Kino, *Cultural Property Disputes are Reshaping the Art World—but How?* July 28, 2003, www.slate.com/id/2086136 [hereinafter *Kino*].

⁸² The meeting took place in Munich. Knox, *supra* note 1, at 325.

⁸³ *Id.* at 325–28 (including the Ethiopian Obelisk and the Nigerian “Benin Bronzes”).

international museums to shift the focus from repatriation of cultural property towards the services museums provide for cultural artifacts and museum visitors.”⁸⁴ This attempt at resolution is understandably unsatisfactory to those who want to see the marbles (and other pieces of cultural property) returned to their original owners,⁸⁵ particularly given the fact that in recent years, there have been successful negotiations for the return of cultural property.⁸⁶

The Declaration was issued, in large part, to lessen the pressure Greece was putting on England for the return of the marbles.⁸⁷

Obviously aware of the fact that the return of the Elgin Marbles is an all-important, even a test, case, the Declaration brings in a specific reference to Greek antiquities. “The universal admiration for ancient civilizations would not be so deeply established today”, it says, “but for the influence exercised by the artifacts of these cultures, widely available to an international public in major museums.”⁸⁸

To date, no resolution has been reached between Greece and England; the 2002 Declaration has not abated the Greek claims.⁸⁹

IV. ENGLAND’S ARGUMENTS FOR RETAINING THE MARBLES

A. Overview

In its attempt to keep the marbles, England has regularly set forth the same set of arguments in favor of its position:

First, the removal of the Marbles was proper under the applicable international law that existed at the time of Lord Elgin’s actions. Second, returning the Marbles to Greece would

⁸⁴ *Id.* at 326.

⁸⁵ Or even those who have the illicitly held property, who want the claims by the source country to be silenced.

⁸⁶ Knox, *supra* note 1, at 330 (discussing other examples of cultural property that were in the process of repatriation – a 160-ton Ethiopian obelisk which stood in Rome was dismantled and sent back to Ethiopia. This is a strong precedent for the return of cultural property and discredits any argument that the Elgin marbles are too large to be returned).

⁸⁷ See generally Knox, *supra* note 1 (explaining that, despite Greece’s apparent intentions and motivations, the Declaration wound up working against the restitution movement because it goes against the idea of cultural nationalism).

⁸⁸ B.N. Goswamy, *Should Cultural Property be Returned?*, Feb. 9, 2003, <http://www.tribuneindia.com/2003/20030209/spectrum/art.htm>.

⁸⁹ See generally Knox, *supra* note 1.

constitute a precedent for the universal removal of major acquisitions of the world's museums, declining the Museum's vital role in the education of arts and culture. Third, retaining the Marbles in the British Museum over the course of 150 years has protected them from the high levels of atmospheric pollution in Athens, which has noticeably damaged the Parthenon marbles on the Acropolis. The Marbles were, thus, "saved" through their removal. Fourth, the Marbles have become part of the British cultural heritage, due to their presence in England for more than a century.⁹⁰

Additionally, England does not want to be the catalyst for all the other small pieces of the frieze held in other countries.⁹¹ These arguments will be discussed in detail below; however, the ultimate conclusion seems to be that England is grasping at straws: Its claims to the marbles are not as strong as it hopes.

B. What Role does Permission Play?

"Lord Elgin's taking of the world's greatest single collection of classical Greek sculptures is probably the world's most celebrated cultural property dispute."⁹² The controversy of the marbles is heightened by the dispute about whether and what type of permission Lord Elgin was granted. "Greece says the fifth century treasures were stolen from the Parthenon in Athens in the 1800s. But Britain argues they were legitimately rescued by the then British Ambassador, the Earl of Elgin."⁹³ Initially, Elgin only asked for permission to have his artists draw the marbles.⁹⁴ It is not entirely clear how he orchestrated the removal of the marbles.⁹⁵ Britain claims that Lord Elgin had permission from the ruling Turkish authorities to take them.⁹⁶ Even if he had been granted "permission" by the Ottoman government then in place, "Greece insists that the Ottomans could not legitimately alienate Greece's cultural property merely because the Ottoman military occupied the terri-

⁹⁰ Reppas, *supra* note 15, at 916 (citations omitted).

⁹¹ See *Heidelberg University to Return Parthenon Frieze Fragment*, www.elginism.com/20060110/296 (last visited Feb. 14, 2007).

⁹² Rudenstine, *supra* note 6, at 450.

⁹³ *Opening*, *supra* note 77.

⁹⁴ Reppas, *supra* note 15, at 924 (citations omitted) (explaining that Elgin had initially wanted to copy the marbles for his new mansion in Scotland).

⁹⁵ *Id.* (explaining that Elgin decided to take the marbles without permission because he was afraid for their "safety" in Greece).

⁹⁶ Rosella Lorenzi, *supra* note 17.

tory.”⁹⁷ “It has been argued . . . that Elgin did not have clear title to the Marbles when he brought them to London, and that therefore, neither do the British.”⁹⁸ Michael Reppas believes that,

[c]onsidering the facts surrounding the removal of the Marbles, it seems clear that Elgin exceeded the authority granted to him by the Ottomans. Moreover . . . it also seems clear that the Ottomans never had the right to dispossess themselves of any parts of the religious monument in the first place.⁹⁹

When Lord Elgin began removing the Marbles from the Parthenon, he did so under the written authority of a “firman,” a written permit. Although the firman gave no specific authority to remove sculptures from the monument, through a succession of bribes and threats, Elgin was successful in removing the Marbles from the Acropolis.¹⁰⁰

C. Fear of Precedent

A large concern of the British is the precedent that would be established if the marbles were to be returned.¹⁰¹ The British “assert that the return of the marbles would establish a precedent that would threaten the collections of the world’s great museums.”¹⁰²

“The British have argued . . . that if they are forced to legally dispute ownership, this ‘returning [of] the Marbles to Greece would constitute a precedent for the universal removal of major acquisitions of the world’s museums.’”¹⁰³ The fear that arises is that, “any country that owns and displays a work originating from another country would be subject to the claim of superior title by the country of origin, based on this precedent. . . . [m]useums as we know them today, will be destroyed completely.”¹⁰⁴

“If the Greeks are successful in exacting the return of the Marbles, and do set such an international precedent, then the contemporary standards of how museums function could be drastically changed.”¹⁰⁵ Reppas believes that this can be established as a very

⁹⁷ Rudenstine, *supra* note 6, at 451.

⁹⁸ Reppas, *supra* note 15, at 976.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 921.

¹⁰¹ See Rudenstine, *supra* note 6, at 450. See also Kino, *supra* note 81.

¹⁰² Rudenstine, *supra* note 6, at 450.

¹⁰³ Reppas, *supra* note 15, at 978–979 (citations omitted).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

narrow precedent, “focus[ing] solely upon immovable property, not movable property. Thus, a painting on a canvas would not be subject to this rule, but a fresco on a wall of an historic building would; the distinction being that the latter was never intended to be moved.”¹⁰⁶

D. Protection of the Marbles

Another argument often made by the British Government is that the marbles are better off in British care than they would have been if they had been left in Greece.¹⁰⁷ In fact, this is one of the reasons given by Elgin when he initially decided to take the marbles.¹⁰⁸ This idea still surrounds the marbles to this day. “The current¹⁰⁹ Lord Elgin agreed,¹¹⁰ adding in a recent interview that the Parthenon continues to deteriorate due to atmospheric pollution. When asked if the Greeks could not properly care for the marbles, he concurred. ‘Exactly,’ he said. ‘They haven’t.’”¹¹¹ However, despite the fact that the British government stands behind this argu-

When considering that most of the great museums of the world house cultural treasures from all parts of the globe, the severity of the position that the British find themselves in can be understood. The British claim that the return of the Marbles would invariably have a domino effect and result in depleting the world’s museums of all the great pieces of art and sculpture that have educated and enlightened scores of people throughout the years. However, considering the extraordinary facts surrounding this case, that does not seem likely, and even if the British fears are real, it seems to be a risk that must be taken. In the case of the Parthenon Marbles, a two hundred year old wrong, must be finally righted; the Marbles must be returned to Greece.

Id. at 916–17.

¹⁰⁶ *Id.* at 978–979 (citations omitted) (illustrating that England’s belief about the precedential value is unfounded and too broad because not all types of cultural property are the same).

¹⁰⁷ Patrick O’Driscoll, *Ancient Art at Center of Dispute*, USA TODAY, Aug. 25, 2004, available at http://www.usatoday.com/sports/olympics/athens/news/2004-08-25-marbles_x.htm.

¹⁰⁸ *Id.* “The British Museum says Lord Elgin, the diplomat for whom the Marbles also are named, saved them from a Parthenon crumbling in neglect and ruin, buying them from the Ottomans who ruled Greece at the time.” See also Rudenstine, *supra* note 6, at 450–51. “They emphasize that Elgin rescued the marbles from other collectors, and that they are in better condition today than they would be if they had remained on the Parthenon because they have been in a museum for 180 years.” *Id.* These arguments seem to indicate a residual patronizing attitude by England.

¹⁰⁹ Current as of 2004: *Dispute over Elgin Marbles Continues*, <http://www.cbc.ca/arts/story/2004/03/10/marbles20040310.html> (last visited Feb. 16, 2007).

¹¹⁰ That the marbles were in better care in England.

¹¹¹ *Dispute over Elgin Marbles continues*, *supra* note 109.

ment, Greece views it differently.¹¹² It seems that the Greeks have the better argument.¹¹³ “[I]t is undeniable that Elgin’s removals caused serious harm to the structure of the Parthenon.”¹¹⁴ In addition to the harm to the Parthenon, the marbles themselves were damaged by the removal. England undertook a mass cleaning campaign in the 1930’s which appears to have diminished the quality of the marbles.¹¹⁵ The government still argues that the cleaning did not have a detrimental effect on the marbles, and that they are best kept in the British museum.¹¹⁶ “It has also recently emerged that they [the Government] have known for over sixty years, but withheld from Greece and the world, about irreparable damage the trustees of the Museum had committed upon the Marbles.”¹¹⁷ The marbles which are still in Athens are brighter and more detailed than those in the British Museum.¹¹⁸ “The irreparable damage caused to the Marbles in the 1930’s when they were ‘cleaned’ and striped [sic] of their original color, far exceeds any damage they would likely have suffered by the pollution in Athens.”¹¹⁹ Anthony Snodgrass,¹²⁰ professor emeritus of classical archaeology at Cambridge University, has also discussed the “protection” argument: “They¹²¹ are in better shape than anything in London. We now know exactly what Lord Elgin ‘saved’ them from: [O]ne has only to go to Athens and see for oneself The Athens pieces have more detail preserved, and are more like what their makers intended.”¹²²

As for the past, the existence of this atmospheric threat has been the strongest argument of the retentionists and is clearly their justification in claiming that the Marbles are safer in London than Athens. The retentionist argument has consistently been that without the Marbles being well cared for in the British Museum, they

¹¹² “Greece and its supporters say Elgin plundered the Parthenon to decorate his new estate back home and that the Turkish occupiers illegally sold the relics.” O’Driscoll, *supra* note 107.

¹¹³ Lorenzi, *supra* note 17.

¹¹⁴ Merryman, *supra* note 38, at 1909.

¹¹⁵ Lorenzi, *supra* note 17.

¹¹⁶ *Id.*

¹¹⁷ Reppas, *supra* note 15, at 916 (citations omitted).

¹¹⁸ Lorenzi, *supra* note 17. The difference in the quality of the marbles is apparent. “[T]he much-debated natural-stained patina is still present in the newly restored Greek marbles, while it is totally gone in the British museum’s pieces.” *Id.*

¹¹⁹ Reppas, *supra* note 15, at 976 (citations omitted).

¹²⁰ Snodgrass has been the chair of the British Committee for the Reunification of the Parthenon Marbles since 2002. Lorenzi, *supra* note 17.

¹²¹ i.e., the marbles still in Athens.

¹²² *Id.*

would inevitably be eaten away with the rest of the Acropolis by the ravenous atmosphere. To this seemingly valid argument, the Greeks have responded by saying: “Well, thank you very much. Now give them back.” The fact that the Marbles were “safer” in London due to the pollution threat in Athens, seemed irrefutable, even to Greeks in favor of repatriation. However, due to a recent disclosure that the British Museum staff in the 1930’s caused irreparable damage to the Marbles while “cleaning” them, this heretofore irrefutable argument, has now become very refutable. In fact, “[a]ccording to an official [British Museum] inquiry in 1939, but suppressed by the British Museum until now, the damage ‘cannot be exaggerated.’”¹²³

E. Duveen Gallery

After purchasing the marbles from Elgin, the British Government placed the frieze fragments in the British Museum,¹²⁴ now housed in the Duveen Gallery¹²⁵ of the British Museum. “The Parthenon Marbles have been central to the museum’s collections, and to its purpose for almost two hundred years.¹²⁶ The gallery was added on to the museum solely in order to make space for the marbles.¹²⁷ The Marbles are “considered one of the crown jewels of the museum’s exceptional collection.”¹²⁸ England’s argument for retaining the marbles as part of British patrimony is that, “with time, objects become ‘part of the heritage of the nations which house them.’”¹²⁹ The placement of the marbles in [arguably] the most prominent British Art museum,¹³⁰ in a gallery built for that purpose alone,¹³¹ aids this argument.

¹²³ Reppas, *supra* note 15, at 937–38.

¹²⁴ *Id.* at 924-25 (citations omitted) (“[t]he British Parliament purchased the entire collections from Lord Elgin in 1816, by a vote of eighty-two for and thirty against, for 35,000 pounds. The Marbles were then officially called ‘The Elgin Marbles,’ and have remained in the British Museum as one of its most important collections.”).

¹²⁵ See generally The British Museum, *supra* note 3.

¹²⁶ Lorenzi, *supra* note 17 (indicating that British have their own interests (e.g. expenditures) in mind rather than the best interest of the artifacts).

¹²⁷ See The British Museum, *supra* note 3.

¹²⁸ See Rudenstine, *supra* note 6, at 449.

¹²⁹ Kino, *supra* note 81. See also Goswamy, *supra* note 88.

¹³⁰ The British Museum, *supra* note 3.

¹³¹ *Id.*

F. Everyone else has them

The majority of the frieze is held by the British in the Duveen Gallery.¹³² Several of the other pieces of the frieze are held in various parts of the world.¹³³ The UK argues that, by returning the Elgin marbles, it will not make the frieze whole,¹³⁴ and therefore, it should not be required to return the marbles at all. However, recent progress in the field of cultural property restitution works against this argument. Heidelberg University in Germany decided to return the part of the frieze it had in its possession, making it the first piece to be returned.¹³⁵ This presents a problem for one of England's largest objections: "If all the holders of small fragments were to follow this example, then it would remove yet another of the British Museum's arguments for retention, that they are not the only ones holding parts of the sculptures."¹³⁶ Even though the University was not motivated by a desire to set a precedent for the British Museum, it is still an important step, and illustrates that regardless of the amount of time which has passed, holders of the marbles recognize where they rightfully belong, and are taking appropriate steps to rectify the wrongs of years past.

V. "GREECE"-ING THE GEARS: WHAT HAS GREECE ATTEMPTED?

According to John Merryman's 1985 article,¹³⁷ the first official request for the return of the marbles was made in 1983 by Greece's Minister Mercouri.¹³⁸ Since then, there have been several attempts at recovering the marbles.

In January 2002, a British MP and a Greek minister launched a joint campaign to return the marbles to Athens in time for the upcoming summer Olympics, after which the two countries

¹³² Parthenon Frieze Columbia, *supra* note 14.

¹³³ *Id.* (indicating that the pieces of the frieze not held by the British in the Duveen Gallery are split between Greece and various European museums).

¹³⁴ Elginism, *Heidelberg University to Return Parthenon Frieze Fragment*, www.elginism.com/20060110/296 (last visited Feb. 14, 2007).

¹³⁵ PRAVDA, *Greece Says German University to Return Fragment of Parthenon*, www.newsfromRussia.com/science/2006/01/09/70890.html (last visited Feb. 17, 2007).

¹³⁶ Elginism, *supra* note 134.

¹³⁷ Merryman, *supra* note 38.

¹³⁸ *Id.* at 1901 (explaining that the request was the first official one, though several unofficial requests were made previously).

could discuss ownership of the works. One suggestion was for the marbles to be housed in the Athens Archaeological Museum but under official ownership of the British Archaeological School. Despite the support of high-profile British actors . . . as well as polls showing that a majority of Brits favoured [sic] returning the stone carvings, the campaign ultimately failed.¹³⁹

The majority of groups who were advocating for return of the marbles¹⁴⁰ were hoping to have them returned in time for the 2004 Olympics.¹⁴¹ When this attempt failed, groups then focused their attention on the 2012 Olympic campaign.¹⁴²

“[Greece] is now building an Acropolis Museum which is due to be completed by 2006. The museum will include a Parthenon Hall which will remain empty until the marbles have been returned.”¹⁴³

VI. KEEPING UP WITH THE JONESES: OTHER CASES

Cultural property restitution is not a new idea. Therefore, in examining options for this controversy, it is important to review what has happened in similar cases, in order to determine what has worked in the past, as well as to learn from past mistakes.

A. The Ethiopian Obelisk Case

Italy seems to be at the forefront of voluntary cultural property restitution.¹⁴⁴ The success of dispute resolution in the Ethio-

¹³⁹ *Dispute Over Elgin Marbles Continues*, *supra* note 109. In a way, this can be seen as Greece’s answer to the Duveen Gallery.

¹⁴⁰ See generally *Marbles Reunited – Coalition Members*, <http://www.marblesreunited.org.uk/about/coalitionmembers.html> (last visited Feb. 16, 2007) (listing organizations in favor of the return).

¹⁴¹ *Marbles Reunited – The Olympic Games*, <http://www.marblesreunited.org.uk/campaign-story/olympicgames.html> (last visited Feb. 16, 2007) (illustrating that Greece tried to use the 2004 Olympics as a quid pro quo bargaining chip). “If Britain gave this pledge in the year when the Olympics are staged in Athens, it would give an enormous boost to the British bid to host the Olympic Games in 2012.” *Id.* Unfortunately, The British were not tempted by this deal and kept the marbles. It is unclear what affect (if any) this refusal had on the fact that Britain lost the bid for 2012 Olympics in London.

¹⁴² *Marbles Reunited – Who We Are*, <http://www.marblesreunited.org.uk/about/whoweare.html> (last visited Feb. 16, 2007).

¹⁴³ Lorenzi, *supra* note 17.

¹⁴⁴ See Knox, *supra* note 1. This may be in part because Italy is aggressively trying to regain cultural property stolen from the country. See Section VI.B. *infra*.

pian obelisk case can be used as a strong argument for Greece in the case of the Elgin Marbles.¹⁴⁵ In 1937, a 1700-year old obelisk was removed from Ethiopia and set up in a piazza in Rome.¹⁴⁶ The dispute was resolved in 2004, nearly seventy years after the obelisk was first taken.¹⁴⁷ The resolution was fueled by the recognition by the Italian government that the obelisk was important to the Ethiopian people and their culture.¹⁴⁸

England is obviously not bound by any actions taken by other countries; however, the example of restitution by Italy is encouraging for the Greek government, fostering hope that the conflict will be resolved. Although the time-frame in the obelisk case¹⁴⁹ is half as long as that of the Elgin marbles,¹⁵⁰ the amount of time that has passed is considerable enough to make the cases comparable.

B. Italian Agreements with American Museums

Italian law allows for criminal prosecution of anyone who engages in the illegal trade or excavation of antiquities;¹⁵¹ however, Italy is trying to avoid litigation in favor of out-of-court agreements.¹⁵² In September 2006, Italy made an agreement with Boston's Museum of Fine Arts (MFA): the agreement provided for the return of thirteen artifacts to Italy in exchange for a loan to the MFA of other artifacts.¹⁵³ The Italian Cultural minister believes that this could serve as a catalyst for other museums to return an-

¹⁴⁵ Knox, *supra* note 1.

¹⁴⁶ *Id.* at 330 (citations omitted).

¹⁴⁷ Rosella Lorenzi, *Italy Returns Stolen Obelisk to Ethiopia*, DISCOVERY NEWS, Nov. 23, 2004, available at <http://dsc.discovery.com/news/briefs/20041122/axumobelisk.html>.

¹⁴⁸ *Id.*

¹⁴⁹ 1700 years/70 years. *Id.*

¹⁵⁰ 2500 years/200 years. Reppas, *supra* note 15, at 931-32 (citations omitted).

¹⁵¹ Ariel David, *US Museum Returns 13 Italian Artifacts*, ASSOCIATED PRESS, Sept. 28, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/28/AR2006092800749.html> (explaining that Italy has tried to recover cultural property through its aggressive cultural property laws. The law further provides that any antiquities found within the country must be turned over to the government).

¹⁵² *Id.* "Boston's Museum of Fine Arts returned [thirteen] disputed ancient artifacts to Italy [], a deal that Italian officials hope will pave the way for others to give back antiquities they say were smuggled out of the country." Thus it is clear that Italy partakes in both traditional and alternative forms of dispute resolution. This particular deal seems to show that Italy is hoping to continue to use ADR in future disputes.

¹⁵³ *Id.* ("[t]he agreement promises loans of other Italian treasures to the MFA, and marks the latest victory for Italy in its quest to regain antiquities that were dug up illegally and sold to museums worldwide.").

tiquities.¹⁵⁴ Italy also made an agreement with the Metropolitan Museum of Art in New York for the return of twenty-one pieces and is trying to work with the J. Paul Getty Museum in Los Angeles.¹⁵⁵ The Italian cases illustrate why alternative dispute resolution is better suited for the art world than traditional litigation.¹⁵⁶ Not only are there issues of venue and jurisdiction, but prosecution is necessarily more adversarial and can sever important ties. This is particularly true of countries like England and Greece who, since entering the European Union (EU),¹⁵⁷ have more of an incentive to work together, and bolster rather than destroy their relationship.

C. Nazi Restitution

In 2000 the United Kingdom government set up the Spoliation Advisory Panel to provide a method of resolving disputes over cultural property which was taken during the Nazi regime and which is currently held by UK national connections. The Panel can recommend the return of the object, that compensation should be paid or that an ex gratia payment should be made to the claimant.¹⁵⁸

If the UK is willing to treat objects taken during the Nazi regime in this way, it diminishes its argument against the return of cultural property it has taken from Greece.¹⁵⁹

D. Stone of Destiny

“The Stone of Destiny, traditional coronation stone of Scottish Kings and Queens, was stolen by English King Edward I 700 years ago.”¹⁶⁰ After centuries of dispute, England decided that the stone was of great cultural significance and returned the stone to Scot-

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Art Law & Cultural Property Law, www.ial.uk.com/artlaw/conflict.php?property=1 (last visited Feb. 16, 2007).

¹⁵⁷ European Countries, http://europa.eu/abc/european_countries/index_en.htm (last visited Feb. 18, 2007).

¹⁵⁸ Institute of Art Law, *Objects Looted During the Second World War*, www.ial.uk.com/artlaw/secondww.php?artlaw=1 (last visited Feb. 17, 2007).

¹⁵⁹ See Knox, *supra* note 1, at 332.

¹⁶⁰ Scotland, Stone of Destiny in Edinburgh Castle, <http://www.aboutscotland.com/stone/destiny.html> (last visited Feb. 16, 2007).

land in 1996.¹⁶¹ It is surprising that England is currently making an argument for retaining property that has such significance to another culture,¹⁶² given that it recognized the importance of Scotland's Stone of Destiny.¹⁶³

VII. SUCCESS OF PREVIOUS EXAMPLES AS APPLIED TO THE ELGIN MARBLE

A. Why it works

The case of the Ethiopian Obelisk illustrates that transportation is not an insurmountable problem.

After decades of pressure from Ethiopia and repeated delays in Rome, a special . . . cargo plane will be chartered for the three flights . . . which will fly back the three segments. Soon afterwards, Italy will fly out machinery to put the great stone in place, after repairing the road leading to its original site.¹⁶⁴

This example can counter any argument that it will be too difficult to move the marbles back to Greece. "The story of the Axum Obelisk's imminent return could set a precedent in the international community. The British Museum is once again under pressure to return to Athens the Elgin Marbles."¹⁶⁵

Additionally, and on a more basic level, the argument against returning the marbles (or any type of cultural property) back to the source nation due to transportation risks is illogical. The marbles were removed to begin with, when England took them from Greece. With advancements in transportation, returning cultural property now should be easier than removing it was centuries ago.

¹⁶¹ *Id.*

¹⁶² For example, the Elgin marbles.

¹⁶³ Marbles Reunited, *Why the Marbles Matter*, <http://www.marblesreunited.org.uk/campaign-story/whymatter.html> (last visited Feb. 12, 2007). "The Parthenon Sculptures have a significance for the Greeks that they can never have for the British, just as the Stone of Destiny has a meaning for the Scots that it can never have for the English . . . who held it for 700 years before returning it to Scotland in 1996." *Id.* Given this information, it seems that England may be just biding its time, waiting for 700 years to pass before it returns the marbles.

¹⁶⁴ *Italy to Return Ethiopian Obelisk*, http://news.xinhuanet.com/english/2005-01/28/content_2517820.htm (last visited Feb. 19, 2007).

¹⁶⁵ Augustus Rylands, *After More Than 60 Years, Italy Will Return a Looted Obelisk to Ethiopia*, *PRESERVATION MAGAZINE*, Feb. 20, 2004, available at http://www.nationaltrust.org/magazine/archives/arch_story/022004.htm.

B. Why it doesn't work

A key obstacle separating the case of the marbles from other cases of cultural property restitution is one of timing. The Ethiopian obelisk and items of cultural property taken during the Nazi regime were acquired relatively recently. England is basing a large part of its argument on the fact that it has had the marbles for so long. The longer it keeps the marbles in its possession, the stronger that argument will become. There is still the argument made by the British Government that the marbles have become part of British culture as much as they had been a part of Greek culture.¹⁶⁶

Many retentionists feel that the British have an equal claim to the Marbles; their cultural significance is as strong to the British as it is to the Greeks. The fallacy in this belief, however, is that retentionists equate 150-odd years of British possession as equal to the near 2500 years of Greek possession. The cultural nationalistic arguments made by the British pale in comparison to that of the Greeks.¹⁶⁷

However, this argument may not have as much support as the British government hopes. Its position is being questioned and attacked from within.¹⁶⁸ Many British nationals recognize the error of the past and are in favor of returning the marbles: "In fact, in a 1996 poll in England, over ninety-two percent of the 99,340 participants voted to repatriate the Marbles to Greece."¹⁶⁹

¹⁶⁶ Reppas, *supra* note 15, at 931–32 (citations omitted).

The British government counters the Greek claim with their argument that the Marbles have equal cultural significance to their society and have become part of the British cultural heritage, due to their presence in England for more than a century. The British claim that the "Elgin Marbles and other works in the British Museum have entered British culture, help define the British to themselves, inspire British arts, give Britons identity and community, civilize and enrich British life, and stimulate British scholarship."

Id.

¹⁶⁷ *Id.* (citations omitted).

¹⁶⁸ Marbles Reunited, *Who We Are*, *supra*, note 142. "'Marbles Reunited' is a new campaign organisation [sic] bringing together the many groups and individuals who share a common aim of reuniting the Parthenon Sculptures (commonly known as the 'Elgin Marbles') in their original home city of Athens." *Id.* The organization emphasizes that the marbles are best understood when viewed as a whole, and advocates for their return to Greece.

¹⁶⁹ Reppas, *supra* note 15, at 931–32 (citations omitted).

VIII. THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION

A. What are the general principles of Alternative Dispute Resolution?

In order to get a better idea of which type of dispute resolution will best apply to this case, it is necessary to analyze the different types of negotiation: mediation, binding arbitration, non-binding arbitration, and the hybrid mediation-arbitration.

i. Mediation

“Mediation is a process wherein the parties meet with a mutually selected impartial and neutral person who assists them in the negotiation of their differences.”¹⁷⁰ The mediator does not have any authoritative power; in a mediation, the parties retain the decision-making power.¹⁷¹ Rather than assessing blame or determining the merits, “the mediator acts as a catalyst between opposing interests attempting to bring them together by defining issues and eliminating obstacles to communication, while moderating and guiding the process to avoid confrontation and ill will.”¹⁷²

Mediation has its advantages. It allows for a discourse between the two parties through a third party mediator who, in theory, addresses each side with impartiality.¹⁷³ However, the drawback of mediation is that there is no binding authority granted to the mediator.¹⁷⁴ Despite its drawbacks, it may be worthwhile to bring the parties face to face without the threat of a binding decision. In this way, the parties can be upfront with their opinions and desires without fear of immediate repercussions.¹⁷⁵

ii. Binding arbitration

“Arbitration is the most traditional form of private dispute resolution.”¹⁷⁶ Arbitration is more structured than mediation, and

¹⁷⁰ Mediation and Role of Mediator, Mediation Defined, <http://jamsadr.com/mediation/mediation-defined.asp> (last visited Feb. 12, 2007) [hereinafter JAMS Mediation].

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* (explaining that in many cases, mediators require both parties to agree to keep the contents of the mediation confidential, even in the event of subsequent litigation).

¹⁷⁶ Arbitration Processes, Arbitration Defined, <http://jamsadr.com/arbitration/defined.asp> (last visited Feb. 12, 2007) [hereinafter JAMS Arbitration].

in most cases, it is a binding procedure.¹⁷⁷ “It is often ‘administered’ by a private organization that maintains lists of available arbitrators and provides rules under which the arbitration will be conducted. . . . Parties often select arbitrators on the basis of substantive expertise.”¹⁷⁸

“Arbitration is adjudicatory, as opposed to advisory, because . . . the arbitrator (usually a retired judge or attorney) renders a decision at the end of an arbitration hearing, and that decision is final and binding, subject only to a very limited court review.”¹⁷⁹ This type of arbitration is “[a]lso known as Judicial Arbitration or Court-Ordered Arbitration.”¹⁸⁰ Binding arbitration is usually required by law or by a court in an on-going or pending litigation.¹⁸¹ Although, by its name, it indicates that the parties are bound by the results, this type of arbitration is still more amicable than litigation and is less stringent: Binding arbitration uses informal rules of evidence and procedure.¹⁸²

iii. Non-binding arbitration

Non-binding arbitration is “conducted much like a (binding) arbitration, except that when the arbitrator issues the award after the hearing, it is **not binding** on the parties . . . In that case, the arbitrator’s award is merely an advisory opinion.”¹⁸³ One benefit of non-binding arbitration is that the parties may later take their dispute to court should the arbitration process fail to achieve a mutually satisfactory result.¹⁸⁴ In this way, the parties will be able to avail themselves of the more amiable, less costly process of arbitration while preserving the right to escalate if they see fit.^{185,186}

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* (defining binding arbitration, and explaining that it is often used for cases which are worth \$50,000 or less. Although the marbles are arguably worth more than \$50,000, the monetary amount is not a primary issue in this case).

¹⁸² *Id.*

¹⁸³ *Id.* (emphasis in original).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* (stating that, at least for cases covered by the Federal Arbitration Act, once parties submit to binding arbitration, they are precluded from filing suit).

¹⁸⁶ This could prove to be both an incentive and disincentive to take non-binding arbitration seriously. It works as an incentive because the parties understand that they can be taken to court if they do not make a good faith effort to reach a solution. It may also be a disincentive, however, because the parties know they can go to court if they get an answer that they do not like.

iv. Mediation/Arbitration Hybrid

Another alternative is the mediation/arbitration hybrid, whereby parties start out in mediation, but have the opportunity to switch to arbitration if they cannot reach a solution.¹⁸⁷ Similar to non-binding arbitration, it allows for a possible escalation if mediation proves unsuccessful. This process is becoming increasingly popular,¹⁸⁸ and is more attractive than non-binding arbitration, because it is both less combative and less expensive than court proceedings. This method also allows “the parties to narrow the issues rather quickly, and focus on those truly in dispute.”¹⁸⁹

One issue which the mediation/arbitration hybrid presents, however, is the choice of an appropriate mediator and arbitrator. It would increase efficiency to keep the same person throughout the process.¹⁹⁰ There remains, however, a valid concern over allowing the mediator to continue into the arbitration stage; namely, that the parties treat mediation with a different degree of candor than arbitration.¹⁹¹

B. What has been useful in the art world previously?

The world of art and cultural property is still one which dislikes the use of legal remedies and relies primarily on the use of “handshakes.”¹⁹² “The international museum and art communities rely a great deal on good will between professionals; consequently, litigation is best avoided in the context of art and cultural property disputes.”¹⁹³

Due to the fact that art and cultural property disputes are inclined to be resolved out of court, organizations such as Ar-

¹⁸⁷ Daniel Renken, *The ABC's of ADR. A Comprehensive Guide to Alternative Dispute Resolution*, Dec. 16, 2002, available at www.mediate.com/articles/renkenD.cfm at 2.3 [hereinafter Renken].

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* (explaining that allowing the mediator to continue into the arbitration stage allows the parties to move forward without having to lay the foundation again to a new arbitrator).

¹⁹¹ See *supra* text accompanying note 190.

¹⁹² JOHN HENRY MERRYMAN, ALBERT E. ELSER & STEPHEN K. URICE, *LAW, ETHICS AND THE VISUAL ARTS* 852 (5th ed. 2007).

¹⁹³ Institute of Art & Law, *supra* note 80.

tResolve¹⁹⁴ have been developed in order to facilitate the reconciliation process.

C. What are the considerations in this case?

Parties turn to alternative dispute resolution methods for many reasons, not the least of which are desires to have a more hands-on role in the resolution of the issue, and to maintain working relations with the adverse party.¹⁹⁵

If Greece and England were to submit to dispute resolution, the first issue which presents itself is the choice of mediators/arbitrators.¹⁹⁶ For the process to be successful, the parties must feel that their side of the story will be given adequate weight. In the case of mediation, the neutrality of the mediator may not be a strong concern because the mediator has no decision making ability.¹⁹⁷ The stakes are higher in arbitration, where the decision is more likely to bind the parties' future conduct.¹⁹⁸

Due to the long standing and highly contentious nature of this dispute, it is unlikely that Greece and England will be able to agree upon one person to arbitrate their case. Instead, it may be preferable to allow each side to choose one member of the arbitral panel, and then allow the two chosen arbitrators to decide on a third.¹⁹⁹ In this way, Greece and England will each feel represented in the process, while the third arbitrator will maintain the requisite impartiality.²⁰⁰ Assuming that Greece and England will find this set-up agreeable, the question then turns to finding the appropriate

¹⁹⁴ ArtResolve is a UK organization that specializes in mediation, early neutral evaluation, expert determination and arbitration for art related disputes. ART RESOLVE, www.artresolve.org (last visited Feb. 4, 2007).

¹⁹⁵ Renken, *supra* note 187, at 2.3 (explaining that allowing the mediator to continue into the arbitration stage allows the parties to move forward without having to lay the foundation again to a new arbitrator).

¹⁹⁶ See *infra* Section IX.B for a discussion of the choice of representatives from each country.

¹⁹⁷ Renken, *supra* note 187, at 2.1.2 (highlighting that the mediator's role is to facilitate conversation between the two sides and to work through impasses rather than to give advice).

¹⁹⁸ This is particularly true in the case of binding arbitration.

¹⁹⁹ Under the rules of the International Centre for Dispute Resolution, "parties may mutually agree on any process for appointing arbitrators." International Dispute Resolution Procedures, www.adr.org/sp.asp?id=28144 (last visited Feb. 16, 2007); "In general the arbitrator is an impartial person chosen by the parties." JAMS Arbitration, *supra* note 176.

²⁰⁰ Renken, *supra* note 187, at 2.2 (emphasizing the importance of impartiality on the part of the third party arbitrator).

arbiters.²⁰¹ Given that the parties have been unable to reach an agreement on their own, it would be counter productive to appoint Greek or British nationals. More effective, therefore, would be an attempt by each side to find a party whom it believes sympathizes with its stand on the issues. Though the panel must be impartial,²⁰² each party will likely feel more comfortable if they believe one of the arbiters is “on their side”.

Greece may want to choose an arbiter who took part in other cultural property restitution cases and who found in favor of the source nation. Italy’s prominent role in cultural property restitution²⁰³ makes it a valuable potential resource for Greece. England, for its part, may be inclined to choose someone who is a proponent of the Universal Museums’ Declaration.²⁰⁴ Though actual participants from other cases may be unable or unwilling to get involved in this case, the issue is sufficiently well-known and supporters for either side should be relatively easy to procure. As for the third arbiter, the two chosen arbiters will exercise their discretion to find someone who they believe will display sufficient impartiality.

The mediation/arbitration hybrid, though often used, may not be the best option in this case. One of the greatest benefits of this process, the ability to narrow issues,²⁰⁵ is not necessary for the dispute between Greece and England. The disagreement over ownership is the main problem, which will not require parsing out. The case here is complex, but this complexity is due to the required resolution, not the issue itself. However, the low-stakes beginning of the mediation/arbitration hybrid has potential because it would bring the parties to the table with the incentive to amicably resolve the issue; the threat of a binding arbitral decision may entice Greece and England to find a solution with the help of the mediator.

²⁰¹ Arbitrators are often trained attorneys or retired judges. JAMS Arbitration, *supra* note 176

²⁰² Renken, *supra* note 187, at 2.2 (emphasizing the importance of impartiality on the part of the third party arbitrator).

²⁰³ See *supra* Section VI for a discussion of Italy’s role.

²⁰⁴ See *supra* Section II.A.3 for details about the Declaration.

²⁰⁵ Renken, *supra* note 187, at 2.3.

IX. CONCLUSION

A. Suggestions

Alternative dispute resolution may be new to the Elgin marbles, but it has been used successfully in other cases of art and cultural property.²⁰⁶

The British have done everything in their power to keep the Marbles in England. They have refused official requests by the Greek government to return the Marbles, they have refused international arbitration to decide the dispute, and they have refused to join any major international conventions dealing with the repatriation of Cultural Property.²⁰⁷

With increasing pressure from the Greek government and the international community, it would appear that the time has come for the British government to work towards a resolution.²⁰⁸

i. “Greek Offer”

It seems that Greece has been more willing to cooperate with negotiations in this field.²⁰⁹ Although Greece would prefer for England to admit that the marbles were stolen and have them repatriated with full ownership title, the Greek government is more concerned with the value of the marbles as a piece of history than as a piece of property.²¹⁰ This is evidenced by the proposal made by the government to bring the marbles back to Greece on long-term loan from England, without need for title transfer.²¹¹ The “Greek-Offer”²¹² is comprised of several factors:

²⁰⁶ See Knox, *supra* note 1; see also <http://www.artresolve.org>. ArtResolve is particularly interesting because it is based in England, illustrating that people in Britain have recognized the importance of ADR in the field of art. Though the website has no affiliation with the government, it can be useful in arguing that England should not retain the marbles.

²⁰⁷ Reppas, *supra* note 15, at 915–916 (citations omitted).

²⁰⁸ See generally Promote, *supra* note 49.

²⁰⁹ <http://www.marblesreunited.org.uk/campaignstory/proposal.html> (last visited Feb. 7, 2007) [hereinafter Proposal].

²¹⁰ *Id.* This distinction also touches upon the differences in views towards cultural property and art more generally in different countries. While Britain is more concerned with property rights, Greece is more concerned with artistic integrity. *Id.*; see also Merryman, *supra* note 38, at 1914.

²¹¹ Proposal, *supra* note 209. As stated in the above section, the debate over title to the marbles is a heated one. Therefore, it seems to be a good move on the part of the Greek government to sidestep, or even concede, this issue in order to get the marbles back to a condition where they can be appreciated in their intended and true form.

²¹² *Id.*

- The British Museum would send its sections of the Parthenon Sculptures to Athens on long-term loan.
- The British Museum would retain ownership of its sections of the Sculptures - ownership would no longer be an issue.
- The reunited Sculptures would be displayed in the new, purpose-built Acropolis Museum in Athens in direct view of the original Acropolis rock and providing ideal conditions for conserving, viewing and appreciating the reunited Sculptures in a historical setting close to the Parthenon.
- The British Museum could have part of the New Acropolis Museum designated as an annex of the British Museum in Athens.
- The Greeks would make available other precious finds (never before seen outside Greece) for touring exhibitions of the British Museum and UK regional museums.²¹³

This offer seems to be reasonable in many respects. Greece is no longer asking for outright legal ownership,²¹⁴ and it would afford an opportunity for unknown works and unknown art galleries to obtain exposure.²¹⁵

However, there are issues which could turn out to be potential deal-breakers. It is unclear, for example, what term would constitute a valid long-term loan to which both sides would agree. The new museum is another point of contention. The Duveen Gallery was built in order to house the marbles.²¹⁶ England uses this fact as an argument for its retention of the marbles.²¹⁷ Now Greece is building its own home for the marbles.²¹⁸ This act can be viewed in several ways, depending on England's interpretation. On one hand, it can be seen as an underhanded way to mock the Duveen Gallery. Alternatively, it can be seen as bolstering the attempt for a peaceful reconciliation: Creating a "sister" gallery for the marbles while they are in Greece so that they have the same treatment as they do in England.²¹⁹ The rationale behind putting the marbles in the museum seems to have been pragmatic. The marbles remaining in Greece were moved to the Acropolis Museum in 1993

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Lorenzi, *supra* note 17.

²¹⁷ *Id.*

²¹⁸ Proposal, *supra* note 209.

²¹⁹ This type of treatment may allay fears about the "protection" of the marbles – discussed *supra* in Section IV.B. Evidence has been given to show that these fears are unfounded, but in a dispute resolution setting, the emotions of the parties are highly relevant.

in order to protect them from the elements.²²⁰ The marbles in the museum, while close to the Parthenon,²²¹ will simultaneously be protected from the elements and reunited at their original site.²²²

However, the offer may seem to be too good to be true. If not clearly determined, it could also turn out to be a basis for further disputes between the countries: Greece, upon receipt of the marbles, and display in the gallery with the remainder of the frieze, may be reluctant to return the marbles at all. “The . . . Greek government had proposed a long-term loan from Britain and the inclusion of an annex of the British Museum within the new Acropolis Museum. But British skeptics claim Greece wants ‘perpetual removal.’ Greece denies that.”²²³ Although this offer seems to be favorable to both sides, these issues indicate why binding arbitration may be particularly apropos in this case.

ii. Copy and Return of Originals

A different way to approach this problem is to look at the situation from the viewpoint of the original Lord Elgin. His original plan was to copy the marbles in order to recast and/or recreate them back in the UK.²²⁴ He deviated from this plan when he feared for the safety of the marbles.²²⁵ Since it has been shown that this fear was unfounded,²²⁶ there is no longer any justification for keeping the marbles out of Athens.

Members of the art world will likely have difficulty with this proposal because of the importance placed on authenticity of works housed in museums.²²⁷ In fact, those in favor of retaining

²²⁰ The Parthenon Frieze, *supra* note 2. “For protection of the marble surface of the west frieze from exposure in the open air and rain, it was imperative that this section be removed and transferred to the Acropolis Museum. This was done in 1993.” *Id.*

²²¹ Within 200 yards. Merryman, *supra* note 38.

²²² See *The New Acropolis Museum*, MARBLES REUNITED, <http://www.marblesreunited.org.uk/campaignstory/acropolismuseum.html> (describing the structure of the new Acropolis museum, which will house the marbles in a room with a glass roof to allow viewers to look at the marbles and through to the monument where they originally stood).

²²³ O’Driscoll, *supra* note 107 (showing that this fear is unfounded, due to the fact that “[t]he Greek culture minister, Professor Evangelos Venizelos, has already conceded that the British Museum can retain ownership of the marbles if they lend them to the museum in Athens. The Greeks are also prepared to make its galleries ‘an official outpost of the British Museum.’”).

²²⁴ Reppas, *supra* note 15, at 924.

²²⁵ *Id.*

²²⁶ See, e.g., Lorenzi, *supra* note 17.

²²⁷ See generally MERRYMAN, ELSÉN & URICE, *LAW*, *supra* note 192.

the marbles have suggested this as a solution for Greece but recognize that from an artistic standpoint, this is unsatisfying.²²⁸

iii. Keep in Britain

Another option for the fate of the marbles is, of course, to maintain the status quo. In order for the marbles to remain in England and for Greece to renounce its claims to the marbles, there would likely need to be a binding decision: either in court or via binding arbitration. Although it is unlikely that the outcome will indeed be for the marbles to stay in England, this type of resolution²²⁹ seems to be the best option for this dispute,²³⁰ so that the dispute may finally be resolved.

iv. Go to Court

Another option for this dispute may be the traditional court system:

The British . . . know that the domestic and regional laws which are currently applicable are not strong enough to allow the Greeks to exact the return of the Marbles as stolen pieces of Cultural Property. The British are also aware that the individual application of contemporary international laws are not broad enough to protect the history of a culture. They are hedging their bet on the belief that too much time has passed for the sale of the property to be questioned, and that no new law would be passed which might be applied retroactively to force them to defend a legal action by the Greeks for the Marbles' repatriation. And they may be right unless Greece seizes the initiative and brings an action before the I.C.J.²³¹

Although Reppas argues for the Greeks to bring the matter before the ICJ,²³² this does not seem to be the best option in this case.²³³ Disputes can come before the ICJ in one of three ways: a specific

²²⁸ *Id.*; see also Merryman, *supra* note 38, at 1913 (discussing that the marbles are not acceptable to the Greeks as reproductions because there is "some cultural magic inherent in the authentic object, and not in an accurate reproduction").

²²⁹ i.e., binding arbitration.

²³⁰ See *infra* Sections IX B and C for further discussion of this topic.

²³¹ Reppas, *supra* note 15, at 976–977 (citations omitted).

²³² *Id.* In fact, Reppas believes that this is the only way for Greece to obtain a binding decision. *Id.* However, it is uncertain that Greece would be able to or want to file a claim. In any event, this is not the most desirable outcome.

²³³ JAMS arbitration, *supra* note 176, (explaining that binding arbitration is generally court mandated). Although it does not seem that an actual trial is the best option for these parties, Greece may want to use the threat of or actual filing of a court case as an incentive to get England to cooperate for arbitration. Minister Mercouri seems to have done just that when she

provision in a treaty between the parties, submission to general jurisdiction of the court, or a special agreement to submit to the court for this purpose.²³⁴ The first two options do not apply, and it is unlikely that Greece and England will come to an agreement to submit to the court's jurisdiction in this case. The fees associated with court costs may be exorbitant.²³⁵ Additionally, keeping the matter out of court is more likely to foster a better working relationship between the two countries.

It has also been opined that Greece will not be able to win in court. In his article *Thinking about the Elgin Marbles*, Merryman highlights the fact that the passage of time will inevitably have damaged (if not eradicated) any legal claims Greece had to the marbles.²³⁶ This lack of action can be attributed in part to the fact that Greece was not an independent country when the marbles were taken: "Greece didn't exist as an independent nation until 1832—and in any case, its 20th-century patrimony laws can't be applied retroactively."²³⁷ This is likely a contributing factor in Greece's decision to resolve the matter through diplomacy, rather than in court thus far.²³⁸

B. Expectations

The considerations for dispute resolution in this case are perhaps more precarious than those in more traditional cases of securities arbitration and family mediation. While the Elgin marbles are of national relevance for both England and Greece, it is not clear that government officials are most qualified to represent the cultural interests, which are also present and important, in a resolution setting. Historians and anthropologists, on the other hand, are perhaps the most knowledgeable about the origins and cultural significance of the marbles, but they are ill equipped to argue the legal points that will inevitably arise. Lawyers are best suited to

said, "[i]f the British government refuses to return [the marbles] we will take them to the courts." Merryman, *supra* note 38, at 1896.

²³⁴ JEFFREY L. DUNOFF, STEVEN R. RATNER & DAVID WIPPMAN, *INTERNATIONAL LAW: NORMS, ACTORS, PROCESS*, 198 (2d. ed. 2006).

²³⁵ See generally <http://jamsadr.com> (last visited Feb. 12, 2007) (discussing the benefits of alternative dispute resolution).

²³⁶ Merryman, *supra* note 38, at 1900 (claiming that Greece's claim would be barred due to the passage of time).

²³⁷ Kino, *supra* note 81.

²³⁸ Kino, *supra* note 81.

present proposals regarding the legal conundrums, but are unable to articulate the national issues as knowledgeably as someone from a more cultural perspective. The same considerations would apply in determining a venue and arbitrators/mediators. It is not certain that, if submitted to dispute resolution, the Elgin marbles would be returned to Greece; however, a resolution of this conflict would put an end to years of controversy and could serve as an important step in the use of dispute resolution for these types of conflicts in the future. The resolution of a long-standing and notorious conflict would serve as an invaluable step in gaining recognition for dispute resolution throughout the world.

The first step in moving towards an amicable resolution is to determine which individuals from both sides will be most informed and effective. This can be effected by bringing in those who were willing to work together before. Unlike the 2002 convention,²³⁹ it will probably be most effective to only have players from the UK and Greece together at first. If this fails, others can be brought in, for binding arbitration will probably work best.²⁴⁰

C. Ultimate Suggestion For this Case

The Elgin marbles have been in debate since they were removed from Greece. It is imperative that this dispute be resolved, not only for the parties on each side, but for the international community at large. As stated in Dean Rudenstine's article,²⁴¹ this is quite possibly the most long standing and important dispute in cultural property ever. While there are many options for resolution, both amicable and more adversarial, it is clear that England's attempts at ignoring the problem or wishing it away have been and will continue to be unsuccessful. The marble controversy is a dispute which "will remain an issue that simply will not go away."²⁴²

The trouble with many of the previous suggestions is that they are now obsolete. The suggestion made by Michael Reppas was primarily based around the then forthcoming 200-year anniversary of the taking of the marbles in 2001.²⁴³ Additionally, the 'Greek

²³⁹ See *supra* Section III.A.3 *supra*.

²⁴⁰ See Knox, *supra* note 1.

²⁴¹ Rudenstine, *supra* note 6.

²⁴² Proposal, *supra* note 209.

²⁴³ See Reppas, *supra* note 15, at 977. See also MERRYMAN, ELSSEN & URICE, *supra* note 192 (citations omitted) (reiterating that the dispute will not disappear despite England's repeated attempts to avoid resolution).

Offer'²⁴⁴ and other attempts at reconciliation were based in large part on the Olympic return to Athens in 2004, and the British bid for the 2012 Olympics in London, both of which have passed.²⁴⁵ Unfortunately, there is no longer a monumental occasion to look to in hopes that England will see the error of its ways and return the marbles on its own. However, there is still hope that, given the increased amount of pressure the country has been under the past few years, it will be willing to sit down to negotiations and reach an amicable resolution with Greece.

Preferably, a system will be worked out whereby Greece can have the marbles back. England can create copies/casts of the marbles and recreate them, as Elgin was initially planning when he visited the Parthenon.²⁴⁶ Another viable option is the long-term loan set forth in the "Greek Offer."²⁴⁷ In either of these ways, Greece will be able to restore a monument with immense cultural significance, while England will not really "lose" the marbles. Although this situation may not be ideal for England, other cases of cultural property have been resolved less favorably to the "taking" country.²⁴⁸ With recent developments and pressure to return the marbles, it seems in everyone's best interest to finally resolve this issue.

D. Conclusion: How can the lessons learned from this case be applied in the future?

Cultural property theft is still occurring today.²⁴⁹ In its appeal for contributions for the fund,²⁵⁰ UNESCO addressed the continuing problem as a reason for needing money:

[t]heft, looting, and illicit excavation continue . . . causing an endless depletion of peoples' cultural treasures. There is a growing feeling in the international community that these peo-

²⁴⁴ Proposal, *supra* note 209.

²⁴⁵ *Id.*

²⁴⁶ Reppas, *supra* note 15, at 924.

²⁴⁷ See *supra* Section IX.A.1.

²⁴⁸ See *supra* Section IV: Obelisk/Nazi restitution work as examples of this.

²⁴⁹ See, e.g., *Iraq - The Cradle of Civilization at Risk: Cultural Heritage and Historical Monuments*, H Museum, <http://www.h-net.org/~museum/iraq.html>. "The war in Iraq in 2003 again exposes these historical monuments and other places of historical interest to great danger. War always carries with it not only suffering and misery for the population but also always hurts the cultural and historical evidence." *Id.*

²⁵⁰ i.e., the International Fund for the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation. See *Promote*, *supra* note 49.

ple should be empowered to recover objects which they created and which best represent their culture.²⁵¹

Until a time when source nations are left to enjoy their cultural property undisturbed, it is necessary to consider the ways in which these disputes are best resolved. One take away from the cases examined is that restitution seems to be easiest when the original owner nation is willing to make loans to the current holder of the property.²⁵²

This case has ramifications which extend further than the fate of the Elgin marbles themselves, for “[t]he Elgin Marbles symbolize an entire body of unrepatriated cultural property in the world’s museums and private collections.”²⁵³

²⁵¹ *Id.*

²⁵² See David, *supra* note 152 (stating that the MFA is giving the artifacts back in exchange for loans of other pieces); see also Proposal, *supra* note 209 (illustrating through the explanation of the Greek Offer that the Greek government also recognizes that loans are key to the negotiations).

²⁵³ John Henry Merryman, *supra* note 38, at 1897.