

## Unifying the Parthenon Sculptures

George Vardas

Still it survives  
Ruin'd but in its ruins beautiful

William Haygarth.<sup>1</sup>

The English Romantic poet John Keats first encountered the Parthenon Sculptures in 1817 and through them saw a vision of a lost Hellenic world. In "awe-struck deference," Keats proceeded to pen a sonnet, *On Seeing the Elgin Marbles*, his mind dizzy with swirling ideas and an "indescribable feud" within his soul as he wrestled with the "dim-conceived glories of the brain." Keats contrasted his own mortality to "each imagined pinnacle and steep/Of godlike hardship", the great artistic achievement of immortal "Grecian grandeur" and a certain "magnitude" projected by the sculptures. In *Ode on a Grecian Urn* Keats' sylvan historian could but only inquire, "What men or gods are these?"

Commencing in 1801 workers engaged by the British Ambassador to Constantinople, the 7th Earl of Elgin, Thomas Bruce, by a combination of bribery of local Ottoman authorities in Athens and a dubious authorization ("firman"), began stripping more than one hundred sculptures and significant fragments consisting of pedimental figures, metope reliefs, and panels from the frieze from the Parthenon temple atop the Acropolis. Originally intended for his own private collection, Lord Elgin was forced under financial pressure to sell the sculptures to the British government, and in 1816 the Elgin Collection of Parthenon Sculptures became an exhibit at the British Museum in London where they remain to the present day, exhibited in a spurious configuration, detached from their original architectural framework and cultural context.<sup>2</sup>

Ian Jenkins, the former Curator of the Greek and Roman section in the British Museum, has contended that the acquisition of the Elgin Marbles was "arguably the single most important event in the history of the British Museum" and the sculptures themselves

were the “most beautiful man-made creations in existence.”<sup>3</sup> The reception of the Elgin Marbles in Bloomsbury is a classic example of the “essential resocialisation of objects in the modern period – the creation of the ‘history of things.’”<sup>4</sup> With the establishment of museums and histories of art during the Enlightenment, there developed a new historical sequencing that sought to rewrite the European past.

Donald Horne in *The Great Museum* noted the trend of the late eighteenth and early nineteenth centuries to establish a museum of antiquities. In addition to art museums, the “new European desire to order the universe” saw the evolution of other museums, including ethnology and historical museums “stocked with either the loot of empire or the relics of Europe’s suddenly vanquished peasant cultures.”<sup>5</sup> To him, structures such as the British Museum which transform objects into monuments, merely affirm the “legitimacy of imperial domination.”<sup>6</sup>

The modern state of Greece has on many occasions sought to have the sculptures returned but has consistently been rebuffed by successive British governments and the British Museum. At the UNESCO World Conference on Cultural Policies held in Mexico in August 1982, Melina Mercouri, the Greek Minister for Culture, famously brought the Parthenon Sculptures on to the world stage when she moved a resolution for the return of the sculptures, declaring:

The request for the restitution of the Parthenon Marbles is not made by the Greek Government in the name of the Greek nation or of Greek history. It is made in the name of cultural heritage of the world and the voice of the mutilated monument itself that cries out for the marbles to be returned.

In 2002, the then Greek Culture Minister, Evangelos Venizelos, proposed that when the Parthenon sculptures are returned, the Greek government would ensure that the British Museum would always host rare and even newly discovered Greek antiquities by way of reciprocal and recurring loans in a spirit of cultural compromise and curatorial co-operation. He was met by an imperious response from the Chairman of the Board of Trustees, Sir John Boyd, rejecting out of hand any collaboration on the ground in Athens.<sup>7</sup> In 2013 Greece sought mediation under the auspices of UNESCO only to be rebuffed eighteen months later by both the British government and the British Museum.

During the Lost Heritage symposium to discuss the return of cultural property held in London in May 1981, the then director of the British Museum, Dr. David Wilson, argued that the British Museum was founded as a “universal museum,” an international museum (as opposed to a museum of empire) “to show the whole of human achievement and the whole of human culture.” Almost forty years later the British Museum is the self-proclaimed “museum of and for the world.”

At the inquiry by a House of Commons Select Committee on Culture Media and Sport in 2000, the UK government stated that there was “no legal or morally or culturally

convincing case" for the return the Parthenon marbles to Greece and refused to introduce legislation enabling the British Museum to return the marbles. In April 2000, the trustees of the British Museum reaffirmed their resistance to establishing a precedent for the "piecemeal dismemberment of collections which recognise no arbitrary boundaries of time or place."

Two years later, the infamous Declaration of the Importance of Universal Museums was issued and the British Museum, now under the tutelage of Neil MacGregor, proclaiming that the artifacts within their walls were of more value to the museums in which they reside than in the original context in which they were situated prior to their removal. The museum freely admitted that the Parthenon Sculptures dispute lay behind the declaration because of alarm at the way Greece was applying political pressure over the Marbles and against the idea that one Western country could build a museum to house objects belonging to another.

Many thought, in fact, that with the completion of the Acropolis Museum in 2009 would be the final act in the Parthenon Marbles debate. But the British cultural establishment had other ideas and were busy re-badging the British Museum to deflect the renewed claims for the return of the Parthenon Sculptures. In a 2002 letter to Venizelos, the Chairman of the Trustees of the British Museum reiterated that there is a "prima facie presumption against the lending of key objects in the Museum's collection" and in this case the Parthenon sculptures are among a "group of key objects, indispensable to the Museum's essential, universal purpose." The letter concluded that the British did not want the Greeks to be left with the impression that any negotiation on the issue was contemplated:

I am bound, in all frankness, to repeat that I cannot envisage the circumstances under which the Trustees would regard it as being in the Museum's interest, or consistent with its duty, to endorse a loan, permanent or temporary, of the Parthenon sculptures in its collections.

Over recent years the British Museum has carefully re-positioned itself as a "universal museum", "the Museum of the Enlightenment," "the collective memory of mankind," the "cache of civilisations," the museum "at the centre of a conversation with the worlds" and, most recently, the "museum of and for the world."

Enlightenment is a nineteenth century term and, in a sense, it is an anachronism. The appeal to enlightenment values is a throwback to the nineteenth century conception of the great museum as an "encyclopedic collection that comprehensively illustrated the history of the world's major civilizations".<sup>8</sup> The reality is rather less romantic: in the age of imperialism, museums often sent their curatorial staff to gather material in far-flung places (such as the punitive military expeditions in Benin and Maqdala Ethiopia) as a kind of "freebooting appropriation."<sup>9</sup> In the case of the Parthenon Sculptures, there were the

beneficiaries of state-sponsored looting by a British Lord who abused his diplomatic office to gain privileges and indulgences from the Ottoman occupying authorities in Athens at the time and used British naval vessels to transport most of the sculptures to London .

The basis of the great universal survey museums established through imperial strength is said to be "de-contextualization." Universal survey museums have traditionally resisted claims for what A. F. Vrdoljak terms the "reconstitution of cultural objects with their original site."<sup>10</sup> She further notes:

Cultural objects gathered from every corner of the globe were centralized in museum collections, that is the 'space without place'. Drained of their context, these objects became vessels for the mythologizing of the dominant (imperial, national) culture. Central to such mythologizing was the (Western) standard of civilization, and the assumed inevitability of European domination.<sup>11</sup>

### **The Parthenon Sculptures and UNESCO**

The UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation was founded in 1978 to facilitate the resolution of restitution claims for cultural property removed prior to the commencement of operation of the 1970 UNESCO Convention. The Committee was charged with striving to create a "favorable international climate, freed of misconceptions, misunderstandings and unjustified fears of one kind or another."<sup>12</sup>

The first session of the UNESCO Intergovernmental Committee was held in Paris in May 1980. The delegate from Lebanon, Salah Stétié, was appointed Chairman. The minutes of that session reveal that members were determined that the Committee should become the "driving force behind co-operation to be sought not only in the national or regional focus but also in the broader outlook of the whole of mankind." This goal required that "technical and legal structures be established and that research be fostered so as to ensure judicious use of cultural property for the benefit of the greatest number of people."<sup>13</sup>

How UNESCO confronts the issue of the Parthenon sculptures is an important theme as they have come to "symbolize the entire body of unrepatriated cultural property in the world's museums and private collections."<sup>14</sup> Lost Heritage held in London in May 1981 was the first seminal symposium to discuss the return of cultural property. Chairman Stétié remarked that it was interesting that the conference was being held in London in the United Kingdom, a "country which has given a great deal to the world and to other peoples but which has also taken a great deal from them."<sup>15</sup>

At the third session of the Committee held in Istanbul in May 1983, the members states resolved to "intensify the promotion of bilateral negotiations for the return or restitution of cultural property."<sup>16</sup> The representative from Greece advised the Committee

that Greece intended to pursue its claim for the Parthenon Marbles by proceeding with bilateral negotiations in compliance with the procedures for bilateral negotiation established by the Intergovernmental Committee. He emphasized that Greece did not intend to request the return of all seized those objects but only those had belonged to unique monuments such as the Parthenon.

The observer from the United Kingdom responded that the way to resolve this potential conflict lay in "international and particularly bilateral cultural co-operation." He further pointed out that although the United Kingdom did not accept the principle of the return of cultural property except in cases of illegal acquisition, it did not mean that it was opposed in principle to the return of objects but that the return of objects was only one of a possible range of options that could be explored bilaterally.<sup>17</sup>

In a letter dated 24 September 1984 the Greek Minister of Culture submitted a request for the return of the "Elgin Marbles" that was transmitted on 19 October 1984 to the United Kingdom National Commission for UNESCO. On 30 October 1985, the UK Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs sent a reply to UNESCO stating that the UK Government had given very careful consideration to this request but that "after a further detailed study of all aspects of the question .... Her Majesty's Government are of the view that the current request from the Greek Government introduces no new elements into the situation, and they therefore remain unable to accept the arguments adduced for the return of the sculptures."<sup>18</sup>

At the eighth session of the Committee held in 1994, the UK representative argued that as the marbles had been legally acquired and given that the British Museum was the owner of the marbles, expropriation of their property would be regarded as confiscatory and in breach of Article 1 of the First Protocol to the European Convention on Human Rights. The Greek delegate disputed this assertion and felt that all issues relating to the marbles were open to discussion and asked for efforts to resolve the dispute within UNESCO to continue.<sup>19</sup> At the ninth session of the Intergovernmental Committee held in Paris in September 1996, an all too familiar recommendation was adopted for the Director-General of UNESCO "to continue his good offices to resolve this issue and to undertake, as a matter of priority, further discussions with both states."<sup>20</sup>

By the time of the tenth session of the Intergovernmental Committee in January 1999 there were reports that it was expected to "lay the groundwork for the Marbles' repatriation."<sup>21</sup> But nothing eventuated, except for the observation that, as with the previous meetings, the Committee would encourage "further initiatives to promote bilateral negotiations" between Greece and Britain.<sup>22</sup>

The UK House of Commons select committee chaired by Gerald Kaufman was convened in 2000 to investigate on the illicit trade in cultural property. Although the Elgin Marbles were not specifically mentioned in the committee's terms of reference, a large

number of submissions were made regarding the sculptures. The *Economist* magazine, in piece titled "Stones to die for" reported that the British Museum was "growing nervous about the possibility of losing what it regards as the centrepiece of its permanent collection" and that both it and the Department for Culture, Media and Sport regarded the effort to retain the marbles in Britain as "something of a strategic campaign." The author referred to a briefing paper that had been sent out in February 2000 by a British Museum press officer:

The paper describes a number of tactics that have been used to delay or derail the Greek efforts. One in particular is the argument, used in the past at UNESCO meetings, that removing the marbles from the British Museum by law could be interpreted as confiscation and would be contrary to the European Convention on Human Rights. 'This argument is of limited value ... it was raised as a delaying tactic and may have run its course.'<sup>23</sup>

Baroness Blackstone, then the Labour Minister for the Arts and later to become a Trustee of the British Museum, when asked as to the government's attitude to the Elgin Marbles ahead of the 2004 Athens Olympics, replied on 8 August 2002:

There are no plans to send the Parthenon sculptures back. The Government is, of course, prepared to go on having bilateral discussions with the Greek government under the guidance of UNESCO.<sup>24</sup>

Nonetheless, in his closing address at the thirteenth session of the Committee on 10 February 2005 the UNESCO Director General, Koichiro Matsuura, declared that progress in bilateral negotiations between Greece and the United Kingdom was "encouraging" and looked forward to seeing this "momentum" maintained with UNESCO ready to provide its good offices to facilitate further meetings and discussions.<sup>25</sup>

In May 2007 this writer was advised by a member of the Greek UNESCO delegation that the "gap of misunderstandings between the Greek and British side is closing up" and that the parties were for the first time "closer to the target (without however any guarantees for a final success)." The Greek delegate also remarked that one of Greece's strongest weapons was the then approaching completion of the New Acropolis Museum in 2009.<sup>26</sup>

When the Intergovernmental Committee again met in Paris in September 2010 for its seventeenth session, it was noted that Greece had invited the UK to collaborate with in exhibiting all the Parthenon Sculptures in their respective collections in the New Acropolis Museum. The Committee then resolved to assist in convening the necessary meetings between Greece and the United Kingdom with the aim of reaching a mutually acceptable solution to the issue of the Parthenon Sculptures. This proved to be a false dawn. the British Museum had previously dismissed the idea of an outpost in Athens and despite a professed commitment to continue bilateral negotiations with the Greeks, the Stone Years<sup>27</sup> of cultural soft power diplomacy had set in.

The ghost of the marbles is haunted by the debate about the repatriation of indigenous remains or works of art seized by the Nazis during World War II. The former issue was resolved by amending the *Human Tissue Act* to enable any museum, including the British Museum, to return indigenous remains; the latter through the introduction of the *Holocaust (Return of Cultural Objects) Act 2009* limited to spoliation by the Nazis.<sup>28</sup>

The British Museum lobbied furiously to ensure that the deaccession provisions of the *British Museum Act* were not amended out of fear that it would create an undesirable precedent. Thus, while the *British Museum Act* is overridden by the legislation affecting human remains or spoliation art which may be in the museum's possession, the marbles are considered "safe." Since that time, the Intergovernmental Committee of UNESCO has met every two years and the Parthenon Sculptures have been on the agenda on each occasion, with the last meeting in Paris in 2018.

### **The New Acropolis Museum**

The opportunity to appreciate the sculptures in context became possible by construction of a specially designed, state-of-the-art-museum at the base of the Acropolis. The Acropolis Museum, officially unveiled in 2009, is an architectural tour de force, a magnificent museum dedicated to the celebration of the antiquity that it houses and which also surrounds it. As its designers intended, the Acropolis Museum provides an appropriate context for understanding the accomplishment of the Parthenon complex itself with the glorious prospect that, if all the known surviving sculptures are reunited from the British Museum and elsewhere, it would become the most famous single home of Classical Greek art in the world.<sup>29</sup>

The British Museum was always fearful of this reality. As early as March 1982, Brian Cook, then Keeper of Greek and Roman Antiquities at the British Museum, sent a memo to the Museum Director regarding reports that Greece was planning to build a new museum near the Acropolis, warning that:

The next phase of the campaign for repatriation is likely to begin any time after the actual start of construction of the new Acropolis Museum. The problem has not gone away, it is merely in hibernation; and when it wakes up, our successors will find that it is fiercer than before.<sup>30</sup>

The UNESCO Assistant Director-General for Culture, Francesco Bandarin, wrote to the relevant UK Ministers as well as to the British Museum on 9 August 2013 advising that Greece had approached UNESCO with a request for mediation using the Mediation and Conciliation Rules of Procedure adopted in 2010 within the framework of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP). Those procedures confirmed that UNESCO "stands ready to facilitate the process." An excruciating eighteen months later, the British Museum and the UK Ministry of Culture rejected the

request for mediation. During that period the Greek Government insisted that there be no other initiatives undertaken until there was a response to the UNESCO mediation proposal.<sup>31</sup>

### **British Stonewalling**

Matthew Taylor, a member of the British Association for the Reunification of the Parthenon Sculptures (BARPS) and the mind behind the *Elginism* website responded in August. He lodged a series of Freedom of Information (FOI) requests with the British Museum, the Department of Culture, Media and Sports (DCMS), the Prime Minister's Office, and the Foreign and Commonwealth Office (FCO) for the production of documents relating to the request for mediation through UNESCO. Taylor eventually received a series of documents that were heavily redacted (to the point of being unintelligible) and accompanied by a letter defending the right of the government to censor the information sought by Taylor and to withhold disclosure of many other documents, all ostensibly on the grounds of government policy making, security and legal professional privilege.<sup>32</sup>

A forensic examination of the redacted documents, cross-checked against publicly available information, UNESCO records and certain private correspondence, reveals the true nature of the British response. The British Museum and the DCMS, despite claims that museums and government operate independently in the UK, actively colluded to thwart the mediation process and the involvement of UNESCO in the Parthenon Sculptures dispute. The documents are a damning indictment of the cynical obstructionism played out by the British side, both at meetings of the UNESCO Intergovernmental Committee and the subsequent request for mediation. They provide clear snapshots of how one side has not been negotiating in good faith, or at all. This reality should be a salient lesson for those who continue to argue that diplomacy and political pressure will somehow win the day when it comes to dealing with the British Museum over the issue of the marbles.

On 15 October 2013, a "Diplomatic Correspondent" wrote to an official within the UK Foreign and Commonwealth Office, asking for a response to the UNESCO request for mediation. On the same day, the Press Secretary to Hugo Swire MP, the Minister of State for Foreign and Commonwealth Affairs, replied, "Do you know what our response should be?"

Dominic Lake, Deputy Director and Head of Arts, Libraries and Cultural Property received copies of the e-mailed documents as his office was responsible for "wide-ranging cultural policy and delivery of a number of key outcomes and projects." Lake was advised on 8 November 2013 by his correspondent in the British Museum that a meeting had taken place to discuss the British Museum response. It had been suggested that a response should come from the Chair of the British Museum. The author had actually drafted a letter but it had not been sent because the view was taken that "we should wait until the Government

response has been sent ... on the basis that UNESCO and the ICPRCP are intergovernmental.”

The UNESCO Intergovernmental Committee was due to meet in Paris on 1-2 October 2014. A month before that meeting, at the British Museum Lesley Fitton, Keeper, Department of Greece and Rome Museum, sent a lengthy email to Mark Caldon, Advisor on Cultural Property (DCMS), pointing out that the letter in response to the UNESCO proposal was more urgent and she proposed a series of bullet points (by way of deflection), extolling the virtues of Anglo-Hellenic co-operation, such as sharing of resources on sculptures conservation, conferences on restoration of the Acropolis monuments, digitisation of the Parthenon Frieze project, and other collaborative projects. Two days later James Pender, the Head of Cultural Property, DCMS, expressed his appreciation for Fitton’s “very helpful update to ... on the museum to museum cooperation points for use in the planned letter to UNESCO.”

Dominic Lake responded on 16 September that the “UK acknowledges the fact that UNESCO stands ready to facilitate mediation discussions should both parties consent to this and we anticipate UK Ministers will respond in due course.” At the Paris meeting of the Intergovernmental Committee of 1-2 October, both sides restated their positions. The Director General of Antiquities of Greece emphasized the significance of the artefacts and invited the United Kingdom to find a mutually acceptable solution for restitution of the Parthenon Sculptures. The Head of the Cultural Property Unit of DCMS acknowledged Greece’s aspirations for reunification of the sculptures but maintained that they were acquired legally by the British Museum. Two weeks later, in the British House of Commons Andrew George (LibDem) asked what was the British government’s policy on the UNESCO proposal for mediation with Greece on the Parthenon sculptures in the British Museum.<sup>33</sup> Helen Grant (Parliamentary Under-Secretary of State for Culture, Media and Sport) replied:

The Government notes that UNESCO stands ready to facilitate mediation discussion on the Parthenon sculptures. We will consider the proposal and respond in due course. We are clear that the sculptures are legally owned by the British Museum, which continues to provide access for all.

In response to a further question as to whether the UK would willingly and constructively engage with UNESCO in respect of the offer of mediation, Grant declared (as if out of the British Museum playbook):

We are engaging constructively. We will respond to the offer in due course. The suitability, objectives and benefits of mediation need to be considered before that point, but I repeat that the sculptures are the property of the British Museum, which provides access to all free of charge.

As events transpired, on 12 March 2015 the Chairperson of the UNESCO Intergovernmental Committee, Samuel Sidibe, wrote to Dame Sue Owen, the Permanent

Secretary DCMS, concerning the “current negotiation process on the Parthenon Sculptures”, reminding her that the request for mediation remained unanswered. Sidibe concluded, rather abjectly, that as the case had been before the UNESCO Intergovernmental Committee for over two decades “we consider that entering into the mediation process could give a fresh impetus to constructive discussions.” In a response dated 26 March 2015, the British Museum and the DCMS declared their belief that any negotiations would be a waste of time. The museum, in fact, had already set the stage for redefining the meaning of the marbles.

### **The Empire Museum Strikes Back**

In late 2014 the British Museum had secretly negotiated a short-term loan of the pedimental sculpture *Ilissos the River God*, to the Hermitage Museum in Russia. *Ilissos* is a headless reclining sculpture of marbled immortality that sat for centuries at one end of the western pediment of the Parthenon. The loan to Hermitage museum ostensibly was to celebrate that museum’s 250th birthday. The real motive was to use the occasion to propagate the idea that the sculptures in the Duveen Gallery are mere art objects that are now detached, both historically and artistically, from the Parthenon so that the British Museum can do what it likes in terms of loaning parts of the collection to anywhere in the world. This provocative move attracted considerable criticism but the loan itself exemplified the self-legitimizing narrative of the British Museum over the last decade in declaring itself to be a universal museum.<sup>34</sup>

The British Museum hauled some twelve pedimental sculptures, metopes and parts of the frieze into a separate hall in the museum in April 2018. Under the pretext of displaying these works of with sculptures by the renown French sculptor, Auguste Rodin. In its press release, the British Museum stressed that the exhibition (which was a blockbuster) “will provide a new opportunity to focus on the Parthenon Sculptures as individual works rather than as part of an ensemble.” This was an obvious counter to the view that the sculptures are integral to a unique monument.

When the United Kingdom voted to leave the European Union in 2016, few predicted the Brexit chaos that would ensue. Brexit, however, was seen by some as an opportunity to revisit the fundamentals upon which the European Union was founded, including the emphasis on a common European cultural heritage. The idea that the Parthenon sculptures and their return to European soil could be used as some kind of cultural leverage was first floated by Geoffrey Robertson QC and was even raised in the European Parliament, only for EU bureaucrat to hose down the prospects of such a tactic, albeit on spurious grounds.<sup>35</sup>

More than 40 years after Melina Mercouri famously declared that these marbles are ours, the Greek state has failed to confront the British Museum narrative head on. Rather than a museum of and for the world as it now proclaims; for many the British Museum remains a citadel of colonialism. In February 2019, the new British Museum director, Hartwig

Fisher, not only repeated the well-worn mantra of the British Museum being restricted by its own enabling legislation from deaccessioning any part of its collection, but added insult to injury by imperiously claiming that in one sense Lord Elgin's actions and the subsequent division of the sculptures between Athens and London could be considered a "creative act."<sup>36</sup> Whilst other former colonial powers are starting to reconsider their approach to repatriation of looted cultural property – particularly from Africa – the British Museum remains steadfast in its refusal to engage with Greece. The sculptures do not tell a different story in the gloomy confines of the museum at Bloomsbury nor have they been absorbed into the British historical landscape and psyche, as the British Museum and its supporters would have us believe.

Myrsini Zorba, the last in the chain of four Culture Ministers in the Tsipras government, declared at an international conference on the marbles held in Athens in April 2019 that the return of the Parthenon Sculptures and their reunification, for the sake of the integrity of the monument, was a "cultural one-way street," one which has to be resolved "through dialogue." Her immediate predecessor, Lydia Koniordou, also spoke of the need to make use of the diplomatic process, but without leaving aside legal avenues.

The election of July 2019 returned the New Democracy party led by Kyriakos Mitsotakis to power in Greece with an absolute majority. The new Culture Minister, Dr. Lina Mendoni, previously served as Director-General of the Ministry for many years. At the handing over ceremony of the ministry, where it is traditional for the outgoing minister to list his or her achievements and for the new minister to highlight the new government's priorities and expectations, neither Zorba nor Mendoni mentioned the issue of the Parthenon Sculptures.

On 21 July 2019, the new Culture Minister unveiled her Government's cultural policy and programs before the Hellenic Parliament, which included the proposed revitalization of the National Archaeological Museum, improved public administration and confidence in the Ministry's operations, enhancing financial receipts from its operations and promoting cultural heritage initiatives. Again, there was silence on the marbles.

Then in late August 2019 the Greek Prime Minister, whilst in Paris, proposed to the French President, Emmanuel Macron, that the Louvre return to Greece on loan a metope from the south wall of the Parthenon (which a former French consul in Athens had procured before Elgin) for display in Athens to help commemorate the bicentennial celebrations in 2021 of the start of the Greek War of Independence. In exchange Greece would send to Paris a collection of rare bronze artefacts that have never previously left the country.<sup>37</sup>

Mitsotakis followed this up in an interview where he indicated that he also would propose to his British counterpart, Boris Johnson, a similar temporary reciprocal loan, this time involving the Elgin collection of Parthenon Sculptures (or more likely some fragments) currently in the British Museum, possibly as a first step to achieving what in effect would be

confidence building measures.<sup>38</sup> Naturally, the British Museum indignantly pointed out that as the sculptures are the legal property of the museum, any decision as to their future rests with the museum's Board of Trustees and not the British government. In any event, any loan request would only be considered if the Greeks formally recognized the British Museum's lawful possession of the sculptures, which the British know that no Greek government (of whatever political complexion) would ever contemplate, let alone undertake.

At the time of this writing, no formal request has as yet been put to the British Museum and/or the British government. The writer has also learned that the current position of the Greek government is, in effect, to simply keep asking for their return, even though the British side has consistently opposed mediation and bilateral negotiations and continues to maintain the false binary narrative that the museum is prevented by legislation from de-accessioning the marbles and the UK government has no intention of changing the law.

Faced with a Cultural Catch-22, the international movement for return is in a diplomatic hiatus, recalling a rather prescient observation in the official biography of the British Museum by the former director, Sir David Wilson, when he characterized the campaign for the return of the Parthenon Marbles as follows:

After (Melina) Mercouri left office the demands became less vociferous and ultimately died down, now occasionally bursting into life for a few days as one side or the other thinks up a new argument or puts a foot wrong.<sup>39</sup>

In 2015, Geoffrey Robertson QC, with the assistance of the late Professor Norman Palmer QC and Amal Clooney, had delivered to the SYRIZA-led Greek government a 600-page legal memorandum of advice surveying the case for the return of the Parthenon Sculptures and the various legal options available to the Greeks, which had been commissioned by the previous Samaras administration. Unfortunately, this legal roadmap for return was abandoned as the new Greek government presumptively dismissed the idea of litigation and despite the weight of history, restated its view that mediation and diplomacy were the only real options. Successive culture ministers initially rejected the litigation route only to recant and state, rather unconvincingly, that it was still an option but only after all other avenues had been exhausted.

This position has been maintained even though as we have seen the British Museum and the UK Government have rejected mediation or any alternative dispute resolution of the marbles.

### **The International Court of Justice—A Way Forward?**

In the absence of any diplomatic breakthrough, Greece should carefully consider approaching UNESCO or the United Nations General Assembly to seek an advisory opinion from the International Court of Justice. Robertson argues forcefully for an approach to the

International Court of Justice for an advisory opinion in his new book, *Who Owns History?*<sup>40</sup> Indeed, he expresses surprise that UNESCO, which has repeatedly called for a resolution of the issue at meetings of its Intergovernmental Committee, has not taken steps already to have a relevant legal question put to the ICJ which arises within the scope of its activities. The 2015 refusal of mediation should have been the catalyst for such a referral.<sup>41</sup>

The International Court of Justice (ICJ) was established as the principal judicial organ of the United Nations and has the power to give advisory opinions in circumstances where the request is made by an official agency, such as the UNN General Assembly or UNESCO, and the request is in respect of a legal question that arises within the scope or activities of the requesting agency or organization.

An advisory opinion by the ICJ is considered to be authoritative but non-binding although it does enjoy a legal status and moral authority in the general interpretation of international law. In practical terms, when it receives such a request, the Court will hold written and oral proceedings, concluded by the delivery of the advisory opinion at a public hearing. All member states which have an interest in the legal question of the return of cultural property (not just the Parthenon Sculptures) will be invited to make submissions and no doubt many nations will take advantage of this procedure.

Robertson believes that such an opinion could, and should, be sought by UNESCO, pursuant to its duty to preserve the world's heritage, or by the General Assembly of the United Nations that has on a number of occasions passed resolutions for the return or restitution of cultural property. According to Robertson, national cultural symbols which are important to a nation's self-identity are deserving of protection under international law which is evolving and which recognizes the sovereign right to claim unique cultural property of great historical significance taken in the past.

UNESCO could seek from the ICJ an advisory opinion as to a legal question that is properly framed around the entitlement of a nation state to retrieve the keys to its ancient history or, as Robertson explains, a more broad "obligation on those states which wrongfully acquired the cultural property of other states or their peoples to restore it to the monuments or museums from which it had been stripped."<sup>42</sup>

The arguments in respect of cultural property and the reunification of the Parthenon Sculptures would include, but not be limited to, the following considerations:

- (a) The Elgin collection of Parthenon Sculptures presently held in the British Museum should be returned to Greece in recognition of Greece's right to its own property. The return is supported by the emerging rule of international law that cultural treasures lost in times of occupation or dependence have to be returned to the countries of origin. Such a claim is not time barred under international law. States that suffered under imperialism or colonialism should be supported in their efforts to collect their cultural treasures.

- (b) Cultural property ensembles should not be dismembered and, if dismembered, should be united to preserve the integrity of works of art. The Parthenon Sculptures are connected with the Parthenon and the surviving sculptures and temple ornaments and are arguably one of the most important keys to the history of Ancient Athens and to a proper understanding of the genius and the Classical spirit that came together to produce these incomparable pieces. The Parthenon Sculptures are the expression of the local culture and evidence of the history of Greece, the country of origin and constitute cultural property that enhances the identity, understanding, and appreciation for the culture that produced it.
- (c) In terms of jurisprudential theory, as Professor Margaret Jane Radin has argued, property that is bound up with the identity of its original owner is important to that owner's self-development and fulfilment and is therefore deserving of the highest level of protection.<sup>43</sup> Cultural property carries a deep historical value; it educates; it is part tangible, part transient. In this case, it can be argued that the Parthenon Sculptures in the British Museum are so tied to the identity of a particular cultural community (Greece) that the group ownership of them is justified. According to Professor Patty Gerstenblith, cultural property is "that specific form of property that enhances identity, understanding, and appreciation for the culture that produced it."<sup>44</sup>
- (d) By virtue of the foregoing the customary international law norm for which UNESCO, on behalf of Greece, can contend might be best described in terms of Greece's right to reconstitute the Parthenon—the existing Acropolis building of world heritage status—with sculptures taken in dubious circumstances by Britain's diplomat, Lord Elgin, albeit by reuniting those sculptures in a magnificent purpose-built museum. Such a rule would be limited to monuments of outstanding and enduring international importance which have been significantly reduced in their integrity by deliberate spoliation or wrongful removal of the fixtures or contents by or on behalf of another state which continues to detain them.
- (e) Even if the Court were to determine that customary international law had not yet evolved to the point of making such a declaration, that would not serve to defeat any Greek claim in the future. On the other hand, an opinion in favor of Greece, although not binding, would carry a lot of weight and serve to underscore the growing international movement for the repatriation of stolen cultural artefacts.

## Conclusion

Before the General Assembly of the UN in 2007 the then Culture Minister of Greece, George Voulgarakis spoke forcefully and passionately of the need to return the Parthenon Marbles: "The Parthenon Sculptures remain dislodged and divided. The uniqueness of the Parthenon, as monumental symbol of Western Civilization, is the critical argument, and the demand for their return is ecumenical. "That claim has not diminished over time.

From the Greek perspective, the Parthenon Sculptures are a part of a nation's dreaming, memory, and spiritual landscape. As the American writer Henry Miller famously put it, Athens represents the "pure distilled heritage of a past which is not altogether lost.". The Parthenon atop the sacred rock of the Acropolis is at the core of that heritage.

When the current Greek government seeks to re-establish a dialogue in good faith with its UK counterpart over the sculptures, the British Museum's ongoing deflection of any colonial guilt and insistence on unreasonable demands for it to even consider a loan of some of the fragments in the Elgin collection, should serve as a timely reminder to the Greeks that attempting to negotiate with the British cultural establishment is simply pointless.

The British sense that the Greeks lack confidence in their own legal and moral case for return and respond accordingly. Attempts at reaching a resolution through mediation, bilateral discussions, implementing short-term and/or long-term reciprocal loan arrangements, countless UNESCO resolutions, joint curatorship initiatives have all failed. There has never been any meaningful engagement with the Greeks. Seeking and advisory opinion from the International Court of Justice may well be a game-changer. However, it is up to Greece to demonstrate that the lessons of history have been heeded if the eventual reunification of the Parthenon Sculptures is to be achieved in our lifetime.

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<sup>1</sup> William Haygarth describing the Parthenon in "Greece: A Poem" (London, 1814) p. 69 [accessed through [https://books.google.com.au/books?id=MUZgAAAAcAAJ&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com.au/books?id=MUZgAAAAcAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)].

<sup>2</sup> For many years the sculptures were called the Elgin Marbles as the British not only saw themselves as the rightful heir to the cultural heritage of ancient Greece but they sought to downplay the Athenian origin of these sculptures. Although they are now referred to as the Parthenon Sculptures, the term "Elgin Marbles" still permeates the debate as colonial memories die hard.

<sup>3</sup> I. Jenkins, *Archaeologists and Aesthetes in the Sculpture Galleries of the British Museum 1800-1939* (British Museum, (British Museum Press, 1992). p.29.

- <sup>4</sup> P. Fisher, "The Future's Pas," *New Literary History*, p 588.
- <sup>5</sup> D. Horne, *The Great Museum: The Re-Presentation of History* (Pluto Press, London and Sydney, 1984) page 15. It is perhaps no co-incidence that the cover of the paperback edition of this work features a photograph of the Elgin Marbles in the Duveen Gallery of the British Museum.
- <sup>6</sup> *Ibid*, p 31.
- <sup>7</sup> The text of the British Museum letter can be accessed at <http://www.elginism.com/elgin-marbles/greeces-parthenon-marbles-loan-request-rejected/20141205/7627/>.
- <sup>8</sup> J. Webb, *Stolen: The Gallery of Missing Masterpieces* (Cameron House, South Australia, 2008) p. 124
- <sup>9</sup> *Ibid*, p. 124.
- <sup>10</sup> *Ibid*, p.33.
- <sup>11</sup> A F Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (Cambridge University Press, Cambridge, 2006) at p. 9.
- <sup>12</sup> *Ibid*, p.61.
- <sup>13</sup> Report of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, General Conference, Belgrade 1980 (21 C/83).
- <sup>14</sup> J H Merryman, *Thinking about Elgin Marbles: Critical Essays on Cultural Property* p. 25.
- <sup>15</sup> M. Salah Stétié, "The View of UNESCO's Intergovernmental Committee" *Lost Heritage: A report of the symposium on the return of cultural property* (Africa Centre, London, 1 May 1981), p.8.
- <sup>16</sup> "Return or restitution of cultural property – a brief resume" *Museum No. 149* (Vol. 38 No. 1 1986) p.61
- <sup>17</sup> <http://www.elginism.com/elgin-marbles/greeces-parthenon-marbles-loan-request-rejected/20141205/7627/>
- <sup>18</sup> *Ibid*, p.63.
- <sup>19</sup> UNESCO CLT-94/CONF.203/3.
- <sup>20</sup> UNESCO 29 C/REP.12.
- <sup>21</sup> "UNESCO to tackle the Parthenon Marbles issue" [www.greekembassy.org/press/newsflash/1999/January/nflash0127b](http://www.greekembassy.org/press/newsflash/1999/January/nflash0127b).
- <sup>22</sup> UNESCO 30 C/REP 14.
- <sup>23</sup> <https://www.economist.com/moreover/2000/03/16/stones-to-die-for>.
- <sup>24</sup> [www.epolitix.com/data/Interview/articles/00000001A447390AA6611CD9BC](http://www.epolitix.com/data/Interview/articles/00000001A447390AA6611CD9BC).
- <sup>25</sup> Address by Mr Koichiro Matsuura, UNESCO, 10 February 2005 (DG/2005/023).
- <sup>26</sup> Email to the writer 9 May 2007.
- <sup>27</sup> "Stone Years" is the writer's appropriation of a term used to describe the dark period in Greece's modern history post-World War II.
- <sup>28</sup> Even Baroness Kennedy was at pains to distinguish between *Human Tissue Act* bones as opposed to *British Museum Act* stones See the commentary at <http://www.elginism.com/similar-cases/change-in-the-law-regarding-human-remains-in-britains-museums/20051008/209/>.
- <sup>29</sup> G. Damiani (ed.), *Bernard Tschumi* (Thames & Hudson, London 2003) p.146.
- <sup>30</sup> *The Art Newspaper*, No. 4, January 1991, p.12.
- <sup>31</sup> <http://www.elginism.com/elgin-marbles/uk-government-rejects-parthenon-marbles-unesco-mediation/20150327/7859/>.

<sup>32</sup> George Vardas in heavily redacted documents produced under FOI at:

<https://www.whatdotheyknow.com/request/504877/response/1250793/attach/html/2/FOI%2011806%20Parthenon%20Marbles%20Combined%20final%20redactions%20marked%20Redacted.pdf.html>.

<sup>33</sup> <https://publications.parliament.uk/pa/cm201415/cmhansrd/cm141016/debtext/141016-0001.htm>

<sup>34</sup> George Vardas "The Empire Museum Strikes Back."

<http://www.ekathimerini.com/165573/article/ekathimerini/comment/the-empire-museum-strikes-back>

<sup>35</sup> See G. Vardas, "The Return of the Parthenon Sculptures and the Cultural Heritage of Europe"

<http://parthenonsculptures.blogspot.com/2017/>.

<sup>36</sup> H. Smith, "British Museum chief: taking the Parthenon marbles was 'creative'" (*Guardian* newspaper)

<https://www.theguardian.com/artanddesign/2019/jan/28/british-museum-chief-taking-the-parthenon-marbles-was-creative>.

<sup>37</sup> Knowledgeable observers appreciated the underlying symbolism in this proposal because the marble metope, which features a scene of a legendary Centauromachy - a battle between a centaur and a distressed Lapith woman - would be reunited with the centaur's missing right arm which has always been in Athens, based on drawings of the Parthenon by the French artist Jacques Carrey made in 1674 (before the Venetian bombardment).

<sup>38</sup>H. Smith "Greece offers sculpture swap in bid for Parthenon marbles"

<https://www.theguardian.com/culture/2019/aug/31/greece-sculpture-swap-athens-partheon-elgin-marbles-boris-johnson>.

<sup>39</sup> D. Wilson, *The British Museum: A History* (British Museum Press, 2002), p.322.

<sup>40</sup> G. Robertson, *Who Owns History? Elgin's Loot and the Case for Returning Plundered Treasures* (Penguin Random House Australia, 2019)

<sup>41</sup> Ibid, p.165.

<sup>42</sup> Ibid, p.163.

<sup>43</sup> Margaret Jane Radin, "Property and Personhood," *Stanford Law Review* Vol. 34, No. 5 (May, 1982), pp. 957-1015.

<sup>44</sup> See generally Patty Gerstenblith, "The Public Interest in the Restitution of Cultural Objects" *Connecticut Journal of International Law* Vol. 16, No. 2 (2000-2001) pp. 197-246.

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