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Case Two One-Thousand-Five-Hundred-Pound, Hand-Carved Lintels Removed from Religious Temples in Thailand – United States of America and City & County of San Francisco

United States of America – City & County of San Francisco – Kingdom of Thailand – Antiquity/antiquités – Pre 1970 restitution claims/Demandes de restitution pre 1970 – Negotiation/négociation – Judicial claim/action en justice – Diplomatic channel/voie diplomatique – Settlement agreement/accord transactionnel – Conditional restitution/restitution sous condition – Deaccession – Due diligence – Illicit exportation/exportation illicite – Ownership/propriété

In 2017, the government of Thailand formally requested that the United States retribute two ancient stone lintels of Khmer origin that had been removed from Thai temples between 1959–1968 and acquired by the Asian Art Museum in San Francisco. From 2017 to 2020, the United States and Thailand negotiated with the Museum for the restitution of the lintels, but in October 2020, the United States sued the Museum in federal court to seek their forfeiture. In February 2021, the Museum and the United States settled the case for a conditional restitution of the lintels to Thailand.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

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I. Chronology

Pre 1970 restitution claims

- **Between 975–1080** : Two sandstone lintels were carved by Khmer¹ artisans in Southeast Asia. The first (“Lintel 1”) became part of Prasat Nong Hong Temple in Thailand, while the second (“Lintel 2”) became part of Prasat Khao Lon Temple in Thailand.²
- **Mid-1930s** : Thailand registered Prasat Nong Hong Temple and Prasat Khao Lon Temple as national monuments.³
- **Between 1959–1966** : Lintel 1 was removed from Prasat Nong Hong Temple by unknown individuals.⁴
- **1966** : The City and County of San Francisco opened the Asian Art Museum (“the Museum”) to showcase the collection of U.S. collector Avery Brundage.⁵ In that year, Mr. Brundage purchased Lintel 1 from an auction house and gallery located in London and donated it to the Museum.⁶
- **Between 1967–1968** : Lintel 2 was removed from Prasat Khao Lon Temple by unknown individuals.⁷
- **1968** : Mr. Brundage purchased Lintel 2 from a gallery located in Paris and donated it to the Museum.⁸
- **2016** : Tanongsak Hanwong, a Thai archaeologist, started a public campaign to seek the return of the lintels to Thailand after discovering that the two lintels had been removed from their temples.⁹
- **24 September 2016** : The Consul General of the Royal Thai Consulate General in Los Angeles, California visited the Museum and asked that the lintels be returned to Thailand. The Museum reportedly did not follow up to the Consul General's request.¹⁰
- **31 May 2017** : The Thai Minister of Culture met with the U.S. Chargé d'affaires at the U.S. Embassy in Bangkok, Thailand, along with a Special Agent from the U.S. Department of Homeland Security. The Thai Minister communicated that the Museum's lintels belonged to

¹ See Jennifer Lu, “Two Thai artifacts in a San Francisco museum were stolen. Now, they’re on their way home,” *LA Times*, 26 March 2021, <https://www.latimes.com/california/story/2021-03-26/archaeologist-thai-artifacts-san-francisco-asian-art-museum>.

² Claire Selvin, “U.S. Government Demands That Asian Art Museum Return Thai Artifacts,” *ARTnews*, 28 October 2020, <https://www.artnews.com/art-news/news/asian-art-museum-san-francisco-lawsuit-thai-artifacts-1234575211/>.

³ Lu, “Two Thai Artifacts.”

⁴ See Verified Complaint for Civil Forfeiture in Rem, No. 4:20-CV-07537 DMR, 27 October 2020, para. 16, <https://www.justice.gov/d9/press-releases/attachments/2020/10/27/complaint.pdf>.

⁵ Lu, “Two Thai Artifacts.”

⁶ See Verified Complaint for Civil Forfeiture in Rem, para. 13.

⁷ See Verified Complaint for Civil Forfeiture in Rem, paras. 12–13.

⁸ Verified Complaint for Civil Forfeiture in Rem, para. 13.

⁹ Lu, “Two Thai Artifacts.”

¹⁰ See Verified Complaint for Civil Forfeiture in Rem, para. 9.

- Thai temples and were designated as cultural artifacts protected under the laws of Thailand.¹¹
- **2017–2020** : The U.S. Department of Homeland Security notified the City and County of San Francisco of Thailand's claim to the lintels.¹² The City and County of San Francisco initiated a study of their acquisition of the lintels.¹³
 - **July 2020** : Following months of negotiations between the U.S. Department of Homeland Security and the Museum for the return of the lintels, Homeland Security investigators referred the case to prosecutors at the Department of Justice.¹⁴
 - **22 September 2020** : The Museum concluded that it did not possess the lintels' required export documentation.¹⁵ The Museum's Asian Art Commission voted to deaccession the lintels with plans to return them to Thailand by the spring of 2021, pending a second, final vote to take place in March 2021 pursuant to the Museum's deaccessioning policy.¹⁶
 - **8 October 2020** : The Museum sent a letter to the United States expressing its preference "to return the lintels without litigation."¹⁷
 - **27 October 2020** : The United States filed a civil complaint with the United States District Court, Northern District of California, requesting that the City and County of San Francisco be ordered to forfeit the lintels as stolen, smuggled, or clandestinely imported merchandise.¹⁸
 - **4 February 2021** : The City and County of San Francisco and the United States reached an agreement stipulating to the deaccessioning and return of the lintels to Thailand in exchange for a stay of the United States' action and no finding of wrongdoing or liability.¹⁹
 - **30 March 2021** : The Asian Art Commission and the board of directors of the Asian Art Museum Foundation voted to finalize the deaccession the lintels.²⁰
 - **5 April 2021** : The United States filed an application for the forfeiture of the lintels. By this point, the lintels had been transferred to the custody of the U.S. federal government and awaited transport back to Thailand upon the arrangement of the Thai government.²¹

¹¹ Verified Complaint for Civil Forfeiture in Rem, para. 10.

¹² Lu, "Two Thai Artifacts."

¹³ See "Asian Art Museum Deaccessioning Two Sandstone Lintels," *Asian Art Museum Press Office*, 22 September 2020, <https://about.asianart.org/press/asian-art-museum-deaccessioning-two-sandstone-lintels/>.

¹⁴ Lu, "Two Thai Artifacts."

¹⁵ Asian Art Museum Press Office, "Deaccessioning Two Sandstone Lintels."

¹⁶ Scarlet Chang, "US presses for return of two Thai lintels from Asian Art Museum in San Francisco to Thailand," *The Art Newspaper*, 30 October 2020, <https://www.theartnewspaper.com/2020/10/30/us-presses-for-return-of-two-thai-lintels-from-asian-art-museum-in-san-francisco-to-thailand>.

¹⁷ Selvin, "U.S. Government Demands."

¹⁸ Verified Complaint for Civil Forfeiture in Rem, paras. 20, 22.

¹⁹ Stipulation of Settlement, No. 4:20-CV-07537 DMR, 4 February 2021, paras. 3–4.

²⁰ "Asian Art Museum Cleared to Return Artworks to Thailand as Long Planned," *Asian Art Museum Press Office*, 10 February 2021, <https://about.asianart.org/press/asian-art-museum-cleared-to-return-artworks-to-thailand-as-long-planned/>.

²¹ Application of The United States for an Order of Forfeiture, No. 4:20-CV-07537 DMR, 5 April 2021, paras. 3–4.

- **9 April 2021** : The United States District Court, Northern District of California ordered the forfeiture of the lintels and their repatriation to Thailand.²²
- **25 May 2021** : Homeland Security Investigations transferred custody of the lintels to the Royal Thai Consulate-General during a formal handover ceremony in Los Angeles.²³
- **28 May 2021** : The lintels arrived in Thailand to be exhibited at the Bangkok National Museum for three months.²⁴
- **5 July 2022** : The Thai government was in the process of reinstalling the lintels at Prasat Khao Loan Temple and Prasat Nong Hong Temple.²⁵

II. Dispute Resolution Process

Diplomatic Channel (Thailand, United States) – Negotiation (United States and City & County of San Francisco) – Judicial Claim (United States v. City & County of San Francisco) – Settlement Agreement

- After the Museum was notified of Thailand’s claim to the lintels in mid-2017,²⁶ the Museum investigated its acquisition of the lintels in collaboration with the U.S. Department of Homeland Security, the Thai Consulate in Los Angeles, the Thai Fine Arts Department, the San Francisco City Attorney, and Asian Art Museum experts.²⁷
- At some time prior to July 2020,²⁸ Homeland Security investigators conducted “months” of negotiations with Museum officials to have them agree to the administrative (i.e., non-court-ordered) forfeiture of the lintels. However, Homeland Security investigators decided to expedite the case by referring it to prosecutors at the Department of Justice,²⁹ who, in July 2020, announced their intention to file a civil complaint against the City and County of San Francisco to force the return of the lintels.³⁰
- In September 2020, the Museum’s Asian Art Commission, which functions as the governance organ of the Museum,³¹ voted to deaccession the lintels with plans to return

²² Order of Forfeiture, No. 4:20-CV-07537 DMR, 9 April 2021.

²³ “The Repatriation of Two Sacred Thai Lintels to Thailand,” Ministry of Foreign Affairs of the Kingdom of Thailand, 26 May 2021, <https://www.mfa.go.th/en/content/the-repatriation-of-two-sacred-thai-lintels-to-tha?cate=5d5bcb4e15e39c3060006844>.

²⁴ “U.S. Welcomes the Return of Ancient Lintels,” U.S. Embassy & Consulate in Thailand, 25 June 2021, <https://th.usembassy.gov/u-s-welcomes-the-return-of-ancient-lintels/>.

²⁵ “Thai archaeologist on mission to reclaim ancient Khmer sculpture from US,” *Thai PBS World*, 5 July 2022, <https://www.thaipbsworld.com/thai-archaeologist-on-mission-to-reclaim-ancient-khmer-sculpture-from-us/>.

²⁶ Lu, “Two Thai artifacts.”

²⁷ *Asian Art Museum Press Office*, “Deaccessioning Two Sandstone Lintels”; Chang, “US presses for return.”

²⁸ U.S. prosecutors announced their intention to file a civil complaint against the Museum in July 2020, indicating that Homeland Security investigators must have referred the case to the Department of Justice by this point. See Selvin, “U.S. Government Demands.”

²⁹ Lu, “Two Thai artifacts.”

³⁰ Selvin, “U.S. Government Demands.”

³¹ “Governance,” Asian Art Museum, accessed 7 January 2023, <https://about.asianart.org/about-the-asian-art-museum/governance/>.

them to Thailand by the spring of 2021, pending a second, final vote to take place in March 2021 pursuant to the Museum's deaccessioning policy.³² On 8 October, the Museum sent a letter to the United States expressing its preference "to return the lintels without litigation."³³

- On 27 October 2020, the United States filed a civil complaint with the United States District Court, Northern District of California, requesting that the City and County of San Francisco be ordered to forfeit the lintels as stolen, smuggled, or clandestinely imported merchandise under 19 U.S.C. § 1595(c)(1)(A).³⁴ U.S. prosecutors expressed frustration with the negotiations³⁵ and filed the complaint to the apparent surprise of the Museum, which had believed the negotiations were "positive and developing."³⁶
- Attorneys for the City and County of San Francisco began settlement negotiations with the U.S. Attorney's Office,³⁷ and on 16 November 2020, the two parties asked the District Court to stay all court deadlines for 60 days so that the negotiations could continue.³⁸ On 4 February 2021, the City and County of San Francisco and the United States reached an agreement stipulating to the finalization of the lintels' deaccessioning, the Museum's relinquishing of all claims to the lintels' ownership, and the forfeiture of the lintels to the United States. In exchange, the United States agreed to stay its District Court action and ask for no finding of wrongdoing or liability against the Museum or any other party. Finally, and as part of the agreement, Thailand stipulated to seek the repatriation of the lintels through the Department of Justice's administrative petition-and-remission procedures.³⁹
- On 30 March 2021, the Asian Art Commission and the board of directors of the Asian Art Museum Foundation held their second and final vote to deaccession the lintels.⁴⁰ By 5 April, the Museum had transferred the lintels to the custody of the U.S. federal government,⁴¹ which successfully obtained a District Court order mandating the forfeiture and repatriation of the lintels on 9 April.⁴²

³² Chang, "US presses for return."

³³ Selvin, "U.S. Government Demands."

³⁴ Verified Complaint for Civil Forfeiture in Rem, paras. 20, 22.

³⁵ "United States Files Civil Action To Repatriate Thai Religious Relics Housed At The San Francisco Asian Art Museum," U.S. Department of Justice, 27 October 2020, <https://www.justice.gov/usao-ndca/pr/united-states-files-civil-action-repatriate-thai-religious-relics-housed-san-francisco>.

³⁶ Selvin, "U.S. Government Demands."

³⁷ See Chang, "US presses for return."

³⁸ Stipulation to Stay Action Pending Settlement Discussions, No. 4:20-CV-07537 DMR, 16 November 2020, p. 2.

³⁹ Stipulation of Settlement, paras. 3–4.

⁴⁰ "Cleared to Return Artworks," *Asian Art Museum Press Office*.

⁴¹ Application of The United States for an Order of Forfeiture, paras. 3–4.

⁴² Order of Forfeiture.

III. Legal Issues

Deaccession – Due diligence – Illicit exportation – Ownership

- The Museum’s 2011 Ethical Stewardship and Collections Management Policy (“2011 Collections Policy”) states that previously accessioned objects may be removed from the permanent collection “only through a formal process of deaccessioning.” These procedures are outlined in Sections 7.1 through 7.13 of the 2011 Collections Policy. In the present case, approval for the deaccessioning of the lintels would have needed support from the Museum’s Director, the Chief Curator, the Curator-in-Charge of the pertinent department, two-thirds of the members of the Acquisitions Committee, and two-thirds of a quorum of the Asian Arts Commission.⁴³ However, the Museum’s initiation of deaccessioning on 22 September 2020 did not stop the U.S. government from suing the Museum in District Court, and deaccessioning was not even mentioned in the government’s complaint.⁴⁴ Prosecutors may have not believed that the Museum’s deaccessioning procedure was legally required for the lintels to be forfeited to the U.S. government. Notwithstanding this, the City and County of San Francisco successfully negotiated for the completion of the deaccessioning process as part of the forfeiture of the lintels, and prosecutors came to recognize the “protocols and procedures in place at the [Museum]” as “appropriate in this matter.”⁴⁵
- It does not appear that the Museum had a due-diligence policy when it acquired the lintels from Mr. Brundage in 1966 and 1968. In 2021, the Deputy Director of the Museum told a reporter that the Museum made the “general presumption that [the dealers who sold the lintels to collector Avery Brundage] were not shady, but selling works legally.” In this case, the lack of Thai export documentation or Thai receipts from the lintel dealers in the Museum’s provenance documentation challenged the Museum’s continued belief in this presumption. Additionally, the Museum possessed documentation showing that these dealers had sold Mr. Brundage two other Thai artifacts – a separate lintel and a bronze statue – that had been reported stolen by the Thai government around the time of Lintels 1 and 2’s acquisition by the Museum.⁴⁶ In the end, the Museum’s lack of a due-diligence policy in the 1960s necessitated three years of study by the Thai government, Thai researchers, the U.S. Department of Homeland Security, and researchers from the Museum to clarify the lintels’ provenance.⁴⁷
- U.S. prosecutors alleged that the lintels were illegally exported and forfeitable as stolen, smuggled, or clandestinely imported merchandise under the National Stolen Property Act, 19 U.S.C. § 1595(c)(1)(A),⁴⁸ but the settlement of the case meant that this claim was never reviewed by the District Court. When U.S. courts are asked to recognize a foreign nation’s right to recover an illegally exported cultural object, the foreign nation (or the United States

⁴³ Ethical Stewardship and Collections Management Policy, Asian Art Museum, 25 April 2011, § 7.1, <https://about.asianart.org/wp-content/uploads/sites/2/2020/09/Collections-Management-Policy.pdf>

⁴⁴ See Verified Complaint for Civil Forfeiture in Rem.

⁴⁵ See Stipulation of Settlement, para. 3.

⁴⁶ Lu, “Two Thai artifacts.”

⁴⁷ *Asian Art Museum Press Office*, “Deaccessioning Two Sandstone Lintels.”

⁴⁸ Verified Complaint for Civil Forfeiture in Rem, para. 20.

acting on behalf of the foreign nation, as in the present case) must typically show two things: first, that the foreign state's export laws have been violated, and second, that the state had ownership over the cultural object. The United States does not enforce foreign export laws by themselves. Nevertheless, U.S. prosecutors "have repeatedly asserted that unprovenanced antiquities removed without a valid export license from a foreign nation in violation of that country's patrimony statutes" are "stolen" within the meaning of the National Stolen Property Act.⁴⁹

- The Thai laws that are relevant to the exportation and ownership of Lintels 1 and 2 from Thailand include: a) the 1934 Act on Ancient Monuments, Objects of Art, Antiquities and National Museums ("1934 Act"),⁵⁰ and b) the 1961 Act on Ancient Monuments, Antiques, Objects of Art, and National Museums ("1961 Act").⁵¹ The 1961 Act requires an export license for "any antique or object of art irrespective of whether they are registered or not [...]"⁵² Consequently, even if the lintels had not been specifically designated as protected artifacts, the unknown parties that exported them from Thailand would have needed export licenses anyway, and such licenses were not uncovered during the three-year investigation prior to the filing of the prosecutors' complaint.⁵³
- In terms of Thailand's claim to ownership of the lintels, Thai officials presented evidence to the U.S. government that the lintels came from temples that had been designated as protected national monuments since 1935.⁵⁴ Moreover, Thailand's Ministry of Fine Arts had conducted surveys of these temples in 1959 and 1960 that identified the lintels as fixtures of the structures.⁵⁵ Despite this, the United States did not quote from or identify the sections of either the 1934 Act or 1961 Act that vested ownership of the lintels in Thailand, and Thailand's legal ownership of the lintels would have needed to be proven had the case proceeded.⁵⁶ The specific language of Thailand's patrimony laws seems to have been less important to prosecutors than establishing the clear origin of the lintels at protected Thai temples. Moreover, by this point in the case, the City & County of San Francisco did not appear to contest the origin of the lintels at protected Thai national monuments.⁵⁷

⁴⁹ Stephen K. Urice, "Between Rocks and Hard Places: Unprovenanced Antiquities and the National Stolen Property Act," *New Mexico Law Review* 40 (2010): 127–130. Accessed 7 January 2023. https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1459&context=fac_articles.

⁵⁰ A publicly accessible English translation of the 1934 Act is not currently available online, but the Act is referenced in the complaint filed by U.S. prosecutors. See Verified Complaint for Civil Forfeiture in Rem, para. 16.

⁵¹ 1961 Act on Ancient Monuments, Antiques, Objects of Art, and National Museums, B.E. 2504, 1961, http://www.asianlii.org/th/legis/consol_act/aoamaooaanm1961650/ (English translation); see Verified Complaint for Civil Forfeiture in Rem, para. 16.

⁵² 1961 Act, § 22.

⁵³ See *Asian Art Museum Press Office*, "Deaccessioning Two Sandstone Lintels."

⁵⁴ Verified Complaint for Civil Forfeiture in Rem, para. 10.

⁵⁵ Lu, "Two Thai artifacts".

⁵⁶ See Rick St. Hilaire, "Thai Cultural Property Case Edges Closer to Settlement," Cultural Heritage Lawyer Blog, 20 January 2021, <https://culturalheritagelawyer.blogspot.com/2021/01/Thailand-cultural-property-forfeiture-repatriation-Asian-Art-Museum.html> (citing *United States v. Schultz*, 333 F.3d 393 (2nd Cir. 2003); *United States v. McClain*, 545 F.2d 988 (5th Cir. 1977)).

⁵⁷ See *Asian Art Museum Press Office*, "Deaccessioning Two Sandstone Lintels."

IV. Adopted Solution

Conditional restitution

- On 4 February 2021, the City and County of San Francisco and the United States reached an agreement stipulating to: a) the completion of the lintels' deaccessioning, b) the Museum's relinquishing of all ownership claims to the lintels, and c) the forfeiture of the lintels to the United States. In exchange, the United States agreed to stay its District Court action and ask for no finding of wrongdoing or liability against the Museum or any other party. As part of the settlement, Thailand stipulated to repatriating the lintels through the Department of Justice's administrative petition-and-remission procedures.⁵⁸

V. Comment

- At least one observer other than the Department of Justice found the Museum's delayed response to the restitution demands of the Thai and U.S. governments to be unreasonably long. The Association for Research into Crimes against Art (ARCA) criticized the 30 October 2020 suggestion of the Museum's Deputy Director that the restitution took longer because of the Museum's deaccessioning policies. ARCA noted that the Museum's board only voted to begin deaccessioning four years after attention was first drawn to the suspicious provenance of the lintels, adding that the board of the Museum could have met "a minimum of six times to address the deaccession of these problematic pieces prior to the filing of the US Federal Complaint."⁵⁹ ARCA's skepticism finds support in the fact that even before the Department of Justice threatened to sue the Museum, the Museum had enough doubts about the provenance of Mr. Brundage's collection to publicly criticize him and state that it would hold public programs to critically examine "questions around provenance and restitution" of objects from his collection. Notwithstanding this, the four-year-old lintels controversy was not disclosed to the public at that time.⁶⁰ The Museum's delay in agreeing to restitution has precedent; when Thai archaeologist M.C. Subhadradis Diskul discovered a stolen lintel from the Prang Ku Suan Taeng archaeological site in the Avery Brundage Collection sometime around 1967, the lintel was only returned in 1970 "[a]fter quite a long negotiation" between Thailand and the Museum.⁶¹

⁵⁸ Stipulation of Settlement, paras. 3–4.

⁵⁹ "Theft to Restitution: a timeline of two 9th and 10th century architectural lintels returning to the Thai people after 50 long years," Association for Research into Crimes against Art, 26 May 2021, <https://art-crime.blogspot.com/2021/05/theft-to-restitution-timeline-of-two.html>.

⁶⁰ No media outlet appears to have reported on the lintels until the Department of Justice announced its lawsuit on 27 October 2020. See, e.g., Carol Pogash, "Asian Art Museum to Remove Bust of Patron. That's Just a Start.," *New York Times*, 16 June 2020, <https://www.nytimes.com/2020/06/15/arts/design/avery-brundage-bust-asian-art-museum.html>.

⁶¹ The date of 1967 assumes that the Prang Ku Suan Taeng lintel was the same lintel referred to in Lu, "Two Thai artifacts." In 1989, M.C. Subhadradis Diskul recalled that he saw the lintel in a catalog sometime after it was looted in 1964. M.C. Subhadradis Diskul, "Stolen Art Objects Returned to Thailand," *SPAFA Digest* 10, no. 2 (1989): pp. 8–9. Accessed 15 January 2023. <https://www.spafajournal.org/index.php/spafadigest/article/view/519/514>.

- The Museum's commitment to following its deaccessioning procedures despite the Department of Justice's July 2020 threat of a lawsuit was guided by its 2011 Collections Policy, which states that the Museum's personnel and commissioners have an "ethical duty to adhere to the Museum's collections management policies," such as those for deaccession. Nevertheless, the Museum has the power to suspend these policies in rare circumstances under Section 1.5 of the Collections Policy: "[p]rudent exceptions to such policies may be granted, on a case-by-case basis [...] by the Director of the Museum or by the Chief Curator in the absence of the Director."⁶² The Museum has separately explained that this power is intended for "legal or other pressing reasons" where the Director must act in the interest of the City and County of San Francisco before the Commissioners of the Museum can be notified. Importantly, the Museum has confirmed that an exception to deaccession under Section 1.5 was considered during the negotiations for the lintels. However, the Director, in consultation with representatives from the City and County of San Francisco, "stood firmly in support of following through with the due deaccession process" despite pressure from the Department of Justice to relinquish the lintels. One current Museum official has not seen a Section 1.5 exception used during his six-year tenure at the Museum and has doubted that "such a circumstance will ever arise."⁶³
- A number of reasons may explain why the City and County of San Francisco believed it was in its interest to avoid using Section 1.5 of its 2011 Collections Policy to skip deaccession. First, it may have feared setting a precedent for future restitution cases; foreign governments and/or the Department of Justice may come to expect the circumvention of deaccessioning procedures for looted cultural objects solely by threatening a federal lawsuit. Second, the City and County may have had a reasonable belief that starting the deaccession process in September 2020 would have mollified the Department of Justice. Finally, there may have been a belief that the Department's threat of litigation was hollow; prior to October 2020, the Museum appears to have never been sued by the Department of Justice for stolen art.
- Thailand's photographic evidence of the lintels' origin at designated national monuments was unusually precise for a case involving looted archeological heritage. Cultural objects from Southeastern Asia are often sold in the United States with no published provenance or ownership history; one study of Sotheby's New York auction house revealed that from 1988 through 2010, 71% of Khmer antiquities were offered for sale without provenance documentation.⁶⁴ A common issue in U.S. cases with unprovenanced cultural objects is whether the claimant foreign nation's patrimony statute clearly vests ownership of the cultural object in the foreign state.⁶⁵ To determine this, U.S. courts look first to the plain

⁶² Ethical Stewardship and Collections Management Policy, § 1.5.

⁶³ Zac Rose, Associate Director of Communications at the Asian Art Museum, Email to Grant Berg, 6 January 2023.

⁶⁴ Tess Davis, "Supply and demand: exposing the illicit trade in Cambodian antiquities through a study of Sotheby's auction house," *Crime, Law and Social Change* 56, no. 2 (2011): 155–174. Accessed 8 January 2023. <https://traffickingculture.org/app/uploads/2013/01/Davis2011.pdf>.

⁶⁵ See *Schultz*, 333 F.3d 393 at 401–02 (analyzing whether Egypt's Law 117 was ambiguous in giving Egypt state ownership over antiquities discovered after 1983); *McClain*, 545 F.2d at 998 (holding that Mexico's patrimony laws did not clearly declare national ownership of all pre-Columbian artifacts found within its borders).

- language of the relevant law, and may also confirm the intent of the law by reviewing a claimant's evidence of the state's active enforcement of its ownership rights.⁶⁶
- The Department of Justice's approach to securing the lintels' forfeiture contrasts with its more famous 2017 case against Hobby Lobby, the U.S. corporation and sponsor of the Museum of the Bible, for the forfeiture of thousands of cuneiform tablets and clay bullae that had been looted from Iraq. In that case, the Department filed its complaint simultaneously with a settlement agreement, showing that it had successfully concluded forfeiture negotiations with Hobby Lobby at the time of filing.⁶⁷ In the present case, the Department chose to file its complaint while negotiations were still ongoing.⁶⁸ Additionally, the Hobby Lobby complaint cited to the specific provisions of Iraqi patrimony law that governed the export and state ownership of cultural objects,⁶⁹ whereas the present case's complaint merely summarized Thailand's relevant patrimony laws without specifying their specific provisions or articles on export or state ownership.⁷⁰ Finally, the present case's complaint was far shorter than, and lacked the developed statement of law of, the Hobby Lobby complaint.⁷¹ It thus appears to have been designed more to get leverage over the Museum during negotiations than to expound a watertight legal argument. In sum, a comparison of these cases suggests that the Department does not have a standardized approach to securing the forfeiture of looted cultural objects through civil litigation.
 - The 30 March 2021 deaccession of the lintels is the only recent deaccession of Avery Brundage Collection objects on the grounds of restitution. On 25 September 2019, the Museum deaccessioned nine other Thai objects from the Avery Brundage Collection.⁷² Unlike the lintels, these objects were removed from the Collection either because of their low quality, such as from being poorly restored, or because they were redundant with other objects in the Collection.⁷³

⁶⁶ See, e.g., *Republic of Turkey v. Christie's Inc.*, 425 F. Supp. 3d 204 (S.D.N.Y. 2019).

⁶⁷ "United States Files Civil Action To Forfeit Thousands Of Ancient Iraqi Artifacts Imported By Hobby Lobby," U.S. Department of Justice, 5 July 2017, <https://www.justice.gov/usao-edny/pr/united-states-files-civil-action-forfeit-thousands-ancient-iraqi-artifacts-imported>.

⁶⁸ Selvin, "U.S. Government Demands."

⁶⁹ *United States of America v. Approximately Four Hundred Fifty (450) Ancient Cuneiform Tablets and Approximately Three Thousand (3,000) Ancient Clay Bullae*, No. CV 17-3980, 5 July 2017, para. 18, <https://www.justice.gov/usao-edny/press-release/file/978096/download> ("Hobby Lobby Complaint").

⁷⁰ Verified Complaint for Civil Forfeiture in Rem, para. 16.

⁷¹ The Hobby Lobby complaint has double the amount of writing on applicable forfeiture law, customs law, and foreign patrimony law, and gives these topics their own dedicated sections. Compare Hobby Lobby Complaint, paras. 7–18, with Verified Complaint for Civil Forfeiture in Rem, paras. 16–17, 19–20, 24–27; see also St. Hilaire, "Case Edges Closer to Settlement," ("Whether Thailand's patrimony law sufficiently grants [state ownership of the lintels] is not made particularly clear in the court complaint.").

⁷² Exhibit A: Brundage Objects for Deaccession, Asian Art Museum, 15 August 2018.

⁷³ Rose, Email from 19 December 2022.

VI. Sources

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