

Can You Dig It?
The Ethics and Politics of Cultural Property

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Abstract

Can You Dig It? is a little archaeology humor that is meant to serve a dual purpose. It is meant as both a literal question and as colloquial slang. The first section of this paper focuses on the politics of cultural property. The question, *Can You Dig It?*, literally asks if items of cultural property can be excavated, by whom, and if they may leave their country of origin. To address these issues, there has been legislation, both international and national, to help regulate the flow of cultural property and prevent the terrible damage done by theft and looting.

The second section of *Can You Dig It?* focuses on the colloquial slang and presents to readers information to allow a basic comprehension of the issues central to the debate of cultural property. While legislation may seem very straightforward, archaeologists, nation-states, museums, and collectors all assign a different type of value to objects and so do not agree on the best practices and uses for cultural property. The pros and cons of each are presented to readers for their consideration, and the ethics of cultural property are discussed.

In the final section, possible solutions to the debate are proposed. These include a type of public service campaign for archaeologists to reach out to communities both at home and abroad. This outreach has already included the education of the U.S. military, particularly those being deployed to Iraq and Afghanistan, about the cultural heritage of the Middle East. Finally, a push to extend archaeology education to teachers and, by extension, their students in the public school system could result in discouraging the next generation of looters.

To Dr. Gloria London,
Thanks for taking a chance on a Jersey Girl,
and believing that I can do anything.
This is only the beginning.

Introduction – Archaeology, Image, and the Value of History

Popular thought about archaeology comes from Hollywood characters like Indiana Jones. The basic premise of rescuing the shiny object, saving the world by defeating the forces of evil, and living happily ever after despite a few bumps and bruises sells movies. The reality is that archaeology is not glamorous and involves meticulous record keeping, which creates an image problem for archaeologists today. Because of the Hollywood image, real archaeologists have to deal with public perceptions that their job is glamorous and full of adventure. Hollywood emphasizes that objects have value and ignores the tedious and mundane work of scholars; real archaeologists cannot, and see themselves as the 'stewards of history'. Details provide archaeologists the basis of their work; the reconstructing of the past as fully, completely and unbiased as possible (Shablitsky, 2007). Image and the job of the real archaeologist matter, because distorted public perceptions fuel support for those that seek only the shiny objects. In order for modern archaeologists to solve their image problem, they must educate and inform the public without being dull or selling the wrong image.

The value of objects has caused great controversy in recent years. To sell objects on the black market, archaeological sites have been clandestinely excavated and looted with invaluable information lost forever. While archaeologists, museums, collectors, and governments all agree that this destruction of information is a scar on the face of humanity, they disagree on the value of the objects themselves and what to do with them once excavated. It is this fundamental difference of perspective of

value which forms the foundation of the argument about objects that are considered cultural property.

Archaeologists usually care more about the context of an object than the object itself. While archaeology is destructive as it peels away layers to get to the earliest date of occupation of a particular site, its goal is the preservation of information about the past. An archaeologist will dig through layer after layer, a process called stratigraphy, in order to understand the context of an object in relation to its surroundings and other objects found with it. The value of cultural property for archaeologists is the context in which an object was found. The ability to trace back the pedigree of a particular object to its point of discovery is called provenance. For most archaeologists an object without provenance has little, if any value, because it cannot add to our knowledge of civilization.

Nation states also place much value on cultural property and consider cultural property to be their cultural heritage. Objects from past civilizations can be used to inspire and show continuity from great civilizations of the past to the modern state. They can help to build ideas of community and instill a sense of national pride. On the other hand, a country that cannot hold on to its cultural heritage acknowledges weakness to others. Cultural heritage has an intangible cultural value and prestige associated with it that make it very desirable to possess (Carman, 2005).

Museums see the value of cultural property in a different light and are not so concerned with context as with the aesthetic and historical value of an object. As institutions primarily concerned with the preservation of science and art in the name of education, context is less important to museums. Considering an object worthy of

display because of its aesthetic qualities gives it a cultural value which does not depend upon whether an item is provenanced (Cuno, 2009). While some museums have adopted acquisition policies that do not allow them to accept unprovenanced objects, some of the largest and most popular museums in this country still operate with questionable acquisition policies, as they display objects of beauty in their quest to inform, educate, and inspire.

Collectors value objects of cultural property differently. While an uglier side of the private market for antiquities exists, which can consist of looting to order and theft, many collectors view the market for private antiquities with alarm and consider themselves guardians of history with a passion for a particular area. Collectors often believe that they are saving items which might otherwise be lost, destroyed, or hidden in museum storage. Collectors believe that cultural property provides a degree of prestige for the owner and has aesthetic value when it is displayed in private collections. Cultural property is also considered an investment, which has added financial value in the US because of the tax relief that can be acquired if collectors donate their items to a museum. Here, objects of cultural property are not only seen for their aesthetic beauty, but they are also seen as commodities to be bought and traded.

While archaeologists, museums, collectors, and nation-states place different values on cultural property, all agree on the detrimental effects of thieves, looters, and the haphazard methods used to extract objects from their original context. We know that looters loot for the money that they earn from dealers and collectors, but just as each values cultural property from a different perspective, there are also different

values and legal implications associated with how thieves loot. One of the ways in which items make it onto the black market is by theft. For example, a site such as a temple or a shrine is discovered and excavated with its contents recorded; then a portion of it, such as the head of a statue or a panel is stolen. In this case at least, there is an existing record and a possibility of establishing a date for the theft which might lead to a conviction. In the case of looting, a clandestine excavation is undertaken and the items removed have little chance of being traced, because there is no documentation about the site since it was excavated illegally. Governments can't know about the looted items because they were not aware that illegal digging occurred (Renfrew, 2000). Regardless of how or why looting occurs, it became evident after World War II that there needed to be some form of legislation to help some of the poorer countries of the third world protect their heritage from the collectors and dealers of wealthier countries. What emerged was a broad reaching convention from UNESCO in which signatory countries agreed to oppose the import, export, and transfer of stolen cultural property and to restore the objects in question to their country of origin.

I. Legal Measures to Prevent Looting

The laws designed to protect cultural property also recognize that items have value. In order to provide a legal remedy, a tangible monetary value must be assigned to cultural property. There must be a definition of what makes an antiquity licit or illicit and how it can be proven. In order to decide this, two levels of legislation are used, international and national. International legislation provides a broad framework which shows how the international community would like member states to behave, while the national legislation actually implements specific objectives within a country and enforces them through its legal system. Without cohesion between international and national standards, the goals are obscured in the name of local interests. Because a state only implements certain principles from the international convention, illicit objects continue to appear in museums and in private collections around the world without much fear of criminal prosecution.

Ia. International Law - The 1970 UNESCO Convention

While there have been questionable acquisitions of cultural property throughout history, the end of World War II ushered in a new era of international cooperation through organizations like the United Nations. Recovery and repatriation of artwork stolen by the Nazi regime created a new awareness of the value of cultural heritage and its destruction by theft. Through the 1960s many countries with long standing cultural heritage but no means to protect it declared their independence and began to try to stop the looting and recover some of their past, which was now in museums around the world. The United Nations Educational and Scientific and Cultural Organization (UNESCO) responded with the 1970 UNESCO Convention on

the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Convention).¹ This document was meant to curb the import, export and transfer of cultural property from 1970 onward.

As of February of 2010, 118 countries had ratified or accepted the UNESCO Convention. It defines cultural property and delineates what states universal ideas of respect for other cultures should be. The Convention also recognizes the importance and value of having the fullest possible information regarding a country's heritage. The UNESCO Convention also outlines protection and moral obligations of states regarding cultural property, and sets down the understanding that protection of cultural heritage can be effectively organized only if it is done both nationally and internationally.² The Convention has 26 articles and covers most aspects of the cultural property debate. Article 1 defines what cultural property is in its many forms; Articles 2-4 explain what makes an object illicit and why the import, export and transfer of ownership is damaging to a State. Articles 5 and 6 request that States set up national organizations to protect cultural heritage and come up with a process to certify legitimate items. Article 7(a) requests that States prevent museums and similar institutions from acquiring illicit cultural property, while Article 7(b) requests States to prevent the illegal import of documented property stolen from a religious monument, museum, or similar institution. It also requests that States take appropriate steps to return stolen property and includes provisions for compensation by innocent purchasers. Article 8 asks for penalties to be imposed for those responsible for violating the laws. Article 9 claims that any State that feels that its

¹ The complete document can be found at http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html

² Preamble to the 1970 UNESCO Convention

heritage is threatened may request agreements with other states to help control imports and exports of its cultural property. Article 10 requests that States undertake to use education, information and vigilance to prevent illegal movement of cultural property. Articles 10 through 16 concern cultural property during times of occupation by foreign powers, provision of services to protect heritage, and the necessity of periodic reports and bilateral agreements. Article 17 states that, if both parties of a dispute on cultural property agree to a mediator, UNESCO will help to broker an agreement. Finally, Articles 18-26 deal with the ratification process.³ While the goals of the Convention are laudable, what is missing is a way to enforce the agreement other than by good faith and penalties for international transport of illicit cultural property. It also is not retroactive and cannot be used to solve some of the great repatriation debates over cultural property such as the Rosetta Stone or the Elgin Marbles.

Some of the earliest signatories were those countries pillaged for profit. The big market countries, however, including the United States, Great Britain, and Switzerland, were hesitant because of the big business of their antiquities trade. Of these, the United States was the first party to agree to sign on in 1983. It did not however, agree to implement all of the articles proposed by the 1970 Convention.

Ib. Federal Law and the Convention on Cultural Property Implementation Act (CPIA)

Because the provisions of the 1970 UNESCO Convention did not have a basis in US law, special legislation was required to allow the US to implement them.⁴ By

³ 1970 UNESCO Convention

⁴ US Dept of State <http://exchanges.state.gov/heritage/culprop/background.html>

1983 Congress had passed and the President had signed into law legislation that implemented parts of two articles of the 1970 UNESCO Convention. The reason for the limited implementation of the Convention by the US was to retain export controls over its own property. The first article was Article 7(b)(1), which says that States that are party to the Convention undertake to prohibit the importation of documented cultural property stolen from museums or religious or secular public monuments in another State Party to the Convention.⁵ The second, Article 9, allows any State Party whose cultural patrimony is in jeopardy from pillage to request assistance from other States Parties to carry out measures such as the control of exports, imports, and international commerce in the specific cultural materials concerned.⁶ The CPIA primarily concerns import restrictions as opposed to theft of archaeological materials, and any violation of the import laws results in civil prosecution and forfeiture of the materials.

In order to implement Article 9, the U.S. established the Cultural Property Advisory Committee (CPAC), comprised of eleven members appointed by the president to three year terms to advise him on requests from foreign governments for assistance in protecting their cultural property. Its members represent the key players in the debate, and include two from museums, three from archaeology and related fields, three from the sale of cultural property, and three from the general public. This committee makes recommendations on new requests from foreign countries as well as considers whether to extend any existing agreements.⁷ Each request by a foreign country for import restrictions is submitted to CPAC and usually suggests that

⁵ 19 U.S.C. § 2607

⁶ 19 U.S.C. § 2602-3

⁷ Dept of State

either bilateral or emergency measures be taken to protect cultural heritage. Provided that the requesting country has undertaken measures to halt the movement of cultural property within its borders, the committee will determine what type of action, if any, should be taken. If all conditions are satisfactorily met and an emergency is declared, the President must consider the findings for import and export restrictions within 90 days. If it is a bilateral agreement, then it must be considered within 150 days (Mauch Messenger, 1999). These agreements can last up to five years with a possibility of renewal, if the need should still exist. Unfortunately, by the time the request is submitted, the committee has deliberated and the President has acted, months and sometimes years have passed while the illicit trade in cultural property has continued unabated. If they know that restrictions are for a limited time only, looters may simply temporarily store their objects until the ban is lifted rather than abandon their efforts altogether. Unfortunately, the bans are put into effect only after a substantial amount of material has appeared on the art market and after most of the destruction has been done. The bilateral agreements do, however, require the importer to prove that the antiquities were legally acquired, as opposed to the 1970 Convention which relies on a country's ability to report the theft and describe the stolen objects (Polk & Schuster, 2005). Of course, the Catch-22 is that if they are clandestinely excavated no one has a record of the objects in the first place.

Ic. Unidroit – Restitution and Repatriation

While it could be argued that the main effect of the 1970 UNESCO Convention has been moral rather than material (Brodie & Tubb, 2002), the weakness of the international as well as national legislation to prosecute looting prompted the

1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects (Unidroit Convention). Unidroit is the International Institute for the Unification of Private Law, an independent intergovernmental organization whose purpose is to standardize the private law of states in various fields. When the Convention was finalized in 1995, it defined what was meant by stolen, and many countries complained that it was even more restrictive than the 1970 UNESCO Convention. Its goal was to initiate a legal process through private law, which dealt with stolen objects of cultural property and their restoration and restitution. It also places a statute of limitations from the time that the claimant knew the location of the object and the identity of its possessor.⁸ What Unidroit does not do is provide a court to adjudicate cases concerning cultural property. It leaves that responsibility to the States. Unfortunately, some of the legal principles which would make convictions easier, such as placing the burden of proof on the owner of the object in question, are not compatible with U.S. law.

Because cultural property, such as art and antiquities, is not considered a part of intellectual law, but instead is treated as personal property, the concern of lawyers is not how much information an object can yield, but who owns it and what its value is. Whether something is illicit is judged in terms of the legal status of an object and not morality (Carman, 2005). If an object is considered legally acquired with the proper documentation concerning ownership, the legal system does not really care about the circumstances surrounding it, such as the loss of its provenance and other scholarly background information. This encourages falsification of records concerning when and where an object was found and forgeries. One of the reasons

⁸ Unidroit Convention Article 3(3)

for the weakness of the 1970 UNESCO convention is the difficulty in legislating respect and moral obligations because of the lack of a tangible value to them.

One of the cornerstones of the U.S. legal system is the idea of innocent until proven guilty. Dr. Patty Gerstenblith, an expert in cultural property law, points out that in the case of theft of cultural property, it is the job of the prosecution to bear the burden of proof and show that an item had been acquired illegally, rather than have the defense prove through paperwork that the owner had acquired the item legally. Reversing the burden of proof would go a long way to increasing convictions in the theft of cultural property, but it would be unconstitutional in the United States. Gerstenblith also recommends broadening prosecution and increasing the severity of the punishment under the CPIA (2007). If the cases were considered under criminal prosecution rather than civil, the threat of jail time might serve as more of a deterrent than a fine would.

Id. NSPA, Criminal Prosecution and America's History of Looting Legislation

While violators of the CPIA are only liable to civil prosecutions, criminal prosecution is possible in America under the National Stolen Property Act (NSPA). Under this act, countries such as Egypt and Italy consider all items of cultural heritage, whether discovered or undiscovered, as national property. Anyone who knowingly transports, possesses or transfers stolen property in interstate or international commerce or even intends to do so, violates NSPA.⁹ The item in question may be subject to forfeiture, and the parties involved subject to criminal prosecution (Rhodes, 2007). Both the CPIA and NSPA are statutes which focus on different and yet complementary ways of dealing with looting.

⁹ 18 U.S.C. §§2314-15

US Customs is also a big part of the legal battle of enforcement of both CPIA and NSPA. If an item is illegally imported by not being declared or misrepresented on the customs declaration, the item is subject to forfeiture. While these cases can be criminal, it depends on whether NSPA is violated.

While these provisions may seem recent, the U.S. has had its own problems protecting its cultural heritage. The U.S. has had laws protecting its antiquities since the Antiquities Act of 1906.¹⁰ The Act was designed by Theodore Roosevelt to give ownership and control of artifacts found on federally owned or controlled land to the federal government. The Antiquities Act was passed because of concern over the looting of sites in the American Southwest and the removal of those objects to foreign countries. There was, however, little effort to enforce the law for seventy years. This was followed by the more comprehensive Archaeological Resources Protection Act (ARPA) of 1979 which vests ownership in the federal government despite the government's lack of actual possession of all "material remains of past human life or activities which are of archaeological interest" and more than one hundred years old that are found on federally owned or controlled land.

All fifty states have passed subsequent legislation, which has given ownership of archaeological artifacts found on state land to the federal government. Almost half of the states have legislation that provides that any undiscovered remains and objects on their property, once excavated, should be returned to the lineal descendants or to those culturally affiliated for reburial purposes. Those that cannot be returned are held in trust by the State (Brodie & Tubb, 2002).

¹⁰ 16 U.S.C. §§431-433n (2000)

Despite the hesitation to sign on to the 1970 UNESCO Convention, there has been a history of awareness, even in the U.S., of recognizing and protecting artifacts which are considered cultural property dating to 1906.

II. The Debate - Archaeologists, Nation States, Museums, and Collectors

Who are the rightful guardians of the past? While it is universally agreed that looting is wrong and must be stopped, no one can seem to agree on what can be done to stop looting, what constitutes a looted object, and what should be done with objects that have already been clandestinely exhumed from their resting place and, therefore, have no provenance. To simply agree that looting is wrong and to pass legislation that has little chance of success are not enough. While archaeologists and nation states see the legislation as a step in the right direction to preserve history, museums and collectors often see the legislation as prohibitive in their pursuit to acquire and display objects of beauty. Each party involved in this debate determined that its perspective provides the only acceptable answer, and with few exceptions they are unwilling to compromise. The value which archaeologists, nation-states, museums, and collectors place upon cultural property along with the context in which they view it determines what course of action and what responsibilities should be pursued by each group as history's guardians. Unfortunately, there is little compromise when you believe that what you are doing for all of humanity is morally correct. Until these groups agree on who is responsible and what should be done to guard the past, little progress will be made.

IIa. Archaeologists: The Preservers of Context

Archaeologists are scientists who look at cultural property through the lens of context; their primary purpose is to gather information. While there are many records for events that have occurred in the history of mankind after the advent of writing, scientists need to rely on scientific information to find out what happened in

prehistory before there was writing or written records. Even after the advent of writing, there is often an absence of written evidence to help archaeologists determine what life was like, and so here too they must rely on science. Thanks to new technology like global positioning systems (GPS) to determine exact measurements of a site, ground penetrating radar to help locate features to excavate, and radiocarbon dating to determine age, scientists are able to present a picture of what everyday life was like in prehistoric times and enhance what we know about current history. Today's archaeologists are concerned with the recovery of the contexts of discovery through stratigraphy. By examining what occurred in a particular place as a scientist descends layer by layer to earlier times to examine assemblages of objects found in the same stratigraphic layer, archaeologists are better able to determine the history of the past in economic, social, and cultural terms (Renfrew 2000). When an object is removed from its context, much of the information it can provide is lost. For many archaeologists, an object without context, or provenance, is useless.

Colin Renfrew, one of the archaeologists leading the charge against looting, believes that in order to preserve context for scientific purposes, there are two ways to address the problem of looting. The first is to eliminate clandestine digs within a country. This approach is enhanced by the 1970 UNESCO Convention and national laws already in place, but Renfrew would have countries further tighten up import and export regulations. To achieve this goal, countries would require law enforcement agencies to provide security at border crossings and known sites, as well as effective antiquities agencies with a network of viable museums ready to educate

the public. Humanity would be better off for having the information that looted sites can provide.

In times when law and order disappear and people are driven to desperation, they will loot to provide for themselves and their family without regard to the information lost. While some are professionals who loot to order for particular collectors, most are amateurs who cause irreparable damage. Looking only at the short term profit they can make in a market where only drug dealers and weapons smugglers make more money, looters do not often give thought to the long term profits that could be made if the items were preserved and information protected (Polk & Schuster, 2005). If the people are educated and see the value of preserving their own heritage and the steady stream of tourist dollars it may bring to them on the local level, they may be more likely to protect their heritage rather than sell it for some quick cash. While this may be the most effective way to stop looting, it is very cost prohibitive. Organizations like the Archaeology Institute of America offer grants that are designed to help people who want to preserve sites and use them for educational purposes, to create a positive impact on the local community, students, and the discipline of archaeology as a whole, but there are limits to what the program can accomplish. Many of the countries that need their cultural property protected are countries that cannot afford the tremendous cost of security, museums, and the repatriation process when they have other pressing issues that require funding (Renfrew, 2000). Even if a nation wants an object returned after it has been confiscated by another country, the country of origin often has to pay for its return even though it was illegally removed in the first place.

The second approach is to stop the problem of distribution and consumption. As scholars, archaeologists should not evaluate a piece without provenance. To this end, prominent organizations such as the Archaeological Institute of America (“AIA”) and the American Schools of Oriental Research (“ASOR”) have regulations in place which now prohibit the publication of unprovenanced materials in their publications.¹¹

Allowing items to be displayed around the world not only allows for cultural understanding, but also serves to protect some of that heritage from destruction if a natural disaster or act of war should occur. To this end, many archaeologists and museums propose that the idea of partage, which has been seriously curtailed since the 1970 convention, be reinstated. In the practice of partage, archaeological finds are shared between the country of origin and the excavating team. In the old days, archaeologists could bring excavated objects back to their university or museum to share in the research and promote further study (Cuno, 2009).

Archaeologists are not entirely blameless in their quest for knowledge and should not dig unless they are prepared to publish their findings in a timely manner. Years after a dig, there are often only preliminary reports that have been filed by the lead archaeologist, and information gathered is not released to the public or other archaeologists until final publication. Because of this, many have pointed the finger at the field of archaeology and accused archaeologists of hoarding objects in

¹¹ The original ASOR policy dating unprovenanced objects back to 1970 can be found at <http://www.bu.edu/asor/pubs/nea/back-issues/instructions.html> while the review of its policy regarding Iraqi antiquities can be found at <http://www.asor.org/excavations/policy.html>. The AIA policy can be found at www.archaeological.org/webinfo.php?page=10352

storerooms and stalling when it comes to sharing the information they have discovered. Non-archaeologists need to understand that for every day spent in the field a minimum of seven days is needed to process the vast amount of information acquired, analyze its contents in relation to other information gathered, and write about it (Chase, Chase & Topsey, 1988). The purpose of the field reports of archaeologists is to be able to place objects in their context in order that they be understood as a part of the bigger picture. The report helps to explain social and cultural aspects of life and has the data to back up any interpretations that archaeologists use in their conclusions. Besides making the information available to other archaeologists, ultimately the goal of these reports should be the education of the public (Chase, Chase & Topsey, 1988). Unfortunately, archaeologists are unlikely to share any of their information until publication time as many of their jobs and funding depend upon their findings. Information that is made public may be published by someone else.

Today, archaeologists do not have a single job where they can remain at a site for as long as needed until the job is done. It is now largely seasonal work that may only last a few weeks during the year when the weather is favorable and the staff available due to work and school commitments. Archaeologists have the job of collecting data for publication, preserving the site as well as their finds, working with governments and local communities, supervising their workers, and getting funding for their work. Those working in developing countries have an intellectual as well as economic obligation to the people who host their research, and so archaeologists must fight to combat looting in the committee room and the public sphere, as well as in the

field and marketplace (Brodie & Tubb, 2002). They are the guardians of data and are ultimately responsible for educating students back at their universities as well as the public, especially if they are receiving public funds (Chase, Chase & Topsey 1988). It is not easy to balance such a demanding work load, but archaeology jobs are scarce, and many leave the field to pursue more lucrative offers. In order to focus on the digs, more archaeologists must be trained, and more jobs must be created in order to lessen the workload and allow for prompt publication of materials.

Archaeologists are not entirely blameless where government abuse and looting is concerned. In order to gain access to a country and maintain their license to dig, archaeologists are also likely to remain silent about government abuses in the country where the dig is occurring. Archaeologist and author John Boardman, in his many years of experience, has seen countries turn a blind eye to thefts; even museum personnel and archaeologists have connived in the loss of antiquities without ever being investigated or having criminal charges brought up against them (Robson, Treadwell & Gosden, 2007). Boardman even sees archaeologists like Renfrew as radical and over zealous and asks if we are being over-sensitive toward the preservation of the historical record and antiquities by making impossible demands on people. Global heritage of humanity should be more important than national heritage, and scholarship cannot take precedence over the general education of the public. When the scholarship of archaeology includes the hoarding of information so that it is never shared, archaeologists become just as responsible for the loss of information as collectors and looters. Boardman believes that archaeologists should not be given *carte blanche* as the stewards of history, and should have their practices

subject to regulation. Without the regulation which would make archaeologists accountable for their actions, laws concerning the preservation of cultural property are useless because the information gained by scholarship will remain hidden from the public.

IIb. Nation-states: The Defenders of Heritage

Many countries, which have a long history but only recent claims to modern statehood, have felt the loss of cultural property as a loss of cultural heritage. This loss of cultural heritage has often symbolized a wealthier country's economic, social, and political dominance over a weaker people and has implied a legitimacy of the strong to rule over the weak. When objects of national pride are removed and placed in another country's museums, it shows a weakness on the part of the country of origin that it does not have the strength or resources to hold on to its own heritage. If those objects find their way into a private collection, the power shifts from the country of origin to a person (Carman, 2009). After decades of colonial rule and oppression, many countries are ready to claim their place as the preservers of their own heritage. If they can convince their citizens that they are related to some of the great empires of the past, it would instill a sense of national pride among the people. It was with these ideas in mind that the 1970 UNESCO Convention was designed. Even though history shows us that no significant civilization ever developed autonomously, the 1970 UNESCO Convention provides a legal framework to allow a country to retain any and all objects of cultural property found within its borders. It is a nationalist retention policy which makes the claim that the people of today have a direct connection with the empires of the past. It also aims to stop the past abuses

committed by colonial powers against poorer and weaker countries from continuing. Nation-states and archaeologists approve of the 1970 UNESCO Convention because it, in theory, protects against looting and the loss of information and cultural heritage to private collectors outside the country of excavation.

While a country's desire to retain its cultural heritage is laudable, retention does not always mean protection and preservation. Many nations already have laws against looting but no money to enforce them and no place to preserve what objects they already possess. If protection of cultural heritage is the primary goal of the 1970 UNESCO Convention, then nations need to realize that leaving items in their country of origin or discovery is not always what is best. Cultures die and civilizations die and there are few relatives of direct descent in the countries of origin to inherit some of these objects. State ownership of artifacts gives greater prestige to the state as an institution but does not fulfill the purposes of heritage protection (Carman, 2009). Culture is poorly served by politics that try to claim it, nationalize it and then police it. Nation-states would do well to remember that cultures have thrived on contact with new and strange things.

The past belongs to all, but not all have an interest in preserving it (Carman, 2009). A tragic example of the 1970 UNESCO Convention gone wrong is the recent case in Afghanistan. When the Taliban decided that all objects of worship in history before the time of Muhammad in the 7th Century A.D. were idolatrous and should be destroyed, the curator from the Kabul museum negotiated for the safe passage of the endangered artifacts and crated them up. In February of 2001 many of the priceless items left in the museum were destroyed by iconoclasts. In March that same year the

Taliban also destroyed two of the now famous Bamiyan Buddhas, the largest surviving early Buddhist figures in the world built in 507 and 554 AD (Cuno, 2009; Gillman, 2006). Regardless of the fact that there were no current worshippers of the giant Buddhas in Afghanistan, they were important to the history of the region. UNESCO hard-liners refused to let the shipment of artifacts be sent to Switzerland because they believed that it would violate the 1970 Convention and so in March 2007 sent 1400 priceless artifacts back to the National Museum in Kabul (Cuno, 2009). Although the Taliban is not in charge of the government today, there can be an argument made that these items are not entirely safe as long as these iconoclastic extremists continue to fight against the current government. The protectors of the 1970 Convention had protected the Taliban's right to destroy objects that were valuable not only to the people of Afghanistan but to the history of humanity. If cultural heritage is only valuable to the people in the country of its origin, then why did the world react with such horror to the destruction of the Buddhas and objects from the museum? Is it alright to destroy items within your own country if they are a part of your heritage? The 1970 UNESCO Convention is flawed in that it protects countries and not humanity. All UNESCO did in the end was issue a resolution in June 2001 that condemned the acts of the Taliban as "crimes against the common heritage of humanity".

What nation states seem to ignore is the idea that culture is dynamic and always changing. The political claims of a right to all of the resources within a nation's borders disregards the fact that most of the borders were established in modern times and had nothing to do with the ancient pedigree that the government

claims (Cuno, 2009). In reality, while governments talk a good game, they do not have a strong enough interest in preserving cultural property to do much about it, because, if they did, the laws and repercussions would be stricter and finances would be available to help the countries that need it. Wealthy countries get pressured by interest groups to allow unprovenanced objects to enter the country and be displayed in the name of a free market economy, and poorer countries cannot afford the means necessary to preserve and protect objects (Posner 2007).

One controversial option is the authorized and legalized sale of items that would be controlled by the country of origin. If the countries knowingly did not have the means needed to protect and preserve artifacts, they could regulate the market and create revenue by selling artifacts (Renfrew, 2000; Posner, 2007). Antiquities have been treated poorly and chopped out without care because regulation forces looters to hack away quickly as they remove the items to sell to the highest bidder. Nation states could create a market that could be regulated and taxed (Posner, 2007). Not only could the sale of artifacts be regulated, but also standards for transportation and storage too. These transactions could be public and include conditions of sale which would make the items easier to locate.

The value of the dispersal of artifacts can be seen in the aftermath of the looting of the Baghdad Museum in Iraq after the fall of Saddam Hussein. Had it not been for the fact that many objects of antiquity were already in museums around the world, much of more of the information of ancient Mesopotamia could have been lost, perhaps irretrievably. While countries such as Greece and Egypt find the policy of return in the 1970 Convention frustrating because it exempts objects acquired

before 1970, their cultural nationalism does not allow them to see the value in leaving some objects in foreign museums. These countries, which no longer wish to be viewed as colonies but powers in their own right, claim that their collections are incomplete without some of the objects held by foreign museums. Requests have been made by Greece and Egypt to return items which they consider their cultural property, even though these items are displayed in technologically superior museums in rooms which are climate controlled, and specifically designed to highlight the objects in question. To a country like Iraq, whose museums have been devastated by war, museum curators, politicians, and historians can be grateful that objects like the stele of the Code of Hammurabi were safely on display in the Louvre Museum in Paris while the Iraq Museum was being ransacked.

IIc. Museums: Exhibitors of the Aesthetic

The purpose of encyclopedic museums is to inform, educate, and inspire the public by offering authentic works of art which can be compared region to region without leaving the building. The imperialist forces that helped to build these museums are no longer in place and what was acceptable then as methods of collection for objects of antiquity would not be acceptable now. In fact, those same methods today would be considered theft of a most heinous nature that would have the world screaming for retribution. In modern times, most museum curators see their job as countering the nationalization of culture and its claims on antiquity and dispelling superstition, stereotypes, and ignorance of the cultures contained in their

collections. According to author and Art Institute of Chicago director James Cuno, encyclopedic museums

“...are a legacy of the Enlightenment and are dedicated to the principle that access to the full diversity of human artistic industry promotes the polymath ideal of discovering and understanding the whole of human knowledge, and improves and advances the condition of our species and the world we inhabit (2009, p.37).”

In a world that is becoming increasingly connected due to technology and at the same time divided because of politics and religion, museums play a big part helping to understand other cultures. While education is important to museums, they do not necessarily agree that an object of antiquity needs to have context in order to provide information. Objects have an aesthetic quality and provide information in and of themselves that do not require provenance. It is possible to get information about influences and technological capabilities by comparing an object from one culture to an object from another culture. Many curators have a difficult time turning down an object from antiquity that may be a seminal piece in their collections just because it has no provenance.

The context of an object can be lost in several ways including acts of war, natural disaster, economic development, looting, pillaging, and accident (Cuno, 2009). In history or natural history museums, context continues to be very important because of the nature of the collections. While archaeologists would argue that much more information could be gained by humanity if the provenance of an object were known, an encyclopedic museum would argue that science cannot tell us everything, and, therefore, it is not concerned with context as much as aesthetic quality. Many objects without provenance have proven extremely valuable and have inspired years

of scholarship, such as the writing on the Rosetta Stone¹². Scholars from many fields can lend their expertise without knowing the provenance of an object. Besides, if the object of archaeology and museums is the education of the public, then it would be irresponsible to not protect, preserve, and investigate items simply because they were unprovenanced. Ignoring these items all together could be casting objects of antiquity into oblivion where all information will be lost.

Museums should also take care in their acquisition policies not to obtain objects that have been illegally excavated. The law of supply and demand shows that when museums pay top dollar for an object that is illegally excavated the practice will continue because it is a profitable business. This popularity also leads to an increasing market in forgeries. Today many museums have adopted the principles set forth in 1989 by the International Council of Museums (ICOM) in their code of ethics which stipulate that for a museum to acquire any object, whether by purchase, gift, bequest, or exchange, the institution's governing body must be able to obtain valid title to the object. The title must ensure that the object was not acquired in or exported from any country in violation of that country's laws, that recently excavated material is not the product of unscientific investigation or destruction of an ancient monument or site, and that finds were not removed from a site without the knowledge of the landowner or governing authority.¹³ Unfortunately, they are only suggestions without enforcement procedures, and so many museums, which are pressured to

¹² Although we know that the Rosetta Stone was discovered by soldiers of Napoleon in 1799 among the foundation ruins of Ft. St. Julien in Rashid (Rosetta), it had been taken from its original site thought to be somewhere in Sais or elsewhere in the Nile Delta by the fifteenth century, and reused as building material. The French found it when they were rebuilding the structure in order to fortify the coast against the British (Cuno, 2009).

¹³ ICOM code of ethics can be found at <http://icom.museum/ethics.html#section1>

acquire objects to draw in the public, manage a very loose interpretation. Collectors, dealers, and museums that acquire objects which have been excavated illegally need to realize the harm done to the history of humanity by the loss of valuable information.

Archaeologists have put forth the idea that publishing unprovenanced artifacts lends itself to more looting, but these same publications, which refuse to print articles on unprovenanced artifacts, have big glossy pictures often with words like gold and treasure on them. To think that putting an item in a museum would encourage looting more than the colorful and glossy publications by the AIA and ASOR which are designed to catch the eye is a bit hypocritical, according to author and archaeologist David I. Owen (Cuno, 2009). These publications draw readers in by focusing on the aesthetic quality of impressive objects rather than the information they may yield. According to Owen, scholars have been translating unprovenanced cuneiform tablets in museum collections for years, and no one has had any problem with it until now, because many new inscriptions have become available in the aftermath of the war in Iraq. These items have their value in the inscriptions which can tell about significant events in history and culture and provide valuable information to scholars of philology by illuminating areas of literature and lexical information (Cuno, 2009). Is it fair to lose the information on the tablets and the rights to publication because these items were looted? They could provide valuable information to scholars and archaeologists, but instead are ignored by a large population of scholars.

One need only look at the success of the recent King Tut exhibition as it traveled around the United States to see the potential influence of foreign artifacts to

awe, inspire, and generate tremendous amounts of revenue for museums and the country of origin. It is easy to forget that museums are big business and as such must obey market principles. We cannot expect academic institutions and museums to act outside the realm of the economic market even if they are acting on behalf of the general welfare (Carman, 2009). A museum is only as good as its collection, and there are many pressures to acquire objects that are aesthetically pleasing and will draw crowds. Museums inadvertently place value on items because they choose which items are suitable for inclusion in their collections and thereby tell the public what is important (Carman, 2009). Author Michael Brown argues that some see museums as theaters of power because they use their space and collections to shape public attitudes and move artistic taste toward what the ruling elites want to see since they are often the museums' largest donors (Cuno, 2009). Some curators are pressured by their trustees to display private collections that may have unprovenanced antiquities because donors get tax relief. The objects museums display are often a reflection both of the government that is funding them and of the cultures of people who are part of the current international political climate. Author and archaeologist Neil Brodie sums up the problem succinctly, when he claims;

“Although subject to commercial restraints, it seems desirable that museums and sites should seek to engage rather than entertain the public, and to challenge their preconceptions rather than pander to their stereotypes and prejudices, otherwise the damaging stereotype of archaeology as treasure hunting will be reinforced (Brodie & Tubb, 2002, p. 12).”

In 1970, as the UNESCO Convention was taking place, a movement among museums began in Philadelphia at the University Museum of the University of Pennsylvania. The Pennsylvania Declaration declared that the University of Pennsylvania Museum of Archaeology and Anthropology would no longer purchase

items unless they had a provenance, and today the University of Pennsylvania is the vanguard for museum acquisition policies. While many museums have adopted similar standards since then, including the ICOM code of ethics, some of the largest museums in this country find loopholes and continue to purchase unprovenanced antiquities. The vagueness of international laws as well as the difficulty of obtaining convictions under federal law allow the purchases to continue. Some have suggested that, since museums are tax exempt because they are educational institutions, they should give priority to legitimate objects or lose their tax exempt status under code 501(c)(3) (Gerstenblith, 2007). At the same time, the federal government should stop allowing collectors who donate part or all of their collections tax relief if those items are unprovenanced. When collectors get a break from the government for donating something they acquired illegally, it does not exactly dissuade them from contributing to looting again. Lastly, when museums purchase unprovenanced objects and then have to return them to the country of origin as a result of litigation or demands of foreign governments, it is a waste of taxpayer money.

IId. Collectors: Investors of History

Archaeologists and nation-states see collectors as the real looters. Civilizations have collected long before archaeology existed. Many ancient civilizations tried to capture the glory of other great civilizations of the past by claiming those civilizations' cultural property. Many armies throughout history fought for the benefit of looting the enemy after defeating them. For example, the Roman emperor Caligula ordered the removal of the Greek statue of Zeus at Olympia

to Rome for his own benefit. This immense statue, created by Phidias, was a symbol of Greek culture and dominance in the ancient world and was regarded as one of the Seven Ancient Wonders of the World. Eventually, the statue ended up in Constantinople before being destroyed. Later governments would realize both the financial as well as symbolic value of looting another country's cultural property and would send in treasure hunters, making looting a state controlled industry. In the Fatimid period, the looting of Egypt was common and looting manuals still survive from medieval times (Schick, 2009). Later, Egypt was again plundered by Napoleon between 1798-1801, although the collection of objects, including the Rosetta Stone, were turned over to the British after the French were defeated in Egypt. The British did not return the collection to the Egyptians, but instead took their spoils of war back to England, where they are today housed in the British Museum.

There are those, such as Eric Posner, who suggest the deregulation of the antiquities market would help to create a legal market system, decrease the destruction caused by hurried clandestine excavation, raise revenue, set standards for storage and transportation, and help promote a universal appreciation of human creativity that would prompt mutual respect (2007). This might be a solution if the free market economy operated under fair circumstances, but, as Neil Brodie points out, currently material flows from source countries to demand countries and there is no fair exchange. Looters make only a small portion of what an object is really worth so that collectors and dealers are able to make a substantial profit. Instead of creating harmony, free market trade in antiquities would merely sustain economic inequality and cause resentment among those whose culture is traded (Brodie & Tubb, 2002).

While collecting has led to the building of great museums and immeasurable amounts of scholarship once an object surfaced, the act of collecting has usually involved the destruction or submission of one people to another. Collectors focus on the objects themselves rather than the information that can be gleaned from their context. While collectors of objects of antiquity may consider themselves aficionados, collecting objects is not in and of itself scholarship (Chase, Chase & Topsey, 1988). The demand for particular objects is one of the primary causes of looting and the destructive theft of the archaeological world. Unfortunately, collecting is big business and fits in with the adventurous Hollywood imagery of archaeology, while real archaeology does not (1988). There is no doubt that some of the early collections contained objects which inspired travel, curiosity, and scholarship, and many of these collections form the cornerstones of some of the worlds great museums, but times have changed. Today, looted antiquities are often hidden away in private collections with no access to the public. Their, excavations are not open to the public, but are done clandestinely and in a highly destructive manner. We know that looters loot for the money it brings in, but we also know that the value of a provenanced object is more than an unprovenanced object. Therefore, to all parties involved it would be better if collectors could be persuaded to spend their money on legitimate archaeological digs which would benefit individuals as well as humanity (Chase, Chase & Topsey, 1988). The collectors could get beautiful objects, the countries could get much needed cash flow, and archaeologists would get the data they desire. To this end, the legitimate and regulated sale of objects of

antiquity as discussed previously would go a long way to stemming the flow of illegal antiquities and the destruction of monuments and religious structures.

III. Solutions: A Multi-tiered Approach

While there are many influences that contribute to the destruction of cultural property such as war, nature, and infrastructure development, I have chosen to focus on looting because archaeologists, nation-states, and many museums believe it is possible to stop it. How best to protect cultural heritage and ensure that items are preserved and protected is a question that bears much scrutiny. One approach, the 1970 UNESCO Convention, is a nationalist policy designed to protect context and heritage for archaeologists and nation-states, but makes it extremely difficult for museums and collectors to acquire objects which may be of public interest. Museums and collectors involved in the debate over cultural property see the issue as less about information and heritage, and more about the value an object and, ultimately, their ability to do business. Although objects can provide some context, are aesthetically pleasing, and provide education, the main goals in respect to cultural property should be its preservation, its truth and meaning in history, and its access to the public and scholars.

One thing that archaeologists do not seem to do enough of is educational outreach to the public. The AIA sponsors international tours that take travelers to spectacular sites with leading archaeologists, but these tours can be cost prohibitive for many and do not reach enough people. While legislation may help to slow down the flow of illegal artifacts, what needs to take place is education of the youth on why looting and destruction of history affect everyone. Stopping looting at its source, as well as educating and discouraging students who might become future looters, could greatly reduce the damage done by clandestine excavation or theft.

Since 1993, the Bureau of Land Management (“BLM”) has had an activity guide for teachers of fourth through seventh grades that “educates students to take thoughtful and responsible actions towards our archaeological heritage (Smith, Moe, Letts & Paterson, 1996).” This emphasis on stewardship of our own heritage has been used to educate students in the southwest and create some dynamic lesson plans, but it is not enough. Not only should every state have the ethics of archaeology as a part of its state standards, but the ethics of archaeology should be taught at all levels of education as a part of history programs. When teachers discuss how history is discovered and reported, archaeology and ethics should be a part of the lesson. The relevance of such a lesson can be seen by examining the damage caused by the looting occurring around the world today. What is needed is an extended curriculum for K-12 education, which encompasses the lessons in the BLM and develops them for use beyond the geographic region of the southwest. Looting occurs all over this country, often on private land and people do not realize the loss of information caused by the wanton destruction of an undocumented excavation. If we can educate our children, they will educate their parents.

Hester Davis, an author who works with the Arkansas Archaeological survey, has noted that in the Midwest the existence of NAGPRA and the consequences of breaking the law are beginning to have an effect on looting. Native Americans are also becoming increasingly vocal in their condemnation of those that desecrate the burials of their ancestors. She sites increased teaching and discussion of ethical issues in archaeology with helping students in public schools understand that Native Americans who lived on the land before today’s students felt the same about burials

and disturbance of the dead as today's students do. As today's students do not want their ancestor's graves disturbed, neither do Native Americans (Brodie & Tubb, 2002).

Teachers everywhere will need to be trained through professional development with the archaeology community so that they can transmit information about the value of preserving history to their students. While history teachers are often looking for ways to make history more hands on and engaging, there are few programs on archaeology education available to educators. A few programs exist, such as those sponsored by the National Endowment of the Humanities and ASOR, but they are not enough to reach the number of teachers and students necessary to facilitate the needed change.

Another way in which education has been successfully used is in the education of our troops about the archaeology of Iraq and Afghanistan. In 2005, the AIA launched a Troops Lecture program after the coalition forces invaded Iraq. When the Baghdad museum was looted, the archaeology community was aghast and realized it needed to act. C. Brian Rose, who was at the time First Vice President of the AIA, knew that he could do something and so arranged to go to military bases and give lectures to the troops on the history of the region and what its archaeological treasures were. The goals were to promote greater comprehension and respect for the cultural heritage of the areas in conflict (Rhodes, 2007). The hopes were that this program would help to staunch the flow of artifacts out of the Middle East. Often, Rose found that the officers he spoke to had M.A. degrees and many of those that attended the mandatory lectures were reservists or history teachers and cared a great

deal about history. He found that the soldiers were inquisitive and asked thoughtful questions. The soldiers often knew that the smuggling of antiquities also went hand in hand with the smuggling of drugs and that both helped to fund terrorism. The program was successful and has since expanded to other countries and organizations similar to the Red Cross (Rhodes, 2007). In order to help the troops identify sites and artifacts, the Department of Defense issued 40,000 decks of playing cards with an archaeological message. Each suit had a theme: diamonds for artifacts, spades for digs, hearts for "winning hearts and minds," and clubs for heritage preservation (Schlesinger, 2007). These cards, as an outreach tool, were hugely successful because they provided entertainment, while at the same time being educational, and helped the U.S. military to facilitate the return of many objects of antiquity to the Iraqi government.

Since we have troops stationed all over the world, this training should be taking place at every military academy and as a part of basic training for all troops. It would also be helpful for members of the Diplomatic Corps serving overseas. Since security for all cultural heritage sites is financially restrictive and nearly impossible, education of the public would be the next best thing.

While all the participants in the discussion of cultural property disagree on a number of issues relating to cultural property, they all realize the value of the objects in question. They also realize that, without context, part of the value is lost and with it the scientific records that can help connect humanity. Looting and theft need to be stopped, and at this time legislation can help to control the trade from the top down, while education can help to discourage future looters and stop the trade from the

bottom up. When education meets legislation then perhaps we will have made some progress in the preservation of humanity for everyone.

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- 16 U.S.C. §§431-433n (2000)
- 18 U.S.C. §§2314-15
- 19 U.S.C. § 2607
- 19 U.S.C. § 2602-3

APPENDIX I
UNESCO CONVENTION ON THE MEANS OF PROHIBITING AND
PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF
OWNERSHIP OF CULTURAL PROPERTY

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 12 October to 14 November 1970, at its sixteenth session,

Recalling the importance of the provisions contained in the Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference at its fourteenth session,

Considering that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations,

Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting,

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export,

Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,

Considering that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles,

Considering that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of UNESCO's mission to promote by recommending to interested States, international conventions to this end,

Considering that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation,

Considering that the Unesco General Conference adopted a Recommendation to this effect in 1964,

Having before it further proposals on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, a question which is on the agenda for the session as item 19,

Having decided, at its fifteenth session, that this question should be made the subject of an international convention,

Adopts this Convention on the fourteenth day of November 1970.

Article 1

For the purposes of this Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;

(b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;

The 1970 UNESCO Convention

(c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(d) elements of artistic or historical monuments or archaeological sites which have been dismembered;

(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

(f) objects of ethnological interest;

(g) property of artistic interest, such as:

(i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) original works of statuary art and sculpture in any material;

(iii) original engravings, prints and lithographs;

(iv) original artistic assemblages and montages in any material;

(h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(i) postage, revenue and similar stamps, singly or in collections;

(j) archives, including sound, photographic and cinematographic archives;

(k) articles of furniture more than one hundred years old and old musical instruments.

Article 2

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership

of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting there from.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

Article 3

The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.

Article 4

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

- (a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;
- (b) cultural property found within the national territory;
- (c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;
- (d) cultural property which has been the subject of a freely agreed exchange;
- (e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

Article 5

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

- (a) Contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;
- (b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;
- (c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops...) required to ensure the preservation and presentation of cultural property;
- (d) organizing the supervision of archaeological excavations, ensuring the preservation "in situ" of certain cultural property, and protecting certain areas reserved for future archaeological research;

- (e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;
- (f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;
- (g) seeing that appropriate publicity is given to the disappearance of any items of cultural property.

Article 6

The States Parties to this Convention undertake:

- (a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations;
- (b) to prohibit the exportation of cultural property from their territory unless accompanied by the above mentioned export certificate
- (c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

Article 7

The States Parties to this Convention undertake:

- (a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party The 1970 UNESCO Convention which has been illegally exported after entry into force of this Convention, in the States concerned.

Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

- (b)
 - (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appearing in the inventory of that institution;
 - (ii) at the request of the State Party of origin to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

Article 8

The States Parties to this Convention undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6 (b) and 7 (b) above.

Article 9

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

Article 10

The States Parties to this Convention undertake:

- (a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject;
- (b) to endeavour by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.

Article 11

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit.

Article 12

The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.

Article 13

The States Parties to this Convention also undertake, consistent with the laws of each State:

- (a) To prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;

- (b) to ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;
- (c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;
- (d) to recognize the indefeasible right of each State party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

Article 14

In order to prevent illicit export and to meet the obligations arising from the implementation of this Convention, each State Party to the Convention should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget and, if necessary, should set up a fund for this purpose.

Article 15

Nothing in this Convention shall prevent State Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned.

Article 16

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

Article 17

1. The States Parties to this Convention may call on the technical assistance of the United Nations Educational, Scientific and Cultural Organization, particularly as regards:
 - (a) Information and education;
 - (b) consultation and expert advice;
 - (c) co-ordination and good offices.
2. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative conduct research and publish studies on matters relevant to the illicit movement of cultural property.
3. To this end, the United Nations Educational, Scientific and Cultural Organization may also call on the co-operation of any competent non-governmental organization.
4. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative, make proposals to States Parties to this Convention for its implementation.

5. At the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, Unesco may extend its good offices to reach a settlement between them.

Article 18

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

Article 19

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.
2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 20

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to accede to it by the Executive Board of the Organization.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 21

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 22

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories, and to notify the Director-General of the United Nations Educational, Scientific and Cultural Organization of the territories to which it is applied, the notification to take effect three months after the date of its receipt.

Article 23

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

Article 24

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 20, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 19 and 20, and of the notifications and denunciations provided for in Articles 22 and 23 respectively.

Article 25

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

Article 26

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization. Done in Paris this seventeenth day of November 1970, in two authentic copies bearing the signature of the President of the sixteenth session of the General Conference and of the Director General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 19 and 20 as well as to the United Nations.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its sixteenth session, which was held in Paris and declared closed the fourteenth day of November 1970.

IN FAITH WHEREOF we have appended our signatures this seventeenth day of November 1970.

Source:

http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html

APPENDIX II

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects
(Rome, 24 June 1995)

THE STATES PARTIES TO THIS CONVENTION,

ASSEMBLED in Rome at the invitation of the Government of the Italian Republic from 7 to 24 June 1995 for a Diplomatic Conference for the adoption of the draft Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects,

CONVINCED of the fundamental importance of the protection of cultural heritage and of cultural exchanges for promoting understanding between peoples, and the dissemination of culture for the well-being of humanity and the progress of civilisation,

DEEPLY CONCERNED by the illicit trade in cultural objects and the irreparable damage frequently caused by it, both to these objects themselves and to the cultural heritage of national, tribal, indigenous or other communities, and also to the heritage of all peoples, and in particular by the pillage of archaeological sites and the resulting loss of irreplaceable archaeological, historical and scientific information,

DETERMINED to contribute effectively to the fight against illicit trade in cultural objects by taking the important step of establishing common, minimal legal rules for the restitution and return of cultural objects between Contracting States, with the objective of improving the preservation and protection of the cultural heritage in the interest of all,

EMPHASISING that this Convention is intended to facilitate the restitution and return of cultural objects, and that the provision of any remedies, such as compensation, needed to effect restitution and return in some States, does not imply that such remedies should be adopted in other States,

AFFIRMING that the adoption of the provisions of this Convention for the future in no way confers any approval or legitimacy upon illegal transactions of whatever kind which may have taken place before the entry into force of the Convention,

CONSCIOUS that this Convention will not by itself provide a solution to the problems raised by illicit trade, but that it initiates a process that will enhance international cultural co-operation and maintain a proper role for legal trading and inter-State agreements for cultural exchanges,

ACKNOWLEDGING that implementation of this Convention should be accompanied by other effective measures for protecting cultural objects, such as the development and use of registers, the physical protection of archaeological sites and technical co-operation,

RECOGNISING the work of various bodies to protect cultural property, particularly the 1970 UNESCO Convention on illicit traffic and the development of codes of conduct in the private sector,

HAVE AGREED as follows:

CHAPTER I - SCOPE OF APPLICATION AND DEFINITION

Article 1

This Convention applies to claims of an international character for:

- (a) the restitution of stolen cultural objects;
- (b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage (hereinafter "illegally exported cultural objects").

Article 2

For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.

CHAPTER II - RESTITUTION OF STOLEN CULTURAL OBJECTS

Article 3

- (1) The possessor of a cultural object which has been stolen shall return it.
- (2) For the purposes of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place.
- (3) Any claim for restitution shall be brought within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft.
- (4) However, a claim for restitution of a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection, shall

not be subject to time limitations other than a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor.

(5) Notwithstanding the provisions of the preceding paragraph, any Contracting State may declare that a claim is subject to a time limitation of 75 years or such longer period as is provided in its law. A claim made in another Contracting State for restitution of a cultural object displaced from a monument, archaeological site or public collection in a Contracting State making such a declaration shall also be subject to that time limitation.

(6) A declaration referred to in the preceding paragraph shall be made at the time of signature, ratification, acceptance, approval or accession.

(7) For the purposes of this Convention, a "public collection," consists of a group of inventoried or otherwise identified cultural objects owned by:

(a) a Contracting State

(b) a regional or local authority of a Contracting State;

(c) a religious institution in a Contracting State; or

(d) an institution that is established for an essentially cultural, educational or scientific purpose in a Contracting State and is recognised in that State as serving the public interest.

(8) In addition, a claim for restitution of a sacred or communally important cultural object belonging to and used by a tribal or indigenous community in a Contracting State as part of that community's traditional or ritual use, shall be subject to the time limitation applicable to public collections.

Article 4

(1) The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object.

(2) Without prejudice to the right of the possessor to compensation referred to in the preceding paragraph, reasonable efforts shall be made to have the person who transferred the cultural object to the possessor, or any prior transferor, pay the compensation where to do so would be consistent with the law of the State in which the claim is brought.

(3) Payment of compensation to the possessor by the claimant, when this is required, shall be without prejudice to the right of the claimant to recover it from any other person.

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

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously.

CHAPTER III - RETURN OF ILLEGALLY EXPORTED CULTURAL OBJECTS

Article 5

(1) A Contracting State may request the court or other competent authority of another Contracting State to order the return of a cultural object illegally exported from the territory of the requesting State.

(2) A cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration, under a permit issued according to its law regulating its export for the purpose of protecting its cultural heritage and not returned in accordance with the terms of that permit shall be deemed to have been illegally exported.

(3) The court or other competent authority of the State addressed shall order the return of an illegally exported cultural object if the requesting State establishes that the removal of the object from its territory significantly impairs one or more of the following interests:

- (a) the physical Preservation of the object or of its context;
- (b) the integrity of a complex object;
- (c) the preservation of information of, for example, a scientific or historical character;
- (d) the traditional or ritual use of the object by a tribal or indigenous community,

or establishes that the object is of significant cultural importance for the requesting State.

(4) Any request made under paragraph 1 of this article shall contain or be accompanied by such information of a factual or legal nature as may assist the court or other competent authority of the State addressed in determining whether the requirements of paragraphs 1 to 3 have been met.

(5) Any request for return shall be brought within a period of three years from the time when the requesting State knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the date of the export or from the date on which the object should have been returned under a permit referred to in paragraph 2 of this article.

Article 6

(1) The possessor of a cultural object who acquired the object after it was illegally exported shall be entitled, at the time of its return, to payment by the requesting State of fair and reason compensation, provided that the possessor neither knew nor ought reasonably to have known at the time of acquisition that the object had been illegally exported.

(2) In determining whether the possessor knew or ought reasonably to have known that the cultural object had been illegally exported, regard shall be had to the circumstances of the acquisition, including the absence of an export certificate required under the law of the requesting State.

(3) Instead of compensation, and in agreement with the requesting State, the possessor required to return the cultural object to that State may decide:

(a) to retain ownership of the object; or

(b) to transfer ownership against payment or gratuitously to a person of its choice residing in the requesting State who provides the necessary guarantees.

(4) The cost of returning the cultural object in accordance with this article shall be borne by the requesting State, without prejudice to the right of that State to recover costs from any other person.

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously.

Article 7

(1) The provisions of this Chapter shall not apply where:

(a) the export of a cultural object is no longer illegal at the time at which the return is requested; or

(b) the object was exported during the lifetime of the person who created it or within a period of fifty years following the death of that person.

(2) Notwithstanding the provisions of sub-paragraph (b) of the preceding paragraph, the provisions of this Chapter shall apply where a cultural object was made by a member or members of a tribal or indigenous community for traditional or ritual use by that community and the object will be returned to that community.

Chapter IV - General Provisions

Article 8

(1) A claim under Chapter II and a request under Chapter III may be brought before the courts or other competent authorities of the Contracting State where the cultural object is located, in addition to the courts or other competent authorities otherwise having jurisdiction under the rules in force in Contracting States.

(2) The parties may agree to submit the dispute to any court or other competent authority or to arbitration.

(3) Resort may be had to the provisional, including protective, measures available under the law of the Contracting State where the object is located even when the claim for restitution or request for return of the object is brought before the courts or other competent authorities of another Contracting State.

Article 9

(1) Nothing in this Convention shall prevent a Contracting State from applying any rules more favourable to the restitution or the return of stolen or illegally exported cultural objects than provided for by this Convention.

(2) This article shall not be interpreted as creating an obligation to recognise or enforce a decision of a court or other competent authority of another Contracting State that departs from the provisions of this Convention.

Article 10

(1) The provisions of Chapter II shall apply only in respect of a cultural object that is stolen after this Convention enters into force in respect of the State where the claim is brought, provided that:

(a) the object was stolen from the territory of a Contracting State after the entry into force of this Convention for that State; or

(b) the object is located in a Contracting State after the entry into force of the Convention for that State.

(2) The provisions of Chapter III shall apply only in respect of a cultural object that is illegally exported after this Convention enters into force for the requesting State as well as the State where the request is brought.

(3) This Convention does not in any way legitimise any illegal transaction of whatever which has taken place before the entry into force of this Convention or which is excluded under paragraphs (1) or (2) of this article, nor limit any right of a State or other person to make a claim under remedies available outside the framework of this Convention for the restitution or return of a cultural object stolen or illegally exported before the entry into force of this Convention.

Chapter V - Final Provisions

Article 11

(1) This Convention is open for signature at the concluding meeting of the Diplomatic Conference for the adoption of the draft Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects and will remain open for signature by all States at Rome until June 1996.

(2) This Convention is subject to ratification, acceptance or approval by States which have signed it.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Ratification, acceptance, approval or accession is subject to the deposit of a formal instrument to that effect with the depositary.

Article 12

(1) This Convention shall enter into force on the first day of the sixth month following the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

(2) For each State that ratifies, accepts, approves or accedes to this Convention after the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State on the first day of the sixth month following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 13

(1) This Convention does not affect any international instrument by which any Contracting State is legally bound and which contains provisions on matters governed

by this Convention, unless a contrary declaration is made by the States bound by such instrument.

(2) Any Contracting State may enter into agreements with one or more Contracting States, with a view to improving the application of this Convention in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary.

(3) In their relations with each other, Contracting States which are Members of organisations of economic integration or regional bodies may declare that they will apply the internal rules of these organisations or bodies and will not therefore apply as between these States the provisions of this Convention the scope of application of which coincides with that of those rules.

Article 14

(1) If a Contracting State has two or more territorial units, whether or not possessing different systems of law applicable in relation to the matters dealt with in this Convention, it may, at the time of signature or of the deposit of its instrument of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may substitute for its declaration another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State the reference to:

(a) the territory of a Contracting State in Article 1 shall be construed as referring to the territory of a territorial unit of that State;

(b) a court or other competent authority of the Contracting State or of the State addressed shall be construed as referring to the court or other competent authority of a territorial unit of that State;

(c) the Contracting State where the cultural object is located in Article 8 (1) shall be construed as referring to the territorial unit of that State where the object is located;

(d) the law of the Contracting State where the object is located in Article 8 (3) shall be construed as referring to the law of the territorial unit of that State where the object is located; and

(e) a Contracting State in Article 9 shall be construed as referring to a territorial unit of that State.

(4) If a Contracting State makes no declaration under paragraph 1 of this article, this Convention is to extend to all territorial units of that State.

Article 15

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

(3) A declaration shall take effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force shall take effect on the first day of the sixth month following the date of its deposit with the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal shall take effect on the first day of the sixth month following the date of the deposit of the notification.

Article 16

(1) Each Contracting State shall at the time of signature, ratification, acceptance, approval or accession, declare that claims for the restitution, or requests for the return, of cultural objects brought by a State under Article 8 may be submitted to it under one or more of the following procedures:

(a) directly to the courts or other competent authorities of the declaring State;

(b) through an authority or authorities designated by that State to receive such claims or requests and to forward them to the courts or other competent authorities of that State;

(c) through diplomatic or consular channels.

(2) Each Contracting State may also designate the courts or other authorities competent to order the restitution or return of cultural objects under the provisions of Chapters II and III.

(3) Declarations made under paragraphs 1 and 2 of this article may be modified at any time by a new declaration.

(4) The provisions of paragraphs 1 to 3 of this article do not affect bilateral or multilateral agreements on judicial assistance in respect of civil and commercial matters that may exist between Contracting States.

Article 17

Each Contracting State shall, no later than six months following the date of deposit of its instrument of ratification, acceptance, approval or accession, provide the depositary with written information in one of the official languages of the Convention concerning the legislation regulating the export of its cultural objects. This information shall be updated from time to time as appropriate.

Article 18

No reservations are permitted except those expressly authorised in this Convention.

Article 19

(1) This Convention may be denounced by any State Party, at any time after the date on which it enters into force for that State, by the deposit of an instrument to that effect with the depositary.

(2) A denunciation shall take effect on the first day of the sixth month following the deposit of the instrument of denunciation with the depositary. Where a longer period for the denunciation to take effect is specified in the instrument of denunciation it shall take effect upon the expiration of such longer period after its deposit with the depositary.

(3) Notwithstanding such a denunciation, this Convention shall nevertheless apply to a claim for restitution or a request for return of a cultural object submitted prior to the date on which the denunciation takes effect.

Article 20

The President of the International Institute for the Unification of Private Law (Unidroit) may at regular intervals, or at any time at the request of five Contracting States, convene a special committee in order to review the practical operation of this Convention.

Article 21

(1) This Convention shall be deposited with the Government of the Italian Republic.

(2) The Government of the Italian Republic shall:

(a) inform all States which have signed or acceded to this Convention and the President of the International Institute for the Unification of Private Law (Unidroit) of:

- (i) each new signature or deposit of an instrument of ratification, acceptance approval or accession, together with the date thereof;
 - (ii) each declaration made in accordance with this Convention;
 - (iii) the withdrawal of any declaration;
 - (iv) the date of entry into force of this Convention;
 - (v) the agreements referred to in Article 13;
 - (vi) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;
- (b) transmit certified true copies of this Convention to all signatory States, to all States acceding to the Convention and to the President of the International Institute for Unification of Private Law (Unidroit);
 - (c) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised, have signed this Convention.

DONE at Rome, this twenty-fourth day of June, one thousand nine hundred and ninety-five, in a single original, in the English and French languages, both texts being equally authentic.

Annex

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs;
 - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

APPENDIX III

ICOM RECOMMENDATIONS (Ethics of Acquisitions, 1970)

1. The museum of today is not a mere repository of objects: it is concerned with the acquisition of the objects as an integral part of a specific programme of:
 - a. scientific research,
 - b. education,
 - c. conservation,
 - d. the demonstration of National and International, Natural and Cultural Heritage.
2. Some museums may encompass all aspects of this far-reaching programme, whilst others may specialize in certain parts of it. Consequently no object should be acquired which has no part to play in the aims of the museum as demonstrated by its programme.
3. The object being considered for acquisition may come from anywhere within a wide spectrum of definitions, the two extremes of which may be briefly summarized as being:
 - a. objects recognised by scholarship and/or the community where they have their full cultural significance as having a unique quality and are therefore beyond value;
 - b. objects which, though not necessarily rare in themselves, nevertheless have a value which derives from their cultural and natural environment.
4. The significance of the object (cultural and scientific) will depend upon its being fully documented. As a matter of principle no acquisition should be made without this full documentation, with the possible exception of certain objects which come near to that end of the spectrum characterized by definition (a), paragraph 3, when the essential documentation relative to the latter may be obtained by systematic research after acquisition.
5. In most fields, direct acquisitions are best obtained by scientifically conducted research missions. They may occur in the mission's own country or abroad. In the latter case they must be conducted with the agreement or the cooperation, and according to the laws of the host country.
6. Direct acquisitions can also be made through cooperation with a museum or with an institution responsible for the safeguard of the national cultural heritage, in the country possessing the required object. These same principles may also be profitably applied "mutatis mutandis" to objects which come near to that end of the spectrum characterized by definition (a), paragraph 3.
7. The object acquired by direct means is as well documented as possible; this is not always the case with indirect acquisitions. Whereas direct acquisitions conducted as described in paragraphs 5 and 6, will always conform to ethical standards, this may not always be the case with the indirect system.
8. The indirect acquisition, which includes the gift and bequest, is that which has been acquired through one, or more intermediaries. When a museum feels

obliged to acquire an object indirectly, this should always be done in observance of the laws and interests of the country from which it is obtained, or the country of origin when the country from which it is obtained is only a place of commercial transit.

9. The responsibility of the museum professional in those museums which have as their primary function the preservation of the national heritage is threefold:
 - a. to acquire and preserve for the country concerned a comprehensive collection illustrating all aspects of the nation's cultural and natural heritage;
 - b. to control the international movement of objects belonging to this heritage;
 - c. to cooperate with foreign museums and other scientific institutions to ensure adequate representation of that culture on an international scale.
10. It is imperative that if the museum is to fulfil completely its roles in education and international understanding, its professional staff must observe the highest ethical standards not only in the very important process of acquisition but also in the other fields of their professional activity.

Suggestions for the Implementation of the Recommendations

11. Museum programmes should be published. This will encourage exchange and outside help.
12. The acquisition of objects by any museum should not be limited to what is necessary for the exhibition halls, but sufficient objects should be collected for study and conservation purposes, for exchange with and for supply to local museums and for international exchange. However, objects should never be accumulated solely for their commercial value.
13. Material for exchange should encompass objects of sufficiently high standard to attract objects of similar standard from other museums. Exchange should mean not merely object against object but also object against services and equipment.
14. Documentation acquired by a scientific expedition should be made available to the country in which the expedition was carried out, after a certain agreed period of time, during which the scientific rights are reserved to the discoverer. The same documentation should be made available under the same conditions to the museum in the country which organised the expedition.
15. With due regard to legal requirements and UNESCO recommendations and conventions relative to sharing the products of field research, every endeavour should be made to respect the ecological association of a group of objects. Certain objects and collections are sometimes lent to a foreign museum or scientific institution for study purposes. On such occasion they should be returned to the institution to which they belong in the shortest time possible.
16. With due regard to legal requirements and UNESCO recommendations and conventions, the museum which has reason to doubt the licit quality of a previously acquired object should contact the museum or other professional organisation in the country of origin with a view to examining, in each

particular case, the steps which should be taken to best preserve the interests of both parties.

17. If a museum is offered objects, the licit quality of which it has reason to doubt, it will contact the competent authorities of the country of origin in an effort to help this country safeguard its national heritage.
18. Gifts and bequests should only be accepted with a proviso that in the event of any object proving to have been illicitly exported from another country the authorities of the museum should be empowered to take action as above.
19. Museums of those countries which, by virtue of political or economic circumstances hold an important part of the cultural property of countries which were not in a position to safeguard their cultural heritage adequately, should remind their authorities and collectors that they have a moral duty to assist in the future development of museums in these countries.
20. The museums of any country which bind themselves to follow the ethical rules and the practical proposals formulated in Paragraphs 1 to 19 of this document, will agree to offer each other preferential treatment in all professional activities, compatible with the existing laws.